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**POL5010W**

**OUTSOURCING INTELLIGENCE: THE RELATIONSHIP BETWEEN THE STATE  
AND PRIVATE INTELLIGENCE IN POST-APARTHEID SOUTH AFRICA**

**A minor dissertation submitted in partial fulfilment of the requirements for the  
award of the degree of *Master of Social Science in International Relations***

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**Plagiarism Declaration**

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## **Abstract**

The state claims the monopoly of the legitimate use of force. This is not to suggest however that the state cannot and does not outsource the practical exercise of force. On the contrary, the outsourcing of a wide range of military and security roles and functions is, to a greater or lesser extent, a feature of most states. Important, yet least well understood is the outsourcing of intelligence. Explanations of the outsourcing of this sensitive function usually cite the incapacity of the state and the efficiency of the private sector. But is such outsourcing efficient? The evidence suggests not. Rather the outsourcing of intelligence has been characterized by inefficiency, corruption and criminality. This has certainly proved the case in post-apartheid South Africa where the outsourcing of intelligence by the state has been popular.

This dissertation examines the relationship between the state and private intelligence in post-apartheid South Africa. It is divided into three chapters. The first chapter is concerned with establishing key concepts; namely the state, intelligence, and public and private intelligence; and with developing an interpretative framework of the relationship between the state and private intelligence. The second chapter provides an overview of intelligence in South Africa between 1949 and 2008. The third chapter considers the relationship between the state and private intelligence in post-apartheid South Africa.

This dissertation concludes that the relationship between the state and private intelligence in post-apartheid South Africa can be best described as contradictory. While on the one hand the state has been hostile towards private intelligence, the outsourcing of intelligence has been favoured by the post-apartheid state. For the most part, such outsourcing has proved inefficient, corrupt and criminal; and has undermined what are already weak mechanisms of oversight and accountability.

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## **List of Acronyms**

ANC	African National Congress
CI	Crime Intelligence
CIA	Central Intelligence Agency
DA	Democratic Alliance
DCC	Directorate of Covert Collection
DFA	Department of Foreign Affairs
DI	Defence Intelligence
DIS	Department of Intelligence and Security
DMI	Directorate of Military Intelligence
DP	Democratic Party
DSO	Directorate of Special Operations
FBI	Federal Bureau of Investigation
FIC	Financial Intelligence Centre
HUMINT	Human Intelligence
IDSO	International Diamond Security Organization
IG	Inspector General
IR-CIS	International Researchers- Ciskei Intelligence Services
JCPS	Justice, Crime, Policing and Security Cluster
JSCI	Joint Standing Committee on Intelligence
MI	Military Intelligence
MI5	Security Service
MI6	Secret Intelligence Service



NNP	New National Party
NAT	Department of National Intelligence and Security
NIA	National Intelligence Agency
NICOC	National Intelligence Coordinating Committee
NIS	National Intelligence Service
NSA	National Security Agency
NSC	National Security Council
PSIRA	Private Security Industry Regulatory Authority
PSU	Presidential Support Unit
SAACIP Professionals	South African Association of Competitive Intelligence Professionals
SADF	South African Defence Force
SANAI	South African National Academy of Intelligence
SANDF	South African National Defence Force
SAP	South African Police
SAPS	South African Police Service
SARS	South African Revenue Service
SASS	South African Secret Service
SIGINT	Signal Intelligence
SSC	State Security Council

## **Introduction**

The contemporary outsourcing of a wide range of military and security roles and functions by the state has attracted much popular and scholarly interest.<sup>1</sup> Less so the outsourcing of intelligence which, characteristically secretive, remains largely unexplored in academia. Not that the outsourcing of this sensitive function is any less significant; on the contrary, with far-reaching and potentially problematic implications, the outsourcing of intelligence is important. This has certainly proved the case in post-apartheid South Africa, where the outsourcing of intelligence by the state has been popular.

This dissertation is concerned with the relationship between the state and private intelligence in post-apartheid South Africa. To what extent has the state outsourced intelligence; what explains such outsourcing; and what have been the implications of such outsourcing, especially for the oversight and accountability of intelligence? Further, to what extent has the state exerted its primacy in the intelligence realm and how has this been achieved, if at all?

### **(i) The State and Private Intelligence**

According to most definitions, the state enjoys a monopoly of the legitimate use of force. While in practice, few if any states have achieved an absolute monopoly on violence, this does not negate the principle that the legitimate use of force belongs to the political sovereign. Scholars argue that the legitimacy of the state depends, in part, on the provision by the state of certain public goods and services, including security. This is not to suggest that the state cannot and does not outsource such goods and services. What is important however, is that while the state outsources work, it remains responsible for such work.

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<sup>1</sup> Important works include Peter Warren Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (London: Cornell University Press, 2003); and Herbert Wulf, *Internationalizing and Privatizing War and Peace* (New York: Palgrave Macmillan, 2005).

One public good which has been increasingly outsourced is intelligence. Part of national defence, intelligence has been outsourced by states, both weak and strong and democratic and undemocratic. Rooted in the neo-liberal agenda, explanations of the outsourcing of public intelligence are twofold. First, the state outsources intelligence because it does not have the capacity or capability to provide the function in question. Second, the state outsources intelligence because the private sector is perceived as being more efficient and effective than the state. But is private intelligence more efficient and effective than public intelligence?

A body of evidence suggests that the outsourcing of intelligence is not efficient, and may in fact be patently inefficient. Certain conditions, for example, a competitive contracting process, need to be met for outsourcing to be efficient. These conditions frequently do not prevail. Shrouded in secrecy, outsourcing by public intelligence is most often characteristically inefficient, corrupt and criminal. Whether it is overcharging, the conflict of interests arising from the “revolving door”, or the outsourcing of “dirty work”, the outsourcing of intelligence has proved anything but efficient.

Suggestions that problems in the outsourcing of intelligence can be addressed by good legislation and the exercise of oversight by the political sovereign are ambitious. While in strong, democratic states, intelligence is restrained in law and subject to mechanisms of oversight and accountability; even in these states intelligence oversight and accountability is very often deficient. Shielded from public scrutiny, the outsourcing of intelligence only further complicates poor oversight and accountability. Difficult enough for strong, democratic states; for weak states, exercising oversight of the outsourcing of intelligence appears almost impossible. In fact, in such states, outsourcing may worsen the problem of poor oversight and accountability.

## **(ii) The State and Private Intelligence in Post-Apartheid South Africa**

Fighting a protracted battle for political control in South Africa, apartheid and liberation intelligence were guilty of widespread human rights abuses. A negotiated settlement and a new constitutional order necessitated the reform of intelligence. The new security, which entailed a broadening and deepening of the notion of security, informed the reform of intelligence which resulted in new legislation, organizations and mechanisms of oversight and accountability. Following the reform of intelligence in the mid-1990s, intelligence was restructured during the presidency of Thabo Mbeki. This restructuring included the establishment of a number of new intelligence organizations.

The performance of post-apartheid intelligence suggests that the reform of intelligence has been far from successful. Having stumbled from one crisis to another, post-apartheid intelligence has displayed the fractiousness which characterized its apartheid counterpart; while a lack of trust in individuals, institutions and the intelligence product itself, has undermined the emergence of an intelligence service consistent with its founding principles. By the mid-2000s, in the context of the presidential succession race and the interests of the intelligence services therein, the South African government conceded that the intelligence services were in crisis.

Against this backdrop, the state has outsourced to a private intelligence industry which emerged in the early 1990s. Employing veterans of the apartheid security forces and offering a wide range of intelligence functions; all indications are that the private intelligence industry in post-apartheid South Africa has experienced growth. While there are cases in which outsourcing has enabled the post-apartheid state to better execute its mandate; overall, the outsourcing of intelligence has been characterized by inefficiency, corruption and criminality. Further, the outsourcing of intelligence has undermined what have proved weak mechanisms of oversight and accountability.

While the numerous cases in which intelligence has been outsourced by the post-apartheid state suggests that outsourcing has been a favoured policy, the post-apartheid state has consistently articulated its hostility towards private intelligence while efforts have been made to better regulate the private intelligence industry. This leads one to conclude that the relationship between the state and private intelligence in post-apartheid South Africa, can be best described as contradictory.

### **(iii) Chapter Overview**

This dissertation consists of three chapters:

Chapter one is concerned with defining key concepts and developing an interpretative framework of the relationship between the state and private intelligence. Key concepts include the state, intelligence, and public and private intelligence. An interpretation of the relationship between the state and private intelligence explores the primacy of public intelligence, the outsourcing of public intelligence, the motivations and characteristics of such outsourcing, and the implications of such outsourcing for intelligence oversight and accountability.

Chapter two provides an overview of intelligence in South Africa. Two time periods are considered, 1949-1990 and 1990-2008. In the case of the former, apartheid and liberation intelligence; together with the relationship between the apartheid state and private intelligence, are discussed. In the case of the latter, an overview is provided of the reform of apartheid intelligence; post-apartheid intelligence legislation, organizations and mechanisms of oversight and accountability; and the restructuring of intelligence by Thabo Mbeki; while an appraisal of post-apartheid intelligence is also offered. This chapter also provides an overview of private intelligence in post-apartheid South Africa, in which the size, location, ownership, functions, clients and employees of the industry are considered.

Chapter three explores the relationship between the state and private intelligence in post-apartheid South Africa. Finding a contradictory relationship, both the hostility of

the state towards private intelligence and the outsourcing of intelligence by the state, are considered. In the case of the former, the articulation by the state of its hostility towards private intelligence, as well as its efforts to better regulate the private intelligence industry, are discussed. In the case of the latter, the extent of the outsourcing by the state, the motivations and characteristics of such outsourcing, and the implications of such outsourcing for intelligence oversight and accountability, are discussed.

#### **(iv) Methodology**

This dissertation is an empirical study of the relationship between the state and private intelligence in post-apartheid South Africa. The main thrust of this dissertation is descriptive; i.e. it provides a description of the relationship between the state and private intelligence in post-apartheid South Africa.

This dissertation relies on primary and secondary sources including books, journal articles, official government speeches and reports, the reports of Commissions of Inquiry, and newspaper and periodical articles. No formal interviews were conducted although informal discussions were held with a number of individuals with knowledge of the subject matter.

#### **(v) Limitations**

This dissertation is at best a preliminary examination of the relationship between the state and private intelligence in post-apartheid South Africa. Its objective is to provide the groundwork for more detailed study of the subject. Intelligence is notoriously difficult terrain which to penetrate. Propaganda, deception and subterfuge are hallmarks of spy craft, which makes the study of intelligence complicated. No doubt, this subject will benefit from future studies in which primary research, including extensive interviews with insiders, is conducted.

## **Chapter 1: Definitions and an Interpretative Framework**

### **1.1. Introduction**

The purpose of this chapter is to, first, define key concepts; specifically the state, intelligence and, public and private intelligence; and second, to develop an interpretative framework of the relationship between the state and private intelligence.

### **1.2. Key Concepts**

#### **1.2.1 The State**

The concept of a state is usually a synonym of country or of government:

When state is synonymous with country, it usually refers to a territorial jurisdiction; which houses a population, has a government, and is legally recognised by other countries as an independent political entity.<sup>2</sup> This recognition and, further, the agreement not to interfere in the affairs of another country, make states juridical equals.<sup>3</sup> Each country is treated as having the right to determine its own political affairs.<sup>4</sup>

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<sup>2</sup> Samuel J. Barkin and Bruce Cronin, "The State and the Nation: Changing Norms and Rules of Sovereignty in International Relations," *International Organization* 48, no. 1 (1994): 107; and Janice E. Thomson, "State Sovereignty in International Relations: Bridging the Gap between Theory and Empirical Research," *International Studies Quarterly* 39, no. 2 (1995): 219.

<sup>3</sup> Robert Jackson and Carl Rosberg, "Why Africa's Weak States Persist: The Empirical and the Juridical in Statehood," *World Politics* 35, no. 1 (1982); in Janice E. Thomson, "State Sovereignty in International Relations: Bridging the Gap between Theory and Empirical Research," *International Studies Quarterly* 39, no. 2 (1995): 219.

<sup>4</sup> Stephen D. Krasner, "Abiding Sovereignty," *International Political Science Review* 22, no.3 (2001): 232, 233; Janice E. Thomson, "State Sovereignty in International Relations: Bridging the Gap between Theory and Empirical Research," *International Studies Quarterly* 39, no. 2 (1995): 219; and Stephen Turner, ed. *The Cambridge Companion to Weber* (Cambridge: Cambridge University Press, 2000), 90.

When state is synonymous with government, scholars refer to a political entity within a territorial jurisdiction which is endowed with the highest political authority in that jurisdiction. This political entity; for example, a royal house, a legislature or a political party, is regarded as the political sovereign; its authority includes the monopoly of the legitimate use of physical force within that territorial jurisdiction.<sup>5</sup> Although political sovereigns rarely achieve an absolute monopoly on violence,<sup>6</sup> practical failures do not however negate the principle that the use of the legitimate means of violence should belong to the highest political authority in the land.<sup>7</sup>

On what grounds do scholars grant the monopoly of the legitimate means of violence to a political sovereign?

Perhaps the most important reason given by a succession of scholars is that the political sovereign provides a service to the public by monopolising the means of violence. The sovereign is also the only political entity that can provide a service on an equal basis to all citizens or nationals. Thomas Hobbes, for example, argued that individuals cede their natural rights to a sovereign authority because that entity guarantees the security of their property and person.<sup>8</sup> More recently, Douglass North has suggested that the legitimacy of the state depends upon the provision of goods and services, including the service of security.<sup>9</sup>

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<sup>5</sup>Max Weber, *Politics as a Vocation*; in William Connolly, ed. *Legitimacy and the State* (Oxford: Basil Blackwell, 1984), 33.

<sup>6</sup> Herbert Wulf, *Internationalizing and Privatizing War and Peace* (New York: Palgrave Macmillan, 2005), 37.

<sup>7</sup> Max Weber, *Politics as a Vocation*, in William Connolly, ed. *Legitimacy and the State* (Oxford: Basil Blackwell, 1984), 33; Janice E. Thomson, "State Sovereignty in International Relations: Bridging the Gap between Theory and Empirical Research," *International Studies Quarterly* 39, no. 2 (1995): 223; Clifford Shearing, "Thoughts on Sovereignty," *Policing and Society* 14, no. 1. (2004): 6; and Roland Axtmann, "The State of the State: The Model of the Modern State and its Contemporary Transformation," *International Political Science Review* 25, no. 3 (2004): 261.

<sup>8</sup> Thomas Hobbes, *The Leviathan* (Cambridge: Cambridge University Press, 1991).

<sup>9</sup> Douglass C. North, John J. Wallis and Barry R. Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* (Cambridge: Cambridge University Press, 2009), 111, 122, 123.



Being responsible for the provision of public goods<sup>10</sup> does not mean that the political sovereign itself must provide these goods. On the contrary, the political sovereign may create institutions of security and may delegate work to these institutions, but can undo these institutions and revoke instructions for a variety of reasons: work can be delegated, as Weber said, but not the responsibility for having the work done.

A significant reason for delegating work is the efficient and effective provision of public goods.<sup>11</sup> Yet scholars have long argued that some goods and services cannot be subjected to cost-benefit calculations: services which have to be available at all times and in all places, regardless of cost. These services, known as public goods, include the defence of the territorial jurisdiction.<sup>12</sup>

### 1.2.2. Intelligence

Following Sherman Kent, intelligence can be defined, alternately; as information, a process and an organization:<sup>13</sup>

Defined as information, intelligence is information; the accuracy and significance of which has been evaluated.<sup>14</sup> Intelligence is not just information but a 'specialized subset of information that has been analysed.'<sup>15</sup> Why does information have to be analysed? The answer lies in the fact that decision-making requires 'targeted, actionable and predictive knowledge,'<sup>16</sup> or foreknowledge of events.<sup>17</sup> The difference

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<sup>10</sup> Following Paul Samuelson a public good is characteristically indivisible and non-excludable.

<sup>11</sup> Max Weber, *Politics as a Vocation*; in William Connolly, ed. *Legitimacy and the State* (Oxford: Basil Blackwell, 1984), 33.

<sup>12</sup> Ronald C. Moe, "Exploring the Limits of Privatization," *Public Administration Review* 47, no. 6 (1987): 457.

<sup>13</sup> Abram Shulsky, *Silent Warfare, Understanding the World of Intelligence* (New York: Brassey's, 1993), 1.

<sup>14</sup> Harry Ransom, *The Intelligence Establishment* (Cambridge: Harvard University Press, 1970), 7.

<sup>15</sup> Greg Hannah, Kevin O'Brien, and Andrew Rathmell, *Intelligence and Security Legislation for Security Sector Reform, RAND Technical Report prepared for the United Kingdom's Security Sector Development Advisory Team* (Europe: RAND Corporation, 2005), 1.  
[http://www.rand.org/pubs/technical\\_reports/2005/RAND\\_TR288.pdf](http://www.rand.org/pubs/technical_reports/2005/RAND_TR288.pdf).

<sup>16</sup> Andrew Rathmell, "Towards Postmodern Intelligence," *Intelligence and National Security* 17, no. 3. (2002): 89.

between information and intelligence is best illustrated by John Deutch who has suggested that ‘there is a difference between information- there’s a red coat, there’s a red coat, there’s a red coat- and intelligence; which is saying at the right time, ‘the British are coming.’<sup>18</sup>

Defined as a process, intelligence is the course of action by which information becomes intelligence.<sup>19</sup> Scholars most often refer to this process as the intelligence cycle, which features a dynamic relationship between the intelligence consumer and producer.<sup>20</sup> (1) An agenda is set according to the intelligence requirements of the consumer.<sup>21</sup> (2) Information is collected by agents and organizations, using a diversity of techniques and involving a wide range of sources. (3) Raw data is analysed; by determining the credibility of information, drawing insightful inferences and interpreting the implications of these inferences.<sup>22</sup> (4) The producer delivers the intelligence product to the consumer in a timely fashion.<sup>23</sup> Once the consumer receives the intelligence product, the cycle very often begins anew.

Defined as an organization, intelligence can be understood as those organizations, which produce intelligence. If information is to be regularly collected, analysed and disseminated, organisation becomes necessary. Specialists have to be accommodated; including informers and spies who collect human intelligence (HUMINT), technicians who intercept electronic communications (SIGINT), subject

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<sup>17</sup> While Keegan is concerned exclusively with intelligence in war, his definition of intelligence as foreknowledge can be used more widely. John Keegan, *Intelligence in War: Knowledge of the Enemy from Napoleon to Al-Qaeda*, (Toronto: Key Porter Books, 2003).

<sup>18</sup> Charles E. Lathrop, *The Literary Spy*, (New Haven: Yale University Press, 2004), 201.

<sup>19</sup> Len Scott and Peter Jackson, “The Study of Intelligence in Theory and Practice,” *Intelligence and National Security* 19, no. 2 (2004): 141.

<sup>20</sup> Harry Ransom, *The Intelligence Establishment* (Cambridge: Harvard University Press, 1970), 15.

<sup>21</sup> Alan Dupont, “Twenty First Century Intelligence,” *Intelligence and National Security* 18, no 4 (2003): 23.

<sup>22</sup> Harry Ransom, *The Intelligence Establishment* (Cambridge: Harvard University Press, 1970), 15.

<sup>23</sup> Alan Dupont, “Twenty First Century Intelligence,” *Intelligence and National Security* 18, no 4 (2003): 22.

specialists, and regional analysts.<sup>24</sup> Routines and procedures have to be created among these specialists to produce the desired product. Intelligence organisations long were a component of defence or military security; that is, intelligence-entities were located in larger military organizations, usually in the staff function.<sup>25</sup> In the twentieth century however, intelligence services became autonomous and increasingly so. Examples include the United Kingdom's Security Service (MI5) and Secret Intelligence Service (MI6), as well as the post-World War II creation of the Central Intelligence Agency (CIA) in the United States.

### 1.2.3. Public and Private Intelligence

What distinguishes public intelligence and private intelligence?

First, a distinction lies in the consumer or client: public intelligence serves only one client, the political sovereign. Further, regardless of regime type or whether the regime is democratic or authoritarian, public intelligence is regarded as being an instrument of the executive branch of the political sovereign.

Second, since public intelligence is a support function of the defence of the country, intelligence is a public good and distances itself from financial cost-benefit calculations. Private intelligence organisations, on the other hand, are profit oriented, requiring intelligence to maximize profit in market-activities.<sup>26</sup>

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<sup>24</sup> Abram Shulsky, *Silent Warfare, Understanding the World of Intelligence* (New York: Brassey's, 1993), 3; and Loch Johnson, *Bombs, Bugs, Drugs and Thugs: Intelligence and America's Quest for Security* (New York: New York University Press, 2000), 2.

<sup>25</sup> Andrew Rathmell, "Towards Postmodern Intelligence," *Intelligence and National Security* 17, no. 3. (2002): 90.

<sup>26</sup> Arthur Hulnick, "Risky Business, Private Sector Intelligence in the United States," *Harvard International Review* 24, no. 3 (2002): 68.

Not all private intelligence companies are, however, profit-oriented; the private intelligence industry in fact includes both profit and non-profit actors. The International Crisis Group, <http://www.crisisgroup.org/home/>, Chatham House, <http://www.chathamhouse.org.uk/> and many similar non-governmental organizations fall into this latter category. Vigil is a particularly interesting case. Founded as 'an act of patriotism to make Britain a safer place'; Vigil, which is not run for profit, produces intelligence on terrorist groups and collaborates closely with United States and United Kingdom intelligence. Tony Gerachty, *Guns for Hire: The Inside Story of Freelance Soldiering*, (London: Piatkus, 2007), 267.

Third, since public intelligence is a support function of the defence of the country, public intelligence organisations can engage in violence. This violence is usually covert.<sup>27</sup> Covert action should not be exaggerated, however, as the range of threats has widened; today it is indeed customary to say that the state faces an increasing number of both traditional and non-traditional threats, which span the military, economic, political, social and environmental.<sup>28</sup>

Fourth, since public intelligence is a support function of the defence of the country, public intelligence organisations are entitled to counter the intelligence activities of other countries, and further, to exclude non-nationals in the production of intelligence.<sup>29</sup> In contrast, private intelligence is increasingly global in nature;<sup>30</sup> characterised by the geographically diverse ownership, location and operation of actors. For example, a private intelligence firm might be United States-owned, located in the United Kingdom, yet operate in Africa or the Middle East.<sup>31</sup> Understandably, these features create problems, leading to (among others) restrictions on both the foreign ownership of domestic actors and the location and operation of foreign actors domestically. India, for example, permits neither the foreign ownership of private intelligence actors nor the employment of foreigners in the domestic private intelligence industry.<sup>32</sup>

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<sup>27</sup> Ted Shackley, *Spymaster: My Life in the CIA*, (Virginia: Potomac Books, 2005).

<sup>28</sup> Harry Ransom, *The Intelligence Establishment* (Cambridge: Harvard University Press, 1970), 8; and Abram Shulsky, *Silent Warfare, Understanding the World of Intelligence* (New York: Brassey's, 1993), 5, 6.

<sup>29</sup> Abram Shulsky, *Silent Warfare, Understanding the World of Intelligence* (New York: Brassey's, 1993), 111.

<sup>30</sup> Simon Chesterman, 'We Can't Spy... If We Can't Buy!': *The Privatization of Intelligence and the Limits of Outsourcing 'Inherently Governmental Functions'*, New York University Law School, Public Law Research Paper, (New York: New York University, 2008), 2. <http://ssrn.com/abstract=1117066>.

<sup>31</sup> Examples of such firms include Control Risks, <http://www.controlrisks.com/>; The Risk Advisory Group, <http://www.riskadvisory.net/>; and Veracity Worldwide, <http://www.veracityworldwide.com/>.

<sup>32</sup> PRS Legislative Research, "The Private Detective Agencies (Regulation) Bill, 2007," PRS Legislative Brief, November 02, 2007. [http://www.prsindia.org/uploads/media/Private%20Detective/legis1223890689\\_The\\_Private\\_Detective\\_Agencies\\_Regulation\\_Bill\\_2007.pdf](http://www.prsindia.org/uploads/media/Private%20Detective/legis1223890689_The_Private_Detective_Agencies_Regulation_Bill_2007.pdf).

Fifth, private intelligence can be defined according to who produces it; that is, non-public entities.<sup>33</sup> Often these entities are located within larger organisations, typically private military or security firms.<sup>34</sup>

#### 1.2.4. Private Intelligence Functions

Private intelligence is a heterogeneous industry. By function, private intelligence actors perform one or a number of the following:

Intelligence related project management, staffing and training;<sup>35</sup>

Intelligence related technology;<sup>36</sup>

Political, socioeconomic and security risk analysis;<sup>37</sup>

Investigations and due diligence;<sup>38</sup>

Competitive intelligence;<sup>39</sup> and

Counterintelligence.<sup>40</sup>

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<sup>33</sup> Bob Hoogenboom, "Grey Intelligence," *Crime, Law and Social Change* 45, no. 4-5 (2006): 373; Arthur Hulnick, "Risky Business, Private Sector Intelligence in the United States," *Harvard International Review* 24, no. 3 (2002): 68; Richard Maxwell, "What is a Spy to Do?" *Social Text* 16, no. 3 (1998): 125; and Peter Gill and Mark Phythian, *Intelligence in an Insecure World* (Cambridge: Polity Press, 2006), 39.

<sup>34</sup> Peter Warren Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (London: Cornell University Press, 2003), 99.

<sup>35</sup> Examples of such firms include CACI, <http://www.caci.com/>; Booz Allen Hamilton, <http://www.boozallen.com/>; and SAIC, <http://www.saic.com/>.

<sup>36</sup> Examples of such firms include AirScan, <http://www.airscan.com/index.html>; QinetiQ, <http://www.qinetiq.com/global.html>; and Northrop Grumman, <http://www.northropgrumman.com/>.

<sup>37</sup> Examples of such firms include Eurasia Group, <http://www.eurasiagroup.net/>; Control Risks, <http://www.controlrisks.com/>; and Veracity Worldwide, <http://www.veracityworldwide.com/>.

<sup>38</sup> Examples of such firms include Kroll, <http://www.kroll.com/>; Hakluyt, <http://hakluyt.co.uk/>; and Diligence, <http://www.diligence.com/index.html>.

<sup>39</sup> Examples of such firms include Fuld & Company, <http://www.fuld.com/HomePage.html>; Outward Insights, <http://www.outwardinsights.com/>; and CIS Competitive Intelligence Services, <http://www.cianalysis.com/index.asp>.

<sup>40</sup> Examples of such firms include Athena Intelligence, <http://www.athenaintelligence.co.uk/home>; ICS, <http://www.icsworld.com/>; and TSCM Services, <http://www.tscm.co.za/>.

## 1.3. Interpreting the Relationship between the State and Private Intelligence

### 1.3.1. The Primacy of Public Intelligence

As noted above, public intelligence is part of national defence, which is a responsibility belonging to the political sovereign. The defence of the country can be broadly understood, as mitigating traditional and non-traditional threats and countering the intelligence activities of non-national entities. As part of national defence, public intelligence may involve the use of violence.<sup>41</sup>

The political sovereign's right to monopolize force is expressed in the constitutional and legal frameworks according to which most states are constituted and governed. For example, the United States Constitution while permitting citizens to keep and bear arms nevertheless establishes the primacy of the state.<sup>42</sup> Further, the authority of the state to monopolize coercion is manifest both in the regulation of intelligence and particularly private intelligence.

Public intelligence remains a public good.<sup>43</sup> Critics of intelligence outsourcing therefore argue intelligence must resist efficiency calculations as what is important is not that intelligence is produced efficiently but rather that it is produced in the public interest. The monopoly of legitimate coercion is a matter of legitimacy.

### 1.3.2. Public Ends, Private Means

Public intelligence has not been exempt from the "privatization revolution"<sup>44</sup> which some scholars argue signifies the 'retreat' or demise of the state.<sup>45</sup> Other scholars

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<sup>41</sup> Johnson, Loch; Harry Ransom, *The Intelligence Establishment* (Cambridge: Harvard University Press, 1970), 8; and Abram Shulsky, *Silent Warfare, Understanding the World of Intelligence* (New York: Brassey's, 1993), 5, 6.

<sup>42</sup> Joelle Polesky, "The Rise of Private Militia: A First and Second Amendment Analysis of the Right to Organize and the Right to Train," *University of Pennsylvania Law Review* 144, no. 4 (1996): 1640.

<sup>43</sup> Peter Warren Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (London: Cornell University Press, 2003), 226.

<sup>44</sup> Peter Warren Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (London: Cornell University Press, 2003), 66.

challenge, on principle, the state's primacy.<sup>46</sup> In practice, undoubtedly, private military and security firms are increasingly significant and important providers of security.<sup>47</sup> Yet the practical reliance on private companies does not necessarily negate the political sovereign's right to monopolise legitimate force. Outsourcing is simply the state exercising its discretionary right about the best means to achieve public ends. Outsourcing remains subject to oversight and non-state actors remain accountable to those who have hired them. Weber summarises this situation as the state permitting something to happen.<sup>48</sup> The state remains ultimately responsible for those functions which are outsourced.

A discussion of the state's reliance on the private intelligence industry is most often illustrated by the American example.<sup>49</sup> In 2005 roughly seventy percent of an intelligence budget totalling billions of dollars was spent on private contractors.<sup>50</sup> Notably however while much attention is focused on the burgeoning private intelligence industry in the United States, intelligence outsourcing is a global phenomenon. Across the Atlantic, countries such as the United Kingdom and Germany<sup>51</sup> both outsource a host of military and security functions including

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<sup>45</sup> Susan Strange, *Retreat of the State: Diffusion of Power in the World Economy* (Cambridge, Cambridge University Press, 1996) in Beatrice Hibou, ed. *Privatizing the State* (London: Hurst and Company, 1999), 1.

<sup>46</sup> Elke Krahnemann, ed. *New Threats and New Actors in International Security*, (London: Palgrave Macmillan, 2005), 1.

<sup>47</sup> Peter Warren Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (London: Cornell University Press, 2003); Bruce Baker, *Multi-Choice Policing in Africa* (Stockholm: Nordiska Afrikainstitutet, 2008); and David Bayley and Clifford Shearing, "The Future of Policing," *Law and Society Review* 30, no. 3 (1996).

<sup>48</sup> Stephen Turner, ed. *The Cambridge Companion to Weber* (Cambridge: Cambridge University Press, 2000), 90.

<sup>49</sup> For example, Tim Shorrock, *Spies for Hire* (New York: Simon and Schuster, 2008).

<sup>50</sup> Simon Chesterman, 'We Can't Spy... If We Can't Buy!': *The Privatization of Intelligence and the Limits of Outsourcing 'Inherently Governmental Functions'*, New York University Law School, Public Law Research Paper, (New York: New York University, 2008), 2. <http://ssrn.com/abstract=1117066>.

<sup>51</sup> Elke Krahnemann, "Controlling Private Military Services in the United Kingdom and Germany: Between Partnership and Regulation," *European Security*, 13, no. 2 (2000). <http://eis.bris.ac.uk/~poxek/Krahnemann%20European%20Security.pdf>.

intelligence; while from Haiti<sup>52</sup> and Australia,<sup>53</sup> to Kenya<sup>54</sup> and Brazil,<sup>55</sup> the private intelligence industry is, for different reasons and to varying degrees, playing an increasingly important and influential role. With many countries outsourcing intelligence, the question is, why do they do so?

### 1.3.3. Explaining the Outsourcing of Public Intelligence

Two explanations dominate scholars' interpretations of why the state outsources to private intelligence: (1) public intelligence does not have the capacity or capability to provide the function; and/or (2) functions can be provided more efficiently or effectively by private intelligence. For example, the state may outsource the interception of communications because it does not have the requisite technology to do so; while it may outsource the vetting of potential employees because such outsourcing is efficient.

The outsourcing of intelligence occurs in both weak and strong states.<sup>56</sup> Many scholars assert that in weak states outsourcing is, for the most part, symptomatic of the incapacity or incapability of the state while in strong states outsourcing is most often propelled by the perceived primacy of the market and the pursuit of efficiency.<sup>57</sup>

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<sup>52</sup> Connor O'Reilly and Graham Ellison, "Eye Spy Private High": Re-Conceptualizing High Policy Theory," *British Journal of Criminology*, 46, no. 4 (2006): 651.

<sup>53</sup> Peter Warren Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (London: Cornell University Press, 2003), 99.

<sup>54</sup> Michela Wrong, *It's Our Turn to Eat: The Story of a Kenyan Whistleblower* (London: Fourth Estate, 2009).

<sup>55</sup> Daniel Zirker, *The Corruption Conundrum in Contemporary Brazil*, A paper prepared for presentation at the International Congress of Latin American Studies Association, Rio de Janeiro, Brazil, June 11-14, 2009, 12. <http://lasa.international.pitt.edu/members/congress-papers/lasa2009/files/ZirkerDaniel.pdf>.

<sup>56</sup> According to Richard F. Doner states can be considered strong if they are 'insulated from societal forces' and are 'sufficiently well organized to implement coherent policies.' Richard F. Doner, "Limits of State Strength: Toward an Institutional View of Economic Development," *World Politics* 44, no. 3 (1992): 399. Robert Rotberg, on the other hand, suggests that strong states can be distinguished from weak ones, 'according to the levels of their effective delivery of the most crucial public goods.' Robert I. Rotberg, *State Failure and State Weakness in a Time of Terror* (Washington D.C: Brookings Institution Press, 2003), 2.

<sup>57</sup> Caroline Holmqvist, *Private Security Companies: The Case for Regulation*, Stockholm International Peace Research Institute, SIPRI Policy Paper 9 (Stockholm: SIPRI, 2005), 11, 23. [http://kms2.isn.ethz.ch/serviceengine/Files/RESSpecNet/10491/ipublicationdocument\\_singledocument/8A6BE2A5-CD56-4AB2-965E-84633C811BD7/en/doc\\_10521\\_290\\_en.pdf](http://kms2.isn.ethz.ch/serviceengine/Files/RESSpecNet/10491/ipublicationdocument_singledocument/8A6BE2A5-CD56-4AB2-965E-84633C811BD7/en/doc_10521_290_en.pdf).



Caroline Holmqvist summarises the distinction as: 'private security in the weak state,' and 'private security and the "efficient" state.'<sup>58</sup> This is, however, at best, a broad generalization as strong states often outsource functions which they lack the capability or capacity to provide themselves; while weak states also pursue efficiency, albeit often at the insistence of foreign donors and the International Monetary Fund and the World Bank. Nevertheless, most scholars agree that neo-liberal ideology has underpinned the outsourcing of intelligence in weak and strong states alike.

The belief that all political relations should be seen as a market is a prominent part of the neo-liberal agenda, which does not exclude national defence from market-calculations.<sup>59</sup> PW Singer notes there was 'a gradual shift to a belief in the superiority of the marketplace in fulfilling organizational or public needs'<sup>60</sup> towards the end of the twentieth century when the neo-liberal economic policies of Thatcher and Reagan and the dramatic fall of state-led economies in the Soviet Union provided important antecedent conditions for the growth of the private military and security industry.<sup>61</sup> At the core of the dominant neo-liberal ideology is a characterization of the state as cumbersome, inefficient and corrupt; and the market as flexible, efficient and incorruptible.<sup>62</sup> This core belief has been widely accepted,

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<sup>58</sup> Caroline Holmqvist, *Private Security Companies: The Case for Regulation*, Stockholm International Peace Research Institute, SIPRI Policy Paper 9 (Stockholm: SIPRI, 2005). [http://kms2.isn.ethz.ch/serviceengine/Files/RESSpecNet/10491/ipublicationdocument\\_singledocument\\_t/8A6BE2A5-CD56-4AB2-965E-84633C811BD7/en/doc\\_10521\\_290\\_en.pdf](http://kms2.isn.ethz.ch/serviceengine/Files/RESSpecNet/10491/ipublicationdocument_singledocument_t/8A6BE2A5-CD56-4AB2-965E-84633C811BD7/en/doc_10521_290_en.pdf).

<sup>59</sup> Joanna Spear, *Market Forces: The Political Economy of Private Military Companies*, FAFO Report 531, 2006 (Norway: FAFO, 2006), 14. <http://www.faf.no/pub/rapp/531/531.pdf>; and Anna Leander, "The Power to Construct International Security: On the Significance of the Emergence of Private Military Companies," *Millennium: Journal of International Studies* 33, no. 3 (2005): 808.

<sup>60</sup> Peter Warren Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (London: Cornell University Press, 2003), 66.

<sup>61</sup> Peter Warren Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (London: Cornell University Press, 2003), 66.

<sup>62</sup> Mary Kaldor and Basker Vashee, eds. *Restructuring the Global Military Sector: New Wars* (London: Cassell Pinter, 1997) in Anna Leander, "The Power to Construct International Security: On the Significance of the Emergence of Private Military Companies," *Millennium: Journal of International Studies* 33, no. 3 (2005): 814.

and both justifies and stimulates the use of the private sector for the delivery of a wide range of public goods and services.<sup>63</sup>

#### **1.3.4. Outsourcing Public Intelligence: Inefficiency, Corruptibility and Criminality**

The belief in market-efficiency is often not supported by extensive evidence; in fact, evidence suggests that the outsourcing of intelligence may not be very efficient,<sup>64</sup> or is patently inefficient.<sup>65</sup> The efficient outsourcing of intelligence depends on certain conditions being met; including a competitive contracting process, clear contractual expectations, good oversight,<sup>66</sup> repeat encounters, and perfect information.<sup>67</sup> With the outsourcing of intelligence shrouded in secrecy, these conditions often do not prevail.

The contracting process is very often uncompetitive. As Fred Schreier and Marina Caparini suggest, outsourcing is marked by limited competition, collusion and the

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<sup>63</sup> Herbert Wulf, *Internationalizing and Privatizing War and Peace* (New York: Palgrave Macmillan, 2005), 41; and Alan Bryden and Marina Caparini, eds. *Private Actors and Security Governance*. Geneva Centre for the Democratic Control of Armed Forces (DCAF), LIT/DCAF, (Geneva: DCAF, 2006), 47.  
[http://se2.dcaf.ch/serviceengine/Files/DCAF/25736/ipublicationdocument\\_singledocument/CFB4D471-7691-448B-B570-582C0E09EE4A/en/bm\\_yb\\_2006.pdf](http://se2.dcaf.ch/serviceengine/Files/DCAF/25736/ipublicationdocument_singledocument/CFB4D471-7691-448B-B570-582C0E09EE4A/en/bm_yb_2006.pdf).

<sup>64</sup> Fred Schreier and Marina Caparini, *Privatizing Security: Law, Practice and Governance of Private Military and Security Companies*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Occasional Paper no. 6, March 2005 (Geneva: DCAF, 2005), 83.  
[http://www.dcaf.ch/docs/op06\\_privatising-security.pdf](http://www.dcaf.ch/docs/op06_privatising-security.pdf); and Glenn James Voelz, *Managing the Private Spies: The Use of Commercial Augmentation for Intelligence Operations*, Centre for Strategic Intelligence Research, Discussion Paper no. 14 (Washington: JMIC Press, 2006), 55.  
<http://www.fas.org/jrp/eprint/voelz.pdf>.

<sup>65</sup> Deborah Avant, "The Privatization of Security and the Change in the Control of Force," *International Studies Perspectives* 5, no. 2 (2004): 155; Anne Markusen, "The Case Against Privatizing National Security," *Governance: An International Journal of Policy, Administration and Institutions* 16, no. 4 (2003): 471; and Simon Chesterman, 'We Can't Spy... If We Can't Buy!': *The Privatization of Intelligence and the Limits of Outsourcing 'Inherently Governmental Functions'*, New York University Law School, Public Law Research Paper, (New York: New York University, 2008), 2.  
<http://ssrn.com/abstract=1117066>.

<sup>66</sup> Anne Markusen, "The Case Against Privatizing National Security," *Governance: An International Journal of Policy, Administration and Institutions* 16, no. 4 (2003): 477.

<sup>67</sup> Simon Chesterman, 'We Can't Spy... If We Can't Buy!': *The Privatization of Intelligence and the Limits of Outsourcing 'Inherently Governmental Functions'*, New York University Law School, Public Law Research Paper, (New York: New York University, 2008), 19. <http://ssrn.com/abstract=1117066>.

inflation of costs.<sup>68</sup> Furthermore, lacking specificity, open-ended contracts which are popular in military and security outsourcing, encourage both overcharging for, and the oversupply of, the good or service in question.<sup>69</sup> Also problematic is the monitoring and evaluation of the delivery of contracts.<sup>70</sup> As Glenn Voelz suggests, 'contract surveillance and performance evaluation,' is all too often inadequate.<sup>71</sup>

The outsourcing of public intelligence is also frequently characterized by corruption and criminality:

One serious form of corruption in the outsourcing of intelligence is the phenomenon of the "revolving door"; that is, the back and forth movement of individuals between employment in the public and private sectors.<sup>72</sup> Employees, including those in senior positions, are tempted to conflate public and private interests. There are many opportunities for impropriety in this conflict of interests.

This conflict of interests is no more apparent than in the United States. Many private intelligence firms employ former public intelligence employees, only for these employees to return, very often on contract, to work with or in public intelligence.<sup>73</sup> Attracted by the many benefits of employment in the private sector; what in United States parlance are known as "green badgers", work alongside public intelligence

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<sup>68</sup> Fred and Marina Caparini, *Privatizing Security: Law, Practice and Governance of Private Military and Security Companies*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Occasional Paper no. 6, March 2005 (Geneva: DCAF, 2005), 51. [http://www.dcaf.ch/docs/op06\\_privatising-security.pdf](http://www.dcaf.ch/docs/op06_privatising-security.pdf).

<sup>69</sup> Fred Schreier and Marina Caparini, *Privatizing Security: Law, Practice and Governance of Private Military and Security Companies*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Occasional Paper no. 6, March 2005 (Geneva: DCAF, 2005), 52. [http://www.dcaf.ch/\\_docs/op06\\_privatising-security.pdf](http://www.dcaf.ch/_docs/op06_privatising-security.pdf).

<sup>70</sup> Peter Warren Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (London: Cornell University Press, 2003), 152.

<sup>71</sup> Glenn James Voelz, *Managing the Private Spies: The Use of Commercial Augmentation for Intelligence Operations*, Centre for Strategic Intelligence Research, Discussion Paper no. 14 (Washington: JMIC Press, 2006), 52. <http://www.fas.org/jrp/eprint/voelz.pdf>.

<sup>72</sup> Peter Warren Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (London: Cornell University Press, 2003), 154.

<sup>73</sup> Simon Chesterman, 'We Can't Spy... If We Can't Buy!': *The Privatization of Intelligence and the Limits of Outsourcing 'Inherently Governmental Functions'*, New York University Law School, Public Law Research Paper, (New York: New York University, 2008), 13. <http://ssrn.com/abstract=1117066>.

officials in a wide range of positions, many of which require top secret security clearances.<sup>74</sup> It is however the back and forth movement of *senior* officials between prominent roles in public and private intelligence which has proved most controversial. For example, having served as a director of the National Security Agency (NSA) under Bill Clinton, Michael McConnell was employed as a senior executive at Booz Allen Hamilton, 'one of the nation's premier intelligence contractors,' before being appointed Director of National Intelligence by George W Bush.<sup>75</sup> The revolving door is however by no means a uniquely United States phenomenon. In numerous African countries, members of the military and security elite own the private security firms which are contracted by the state and multinational corporations.<sup>76</sup>

Beyond corruption, the outsourcing of intelligence enables public intelligence to engage in criminality. It what a number of scholars refer to as the outsourcing of "dirty work", public entities rely on non-state proxies to engage in illegal activities on their behalf.<sup>77</sup> Such "dirty work" includes the illegal surveillance of political opponents and civil society, as well as the illegal torture of detainees and other serious human rights abuses. Where public intelligence outsources "dirty work" the emphasis is upon culpable deniability.<sup>78</sup> For example, in the case of the Abu Ghraib scandal in Iraq, in which soldiers, together with private contractors employed by CACI, tortured

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<sup>74</sup> R.J. Hillhouse, "Dusty Gets Green Light for Green Badge, October 01, 2008," *The Spy Who Billed Me*. [http://www.thespywhobilledme.com/the\\_spy\\_who\\_billed\\_me/2008/10/dusty-gets-gree.html](http://www.thespywhobilledme.com/the_spy_who_billed_me/2008/10/dusty-gets-gree.html).

<sup>75</sup> Tim Shorrock, *Spies for Hire* (New York: Simon and Schuster, 2008), 38, 39.

<sup>76</sup> Joanna Spear, *Market Forces: The Political Economy of Private Military Companies*, FAFO Report 531, 2006 (Norway: FAFO, 2006), 20. <http://www.faf.no/pub/rapp/531/531.pdf>

<sup>77</sup> Fred Schreier and Marina Caparini, *Privatizing Security: Law, Practice and Governance of Private Military and Security Companies*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Occasional Paper no. 6, March 2005 (Geneva: DCAF, 2005), 85. [http://www.dcaf.ch/docs/op06\\_privatising-security.pdf](http://www.dcaf.ch/docs/op06_privatising-security.pdf); and Bob Hoogenboom, "Grey Intelligence," *Crime, Law and Social Change* 45, no. 4-5 (2006): 377.

<sup>78</sup> Saad Gul, "The Secretary will deny all Knowledge of you Actions: The Use of Private Military Contractors and the Implications for State and Political Accountability," *Lewis and Clark Law Review* 10, no 2 (2006): 304. [http://legacy.lclark.edu/org/lclr/objects/LCB10\\_2\\_Gul.pdf](http://legacy.lclark.edu/org/lclr/objects/LCB10_2_Gul.pdf); and Ruth Jamieson and Kieran McEvoy, "State Crime by Proxy and Juridical Othering," *The British Journal of Criminology* 45, no. 4 (2005).

Iraqi detainees; senior United States government officials repeatedly claimed they had no hand in, or knowledge of, the torture even though this is widely contested.<sup>79</sup>

### 1.3.5. Intelligence Oversight and Accountability

Those who defend outsourcing frequently point out that flaws in the processes of outsourcing can be corrected by good legislation and the regulation of intelligence by the political sovereign:

In most states, non-state actors are prohibited by law from engaging in many core intelligence functions, but especially those which impinge on basic human rights and democratic liberties. In the United Kingdom, for example, non-state actors cannot legally tap phones or intercept mail.<sup>80</sup> Notably the right to privacy extends beyond individuals to organizations. In the United States, the Economic Espionage Act of 1996 outlaws the covert theft of proprietary information such as trade secrets; non-state actors who attempt to procure such information, if caught, face lengthy prison sentences.<sup>81</sup>

Various executive, judicial and legislative mechanisms of oversight and accountability can ensure that state intelligence organizations are accountable and that their conduct is within the bounds of the law. For example, in the United Kingdom, invasive intelligence functions such as the interception of communications, are strictly regulated. State intelligence organizations can only intercept communications with a judicial warrant; while their conduct in this regard is subject to legislative scrutiny.<sup>82</sup> If the state is weak, however, and relies on non-state actors

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<sup>79</sup> Seymour Hersh, "Chain of Command: How the Department of Defense Mishandled the Disaster at Abu Ghraib," *The New Yorker* 80, no. 12 (2004). [http://www.newyorker.com/archive/2004/05/17/040517fa\\_fact2](http://www.newyorker.com/archive/2004/05/17/040517fa_fact2); and Mark Danner, "Abu Ghraib: The Hidden Story," *The New York Review of Books* 51, no. 15 (2004). <http://www.nybooks.com/articles/17430>.

<sup>80</sup> United Kingdom, *Regulation of Investigatory Powers Act, 2000*, (United Kingdom: Office of Public Sector Information, 2000). [http://www.opsi.gov.uk/acts/acts2000/ukpga\\_20000023\\_en\\_1](http://www.opsi.gov.uk/acts/acts2000/ukpga_20000023_en_1).

<sup>81</sup> Arthur Hulnick, "Risky Business, Private Sector Intelligence in the United States," *Harvard International Review* 24, no. 3 (2002): 68.

<sup>82</sup> Greg Hannah, Kevin O'Brien, and Andrew Rathmell, *Intelligence and Security Legislation for Security Sector Reform, RAND Technical Report prepared for the United Kingdom's Security Sector Development Advisory Team* (Europe: RAND Corporation, 2005), 24. [http://www.rand.org/pubs/technical\\_reports/2005/RAND\\_TR288.pdf](http://www.rand.org/pubs/technical_reports/2005/RAND_TR288.pdf).

because of this weakness, the promise of oversight and accountability is unconvincing. In addition, the character of the political regime is crucial. In undemocratic states, little or no control is exercised over intelligence organizations which serve the narrow personal interests of those in power.

In democratic regimes, however, there are fears about whose interests are to be served and how:

As Richard Betts has noted 'there is a world of difference between collecting intelligence abroad and doing so at home.'<sup>83</sup> Democratic regimes tend to scrutinise domestic intelligence activities far more than foreign activities, even allowing operatives to break the laws of the foreign states in which they operate. The same cannot, however, be said for domestic intelligence. As Laurence Lustgarten argues, 'the greatest threat to individuals' ability to live a peaceful life' stems not from internal anarchy or external invasion but from the dictatorial state.'<sup>84</sup>

Domestic intelligence has the potential to undermine democratic rule. This potential, in part, derives from public intelligence usually being a function of the executive branch of government, which tends to focus on issues of efficacy; while the legislature tends to focus on issues of propriety.<sup>85</sup> In this regard Marina Caparini has argued that while the executive is concerned, first and foremost, with,

'how effectively the (intelligence) service is fulfilling its tasks and functions; such as identifying important threats, whether the intelligence community is responding adequately to policy-makers' needs, whether it is doing sound analysis, and whether it has adequate capabilities;'

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<sup>83</sup>Richard Betts, "Fixing Intelligence," *Foreign Affairs* 81, no. 1 (2002): 50.

<sup>84</sup> Laurence Lustgarten, "National Security and Political Policing: Some Thoughts on Values, Ends and Law," in Jean-Paul Brodeur, Peter Gill Dennis Tollborg, eds. *Democracy, Law and Security, Internal Security Services in Contemporary Europe*, (Aldershot :Ashgate, 2003), 320.

<sup>85</sup> Marina Caparini, *Challenges of Control and Oversight of Intelligence Services in a Liberal Democracy*, paper presented at the Workshop on "Democratic and Parliamentary Oversight of Intelligence Services," Geneva, October 03-05, 2002 (Geneva: DCAF, 2002), 9.  
[http://www.dcaf.ch/pcaf/ev\\_geneva\\_021002\\_prog\\_caparini.pdf](http://www.dcaf.ch/pcaf/ev_geneva_021002_prog_caparini.pdf).

the legislature is primarily concerned with ensuring that the intelligence services comply with laws and regulations and that their conduct is consistent with the principles upon which the state is founded.<sup>86</sup>

Having argued that intelligence in democratic states, especially where it is domestically focused, is restrained in law and subject to various mechanisms of oversight and accountability; intelligence oversight and accountability nevertheless remains problematic in the majority of states. In some democratic states, little or no meaningful democratic control is exercised.<sup>87</sup> The contest between secrecy and oversight lies at the crux of most debates concerning intelligence oversight.<sup>88</sup> The often prevailing view is that oversight undermines the efficiency and effectiveness of intelligence organizations, which are argued, best operate behind a veil of secrecy. As a result even in established constitutional democracies in North America and Western Europe, intelligence oversight and accountability is often deficient, which goes some way in explaining the abuses of power by intelligence organizations in these countries.<sup>89</sup>

Outsourcing of public intelligence only further complicates poor oversight and accountability. Private intelligence actors, while restrained in law, are usually privately owned entities which are not obliged to expose their workings to the public. If democratic regimes in strong states find it very difficult to properly oversee public intelligence and its relationship with private contractors; democratic regimes in weak

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<sup>86</sup> Marina Caparini, *Challenges of Control and Oversight of Intelligence Services in a Liberal Democracy*, paper presented at the Workshop on "Democratic and Parliamentary Oversight of Intelligence Services," Geneva, October 03-05, 2002 (Geneva: DCAF, 2002), 9. [http://www.dcaf.ch/pcaf/ev\\_geneva\\_021002\\_prog\\_caparini.pdf](http://www.dcaf.ch/pcaf/ev_geneva_021002_prog_caparini.pdf).

<sup>87</sup> Marina Caparini, *Challenges of Control and Oversight of Intelligence Services in a Liberal Democracy*, paper presented at the Workshop on "Democratic and Parliamentary Oversight of Intelligence Services," Geneva, October 03-05, 2002 (Geneva: DCAF, 2002), 4. [http://www.dcaf.ch/pcaf/ev\\_geneva\\_021002\\_prog\\_caparini.pdf](http://www.dcaf.ch/pcaf/ev_geneva_021002_prog_caparini.pdf).

<sup>88</sup> Greg Hannah, Kevin O'Brien, and Andrew Rathmell, *Intelligence and Security Legislation for Security Sector Reform, RAND Technical Report prepared for the United Kingdom's Security Sector Development Advisory Team* (Europe: RAND Corporation, 2005), 10. [http://www.rand.org/pubs/technical\\_reports/2005/RAND\\_TR288.pdf](http://www.rand.org/pubs/technical_reports/2005/RAND_TR288.pdf).

<sup>89</sup> Jean-Paul Brodeur, Peter Gill Dennis Tollborg, eds. *Democracy, Law and Security, Internal Security Services in Contemporary Europe*, (Aldershot :Ashgate, 2003).

states will find it nearly impossible to do so. In fact, the outsourcing of public intelligence by weak regimes is likely to exacerbate the problem of poor oversight.

#### **1.4. Summary: A Framework for Interpreting the Relationship between the State and Private Intelligence**

In the preceding discussion, key areas of criticism and debate have emerged, which can be applied to the South African case. The key issues are:

##### **1.4.1. Legitimacy**

The relationship between the state and private intelligence involves principles or, stated differently, concerns legitimacy. The older and more enduring view is that public intelligence is a component of national defence, which is rightfully monopolised by the political sovereign. The political sovereign cannot regard national defence as a commercial or market-related activity: national defence is a public good which must be provided to all citizens, at all times and places, regardless of cost. This does not prevent the political sovereign from outsourcing some activities but that outsourcing is done for reasons of convenience and it is a decision which can be revoked. The political sovereign can outsource work but it cannot divest itself of the responsibility for the work being completed. The more recent view however, is that the state is too incompetent, weak etc to provide the necessary range of public goods and services.

##### **1.4.2. Explaining Outsourcing**

Two motivations feature prominently in why the state outsources to private intelligence:

First, public intelligence lacks the capacity or capability to perform the tasks which it is mandated to perform. This is a state weakness-explanation.

Second, public intelligence relies on private intelligence because the latter can provide goods and services, for example, in the field of technology, more efficiently and effectively. This is an efficiency-explanation.



### **1.4.3. Outsourcing's Inherent Problems**

Despite claims of private intelligence providing goods and services more efficiently and effectively, the empirical evidence suggests that the outsourcing of intelligence is marked by inefficiency, corruption and criminality. These problems are not produced occasionally or depend on personalities; rather, the problems are structural in nature, such as the likelihood of a revolving door, public intelligence's need to outsource "dirty work", etc.

### **1.4.4. Regulating Outsourcing: Oversight and Accountability**

Empirical studies have shown that oversight does not deter, expose, or punish problems that emerge in the relationship between the state and private intelligence. Democratic regimes in strong states find oversight very difficult, while democratic regimes in weak states find oversight all but impossible. In fact, in weak states, the outsourcing of intelligence may increase the problems relating to oversight and accountability.

### **1.4.5. Conclusion: Approaching the Relationship between the State and Private Intelligence**

Three out of the four key areas of criticism and debate are empirical in nature. For this reason, an analysis of the relationship between the state and private intelligence deserves to be empirical in nature. Notably however this does not diminish the importance of the issue of whether the outsourcing of intelligence is legitimate.

## **Chapter Two: Intelligence in South Africa**

### **2.1. Introduction**

This chapter provides an overview of intelligence in South Africa, dividing the discussion into two periods, 1949-1990 and 1990-2008. For the period 1949-1990, a brief description of apartheid and liberation intelligence is offered; as is a simple account of the outsourcing of intelligence by the apartheid state. For the period 1990-2008, the reform of apartheid intelligence is discussed which includes an overview of post-apartheid intelligence legislation, organizations and, oversight and accountability; the restructuring of post-apartheid intelligence under President Thabo Mbeki; and an appraisal of post-apartheid intelligence. This chapter also includes an overview of the private intelligence industry in post-apartheid South Africa, in which the size, ownership, location, functions, clients and employees of the industry are considered.

### **2.2. Intelligence: 1949-1990**

#### **2.2.1. Introduction**

The period 1949-1990 in South Africa was dominated by the conflict between the apartheid government and the African National Congress (ANC)-led liberation movement. What follows is a description of both apartheid and liberation intelligence and an examination of the outsourcing of intelligence by the apartheid regime.

#### **2.2.2. Apartheid Intelligence<sup>90</sup>**

Apartheid's survival depended largely on the regime's security apparatus. Even political decision-making was dominated by the security forces; certainly by the 1980s the security-dominated State Security Council (SSC) had become the true centre of power.<sup>91</sup> Yet the security forces were never of one mind; on the contrary, relations among the intelligence services were characterized by inter-agency rivalry.

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<sup>90</sup> Together with the apartheid state, the majority of the "independent" homelands also boasted an intelligence capability.

<sup>91</sup> Annette Seegers, *The Military in the Making of Modern South Africa*, (London: Tauris Academic Books: 1996), 162-169.

From the formation in 1961 of the Directorate of Military Intelligence (DMI) and the subsequent competition between the DMI and the South African Police (SAP) Special Branch, to the subordination of the DMI to the National Intelligence Service (NIS) in the late 1980s, the intelligence services constantly fought one other.<sup>92</sup> The rivalries were about many things but the dominant agency, or an agency's claim to primacy, was to a large extent influenced by the preferences of the incumbent prime minister (later president). Thus the SAP Special Branch was elevated during the Vorster presidency; DMI rose during PW Botha's reign; and the NIS claimed leadership under De Klerk.<sup>93</sup>

Speaking at a conference in 1992, Joe Nhlanhla, argued that the key features of apartheid intelligence were,

'a militaristic and racist culture where interests served have been those of the ruling Nationalist government and not those of the people as a whole; a culture of secrecy and lack of transparency and a total absence of accountability to the public; an undermining of basic human rights and freedoms, including freedom of speech, thought and action, and the right to privacy; repressive and criminal methods including the use of detention and torture, assassination and kidnapping in pursuit of the interest of state security; an inward focused approach where the greatest threat to national security was seen to come from fellow South Africans; the wanton infiltration of organizations and disinformation against anti-government organizations; the deliberate misleading of the public through the use of front organisations

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<sup>92</sup> Kevin O'Brien, *Controlling the Hydra: An Historical Analysis of South Africa Intelligence Oversight- "Making Intelligence Accountable: Executive and Legislative Oversight of Intelligence Services,"* Geneva Centre for the Democratic Control of Armed Forces (DCAF), Making Intelligence Accountable Workshop, Oslo, Norway, September, 2003 (Norway:DCAF, 2003), 3. [http://www.dcaf.ch/legal\\_wg/ev\\_oslo\\_030919\\_obrien.pdf](http://www.dcaf.ch/legal_wg/ev_oslo_030919_obrien.pdf); and Kenneth R. Dombroski, "South Africa After Apartheid," *Journal of Democracy* 17, no. 3 (2006): 45.

<sup>93</sup> Mark Shaw, *The Changing Role of the South African Intelligence Community*, Institute for Advanced Social Research, University of the Witwatersrand, Seminar Paper, March 27, 1995 (Johannesburg: Institute for Advanced Social Research, 1995), 3.

to achieve ignoble intelligence objectives; the abuse of taxpayers' money; and many excesses.<sup>94</sup>

As a leader of the often equally repressive ANC intelligence, the hypocrisy of Nhlanhla's position was not lost on his audience. Nevertheless, confirmed by the Truth and Reconciliation Commission's<sup>95</sup> ventilation of apartheid abuses; and various accounts of the kidnapping, torture and assassination of opponents not only in South Africa but also abroad,<sup>96</sup> Nhlanhla's portrayal of apartheid intelligence is incontestable.

In Apartheid South Africa, mechanisms of intelligence oversight and accountability were weak or non-existent; sometimes confined to lone voices such as opposition politician Helen Suzman.<sup>97</sup> Particularly the case during the presidency of PW Botha; intelligence was especially insulated from both legislative and judicial oversight.<sup>98</sup>

### 2.2.3. Liberation Intelligence<sup>99</sup>

ANC intelligence, too, was characterized by a lack of accountability, transparency and respect for basic human rights.<sup>100</sup> Furthermore, marked by a great deal of suspicion and mistrust, the rivalry which dogged the intelligence services of the

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<sup>94</sup> Joe Nhlanhla, "The modalities of combining the SATBVC and liberation movements' intelligence services in a changing South Africa," *Strategic Review for Southern Africa: Security and Intelligence in a Post-Apartheid South Africa*, XIC, 2, (Pretoria: University of Pretoria, 1992): 67.

<sup>95</sup> Republic of South Africa, The Truth and Reconciliation Commission of South Africa, Final Report, 1998. [www.justice.gov.za/trc/report/index.htm](http://www.justice.gov.za/trc/report/index.htm).

<sup>96</sup> Carl Schutte, Ian Liebenberg, and Anthony Minnaar, eds. *The Hidden Hand, Covert Operations in South Africa: Second Edition*, (South Africa: Human Sciences Research Council, 1998).

<sup>97</sup> Kevin O'Brien, *Controlling the Hydra: An Historical Analysis of South Africa Intelligence Oversight- "Making Intelligence Accountable: Executive and Legislative Oversight of Intelligence Services,"* Geneva Centre for the Democratic Control of Armed Forces (DCAF), Making Intelligence Accountable Workshop, Oslo, Norway, September, 2003 (Norway:DCAF, 2003), 12. [http://www.dcaf.ch/legal\\_wg/ev\\_oslo\\_030919\\_obrien.pdf](http://www.dcaf.ch/legal_wg/ev_oslo_030919_obrien.pdf).

<sup>98</sup> Kenneth R. Dombroski, "South Africa After Apartheid," *Journal of Democracy* 17, no. 3 (2006): 45.

<sup>99</sup> While the ANC was not the only anti-apartheid organization which boasted an intelligence capability, for the purposes of this discussion only ANC intelligence is considered.

<sup>100</sup> Stephen Ellis, "Mbokodo: Security in ANC Camps 1961-1990," *African Affairs* 93, (1994): 279-298.

apartheid regime was mirrored by the jockeying for power and control within ANC intelligence.<sup>101</sup>

The ANC did not have an organized intelligence capacity until the late 1960s. Inspired by earlier Umkhonto we Sizwe failures, most notably the Wankie campaign, the Department of Intelligence and Security (DIS) was founded at the Morogoro Conference in 1969.<sup>102</sup> Trained by the efficient yet brutal intelligence services of the Soviet Union, East Germany and Libya; the DIS, later renamed the Department of National Intelligence and Security (NAT), served a policing and intelligence function.<sup>103</sup> In the execution of its mandate, which included counterintelligence, the NAT and specifically its security section, Mbokodo, committed widespread human rights abuses.<sup>104</sup> In this regard, operating in the Quatro prison camp, Mbokodo achieved a particular notoriety for its brutal treatment of dissenting cadres and suspected apartheid spies.<sup>105</sup> The abuses by ANC intelligence have been well documented in reports by the Stuart, Skweyiya and Motsuenyane Commissions.<sup>106</sup>

#### **2.2.4. Private Intelligence and the Apartheid State**

The apartheid regime rarely outsourced public intelligence, at least not until the late 1980s.<sup>107</sup> Nevertheless, private intelligence was not altogether absent during apartheid. Some large corporations boasted an intelligence capacity while a number

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<sup>101</sup> This rivalry and mistrust was no more apparent than with the establishment of Operation Vula in the late 1980s. James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 299.

<sup>102</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 283.

<sup>103</sup> Alexander H. Joffe, "Dismantling Intelligence Agencies," *Crime, Law and Social Change* 32 (1999):334; and Vladimir Shubin, *ANC, A View From Moscow* (South Africa: Jacana Media. 2008).

<sup>104</sup> Stephen Ellis, "Mbokodo: Security in ANC Camps 1961-1990," *African Affairs* 93, (1994): 283.

<sup>105</sup> Mwezi Twala's has detailed the extent of abuses by Mbokodo in a personal account of his detention at Quatro. Ed Benard and Mwezi Twala, *Mbokodo: Inside MK* (Cape Town: Jonathan Ball, 1994).

<sup>106</sup> Stephen Ellis, "Mbokodo: Security in ANC Camps 1961-1990," *African Affairs* 93, (1994): 282.

<sup>107</sup> Executive Outcomes was contracted to train members of the South African Defence Force (SADF) Special Forces in the late 1980s. Eeben Barlow, *Executive Outcomes, Against All Odds* (Alberton: Galago, 2007), 79.

of private intelligence actors did exist, although such actors were most often apartheid intelligence fronts.

One corporation which had a private intelligence capability was the Oppenheimers' omnipotent Anglo American Corporation. Great Britain was in a sense the midwife which delivered apartheid intelligence. During a visit to the country in the late 1940s, Percy Sillitoe, the head of MI5, made recommendations that informed the establishment of an organized intelligence capacity within the SAP Special Branch.<sup>108</sup> Not long after his retirement from British intelligence, Sillitoe returned to South Africa, this time to work for Harry Oppenheimer's Anglo American Corporation.<sup>109</sup> Serving in what was essentially a private intelligence role, Sillitoe founded the International Diamond Security Organization (IDSO), which investigated international diamond smuggling on behalf of Anglo American.<sup>110</sup> Headquartered in Johannesburg, the IDSO was especially active in Sierra Leone where its alleged use of mercenaries earned it a particular notoriety.<sup>111</sup> While it was disbanded some three years after its founding, the IDSO was the forerunner to a significant intelligence capability within Anglo American, which at times collaborated closely with apartheid intelligence.<sup>112</sup>

While all indications are that the apartheid state did not favour the outsourcing of intelligence, apartheid intelligence did create a number of front companies which masqueraded as private intelligence firms. These front companies wielded significant influence in their areas of operation. Notable amongst these was Longreach, a

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<sup>108</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service* (London: John Murray, 2006), 9.

<sup>109</sup> David Pallister, Sarah Stewart, and Ian Lepper, *South Africa Inc: The Oppenheimer Empire* (London: Corgi, 1988), 161.

<sup>110</sup> Edward Jay Epstein, *The Rise and Fall of Diamonds: The Shattering of a Brilliant Illusion*, (United Kingdom: Simon and Shuster, 1982). <http://www.edwardjayepstein.com/diamond/chap14.htm>.

<sup>111</sup> David Pallister, Sarah Stewart, and Ian Lepper, *South Africa Inc: The Oppenheimer Empire* (London: Corgi, 1988), 161.

<sup>112</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 365; and Jonathan Crush, "Power and Surveillance on South African Gold Mines," *Journal of Southern African Studies* 18, no. 4 (1992): 825-844.

Military Intelligence (MI) front set up by apartheid super-spy Craig Williamson in the 1980s. Longreach provided political and security risk analysis for corporate clients interested in investing in countries such as Mozambique, Burundi and Uganda.<sup>113</sup> According to Williamson, Longreach 'could justify the gathering of political intelligence on the basis that we were gathering information for confidential reports for corporate clients considering investing in the region.'<sup>114</sup> Having cultivated a relationship with Italian businessman Mario Ricci, a confidante of Seychelles President France Albert Rene, Seychelles' security was outsourced to Williamson and Longreach in the mid-1980s.<sup>115</sup> Seychelles was thus effectively controlled by South African MI during this period.

The success of Longreach in the Seychelles set an example of what could be done within South Africa. Various Homeland governments employed front companies or companies closely linked to apartheid intelligence, which were often managed by "retired" apartheid intelligence operatives or former Rhodesian Selous Scouts.<sup>116</sup> One such firm was International Researchers- Ciskei Intelligence Services (IR-CIS). Like Longreach, IR-CIS, was a South African MI front. Set up in the early 1980s by retired Directorate of Covert Collection (DCC) major Ted Brassel and staffed by former members of Koevoet and 32 Battalion,<sup>117</sup> IR-CIS served as Brigadier Oupa Gqozo's 'personal covert intelligence unit.'<sup>118</sup> Importantly IR-CIS's role in Ciskei was not limited to the production of intelligence: IR-CIS was intimately involved in the

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<sup>113</sup> Stephen Ellis, "Africa and International Corruption: The Strange Case of South Africa and the Seychelles," *African Affairs*, 95 (1996): 177.

<sup>114</sup> Phillip van Niekerk, "How Apartheid Conned the West," *The Observer*, 16 July 1995. <http://www.lexisnexis.com/us/lnacademic/>.

<sup>115</sup> Stephen Ellis, "Africa and International Corruption: The Strange Case of South Africa and the Seychelles," *African Affairs*, 95 (1996): 176.

<sup>116</sup> Led by ex-Selous Scouts such as Ron Reid Daly, Peter Stiff provides an account of those firms which were active in Ciskei and Transkei. Peter Stiff, *Warfare by Other Means*, (South Africa: Galago, 2001).

<sup>117</sup> J.B. Peires, "The Implosion of Transkei and Ciskei," *African Affairs* 91(1992): 379.

<sup>118</sup> Peter Stiff, *Warfare by Other Means*, (South Africa: Galago, 2001), 473.

assassination of Charles Sebe and Onward Guzana.<sup>119</sup> Headed by Jan Anton Nieuwoudt; as was the case with Longreach in the Seychelles some years earlier, IR-CIS's access to the Ciskei leadership placed it in a position of significant influence and allowed apartheid intelligence to manipulate the Homeland's affairs.

### **2.2.5. Conclusion**

While diametrically opposed, apartheid and liberation intelligence were both characterized by a lack of transparency, accountability and respect for basic human rights. Both actors displayed the rivalry and mistrust which is so often a feature of relations within and between intelligence organizations. There is little evidence, during apartheid, of a private intelligence industry of any significance while an expansive apartheid security establishment does not seem to have favoured the outsourcing of intelligence. Nevertheless, a number of private intelligence actors did exist, even if such actors were most often apartheid intelligence front companies. These front companies were used to great effect both in the Seychelles and the apartheid Homelands.

## **2.3. Intelligence: 1990- 2008**

### **2.3.1. Introduction**

The emergence of a rights-based constitutional democracy in South Africa necessitated the reform of apartheid intelligence. What follows is an examination of this reform, including legislation, organizations, and oversight and accountability. Also discussed is the restructuring of intelligence under President Thabo Mbeki. An appraisal of post-apartheid intelligence is also offered.

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<sup>119</sup> Peter Stiff, *Warfare by Other Means*, (South Africa: Galago, 2001), 476.



### 2.3.2. Reforming Intelligence: Beyond Organizational Restructuring

By the mid 1980s the apartheid regime and the ANC had reached a stalemate.<sup>120</sup> Against this backdrop, the NIS, seen as the 'least controversial and most enlightened' of all the apartheid intelligence organizations, met with the ANC, in a secret meeting in Lucerne, Switzerland, in 1986.<sup>121</sup> In the series of meetings which followed, in what were essentially "talks about talks," the intelligence services of both sides played a key role in bringing about a negotiated transition in South Africa.<sup>122</sup> Importantly these discussions concerned not only the future of South Africa, but also the future of intelligence in post-apartheid South Africa itself.

Organizational restructuring dominated the early intelligence reform debates. The NIS initially argued that the intelligence services of the liberation movement and the Homelands should be absorbed into the NIS- a suggestion which was rejected outright by the ANC.<sup>123</sup> However, in the discussions between the NIS and the ANC; which in the early 1990s were continued formally within the Transitional Executive Council (TEC) sub-council on intelligence, it became increasingly clear that the reform of apartheid intelligence would need to extend beyond organizational restructuring:<sup>124</sup> without 'a redefinition of its mission, focus and priorities, post-

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<sup>120</sup> Laurie Nathan, *Accounting for South Africa's Successful Transition to Democracy*, London School of Economics, Crisis States Discussion Paper, no. 5, June 2004, (London: LSE, 2004), 3. <http://www.crisisstates.com/download/dp/dp05.pdf>.

<sup>121</sup> Mark Shaw, *The Changing Role of the South African Intelligence Community*, Institute for Advanced Social Research, University of the Witwatersrand, Seminar Paper, March 27, 1995 (Johannesburg: Institute for Advanced Social Research, 1995), 4.

<sup>122</sup> Kevin O'Brien, *Controlling the Hydra: An Historical Analysis of South Africa Intelligence Oversight- "Making Intelligence Accountable: Executive and Legislative Oversight of Intelligence Services,"* Geneva Centre for the Democratic Control of Armed Forces (DCAF), Making Intelligence Accountable Workshop, Oslo, Norway, September, 2003 (Norway:DCAF, 2003), 14. [http://www.dcaf.ch/legal\\_wg/ev\\_oslo\\_030919\\_obrien.pdf](http://www.dcaf.ch/legal_wg/ev_oslo_030919_obrien.pdf).

<sup>123</sup> Sandy Africa, "The South African Intelligence Services: A Historical Perspective," in Sandy Africa, ed. in collaboration with Johnny Kwadjo, Wilson Boinett, Andrew Agaba, David Pulkol, and Laurie Nathan, *Changing Intelligence Dynamics in Africa*, Global Facilitation Network for Security Sector Reform (GFN-SSR), June 2009, (GFN-SSR, 2009), 71. <http://www.ssrnetwork.net/documents/Publications/ChangingIntelligenceDynamicsInAfrica/ChangingIntelligenceDynamicsInAfrica.pdf>.

<sup>124</sup> Kevin O'Brien, *Controlling the Hydra: An Historical Analysis of South Africa Intelligence Oversight- "Making Intelligence Accountable: Executive and Legislative Oversight of Intelligence Services,"* Geneva Centre for the Democratic Control of Armed Forces (DCAF), Making Intelligence Accountable

apartheid intelligence would be inconsistent with the constitutional democracy posited for South Africa.<sup>125</sup>

### 2.3.3. The New Security in Post-Apartheid South Africa

The reform of intelligence in the early 1990s, and that of the military and the police, was informed by a broadening and deepening of the concept of security, a new notion pioneered by Barry Buzan.<sup>126</sup> The new security was accepted in transitional South Africa primarily through the efforts of a select group of academics and activists, many of whom advocated a security-is-development thesis.<sup>127</sup> The influence of members of this group, for example, Laurie Nathan and Mark Philips, was apparent in important policy documents such as the ANC's *Ready to Govern*, in which the party committed itself to the new security.<sup>128</sup>

Senior members of the ANC such as the late Joe Nhlanhla also endorsed the new notion of security:

‘the redefinition of South Africa's security needs and the inter-relationship between the security of the state and that of the people must be seen in arriving at a new definition of national security. The security of the state depends on its ability to maintain its political independence, sovereignty and

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Workshop, Oslo, Norway, September, 2003 (Norway:DCAF, 2003), 22.  
[http://www.dcaf.ch/legal\\_wg/ev\\_oslo\\_030919\\_obrien.pdf](http://www.dcaf.ch/legal_wg/ev_oslo_030919_obrien.pdf).

<sup>125</sup> Shaun McCarthy, *Intelligence Services for a Democratic South Africa: Ensuring Parliamentary Control* (London: Research Institute for the Study of Conflict and Terrorism, 1996), 1; and Greg Hannah, Kevin O'Brien, and Andrew Rathmell, *Intelligence and Security Legislation for Security Sector Reform, RAND Technical Report prepared for the United Kingdom's Security Sector Development Advisory Team* (Europe: RAND Corporation, 2005): 22.  
[http://www.rand.org/pubs/technical\\_reports/2005/RAND\\_TR288.pdf](http://www.rand.org/pubs/technical_reports/2005/RAND_TR288.pdf).

<sup>126</sup> Barry Buzan, *People, States and Fear* (Brighton, Harvester Wheatsheaf, 1983).

<sup>127</sup> Annette Seegers, *The New Security in Democratic South Africa: A Cautionary Tale*, University of Cape Town, unpublished paper, 2009, 12.  
<http://web.uct.ac.za/depts/politics/depnews/StaffStudentSeminars/4aug09%20SeegersA%20paper.docx>.

<sup>128</sup> Annette Seegers, *The New Security in Democratic South Africa: A Cautionary Tale*, University of Cape Town, unpublished paper, 2009, 13.  
<http://web.uct.ac.za/depts/politics/depnews/StaffStudentSeminars/4aug09%20SeegersA%20paper.docx>.

territorial integrity...The security of the people depends on the satisfaction of their political, economic, cultural and social needs... The security of the state depends on the security of the people, and the security of the people depends on the security of the state.<sup>129</sup>

#### **2.3.4. Post-Apartheid Intelligence Legislation**

Together with the White Paper on Intelligence, the three key pieces of post-apartheid intelligence legislation are the Intelligence Services Act, 1994, the National Strategic Intelligence Act, 1994, and the Intelligence Services Control Act, 1996.<sup>130</sup> As one would expect, the new conception of security features strongly in this legislation. For example, the mission of the South African intelligence services, as outlined in the White Paper on Intelligence includes, safeguarding the Constitution; upholding fundamental rights; promoting security, stability, co-operation and development in South and Southern Africa; achieving national prosperity and making a contribution to global human priorities; and contributing to South Africa's ability to face foreign threats and to compete internationally.<sup>131</sup>

Supposedly modelled on Australian and Canadian legislation, post-apartheid intelligence legislation was centred on the principles of political neutrality, legislative sanction, accountability and parliamentary control; a balance between secrecy and transparency; and effective management, organisation and administration.<sup>132</sup> The legislative framework specifically provided for various mechanisms of oversight and accountability.

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<sup>129</sup> Joe Nhlanhla, "The modalities of combining the SATBVC and liberation movements' intelligence services in a changing South Africa," *Strategic Review for Southern Africa: Security and Intelligence in a Post-Apartheid South Africa*, XIC, 2, (Pretoria: University of Pretoria, 1992): 76.

<sup>130</sup> Michael Hough and Anton Du Plessis, *Strategic Intelligence: Selected Official South African Perceptions: 1992-2002*, (Pretoria: Institute for Strategic Studies, University of Pretoria, 2002), 3.

<sup>131</sup> Republic of South Africa, *White Paper on Intelligence, 1994*, Cape Town, 2004.

<sup>132</sup> Republic of South Africa, *White Paper on Intelligence, 1994*, Cape Town, 2004.

### 2.3.5. Post-Apartheid Intelligence Organizations

The two principal intelligence organizations of post-apartheid South Africa, the National Intelligence Agency (NIA) and the South African Secret Service (SASS) have geographically specific briefs. The NIA is responsible for domestic intelligence while the SASS is responsible for foreign intelligence.<sup>133</sup> In many ways the NIA is the primary post-apartheid intelligence agency as its role extends beyond conducting 'security intelligence within the borders of the Republic of South Africa in order to protect the Constitution' to being responsible for counterintelligence and the implementation of Minimum Information Security Standards across government.<sup>134</sup>

While the ANC's Mo Shaik argued that it was a 'necessary evil,'<sup>135</sup> as Annette Seegers has pointed out, it has never been explained why the NIA, with a mandate for domestic intelligence which includes the collection of political intelligence, was necessary.<sup>136</sup> The existence of such agencies in constitutional democracies is rare and certainly, the existence of the NIA has not been without controversy.

Alongside the NIA and the SASS, post-apartheid intelligence consists of Crime Intelligence (CI) and Defence Intelligence (DI), which are located within the South African Police Service (SAPS) and the South African National Defence Force (SANDF) respectively. CI and DI have specific mandates. In the case of CI it is 'to gather, correlate, evaluate and use crime intelligence,' while in the case of DI it is 'to

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<sup>133</sup> Sandy Africa and Siyabulela Mlombile, *Transforming the Intelligence Services: Some Reflections on the South African Experience*, October, 15, 2001, 6.  
<http://www.law.harvard.edu/programs/criminal-justice/south-africa.pdf>.

<sup>134</sup> Greg Hannah, Kevin O'Brien, and Andrew Rathmell, *Intelligence and Security Legislation for Security Sector Reform, RAND Technical Report prepared for the United Kingdom's Security Sector Development Advisory Team* (Europe: RAND Corporation, 2005), 22.  
[http://www.rand.org/pubs/technical\\_reports/2005/RAND\\_TR288.pdf](http://www.rand.org/pubs/technical_reports/2005/RAND_TR288.pdf).

<sup>135</sup> Mark Shaw, "Spy meets Spy" in Steve Friedman and Doreen Atkinson, eds. *The Small Miracle* (South Africa: Ravan Press, 1994), 271.

<sup>136</sup> Annette Seegers, *The New Security in Democratic South Africa: A Cautionary Tale*, University of Cape Town, unpublished paper, 2009, 15.  
<http://web.uct.ac.za/depts/politics/depnews/StaffStudentSeminars/4aug09%20SeegersA%20paper.docx>.

to gather, correlate, evaluate and use foreign military intelligence.<sup>137</sup> In short, CI is concerned with intelligence relating to criminal activities while DI is concerned with strategically important military intelligence.

In order to avert the rivalry which dogged apartheid intelligence not only do the various agencies have specific mandates; some argue not specific enough, provision was also made for the establishment of an organization to coordinate the efforts of the post-apartheid intelligence agencies. The National Intelligence Coordinating Committee (NICOC) is this organization. Serving as an 'umbrella structure,' intelligence whether from the NIA, the SASS or any other agency is required to be passed to the NICOC which is concerned first and foremost with the coordination and interpretation of intelligence produced by the various agencies.<sup>138</sup>

### **2.3.6. Post-Apartheid Intelligence Oversight and Accountability**

The Intelligence Services Control Act, 1996, together with certain other pieces of legislation, provides for executive, judicial, legislative and internal oversight of intelligence in a democratic South Africa:<sup>139</sup>

Responsibility for executive oversight of intelligence rests with the President of the Republic and the Ministry of Intelligence,<sup>140</sup> while judicial oversight of intelligence is the responsibility of a designated judge, on whose authority the permissibility of invasive intelligence functions, such as the interception of communications depends.<sup>141</sup> Chaired by a member of the ruling party but with representation from members of other parties, a parliamentary committee, the Joint Standing Committee

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<sup>137</sup> Republic of South Africa, *National Strategic Intelligence Act*, 1994. Cape Town, 1994.

<sup>138</sup> Mark Shaw, *The Changing Role of the South African Intelligence Community*, Institute for Advanced Social Research, University of the Witwatersrand, Seminar Paper, March 27, 1995 (Johannesburg: Institute for Advanced Social Research, 1995), 17.

<sup>139</sup> Michael Hough and Anton Du Plessis, *Strategic Intelligence: Selected Official South African Perceptions: 1992-2002*, (Pretoria: Institute for Strategic Studies, University of Pretoria, 2002), 3.

<sup>140</sup> Republic of South Africa, *Intelligence Services Control Act, 1996*, Cape Town, 1996.

<sup>141</sup> Republic of South Africa, *Intelligence Services Control Act, 1996*, Cape Town, 1996.

on Intelligence (JSCI) is responsible for the legislative oversight of intelligence.<sup>142</sup> Internally, responsibility for intelligence oversight rests with an Inspector General (IG) of Intelligence, whose role includes the investigation of misconduct by the intelligence services.<sup>143</sup>

### **2.3.7. The Restructuring of Post-Apartheid Intelligence under Thabo Mbeki**

Following the reorganization of apartheid intelligence by FW De Klerk in the late 1980s and the reform of apartheid intelligence in the early 1990s, post-apartheid intelligence was restructured during the presidency of Thabo Mbeki.<sup>144</sup> While this restructuring involved amendments to existing legislation as well as the promulgation of new legislation,<sup>145</sup> it also involved the establishment of various intelligence related coordinating mechanisms and the creation of a number of new intelligence organizations. The National Security Council (NSC), which was established in June 2000;<sup>146</sup> the Presidential Support Unit (PSU); the Directorate of Special Operations (DSO); and the Financial Intelligence Centre (FIC) were all founded during Mbeki's tenure.<sup>147</sup> Furthermore, responsible for training, the South African National Academy of Intelligence (SANAI) was established in February 2003,<sup>148</sup> while the South African

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<sup>142</sup> Republic of South Africa, *Intelligence Services Control Act, 1996*, Cape Town, 1996.

<sup>143</sup> Republic of South Africa, *Intelligence Services Control Act, 1996*, Cape Town, 1996.

<sup>144</sup> Kenneth R. Dombroski, "Transforming Intelligence in South Africa," in Thomas Bruneau, and Steven Boraz, eds. *Reforming Intelligence: Obstacles to Democratic Control and Effectiveness* (Texas University Press, 2007), 263.

<sup>145</sup> According to Gavin Cawthra, these legislative changes 'were aimed at further aligning the intelligence agencies with democratic governance norms, and other national legislation.' Gavin Cawthra, "Security Governance in South Africa," *African Security Review* 14, no. 3 (South Africa: Institute for Security Studies, 2005): 103.

<sup>146</sup> Other coordinating mechanisms established under Mbeki include the Cabinet Committees on International Relations, Peace and Security; and Justice, Crime Prevention and Security. Michael Hough and Anton Du Plessis, *Strategic Intelligence: Selected Official South African Perceptions: 1992-2002*, (Pretoria: Institute for Strategic Studies, University of Pretoria, 2002), 57.

<sup>147</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 343.

<sup>148</sup> South African National Academy of Intelligence.  
<http://www.intelligence.gov.za/Functions/SANAI.htm>.

Revenue Service (SARS) and the Department of Foreign Affairs (DFA)<sup>149</sup> are said to have either retained or developed an intelligence capacity during the Mbeki presidency.<sup>150</sup> The expansion of intelligence under Thabo Mbeki was not without controversy. Seen as Mbeki's personal intelligence agency, the creation of the PSU, in particular, was widely criticised.<sup>151</sup>

### 2.3.8. An Appraisal of Post-Apartheid Intelligence

Intelligence reform is notoriously difficult<sup>152</sup> and the reform of apartheid intelligence has proved no exception. While on the face of it, the reform of apartheid intelligence has been, to quote Kenneth Dombroski, 'a model success,'<sup>153</sup> post-apartheid intelligence has displayed the 'fractiousness, factionalism and corruption' which characterized apartheid intelligence; while a lack of trust in individuals, institutions and the intelligence product itself, has undermined the emergence of an intelligence service consistent with its founding principles.<sup>154</sup> Having stumbled from one scandal to another, post-apartheid intelligence has proved that it is neither competent nor

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<sup>149</sup> The name of the Department of Foreign Affairs was changed to the Department of International Relations and Cooperation in 2009.

<sup>150</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 343.

<sup>151</sup> Kenneth R. Dombroski, "Transforming Intelligence in South Africa," in Thomas Bruneau, and Steven Boraz, eds. *Reforming Intelligence: Obstacles to Democratic Control and Effectiveness* (Texas University Press, 2007), 256.

<sup>152</sup> Kenneth Dombroski and Thomas Bruneau, *Reforming Intelligence: The Challenge of Control in New Democracies*, The Intelligence and Democracy Roundtable, 2003, United States Naval Postgraduate School, (United States: Centre for Civil-Military Relations, United States Naval Postgraduate School, 2003), 2. [http://www.ccmr.org/public/library/file\\_proxy.cfm/lid/5257](http://www.ccmr.org/public/library/file_proxy.cfm/lid/5257).

<sup>153</sup> As Dombroski contends, 'the South African intelligence services have gone from being militarized, highly repressive instruments of internal control to being seemingly transparent and democratically accountable civilian-led agencies designed to inform policy.' Kenneth R. Dombroski, "South Africa After Apartheid," *Journal of Democracy* 17, no. 3 (2006): 43.

<sup>154</sup> Kevin O'Brien, *Controlling the Hydra: An Historical Analysis of South Africa Intelligence Oversight- "Making Intelligence Accountable: Executive and Legislative Oversight of Intelligence Services,"* Geneva Centre for the Democratic Control of Armed Forces (DCAF), Making Intelligence Accountable Workshop, Oslo, Norway, September, 2003 (Norway:DCAF, 2003), 3. [http://www.dcaf.ch/legal\\_wg/ev\\_oslo\\_030919\\_obrien.pdf](http://www.dcaf.ch/legal_wg/ev_oslo_030919_obrien.pdf).

apolitical; while the many abuses of power by post-apartheid intelligence have highlighted the limitations of intelligence oversight and accountability.

Many have questioned the competence of post-apartheid intelligence and it is a concern which has been articulated repeatedly within government, most notably, by former Presidents Mandela and Mbeki. Following a 1997 burglary at the NIA's offices, Nelson Mandela lamented the NIA asking, 'how can you claim with any measure of integrity that you are competent to protect the country if you cannot secure your own premises?'<sup>155</sup> Similarly, in a 2005 address at the Intelligence Services Day Tenth Anniversary Awards Ceremony, Thabo Mbeki commented that for many years he 'had been concerned about the quality of a significant proportion of the intelligence,' he had received.<sup>156</sup>

Intelligence failures have included the abortive surveillance of the German Embassy<sup>157</sup> and of businessman Saki Macozoma,<sup>158</sup> as well as the embarrassing arrest of SASS agent Aubrey Welken in Zimbabwe.<sup>159</sup> Against the backdrop of perceptions of post-apartheid intelligence's woeful incompetence, the disclosure in 1999 by the minister of intelligence Joe Nhlanhla that 115 NIA and SASS employees were charged with misconduct, ranging from the smuggling of precious metals to murder, over a five year period, says a great deal about the professionalism, or lack

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<sup>155</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 344.

<sup>156</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 364.

<sup>157</sup> Patrick Laurence, "The Future of the NIA," *Focus* 17, March 2000, (Johannesburg: Helen Suzman Foundation, 2000). <http://www.hsf.org.za/resource-centre/focus/issues-20-11/issue-17-first-quarter-2000/the-future-of-the-nia>.

<sup>158</sup> Republic of South Africa, Office of the Inspector General of Intelligence, *Executive Summary on the Final Report of the Findings of an Investigations into the Legality of the Surveillance Operations carried out by the NIA against Mr S Macozoma, Extended Terms of Reference, Report on the Authenticity of the Allegedly Intercepted E-Mails, Media Briefing. 23 March 2006*. Office of the Inspector General of Intelligence, 2006. [www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc](http://www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc).

<sup>159</sup> G.P.H. Kruys, "Intelligence Failures: Causes and Contemporary Case Studies," *Strategic Review of Southern Africa* 28, no. 1 (2006): 86.



thereof, of the post-apartheid intelligence services.<sup>160</sup> Besides its competence, the capacity of post-apartheid intelligence has been questioned; the intelligence services not only lack many specialized skills, it is said, but also have an acute shortage of well qualified personnel.<sup>161</sup>

The numerous scandals have shown that post-apartheid intelligence, like its apartheid counterpart, is both highly politicised and deeply divided. Further, the mechanisms of intelligence oversight and accountability, while appearing strong on the surface, are in fact weak and problematic at best.<sup>162</sup> Post-apartheid intelligence has abused its position and power with worrying regularity. Such abuses, committed most often by the NIA, have included the surveillance of opposition politicians and political parties,<sup>163</sup> the media<sup>164</sup> and civil society.<sup>165</sup> It is however the meddling and misadventure in the context of the presidential succession battle within the ANC

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<sup>160</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 356.

<sup>161</sup> Annette Seegers, *The New Security in Democratic South Africa: A Cautionary Tale*, University of Cape Town, unpublished paper, 2009, 23.

<http://web.uct.ac.za/depts/politics/depnews/StaffStudentSeminars/4aug09%20SeegersA%20paper.docx>;

Martin Schonteich et al. has detailed the shortage of skilled personnel within the SAPS. Martin Schonteich, Anthony Minnaar, Duxita Mistry and, K.C. Goyer, *Private Muscle: Outsourcing the Provision of Criminal Justice Services*, Institute for Security Studies, Monograph no. 93, January 01, 2004 (South Africa: Institute for Security Studies, 2004), 41.

<sup>162</sup> Kevin O'Brien, *Controlling the Hydra: An Historical Analysis of South Africa Intelligence Oversight- "Making Intelligence Accountable: Executive and Legislative Oversight of Intelligence Services,"* Geneva Centre for the Democratic Control of Armed Forces (DCAF), Making Intelligence Accountable Workshop, Oslo, Norway, September, 2003 (Norway:DCAF, 2003), 2.

[http://www.dcaf.ch/legal\\_wg/ev\\_oslo\\_030919\\_obrien.pdf](http://www.dcaf.ch/legal_wg/ev_oslo_030919_obrien.pdf).

<sup>163</sup> Pearlie Joubert and Nic Dawes, "Someone is bugging me- Zille," *Mail & Guardian*, 15 February 2008. <http://www.mg.co.za/article/2008-02-15-someone-is-bugging-me-zille>; and Republic of South Africa, Office of the Inspector General of Intelligence, *Executive Summary on the Final Report of the Findings of an Investigations into the Legality of the Surveillance Operations carried out by the NIA against Mr S Macozoma, Extended Terms of Reference, Report on the Authenticity of the Allegedly Intercepted E-Mails, Media Briefing. 23 March 2006*. Office of the Inspector General of Intelligence, 2006. [www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc](http://www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc).

<sup>164</sup> Sam Sole and Stefaans Brummer, "M&G was spied on," *Mail & Guardian*, 24 September 2009. <http://www.mg.co.za/article/2009-09-24-mg-was-spied-on>.

<sup>165</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 357.

which prompted the then minister of intelligence Ronnie Kasrils to declare in 2006 that the post-apartheid intelligence services were in crisis.<sup>166</sup>

Minister Ronnie Kasrils summarized the crisis as involving the 'unauthorised surveillance of citizens; the unlawful interception of the communication of members of the public and of parliamentarians; the fabrication of bogus e-mails as part of a political conspiracy; and evasions and lying to the President, the Minister and the Inspector-General for Intelligence.'<sup>167</sup> With state security structures engaged in an internecine battle; with a wide-ranging mandate, Kasrils established the Ministerial Review Commission on Intelligence in November 2006.<sup>168</sup> The findings and recommendations of the Commission, published in September 2008, are instructive. The Commission called for an overhaul of the legislative framework governing intelligence.<sup>169</sup> One recommendation was to revise the mandate of the intelligence services, especially the domestic intelligence mandate of the NIA, which has proved to be unacceptably broad. Another recommendation was to strengthen mechanisms of oversight and accountability, which have proved inadequate and ineffectual.<sup>170</sup>

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<sup>166</sup> Ronnie Kasrils, Minister of Intelligence, *Intelligence Services Budget Speech*, 1 June 2006, National Assembly, Cape Town. [http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F2006%2F06060513451001.htm%40Gov&q=\(+deadly+%3CAND%3E+force+\)&t=R+Kasrils%3A+Intelligence+Services+Dept+Budget+Vote+2006%2F07](http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F2006%2F06060513451001.htm%40Gov&q=(+deadly+%3CAND%3E+force+)&t=R+Kasrils%3A+Intelligence+Services+Dept+Budget+Vote+2006%2F07).

<sup>167</sup> Ronnie Kasrils, Minister of Intelligence, *Intelligence Services Budget Speech*, 1 June 2006, National Assembly, Cape Town. [http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F2006%2F06060513451001.htm%40Gov&q=\(+deadly+%3CAND%3E+force+\)&t=R+Kasrils%3A+Intelligence+Services+Dept+Budget+Vote+2006%2F07](http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F2006%2F06060513451001.htm%40Gov&q=(+deadly+%3CAND%3E+force+)&t=R+Kasrils%3A+Intelligence+Services+Dept+Budget+Vote+2006%2F07).

<sup>168</sup> Ronnie Kasrils, Minister of Intelligence, *Speech on the launch of the Ministerial Review Commission on Intelligence*, 1 November 2006. <http://www.info.gov.za/speeches/2006/06110309451004.htm>.

<sup>169</sup> Republic of South Africa, Ministerial Review Commission on Intelligence, *Intelligence in a Constitutional Democracy*, Final report of the Ministerial Review Commission on Intelligence, 23 September 2008, South Africa. <http://www.mg.co.za/uploads/final-report-september-2008-615.pdf>.

<sup>170</sup> Republic of South Africa, Ministerial Review Commission on Intelligence, *Intelligence in a Constitutional Democracy*, Final report of the Ministerial Review Commission on Intelligence, 23 September 2008, South Africa. <http://www.mg.co.za/uploads/final-report-september-2008-615.pdf>.

### **2.3.9. Conclusion**

A new notion of security informed the reform of intelligence in post-apartheid South Africa. Consistent with the development-is-security thesis of the new security, the reform of apartheid intelligence included the promulgation of new legislation and the establishment of new organizations as well as various mechanisms of coordination, oversight and accountability. While on the face of it the reform of apartheid intelligence appears to have been a success, an appraisal of post-apartheid intelligence suggests otherwise. Certainly if the numerous scandals are anything to go by, post-apartheid intelligence has not distinguished itself as a professional, competent and apolitical service.

## **2.4. Private Intelligence in Post-Apartheid South Africa**

### **2.4.1. Introduction**

There exists in South Africa, a private intelligence industry, which has played a significant, influential and certainly not uncontroversial role since the early 1990s. What follows is an overview of private intelligence in post-apartheid South Africa in which the size, location, ownership, functions, clients and employees of the industry are considered.

### **2.4.2. The Emergence of a Private Intelligence Industry in Post-Apartheid South Africa**

A private intelligence industry in South Africa emerged in late 1980s and early 1990s with the establishment of a number of domestic private intelligence firms. Preceding the entry of a host of foreign firms which later established a 'beachhead in the new South Africa,'<sup>171</sup> these initial firms included Executive Outcomes,<sup>172</sup> Executive

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<sup>171</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 366.

Research Associates<sup>173</sup> and Panasec Corporate Dynamics.<sup>174</sup> While all indications are that since the emergence of these firms, the private intelligence industry has experienced robust growth, the secrecy in which the private intelligence industry is shrouded has undermined detailed study of the industry.<sup>175</sup> As such, unlike the broader private security industry, there are no statistics on the private intelligence industry in post-apartheid South Africa.<sup>176</sup>

The rapid growth of the broader private security industry is nevertheless suggestive. Having grown at rates of up to thirty percent per annum since the 1970s, the South African private security industry was valued at R1.2 billion by 1990, at R6 billion by 1997 and at more than R14 billion by 2004.<sup>177</sup> According to a 2007 study by Julie Berg, the industry boasts an annual turnover of more than R40 billion, while in 2005 there were 4 639 security businesses and 288 686 security officers registered with the Private Security Industry Regulatory Authority (PSIRA).<sup>178</sup> While the reasons for this growth are numerous and varied, an explanation is best offered by Julie Berg

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<sup>172</sup> Eben Barlow, *Executive Outcomes, Against All Odds* (Alberton: Galago, 2007).

<sup>173</sup> "Exposed: Spy-for-Cash Dirty Tricks Network," *Independent Newspapers*, 13 June 1996. <http://www.lexisnexis.com/us/lnacademic/>.

<sup>174</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006): 372.

<sup>175</sup> Jenny Irish, *Policing for Profit*, Institute for Security Studies Monograph no. 39, August 1999, (South Africa: Institute for Security Studies, 1999). <http://www.iss.co.za/Pubs/Monographs/No39/SAPrivSecIndustry.html>; and Mark Shaw, *Crime and Policing in Post-Apartheid South Africa: Transforming Under Fire* (Cape Town: David Philip, 2002), 106.

<sup>176</sup> Certain private intelligence actors, such as private investigators, are required by law to be registered with the Private Security Industry Regulatory Authority (PSIRA). According to PSIRA statistics, in 2005 there were 958 security companies in South Africa which offered private investigatory services. Julie Berg, *The Accountability of South Africa's Private Security Industry: Mechanisms of Control and Challenges to Effective Oversight*, Open Society Foundation for South Africa, Criminal Justice Initiative, Occasional Paper no. 2, 2007 (South Africa: Open Society Foundation for South Africa, 2007), 6. [http://www.osf.org.za/File\\_Uploads/docs/File\\_Download.asp?ThisFile=OSF\\_JulieBerg\\_to\\_print.pdf](http://www.osf.org.za/File_Uploads/docs/File_Download.asp?ThisFile=OSF_JulieBerg_to_print.pdf).

<sup>177</sup> Anthony Minnaar, "Private-Public Partnerships: Private Security, Crime Prevention and Policing in South Africa," *Acta Criminologica: Southern African Journal of Criminology* 18, no. 12 (2005): 93.

<sup>178</sup> Julie Berg, *The Accountability of South Africa's Private Security Industry: Mechanisms of Control and Challenges to Effective Oversight*, Open Society Foundation for South Africa, Criminal Justice Initiative, Occasional Paper no. 2, 2007 (South Africa: Open Society Foundation for South Africa, 2007), 4, 5. [http://www.osf.org.za/File\\_Uploads/docs/File\\_Download.asp?ThisFile=OSF\\_JulieBerg\\_to\\_print.pdf](http://www.osf.org.za/File_Uploads/docs/File_Download.asp?ThisFile=OSF_JulieBerg_to_print.pdf).

who has suggested that the growth of the private security industry can be explained by,

‘the rise (in the 1980s) of insecurities associated with apartheid activities; the apartheid state’s willingness to accept the security industry as an adjunct to the state police; and the apartheid state’s attempts to professionalise the industry through the enactment of various pieces of legislation. Post-1994 has seen an especially significant rise in the size of the industry due to the entry of international conglomerates; the steady entry of ex-security personnel into the industry; and the rise of the crime rate and insecurities associated with post-transitional developments. South Africa’s re-entry into the global arena has also led to a number of other developments associated with late or post modernity. Some of these developments taking place in a number of countries include changes in property relations due to the rise of mass private property and the need to secure this property; the identification of new insecurities and risks in the so-called “risk society”; growing trends towards consumerism and the commodification of security – individuals are able to purchase their own security in the light of the state’s inability to guarantee security; and the state’s adoption of “responsibilization” strategies to encourage individuals to take responsibility for their own security.’<sup>179</sup>

#### **2.4.3. An Overview of the Private Intelligence Industry in Post-Apartheid South Africa**

The private intelligence industry in post-apartheid South Africa is populated by both foreign and domestically owned and located firms.<sup>180</sup> Notable foreign firms include or have included Kroll, Control Risks, CIEX, Risk Advisory Group and Veracity

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<sup>179</sup> Julie Berg, *The Accountability of South Africa’s Private Security Industry: Mechanisms of Control and Challenges to Effective Oversight*, Open Society Foundation for South Africa, Criminal Justice Initiative, Occasional Paper no. 2, 2007 (South Africa: Open Society Foundation for South Africa, 2007), 4.

[http://www.osf.org.za/File\\_Uploads/docs/File\\_Download.asp?ThisFile=OSF\\_JulieBerg\\_to\\_print.pdf](http://www.osf.org.za/File_Uploads/docs/File_Download.asp?ThisFile=OSF_JulieBerg_to_print.pdf).

<sup>180</sup> James Sanders, *Apartheid’s Friends: The Rise and Fall of South Africa’s Secret Service*, (London: John Murray, 2006), 366, 372.

Worldwide,<sup>181</sup> while domestic firms include and have included Associated Intelligence Network, Orion Professional Management, Congress Consultants, Pasco, Executive Research Associates, Panasec Corporate Dynamics, Stallion Security, Saracen International, Southern Cross and Stabilico.<sup>182</sup> As illustrated by the furore surrounding the outsourcing by the Directorate of Special Operations, the operation in South Africa of foreign owned private intelligence has certainly not been without controversy.<sup>183</sup>

What about the size of firms? The intelligence industry is a ready mix of multinationals like Kroll and Control Risks;<sup>184</sup> sizeable domestic firms like Pasco and Ramathe Fivaz;<sup>185</sup> and the freelance intelligence traders which Adam Roberts likens in his book, *The Wonga Coup*, to 'modern day rag-and-bone cart merchants.'<sup>186</sup> Firms habitually engage in sub-contracting. Firms subcontract work to individual consultants who have either specialist skills or in-depth knowledge of a particular industry or geographical region. Most often, however, these freelancers are

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<sup>181</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 366; and "Veracity's Indian Agent," *Intelligence Online*, 4 June 2009. [http://www.lexisnexis.com/us/lnacademic/results/docview/docview.do?docLinkInd=true&risb=21\\_T7871684580&format=GNBFI&sort=BOOLEAN&startDocNo=1&resultsUrlKey=29\\_T7871671880&cisb=22\\_T7871684583&treeMax=true&treeWidth=0&csi=143295&docNo=1](http://www.lexisnexis.com/us/lnacademic/results/docview/docview.do?docLinkInd=true&risb=21_T7871684580&format=GNBFI&sort=BOOLEAN&startDocNo=1&resultsUrlKey=29_T7871671880&cisb=22_T7871684583&treeMax=true&treeWidth=0&csi=143295&docNo=1).

<sup>182</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 391; and Sabelo Gumedze, ed. "List of South African PMCs and PSCs," *The Private Security Sector in Africa, Country Series*, Institute for Security Studies, Monograph no. 146, July 2008 (South Africa: Institute for Security Studies, 2008). [http://www.issafrica.org/index.php?link\\_id=30&slink\\_id=6595&link\\_type=12&slink\\_type=12&tmpl\\_id=3](http://www.issafrica.org/index.php?link_id=30&slink_id=6595&link_type=12&slink_type=12&tmpl_id=3).

<sup>183</sup> "CIA Runs Scorpions," *City Press*, 9 October 2005. <http://www.lexisnexis.com/us/lnacademic/>.

<sup>184</sup> Kroll has offices in more than 60 cities in the United States and abroad, <http://www.kroll.com/about/>; while Control Risks has offices in 27 countries, <http://www.controlrisks.com/Default.aspx?page=2>.

<sup>185</sup> Pasco Risk Management has offices in Johannesburg, London and New Delhi, <http://www.pasco.co.za/>. Ramathe Fivaz employs more than 250 people, <http://www.ramathe.co.za/group/?sid=8bf437f4-e884-4df8-a6de-afc9454c0c7a>.

<sup>186</sup> Adam Roberts, *The Wonga Coup*, (London: Profile Books, 2006), 67.

employed because they are well networked and have the necessary contacts to complete the work.<sup>187</sup>

The functions of the private intelligence industry in post-apartheid South Africa are wide ranging and include intelligence related project management, staffing and training,<sup>188</sup> intelligence related technology;<sup>189</sup> political, socioeconomic and security risk analysis;<sup>190</sup> investigations and due diligence;<sup>191</sup> competitive intelligence;<sup>192</sup> and counterintelligence.<sup>193</sup> While no single function is predominant, a discussion of these functions is best served by considering the clients of the industry, which Lauren Hutton suggests fall into one of three categories; namely personal, corporate and government.<sup>194</sup> Investigations and due diligence is the predominant function among personal clients. Corporate clients are mainly interested in political, socioeconomic and security risks analysis; investigations and due diligence; competitive intelligence; and counterintelligence. Among government clients the demand is for intelligence

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<sup>187</sup> Lauren Hutton, "Spies for Hire and Information Peddlers: A New Threat to Security in Africa?" *African Security Review* 17, no. 4 (2008): 188.

<sup>188</sup> Examples of such firms include Kroll, <http://www.kroll.com/>; Africa-Analysis Services, <http://www.africa-analysis.org/services.html>; Gondo Training Academy, <http://www.gondo.co.za/>; and 4Knowledge Analysis Solutions, <http://www.4knowledge.co.za/about.html>.

<sup>189</sup> Examples of such firms include Marshall International, <http://www.marshall.co.za/>; and TSCM, <http://www.tscm.co.za/>.

<sup>190</sup> Examples of such firms include Control Risks, <http://www.controlrisks.com/>; Executive Research Associates, <http://www.erassociates.co.za/>; and Veracity Worldwide, <http://www.veracityworldwide.com/>. Consultants include Johan Smith, Nigel Morgan and the late Bheki Jacobs. Adam Roberts, *The Wonga Coup*, (London: Profile Books, 2006), 67; and James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 391.

<sup>191</sup> Examples of such firms include D&K Management Consultants, <http://www.investigators.co.za/>; Magnum Investigations, <http://www.privateinvestigator.co.za/>; Stallion Security, <http://www.stallion.co.za/>; and Specialized Services Group (SSG), <http://www.ssgonline.co.za/>.

<sup>192</sup> The industry body representing competitive intelligence firms in South Africa is the South African Association of Competitive Intelligence Professionals (SAACIP). <http://www.saacip.co.za/>.

<sup>193</sup> Examples of such firms include and CBIA, <http://www.cbia.co.za/index.php>; and TSCM, <http://www.tscm.co.za/>.

<sup>194</sup> Lauren Hutton, "Spies for Hire and Information Peddlers: A New Threat to Security in Africa?" *African Security Review* 17, no. 4 (2008): 188, 189.

related project management, staffing and training; intelligence related technology; and political, socioeconomic and security risk analysis.<sup>195</sup>

Private intelligence's employees are predominantly from police, military and intelligence backgrounds.<sup>196</sup> As is the case with the broader private security industry, many of those who have found employment in the private intelligence industry in South Africa served in the security forces of the apartheid regime and the liberation movement; while since 1994, there has been a not uncontroversial flight of skills from the SAPS, the NIA, the SASS, and with its closure, the DSO, to the private sector.<sup>197</sup> That many of those who served with notoriety in amongst others, Vlakplaas, Koevoet, 32 Battalion, and the CCB are now employed in the private intelligence industry and the broader private security industry has certainly stirred controversy. Meanwhile the phenomenon of the revolving door which since 1994 has seen the departure for the private sector of amongst others; Vusi Mavimbela,<sup>198</sup> Daniel Lengosane<sup>199</sup> and Pete Richer<sup>200</sup> has not gone uncriticized.

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<sup>195</sup> Lauren Hutton, "Spies for Hire and Information Peddlers: A New Threat to Security in Africa?" *African Security Review* 17, no. 4 (2008): 188, 189.

<sup>196</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 366; and Veracity Worldwide Management Team, <http://www.veracityworldwide.com/about/core>.

<sup>197</sup> John McLeenan, "Spy vs Spy-for-Rent," *Independent Newspapers*, 9 June 1996. <http://www.lexisnexis.com/us/lnacademic/>; "Former Top Cops Form Private Police Force," *City Press*, 23 January 2000. <http://www.lexisnexis.com/us/lnacademic/>; and James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006): 372.

<sup>198</sup> Vusi Mavimbela was an advisor on security and intelligence matters in the Office of the Deputy President and the Director General of the NIA before joining Toyko Sexwale's Mvelaphanda Group as a director responsible for business strategy and African expansion. Lauren Hutton, "Spies for Hire and Information Peddlers: A New Threat to Security in Africa?" *African Security Review* 17, no. 4 (2008): 188; and Mvelaphanda Group Limited, Board and Management, [http://www.mvelagroupir.com/man\\_ed.htm](http://www.mvelagroupir.com/man_ed.htm).

<sup>199</sup> Daniel Lengosane was a bodyguard to Presidents Nelson Mandela and Thabo Mbeki (he became National Commander of the Presidential Protection Unit during Mbeki's tenure as president) as well as a Director in the Presidents' Office responsible for internal security, before joining Imvume Resources and Omega Risk Solutions as a Director of strategic operations and corporate affairs respectively. Omega Risk Solutions, Senior Management. <http://www.omegasol.com/>.

<sup>200</sup> Pete Richer was the Deputy Director General of the NIA before joining Kroll. James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006):370.



#### **2.4.4. Conclusion**

While the reticent nature of the private intelligence industry in post-apartheid South Africa has precluded detailed study of the industry; if the rapid growth of the broader private security industry is anything to go by, it is an industry which has grown. Consisting of foreign and domestically owned and located firms, which vary in size and geographical reach, the private intelligence industry employs many with police, military and intelligence backgrounds. While no single function predominates, the functions of the post-apartheid private intelligence industry include intelligence related project management, staffing and training; intelligence related technology; political, socioeconomic and security risk analysis; investigations and due diligence; competitive intelligence; and counterintelligence.

#### **2.5. Conclusion**

As the ventilation of abuses had shown, apartheid and liberation intelligence were characterized by a lack of transparency, accountability and respect for basic human rights. Further, both actors were dogged by rivalry and mistrust. The apartheid security establishment appears not to have favoured the outsourcing of intelligence and those private intelligence actors which did exist, were more often than not apartheid intelligence fronts. Notably, these fronts enjoyed success both in the Seychelles and the apartheid Homelands.

The reform of intelligence required by a constitutional state in South Africa was underpinned by a broadening and deepening of the notion of security and made much of the need for political neutrality, accountability and parliamentary control; and a balance between secrecy and transparency. Legislation established not only new intelligence organizations, but also mechanisms of coordination; and executive, judicial and legislative oversight and accountability. Yet the reform of intelligence has been far from a success: scandals, incompetence, politicization and corruption have been abundantly evident.

Although it is impossible to determine the precise size and shape of the private intelligence industry, all indications are that it is an industry which has grown. The industry includes both foreign and domestically owned and located firms, with firms ranging in size from individual consultants to large multinationals. Employing many with police, military and intelligence backgrounds and serving both the public and private sectors, the functions of the private intelligence industry in post-apartheid South Africa include intelligence related project management, staffing and training; intelligence related technology; political, socioeconomic and security risk analysis; investigations and due diligence; competitive intelligence; and counterintelligence.

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## **Chapter Three: The Relationship between the State and Private Intelligence in Post-Apartheid South Africa**

### **3.1. Introduction**

This chapter is concerned with an examination of the relationship between the state and private intelligence in post-apartheid South Africa. The relationship is contradictory, containing simultaneously the outsourcing of intelligence by the state and the states' hostility towards private intelligence.

### **3.2. The State and Private Intelligence: A Contradictory Relationship**

The relationship between the state and private intelligence in post-apartheid South Africa is best described as contradictory. This is on account of the incongruity of the hostility of the state towards private intelligence, demonstrated both by the state's criticism of private intelligence,<sup>201</sup> and by moves to better regulate the private intelligence industry;<sup>202</sup> and the outsourcing of intelligence by the state to the private intelligence industry.<sup>203</sup>

If anything, the case of Vusi Mavimbela best illustrates the inherently contradictory relationship between the state and private intelligence in post-apartheid South Africa. Having served as an advisor to deputy president Thabo Mbeki on intelligence and

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<sup>201</sup> Intelligence ministers Nhlanelhla, Sisulu and Kasrils all expressed their opposition to private intelligence.

Joe Nhlanelhla, Minister of Intelligence, *Intelligence Services Budget Speech*, 28 May 1996, National Assembly, Cape Town. [http://www.info.gov.za/speeches/1996/960723\\_13796.htm](http://www.info.gov.za/speeches/1996/960723_13796.htm); Lindiwe Sisulu, Minister of Intelligence, *Intelligence Services Budget Speech*, 5 June 2002, National Assembly, Cape Town. <http://www.info.gov.za/speeches/2002/03050908591002.htm>; and Ronnie Kasrils, Minister of Intelligence, *Secret Services Debate Speech*, 23 June 2004, National Assembly, Cape Town. <http://www.intelligence.gov.za/Speeches/BudgetVote2004.htm>.

<sup>202</sup> For example, the Protection of Information Bill proposed in 2008. Republic of South Africa, *The Protection of Information Bill, 2008*, Cape Town, 2008. <http://www.pmg.org.za/files/bills/080530b28-08.pdf>.

<sup>203</sup> Notable examples include the outsourcing of intelligence to Kroll, the Equatorial Guinea coup plot, the Western Cape spy saga, the hoax e-mail scandal, and the Special Browse Mole Report.

security matters, Mavimbela was appointed director general of the NIA in 1999. During his tenure at the NIA Mavimbela was critical of private intelligence, penning, in this regard, a particularly forthright article entitled 'Eve was a Victim of Bad Intelligence: Global Politics, Economy and Private Spooks Must Be Watched' which was published in South Africa's *Business Day* newspaper.<sup>204</sup> The hypocrisy of Mavimbela's position was not lost when, in 2005, he joined Tokyo Sexwale's Mvelaphanda,<sup>205</sup> in a de facto private intelligence role as a director responsible for strategy and the expansion of the group on the African continent.<sup>206</sup>

### **3.3. The Hostility of the State towards Private Intelligence**

#### **3.3.1. Introduction**

The hostility of the state towards private intelligence is demonstrated both by successive post-apartheid governments' criticism of private intelligence; and by moves to better regulate the private intelligence industry. What follows is a discussion of both the former and the latter.

#### **3.3.2. The Official Government Position**

The hostility of the state towards private intelligence has been an enduring feature of the intelligence discourse in post-apartheid South Africa, rather than the project of a particular political leadership. Ministers of intelligence in the governments of Nelson

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<sup>204</sup> Vusi Mavimbela, "Eve was a Victim of Bad Intelligence: Global Politics, Economy and Private Spooks Must Be Watched," *Business Day*, 9 May 2000. <http://www.lexisnexis.com/us/lnacademic/>.

<sup>205</sup> Lauren Hutton, "Spies for Hire and Information Peddlers: A New Threat to Security in Africa?" *African Security Review* 17, no. 4 (2008): 187; "Ex-NIA Man Joins Mvela," *Fin24.com*, 23 January 2005. [http://www.fin24.com/articles/default/display\\_article.aspx?ArticleId=1518-24\\_1651154](http://www.fin24.com/articles/default/display_article.aspx?ArticleId=1518-24_1651154).

<sup>206</sup> Mavimbela departed Mvelaphanda in 2009 to become director general of the presidency under Jacob Zuma. "Presidency Appoints Director General," *BuaNews Online*, 5 June 2009. <http://www.buanews.gov.za/rss/09/09060511351001>.

Mandela, Thabo Mbeki and Kgalema Motlanthe all expressed serious reservations regarding private intelligence.

ANC intelligence veteran Joe Nhlanhla was democratic South Africa's first intelligence minister. In his budget address to parliament in 1996, the then deputy minister of intelligence commented that the 'mushrooming' of private intelligence agencies was a 'grave and worrying situation.'<sup>207</sup> Arguing that 'intelligence, both as a function and as an organisation, is a national governmental function and asset,' he assured parliament that legislation governing private intelligence was forthcoming.<sup>208</sup> In 2000, Nhlanhla, somewhat more circumspectly again made mention of private intelligence. Mooting a partnership with the 'critical' private security industry, Nhlanhla nevertheless undertook to root out 'rogue elements and exploitative fly by night groups' and to ensure that private intelligence did not operate contrary to the Constitution.<sup>209</sup>

Thabo Mbeki's ascent to the presidency and the appointment of Lindiwe Sisulu as minister of intelligence yielded no shift in the South African government's stance on private intelligence. If anything, the government's position only hardened. Consistent with her predecessor; Sisulu, in a 2002 speech to parliament, remarked that 'the proliferation of private intelligence organisations (also) represents a security and potential stability-related concern.'<sup>210</sup> The problem of private intelligence was a priority for minister Sisulu who repeatedly opposed private intelligence by asserting, like Nhlanhla some years earlier, that the state – the political sovereign – enjoyed

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<sup>207</sup> Joe Nhlanhla, Minister of Intelligence, *Intelligence Services Budget Speech*, 28 May 1996, National Assembly, Cape Town. [http://www.info.gov.za/speeches/1996/960723\\_13796.htm](http://www.info.gov.za/speeches/1996/960723_13796.htm).

<sup>208</sup> Joe Nhlanhla, Minister of Intelligence, *Intelligence Services Budget Speech*, 28 May 1996, National Assembly, Cape Town. [http://www.info.gov.za/speeches/1996/960723\\_13796.htm](http://www.info.gov.za/speeches/1996/960723_13796.htm).

<sup>209</sup> Joe Nhlanhla, Minister of Intelligence, *Intelligence Services Budget Speech*, 24 May 2000, National Assembly, Cape Town. <http://www.info.gov.za/speeches/2000/0006081255p1001.htm>.

<sup>210</sup> Lindiwe Sisulu, Minister of Intelligence, *Intelligence Services Budget Speech*, 5 June 2002, National Assembly, Cape Town. <http://www.info.gov.za/speeches/2002/03050908591002.htm>.

primacy.<sup>211</sup> On occasion Sisulu even declared: ‘there is no scope (here) for private intelligence activity for purposes of gain or profit.’<sup>212</sup>

Criticism of private intelligence has not been limited to ministers of intelligence. Senior intelligence officials such as Vusi Mavimbela and Barry Gilder, have both expressed their concern regarding private intelligence.<sup>213</sup> As noted above, Vusi Mavimbela was particularly critical of private intelligence, arguing that,

‘there are limitless dangers in an intelligence regime that is neither regulated by the private sector itself nor by the constitutional authorities. If the intelligence activity of the state is regulated to protect the individual and the private sector, certainly the individual and the state need protection against unconstitutional and boundless practices of the private sector.’<sup>214</sup>

It was however during the tenure of intelligence minister Ronnie Kasrils that private intelligence attracted wider and more significant criticism, both from within and outside the state. Much of this criticism was fuelled by the use of private intelligence by the Directorate of Special Operations, otherwise known as the Scorpions. In particular, the involvement of private intelligence firms in the raids on Jacob Zuma’s Union Buildings office and in the ill-fated Special Browse Mole Report proved highly controversial.<sup>215</sup>

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<sup>211</sup> Lindiwe Sisulu, Minister of Intelligence, *Intelligence Services Budget Speech*, 17 June 2003, National Assembly, Cape Town. <http://www.info.gov.za/speeches/2003/03070113461001.htm>.

<sup>212</sup> Lindiwe Sisulu, Minister of Intelligence, *Intelligence Services Budget Speech*, 17 June 2003, National Assembly, Cape Town. <http://www.info.gov.za/speeches/2003/03070113461001.htm>.

<sup>213</sup> Vusi Mavimbela, “Eve was a Victim of Bad Intelligence: Global Politics, Economy and Private Spooks Must Be Watched,” *Business Day*, 9 May 2000. <http://www.lexisnexis.com/us/lnacademic/>; and Barry Gilder, *Submission to the ad hoc committee on the Protection of Information Bill*, 29 July 2008, National Assembly, Cape Town. [www.pmg.org.za/files/docs/080729barrygilder.doc](http://www.pmg.org.za/files/docs/080729barrygilder.doc).

<sup>214</sup> Vusi Mavimbela, “Eve was a Victim of Bad Intelligence: Global Politics, Economy and Private Spooks Must Be Watched,” *Business Day*, 9 May 2000. <http://www.lexisnexis.com/us/lnacademic/>.

<sup>215</sup> “CIA Runs Scorpions,” *City Press*, 9 October 2005. <http://www.lexisnexis.com/us/lnacademic/>.

The outsourcing of intelligence roles and functions by the Scorpions was scrutinized by both the Khampepe and Ginwala Commissions in their inquiries into the mandate and location of the DSO and the fitness of Vusi Pikoli to hold the office of the Director of National Public Prosecutions respectively.<sup>216</sup> Both the Khampepe and Ginwala Commissions were highly critical of the Scorpions' use of private intelligence, specifically in the raid on the Union Buildings, criticism which provided grounds for the closure of the DSO and the sacking of Pikoli.<sup>217</sup>

In the case of the Special Browse Mole Report, a highly explosive intelligence document produced by the DSO implicating Jacob Zuma in an international conspiracy against Thabo Mbeki's government, the Joint Standing Committee on Intelligence slammed the Scorpions use of private intelligence firms in a Special Report tabled before parliament.<sup>218</sup> Significant however was not so much the criticism of the DSO's use of private intelligence in the drafting of the report but rather the conclusions of the committee regarding private intelligence itself. The JSCI was highly disparaging, concluding that those engaged in private intelligence are 'information peddlers' who 'produce and disseminate defamatory and subversive documents.'<sup>219</sup>

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<sup>216</sup> Republic of South Africa, Khampepe Commission of Inquiry into the Mandate and Location of the Directorate of Special Operations (DSO), 3 February 2004. <http://www.info.gov.za/view/DownloadFileAction?id=80441>; and Republic of South Africa, Ginwala Commission, Report of the Enquiry into the Fitness of Advocate VP Pikoli to hold the Office of National Director of Public Prosecutions, November 2008. <http://www.info.gov.za/view/DownloadFileAction?id=93423>.

<sup>217</sup> Republic of South Africa, Khampepe Commission of Inquiry into the Mandate and Location of the Directorate of Special Operations (DSO), 3 February 2004, 61. <http://www.info.gov.za/view/DownloadFileAction?id=80441>; and Republic of South Africa, Ginwala Commission, Report of the Enquiry into the Fitness of Advocate VP Pikoli to hold the Office of National Director of Public Prosecutions, November 2008, 207. <http://www.info.gov.za/view/DownloadFileAction?id=93423>.

<sup>218</sup> Republic of South Africa, Joint Standing Committee on Intelligence (JSCI), Special Report of the Joint Standing Committee on Intelligence on the Special Browse Mole Consolidated Report document leaked to the public and investigated by Government Investigative Task Team, 27 November 2007. [www.pmq.org.za/files/bills/080226browsemolereport.doc](http://www.pmq.org.za/files/bills/080226browsemolereport.doc).

<sup>219</sup> Republic of South Africa, Joint Standing Committee on Intelligence (JSCI), Special Report of the Joint Standing Committee on Intelligence on the Special Browse Mole Consolidated Report document leaked to the public and investigated by Government Investigative Task Team, 27 November 2007. [www.pmq.org.za/files/bills/080226browsemolereport.doc](http://www.pmq.org.za/files/bills/080226browsemolereport.doc).

In a statement on the investigation into the Special Browse Mole Report the Justice, Crime, Policing and Security (JCPS) cluster was similarly critical, charging private intelligence firms, or at least those involved with the controversial report, with 'weakening and paralysing the government, destabilizing the ruling party, undermining relations between South Africa and other Africa states, and making money in a manner most vile.'<sup>220</sup> Following the Special Browse Mole Report scandal there was a wide call by members of government, opposition parties and civil society to, as one newspaper report put it, 'rein in the private spies.'<sup>221</sup>

### 3.3.3. Explaining the Hostility of the State towards Private Intelligence

The hostility of the post-apartheid state towards private intelligence is rooted in three main concerns:

First, private intelligence is subject to scant democratic oversight and accountability and is motivated by profit. Thus there is vast potential and great motivation for illegality, whether it be in the infringement of civil liberties or the invasion of privacy.<sup>222</sup> As Sisulu noted in 2003: 'our concerns refer to the protection of the constitutional rights to privacy by South African citizens. When state organs infringe on these rights, it is not for profit and that activity is very strictly governed by a number of laws.'<sup>223</sup>

Second, the employment in the private intelligence industry of individuals who have served in the intelligence agencies of other countries has proved controversial,

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<sup>220</sup> Republic of South Africa, Justice, Crime Prevention and Security Cluster (JCPS), Statement on the Investigation into the Special Browse Mole Report, 30 July 2007. <http://www.intelligence.gov.za/MediaStatements/STATEMENT%20ON%20THE%20INVESTIGATION%20INTO%20THE%20DOCUMENT%20ENTITLED.doc>.

<sup>221</sup> "Call to Rein in Private Sector Spies," *Business Day*, 20 November 2007. <http://www.lexisnexis.com/us/Inacademic/>.

<sup>222</sup> Lauren Hutton, "Spies for Hire and Information Peddlers: A New Threat to Security in Africa?" *African Security Review* 17, no. 4 (2008): 187.

<sup>223</sup> Lindiwe Sisulu, Minister of Intelligence, *Intelligence Services Budget Speech*, 17 June 2003, National Assembly, Cape Town. <http://www.info.gov.za/speeches/2003/03070113461001.htm>.



above all because it poses a potentially serious threat to South Africa's national security. In this regard as Sisulu pointed out in 2002, there is 'the potential for these organisations (private intelligence) to be used by foreign intelligence services as fronts for espionage purposes.'<sup>224</sup>

Last but not least, the employment of veterans of the apartheid security establishment not only in the private intelligence industry but also in the broader private military and security industry has been widely criticised.<sup>225</sup> For the most part, concerns in this regard have been informed by the potential for these individuals, previously the bulwark of the apartheid regime, to undermine the ruling ANC government and threaten the stability of a democratic South Africa. If the conclusions of the investigation into the Special Browse Mole Report are anything to go by, such concerns may well be valid.<sup>226</sup>

### 3.3.4. The Regulation of Private Intelligence

Intelligence ministers Nhlanhla and Sisulu were both convinced that private intelligence needed to be better regulated. Minister Sisulu was especially proactive, launching in December, 2003, a commission to review the regulation of the private security industry and specifically the regulation of those actors engaged in private intelligence.<sup>227</sup> The findings of Sisulu's enquiry were never made public.<sup>228</sup>

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<sup>224</sup> Lindiwe Sisulu, Minister of Intelligence, *Intelligence Services Budget Speech*, 5 June 2002, National Assembly, Cape Town. <http://www.info.gov.za/speeches/2002/03050908591002.htm>.

<sup>225</sup> The widespread and sustained criticism of Executive Outcomes is a case in point.

<sup>226</sup> Those fingered by the investigation into the Special Browse Mole Report were individuals with backgrounds in apartheid intelligence. Republic of South Africa, Justice, Crime Prevention and Security Cluster (JCPS), Statement on the Investigation into the Special Browse Mole Report, 30 July 2007. <http://www.intelligence.gov.za/MediaStatements/STATEMENT%20ON%20THE%20INVESTIGATION%20INTO%20THE%20DOCUMENT%20ENTITLED.doc>.

<sup>227</sup> Christelle Terreblanche, "State Clamps Down on Private Intelligence," *Sunday Independent*, 14 February 2004. <http://www.lexisnexis.com/us/lnacademic/>.

<sup>228</sup> Anthony Minnaar, "Private-Public Partnerships: Private Security, Crime Prevention and Policing in South Africa," *Acta Criminologica: Southern African Journal of Criminology* 18, no. 12 (2005): 14.

Yet parliament adopted both new legislation and amendments to existing legislation, seeking to address some of the more serious concerns regarding the private intelligence industry. By 2004, a more comprehensive legislative and regulatory framework governing private intelligence had emerged. It consisted of, among others; the Regulation of Foreign Military Assistance Act, 1998,<sup>229</sup> which introduced a licensing regime for private military firms; the Private Security Industry Regulation Act, 2001,<sup>230</sup> which requires the registration of private investigators; the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002,<sup>231</sup> which outlaws the interception of communications by non-state actors; and the General Intelligence Law Amendment Act, 2001,<sup>232</sup> which introduced a restraint of trade for former members of public intelligence.

The controversy surrounding the hoax e-mail scandal and the Special Browse Mole Report subsequently reenergized efforts to regulate the private intelligence industry. These efforts were reflected not in a Bill dedicated exclusively to private intelligence but rather in the proposed Protection of Information Bill.<sup>233</sup> Replacing archaic apartheid legislation which is inconsistent with South Africa's Constitution, the proposed Protection of Information Bill, criminalizes both the possession of classified state information and the provision of false or fabricated information to public intelligence.<sup>234</sup> Following a national outcry and strident opposition from the media,

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<sup>229</sup> Republic of South Africa, *Regulation of Foreign Military Assistance Act, 1998*, Cape Town, 1998. <http://www.info.gov.za/view/DownloadFileAction?id=70672>.

<sup>230</sup> Republic of South Africa, *Private Security Industry Regulation Act, 2001*, Cape Town, 2001. <http://www.info.gov.za/view/DownloadFileAction?id=68158>.

<sup>231</sup> Republic of South Africa, *Regulation of Interception of Communications and Provision of Communication-related information Act, 2002*, Cape Town, 2002. <http://www.info.gov.za/gazette/acts/2002/a70-02.pdf>.

<sup>232</sup> Republic of South Africa, *General Intelligence Law Amendment Act, 2001*, Cape Town, 2001. <http://www.info.gov.za/view/DownloadFileAction?id=68235>.

<sup>233</sup> Republic of South Africa, *The Protection of Information Bill, 2008*, Cape Town, 2008. <http://www.pmg.org.za/files/bills/080530b28-08.pdf>.

<sup>234</sup> Republic of South Africa, *The Protection of Information Bill, 2008*, Cape Town, 2008. <http://www.pmg.org.za/files/bills/080530b28-08.pdf>.

the Bill was withdrawn in late 2008 after the parliamentary committee considering the Bill conceded that too much work on the Bill still needed to be done.<sup>235</sup>

While the withdrawal of the Protection of Information Bill was in response to public criticism, it was also prompted both by the committee's failure to agree on an acceptable definition of private intelligence and by concerns that the Bill does not adequately address the threat posed by private intelligence.<sup>236</sup> While acknowledging the difficulty in determining exactly which private intelligence actors and activities pose a threat to the state and should be regulated; committee member Dennis Bloem argued that the proposed Protection of Information Bill is inadequate, as at the very least, private intelligence actors should be required by law to register.<sup>237</sup>

The withdrawal of the proposed Protection of Information Bill has underlined the challenges of regulating private intelligence. As Lauren Hutton has noted, the regulation of private intelligence 'is a very complex area, thanks not only to the difficulties that arise when one tries to define private intelligence and to differentiate private intelligence from think tanks and research institutions.'<sup>238</sup> The definitional bog in which debates regarding the regulation of private intelligence are mired, however, only partly explains the failure of the ANC government to comprehensively regulate private intelligence in post-apartheid South Africa:

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<sup>235</sup> "SANEF Welcomes Withdrawal of Information Bill," *Mail & Guardian*, 22 October 2008. <http://www.mg.co.za/article/2008-10-22-sanef-welcomes-withdrawal-of-information-bill>.

<sup>236</sup> Republic of South Africa, Intelligence Legislation Ad Hoc Committee Report, *Withdrawal of Intelligence Services Amendment Bill; National Strategic Intelligence Amendment Bill; Protection of Information Bill*, 15 October 2008. <http://www.pmg.org.za/report/20081015-intelligence-services-amendment-bill-national-strategic-intelligence->; and Republic of South Africa, Intelligence Legislation Ad Hoc Committee Report, *Intelligence Services Amendment Bill; National Strategic Intelligence Amendment Bill & Protection of Information Bill: deliberations*, 30 September 2008. <http://www.pmg.org.za/report/20080930-intelligence-services-amendment-bill-national-strategic-intelligence->.

<sup>237</sup> Republic of South Africa, Intelligence Legislation Ad Hoc Committee Report, *Withdrawal of Intelligence Services Amendment Bill; National Strategic Intelligence Amendment Bill; Protection of Information Bill*, 15 October 2008. <http://www.pmg.org.za/report/20081015-intelligence-services-amendment-bill-national-strategic-intelligence->.

<sup>238</sup> Lauren Hutton, ed. *To Spy or Not to Spy? Intelligence and Democracy in South Africa*, Institute for Security Studies, Monograph no. 157, (South Africa, Institute for Security Studies, 2009), 87. [http://www.iss.co.za/dynamic/administration/file\\_manager/file\\_links/MONO157HUTTONCONCLU.PDF?link\\_id=3&slink\\_id=7666&link\\_type=12&slink\\_type=23&tmpl\\_id=3](http://www.iss.co.za/dynamic/administration/file_manager/file_links/MONO157HUTTONCONCLU.PDF?link_id=3&slink_id=7666&link_type=12&slink_type=23&tmpl_id=3).

ANC leaders including Thabo Mbeki and Jacob Zuma have relied on private intelligence in fighting party political battles. Mbeki is said to have relied on the late Bheki Jacobs and Congress Consultants, described by some as a guerrilla intelligence network, for 'intelligence on what was happening in the country and in his rival's camps.'<sup>239</sup> Similarly Jacob Zuma, when facing charges relating to his role in the infamous arms deal, appeared to be 'indirectly running a parallel, informal intelligence network.'<sup>240</sup>

### 3.3.5. Conclusion

The hostility of the post-apartheid state towards private intelligence has been demonstrated by the state's consistent criticism of private intelligence, as well as by moves to better regulate the private intelligence industry. While such hostility has been an enduring feature of post-apartheid intelligence discourse, scandals relating to the reliance of the DSO on private intelligence in the mid-2000s added fuel to the fire, so to speak. Explanations of the state's hostility towards private intelligence include concerns relating to; the lack of oversight and accountability to which the profit orientated industry is subject; the potential for private intelligence actors to provide cover for hostile foreign intelligence actors; and the employment, in the private intelligence industry, of veterans of the apartheid security forces. Efforts to regulate the private intelligence industry have produced mixed results. While by 2004 a tighter framework governing private intelligence did exist; the withdrawal of the Protection of Information Bill has underlined the difficulty of regulating private intelligence, while the use of private intelligence by Thabo Mbeki and Jacob Zuma suggests that political will to tackle the industry may be deficient.

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<sup>239</sup> "The Spy Who's Out in the Cold," *Nosweek* 32, April, 2001 (Cape Town: Chaucer Publications, 2002).

<sup>240</sup> "SA's Spying Game," *IOL*, 11 October 2009.  
[http://www.iol.co.za/general/news/newsprint.php?art\\_id=vn20091011075242553C542280&sf=](http://www.iol.co.za/general/news/newsprint.php?art_id=vn20091011075242553C542280&sf=).

## **3.4. The Outsourcing of Intelligence by the State in Post-Apartheid South Africa**

### **3.4.1 Introduction**

The outsourcing of intelligence by the state in post-apartheid South Africa has proved popular. What follows is an examination of the outsourcing of intelligence, focusing on case studies. The extent of the outsourcing is considered while an explanation of such outsourcing is offered. Finally, issues of oversight and accountability are examined.

### **3.4.2. The Extent of the Outsourcing of Intelligence**

While the DSO was heavily criticised for its use of private intelligence, the NIA, the SASS, the SAPS and government departments, most notably the Presidency, have all outsourced both core and peripheral functions to private intelligence.<sup>241</sup> The outsourcing of intelligence is part of a wider privatization of security by the state in post-apartheid South Africa.<sup>242</sup> Best illustrative of this privatization of security is the outsourcing of security at police stations. In an answer to a parliamentary question, safety and security minister Nathi Mthethwa, noted that in 2008 more than R121 million was spent on private security guarding the premises of the SAPS.<sup>243</sup>

### **3.4.3. Explaining the Outsourcing of Intelligence**

The outsourcing of intelligence can be attributed to the following factors:

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<sup>241</sup> Notable examples of outsourcing include the outsourcing of intelligence to Kroll, the Equatorial Guinea coup plot, the Western Cape spy saga, the hoax e-mail scandal, and the Special Browse Mole Report.

<sup>242</sup> Martin Schonteich, Anthony Minnaar, Duxita Mistry and, K.C. Goyer, *Private Muscle: Outsourcing the Provision of Criminal Justice Services*, Institute for Security Studies, Monograph no. 93, January 01, 2004 (South Africa: Institute for Security Studies, 2004), 11.

<sup>243</sup> Carien Du Plessis, "Private security costs cops R121m; But minister maintains firms' guards are cheapest option," *The Star*, 14 March 2009. <http://www.lexisnexis.com/us/Inacademic/>.

First, post-apartheid South Africa has been characterized by especially high levels of crime, making it a relatively dangerous country in which to live.<sup>244</sup> Very often overburdened and ill-equipped, the NIA, the SAPS and the now defunct DSO, amongst other state agencies, have battled to contain the dramatic rise in crime and especially organized crime.<sup>245</sup> Recognising its lack of capacity (or weakness), the South African government turned to private intelligence firms including Kroll, for assistance in training and investigations.<sup>246</sup>

Second, many within the South African government have long questioned the competence of public intelligence.<sup>247</sup> Notably this did not always lead to outsourcing, but rather, to the creation of new intelligence organizations such as the PSU and the DSO.<sup>248</sup>

Third, in a climate of political machination and mistrust surrounding the Mbeki-Zuma succession struggle, public intelligence organizations were suspected of having taken sides. Politicians and civil servants preferred to rely on the private intelligence industry rather than on potentially untrustworthy public organizations. In other words, the outsourcing here was connected to public intelligence's lack of professionalism and its politicisation.<sup>249</sup>

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<sup>244</sup> Mark Shaw and Peter Gastrow, "Stealing the Show: Crime and Its Impact in Post-Apartheid South Africa," *Daedalus* 130, no. 1 (2001): 235.

<sup>245</sup> Peter Gastrow, *Penetrating State and Business, Organized Crime in Southern Africa*, Institute for Security Studies, Monograph no. 89 (South Africa: Institute for Security Studies, 2003).  
[www.iss.co.za/pubs/Monographs/No86/Contents.html](http://www.iss.co.za/pubs/Monographs/No86/Contents.html).

<sup>246</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 368.

<sup>247</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 364.

<sup>248</sup> Annette Seegers, *The New Security in Democratic South Africa: A Cautionary Tale*, University of Cape Town, unpublished paper, 2009, 23.  
<http://web.uct.ac.za/depts/politics/depnews/StaffStudentSeminars/4aug09%20SeegersA%20paper.docx>.

<sup>249</sup> For example, the hoax e-mail scandal and the Special Browse Mole report.

### 3.4.4. The Inefficiency, Corruptibility and Criminality of the Outsourcing of Intelligence

There are cases where the outsourcing of intelligence by public intelligence has enabled the state to better execute its mandate.<sup>250</sup> But these successes are overshadowed by the abuses of position and power facilitated by the outsourcing of intelligence. Certainly in the case of both the hoax e-mail scandal and the Special Browse Mole Report what is most concerning is not that the outsourcing of intelligence was inefficient but rather that, in the context of the presidential succession battle within the ANC, it allowed members of the NIA and the DSO to engage in illegality with implications far beyond their respective organizations.

Notwithstanding the reform of intelligence in the early 1990s, the oversight and accountability of intelligence in post-apartheid South Africa has proved problematic at best;<sup>251</sup> and the outsourcing of intelligence by the state has undermined what are already weak mechanisms of oversight and accountability. All indications are that there is little control exercised over the outsourcing of intelligence itself while those private intelligence actors to which the state has outsourced are subject to scant oversight and accountability. The Western Cape spy saga, the hoax e-mail scandal and the Special Browse Mole Report have all illustrated how the outsourcing of intelligence effectively places intelligence roles and functions beyond view.

### 3.4.5. Selected Cases

#### 3.4.5.1 Kroll

Kroll made its entry in South Africa in the late 1990s. Boasting a staff with backgrounds in the Federal Bureau of Investigation (FBI), the CIA and MI6; and perceived to be at the cutting edge of efforts to combat international organized crime, Kroll was employed to train new recruits of the DSO.<sup>252</sup> Kroll's involvement in South

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<sup>250</sup> For example, in the case of the outsourcing to Kroll and the Equatorial Guinea coup plot.

<sup>251</sup> Republic of South Africa, Ministerial Review Commission on Intelligence, *Intelligence in a Constitutional Democracy*, Final report of the Ministerial Review Commission on Intelligence, 23 September 2008, South Africa. <http://www.mg.co.za/uploads/final-report-september-2008-615.pdf>.

<sup>252</sup> Sam Kiley, "Mbeki Crime-Busters in Class of their Own," *Weekend Australian*, 17 July 1999. <http://www.lexisnexis.com/us/Inacademic/>; and James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 368.

Africa did not begin with, nor was it limited to, the training of the Scorpions. Kroll had been contracted by the South African government about a year earlier to train members of the intelligence community, the SAPS and the prosecution service.<sup>253</sup> During this period, Kroll worked closely with the NIA's training academy.<sup>254</sup>

As James Sanders suggests, Kroll's activities in South Africa extended far beyond training. Kroll became involved in investigations into the Reserve Bank, the Strategic Fuel Fund and the Post Office.<sup>255</sup> Kroll's significant influence, both within the ANC and South Africa, in the late 1990s, is best illustrated by the employment of Peter Richer and Andre Pienaar. Both South Africans, Peter Richer was an ANC intelligence operative who before and after a stint with Kroll held senior positions in public intelligence; while Andre Pienaar, an officer in the SADF who was jailed in the 1980s for supplying secret information to the ANC, at one stage headed Kroll in South Africa.<sup>256</sup>

Explanations of the South African government's outsourcing to Kroll lie at the intersection between high levels of crime and the incapacity of the post-apartheid state to tackle the problem. South Africa in the late 1990s was facing unprecedented levels of crime and in particular international organized crime.<sup>257</sup> Most worryingly, the

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<sup>253</sup> Sydney Mufamadi, Minister of Safety and Security, *Safety and Security Budget Speech*, 28 May 1998, National Assembly, Cape Town. [http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F1998%2F98921\\_2869810915.htm%40Gov&q=\(\(mufamadi\)%3CIN%3ETitle\)+%3CAND%3E\(+Category%3Cmatches%3Es+\)&t=MUFAMADI%3A+BUDGET+VOTE](http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F1998%2F98921_2869810915.htm%40Gov&q=((mufamadi)%3CIN%3ETitle)+%3CAND%3E(+Category%3Cmatches%3Es+)&t=MUFAMADI%3A+BUDGET+VOTE); and Victor Mallet and Jimmy Burns, "South Africa Calls in Kroll to Help Police Fight Organized Crime," *London Financial Times*, 27 May 1998. <http://www.lexisnexis.com/us/lnacademic/>.

<sup>254</sup> Sydney Mufamadi, Minister of Safety and Security, *Safety and Security Budget Speech*, 28 May 1998, National Assembly, Cape Town. [http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F1998%2F98921\\_2869810915.htm%40Gov&q=\(\(mufamadi\)%3CIN%3ETitle\)+%3CAND%3E\(+Category%3Cmatches%3Es+\)&t=MUFAMADI%3A+BUDGET+VOTE](http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F1998%2F98921_2869810915.htm%40Gov&q=((mufamadi)%3CIN%3ETitle)+%3CAND%3E(+Category%3Cmatches%3Es+)&t=MUFAMADI%3A+BUDGET+VOTE).

<sup>255</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 368.

<sup>256</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 370; and "Gumshoes do a stick and paste job on SA intelligence," *Noseweek* 40, August, 2002 (Cape Town: Chaucer Publications, 2002): 20.

<sup>257</sup> Marcus Mabry and Babak Deghanpisheh, "Gangsters' Paradise," *Newsweek*, 3 August 1998. <http://www.lexisnexis.com/us/lnacademic/>.



South African security establishment resembled a deer in the headlights. Against this backdrop, together with the founding of the DSO; Kroll, according to Sydney Mufamadi, 'one of the world's leading risk mitigation companies,' was engaged by the South African authorities.<sup>258</sup>

Kroll was retained for a number of years and became involved in some very high profile investigations, indicating the regard in which it was held by the South African government.<sup>259</sup> Yet many expressed concerns that Kroll's services were not only secured improperly, but also that they proved exorbitantly expensive. What Kroll cost the South African government has never been revealed and there is no evidence that a tender for the services that Kroll provided was ever issued. However, it was in the context of the turf battles between the DSO, and the SAPS and the NIA, that Kroll was criticised most vocally. Here it was argued that the DSO's working relationship with Kroll compromised national security because Kroll had a close relationship with the CIA.<sup>260</sup> Although a not altogether unreasonable charge, made by amongst others, Billy Masetlha; as Vusi Pikoli recently pointed out, the DSO's critics in the NIA and the SAPS also worked with Kroll.<sup>261</sup>

#### **3.4.5.2. The Western Cape Spy Saga**

In 1999 the Democratic Alliance (DA), a coalition between the New National Party (NNP) and the Democratic Party (DP), won power in the Western Cape. As director general of the province, the DA appointed the former head of the apartheid National Intelligence Service, Neil Barnard. Soon after Barnard's appointment, allegations of

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<sup>258</sup> Sydney Mufamadi, Minister of Safety and Security, *Safety and Security Budget Speech*, 28 May 1998, National Assembly, Cape Town. [http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F1998%2F98921\\_2869810915.htm%40Gov&q=\(+\(mufamadi\)%3CIN%3ETitle\)+\)%3CAND%3E\(+Category%3Cmatches%3Es+\)&t=MUFAMADI%3A+BUDGET+VOTE](http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F1998%2F98921_2869810915.htm%40Gov&q=(+(mufamadi)%3CIN%3ETitle)+)%3CAND%3E(+Category%3Cmatches%3Es+)&t=MUFAMADI%3A+BUDGET+VOTE).

<sup>259</sup> James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 369.

<sup>260</sup> "CIA Runs Scorpions," *City Press*, 9 October 2005. <http://www.lexisnexis.com/us/lnacademic/>; *Africa Research Bulletin*, "South Africa, the Kebble Controversy," *Africa Research Bulletin* 42 no. 10 (October 2005): 16404; and James Sanders, *Apartheid's Friends: The Rise and Fall of South Africa's Secret Service*, (London: John Murray, 2006), 369.

<sup>261</sup> Adriaan Basson and Ihlam Rawoot, "Pikoli Takes Issue With Scorpions Being 'Singled Out,'" *Mail & Guardian*, 17 November 2009. <http://www.mg.co.za/article/2009-11-17-pikoli-takes-issue-with-scorpions-being-singled-out>.

spying by the Western Cape government surfaced. Launched in a climate of widespread paranoia and mistrust to investigate these allegations; the Desai Commission probed the acquisition, from private intelligence firm TSCM, of a *Watchdog*, a sophisticated surveillance device with both offensive and defensive capabilities; and related counter surveillance services.<sup>262</sup> The Commission also probed the establishment of an information unit, the forerunner to a planned permanent information secretariat, staffed by contract employees with backgrounds in the NIS, the NIA and the SASS.<sup>263</sup>

As the Desai Commission revealed, the outsourcing of intelligence by the Western Cape government was rooted in Barnard's mistrust of the NIA and in his concerns regarding the competency of post-apartheid intelligence. In the context of a fierce political battle for control of the Western Cape, Barnard did not conceal his suspicion of the NIA. Seen as an instrument of the ANC-led national government, Barnard suspected that the NIA was spying on his administration; a concern which he expressed in letters to intelligence minister Lindiwe Sisulu.<sup>264</sup> Together with the mistrust of the NIA, there was a perception amongst members of Barnard's administration that the NIA was largely incompetent; certainly Barnard himself believed that 'the products of the NIA were not of a good standard.'<sup>265</sup> Against this backdrop Barnard turned to the private sector.

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<sup>262</sup> The Watchdog was used in a strong room established by Barnard for sensitive meetings. The existence of this strong room was also investigated by the Desai Commission. Western Cape (South Africa), The Desai Commission, Final Report, (2002), 25, 40.  
<http://www.capecapegateway.gov.za/Text/2004/10/desai2.pdf>.

<sup>263</sup> Western Cape (South Africa), The Desai Commission, Final Report, (2002), 56.  
<http://www.capecapegateway.gov.za/Text/2004/10/desai2.pdf>.

<sup>264</sup> Western Cape (South Africa), The Desai Commission, Final Report, (2002), 109, 114.  
<http://www.capecapegateway.gov.za/Text/2004/10/desai2.pdf>.

<sup>265</sup> Western Cape (South Africa), The Desai Commission, Final Report, (2002), 64.  
<http://www.capecapegateway.gov.za/Text/2004/10/desai2.pdf>.

According to the Desai Commission, the outsourcing of intelligence by Neil Barnard was characterized by gross financial mismanagement, cronyism, overbilling and under-delivery.<sup>266</sup> In the acquisition of the *Watchdog* and related counter surveillance services the Commission found that no tender was issued; that a quote was received from only one firm, TSCM; and that the quote was not approved by the provincial tender board as required.<sup>267</sup> Further, the Commission found it problematic that Barnard had outsourced to a private firm an intelligence function, at a cost of tens of thousands of rands, which was a key responsibility of the NIA.<sup>268</sup>

In the establishment of an information unit, ostensibly to collect and analyse open source information, the Desai Commission was equally critical. The Commission found that the information unit, which provided the province with an intelligence capability; was staffed by contract employees, the majority of whom were experienced intelligence operatives skilled in covert surveillance and the running of agents.<sup>269</sup> This raises the spectre that the information unit's activities extended beyond the gathering and analysis of publicly available information; especially worrying given that, unlike statutory intelligence, the information unit was not subject to mechanisms of oversight and accountability.<sup>270</sup> The Commission further found that not only were the employees of the information unit either overqualified or inappropriately qualified, but also that they were protégés of Barnard's, who were handpicked without their positions being advertised.<sup>271</sup>

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<sup>266</sup> Western Cape (South Africa), The Desai Commission, Final Report, (2002), 35, 69, 78.  
<http://www.capegateway.gov.za/Text/2004/10/desai2.pdf>.

<sup>267</sup> Western Cape (South Africa), The Desai Commission, Final Report, (2002), 37.  
<http://www.capegateway.gov.za/Text/2004/10/desai2.pdf>.

<sup>268</sup> Western Cape (South Africa), The Desai Commission, Final Report, (2002), 35, 111.  
<http://www.capegateway.gov.za/Text/2004/10/desai2.pdf>.

<sup>269</sup> Western Cape (South Africa), The Desai Commission, Final Report, (2002), 80, 90.  
<http://www.capegateway.gov.za/Text/2004/10/desai2.pdf>.

<sup>270</sup> Ashley Smith, "How the DA took its Brief from the Old SA," *Cape Times*, 21 May 2002.  
<http://www.lexisnexis.com/us/Inacademic/>.

<sup>271</sup> Western Cape (South Africa), The Desai Commission, Final Report, (2002), 79.  
<http://www.capegateway.gov.za/Text/2004/10/desai2.pdf>.

As Nel Marais, a former SASS analyst conceded, the work of the contracted employees was of a generally poor quality,<sup>272</sup> while relative to the many hours that the contract employees billed, the apparent output of the unit was unacceptably limited.<sup>273</sup> Most problematic however was the “honour system” which was used in the submission of claims. The Desai Commission found this system did not provide for the accountability of financial expenditure as there was no verification of the hours worked or whether they were effectively utilized.<sup>274</sup>

### 3.4.5.3 The Wonga Coup

The 2004 Equatorial Guinea coup plot, dubbed the “Wonga Coup” rocked not only South Africa but the wider international community and especially those countries with an interest in Equatorial Guinea. Many of the coup plotters were men who had served in the apartheid SADF and in Eben Barlow’s Executive Outcomes; one of the financiers of the plot was none other than Mark Thatcher, the son of ex-British Prime Minister Margaret Thatcher.<sup>275</sup>

Motivated by Equatorial Guinea’s vast oil wealth, an advance group in Equatorial Guinea led by Nick Du Toit prepared the ground for the arrival of the main force led by Simon Mann. However the South Africa government had caught wind of the plot and alerted their counterparts in Zimbabwe and Equatorial Guinea. Mann’s group was arrested in Zimbabwe where they had stopped to collect weapons en route to Equatorial Guinea; while Du Toit’s group in the target country was arrested without a

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<sup>272</sup>Western Cape (South Africa), The Desai Commission, Final Report, (2002), 67, 78. <http://www.capegateway.gov.za/Text/2004/10/desai2.pdf>.

<sup>273</sup> Western Cape (South Africa), The Desai Commission, Final Report, (2002), 78. <http://www.capegateway.gov.za/Text/2004/10/desai2.pdf>.

<sup>274</sup> Western Cape (South Africa), The Desai Commission, Final Report, (2002), 94. <http://www.capegateway.gov.za/Text/2004/10/desai2.pdf>.

<sup>275</sup> Kim Sengupta and Jonathan Brown, “Thatcher: the net tightens, Witness set to hand key documents to South African investigators,” *Belfast Telegraph*, 27 August 2004. <http://www.lexisnexis.com/us/lnacademic/>; Martin Fletcher, “Mann was a 'zero in the larger plot', says his defence lawyer,” *The Times*, 21 June 2008. <http://www.lexisnexis.com/us/lnacademic/>; and Adam Roberts, *The Wonga Coup*, (London: Profile Books, 2006), IX, X, 251.

shot being fired.<sup>276</sup> Those coup plotters who were arrested were charged with various offences in Equatorial Guinea, Zimbabwe and South Africa. Notably, those charged in South Africa under the Prevention of the Foreign Military Assistance Act were acquitted after alleging that the South African government had known about and tacitly supported the coup plot.<sup>277</sup> In 2009, the last of the coup plotters still in prison were pardoned by Equatorial Guinean President Teodoro Obiang Nguema.<sup>278</sup>

South African intelligence has claimed the credit for thwarting the coup.<sup>279</sup> Triumphant pronouncements in this regard have failed, however, to obscure the vital role played by private intelligence. As Adam Roberts has detailed in his authoritative book on the plot, *The Wonga Coup*, South African intelligence relied upon private intelligence traders Nigel Morgan and Johan Smith for much of their intelligence on the coup.<sup>280</sup> Having served in the SADF's notorious 32 Battalion and the Irish Guards respectively, Smith and Morgan were by the early 2000s working as freelance intelligence men. Moving in similar circles to those of the coup plotters, it was reports on the coup plot authored by these two men, which were provided to South African intelligence, which ultimately scuppered the farcical plan.<sup>281</sup>

In the case of the Wonga Coup, the incompetence of post-apartheid intelligence explains the reliance of the South African government on intelligence traders such as Johan Smith and Nigel Morgan. This is the view of amongst others, RW Johnson, who has argued that because the NIA

‘is stuffed full of agents who learned their craft as operatives for the ANC’s armed wing, Umkhonto we Sizwe, once one of the world’s least effective guerrilla forces, President Mbeki relies, for anything really serious, on white

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<sup>276</sup> Adam Roberts, *The Wonga Coup*, (London: Profile Books, 2006), 188, 193.

<sup>277</sup> “South African secret service said “likely” to testify at Equatorial Guinea plot case,” SAPA, 22 February 2007. <http://www.lexisnexis.com/us/Inacademic/>.

<sup>278</sup> “Equatorial Coup Plotters ‘Back in SA’,” *Mail & Guardian*, 6 November 2009. <http://www.mg.co.za/article/2009-11-06-equatorial-guinea-coup-plotters-back-in-sa>.

<sup>279</sup> Ronnie Kasrils, Minister of Intelligence, *Intelligence Services Budget Speech*, 17 May 2005, Cape Town, 2005. [www.info.gov.za/speeches/2004/04062310151001.htm](http://www.info.gov.za/speeches/2004/04062310151001.htm).

<sup>280</sup> Adam Roberts, *The Wonga Coup*, (London: Profile Books, 2006), 92, 138, 206.

<sup>281</sup> Adam Roberts, *The Wonga Coup*, (London: Profile Books, 2006), 93.

Afrikaners from the *ancien regime*, several of whom have set up private security companies with ties to mercenary and special forces circles.<sup>282</sup>

While the outsourcing of intelligence in the case of the Wonga Coup proved successful, at least from the point of view that the coup was averted, this should not distract from the fact that such outsourcing is problematic. It is unclear what Smith and Morgan were paid for their reports; as is the case with the use of informers, there would have been significant scope for inefficiency and corruption. Most worrying is the lack of oversight and accountability to which Smith and Morgan were subject. The concern here is that they broke the law in their gathering of information relating to the coup. Certainly, that Morgan relied for much of his information, on Mann's assistant, James Kershaw, who he (Morgan) had planted as a mole raises questions regarding the propriety of his (Morgan's) conduct.<sup>283</sup>

#### 3.4.5.4 The Hoax E-Mail Scandal

As part of its duty to gather intelligence about domestic political affairs, the NIA, in July 2005, launched Project Avani.<sup>284</sup> Conceived as an 'environmental scanning project without specific targets,' Project Avani was a legally constituted project to 'gather, correlate, evaluate and analyse intelligence in order to identify any threat or potential threat posed by the presidential succession debate; foreign services interests there-in; the impending Jacob Zuma trial; and poor service delivery impacts and dynamics; to the security and stability of the Republic and its people.'<sup>285</sup>

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<sup>282</sup> RW Johnson, "Her Boy," *London Review of Books* 28, no. 22, 16 November 2006. <http://www.lrb.co.uk/v28/n22/rw-johnson/her-boy>.

<sup>283</sup> Adam Roberts, *The Wonga Coup*, (London: Profile Books, 2006), 92.

<sup>284</sup> Republic of South Africa, Office of the Inspector General of Intelligence, *Executive Summary on the Final Report of the Findings of an Investigations into the Legality of the Surveillance Operations carried out by the NIA against Mr S Macozoma, Extended Terms of Reference, Report on the Authenticity of the Allegedly Intercepted E-Mails, Media Briefing. 23 March 2006*. Office of the Inspector General of Intelligence, 2006. [www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc](http://www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc).

<sup>285</sup> Republic of South Africa, Office of the Inspector General of Intelligence, *Executive Summary on the Final Report of the Findings of an Investigations into the Legality of the Surveillance Operations carried out by the NIA against Mr S Macozoma, Extended Terms of Reference, Report on the Authenticity of the Allegedly Intercepted E-Mails, Media Briefing. 23 March 2006*. Office of the Inspector General of Intelligence, 2006. [www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc](http://www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc).

Ostensibly as part of Project Avani, Billy Masethla outsourced to Muzi Kunene, an information technology consultant, the interception of the e-mails of a select group which included a number of prominent South African politicians.<sup>286</sup> Uncovering a grand political conspiracy, the purportedly intercepted e-mails had, as the report of the investigation by the Inspector General of Intelligence into the matter concluded, 'a profound impact on Project Avani.'<sup>287</sup> What followed was the surveillance by the NIA of a number of high profile South Africans allegedly conspiring against Jacob Zuma, Kgalema Motlanthe and Billy Masethla. In the amateurish physical surveillance of one of the targets, Saki Macozoma, Project Avani was exposed.<sup>288</sup> The fallout was significant. Not only were Masethla and senior NIA officials, Gibson Njenje and Bob Mhlanga suspended; an investigation by the Inspector General of Intelligence was also launched.<sup>289</sup>

The outsourcing of the interception of e-mails to Muzi Kunene needs to be understood in the context of the presidential succession race, which fuelled the politicization of the South African security establishment.<sup>290</sup> In an environment characterized by paranoia and mistrust and dominated by turf battles, most notably between the DSO, and the NIA and the SAPS, it is not surprising that Masetlha

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<sup>286</sup> Republic of South Africa, Office of the Inspector General of Intelligence, *Executive Summary on the Final Report of the Findings of an Investigations into the Legality of the Surveillance Operations carried out by the NIA against Mr S Macozoma, Extended Terms of Reference, Report on the Authenticity of the Allegedly Intercepted E-Mails, Media Briefing*. 23 March 2006. Office of the Inspector General of Intelligence, 2006. [www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc](http://www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc); and Adriaan Basson, "Kunene: 'I must be killed,'" *Mail & Guardian*, 15 November 2007. <http://www.mg.co.za/article/2007-11-15-kunene-i-must-be-killed>.

<sup>287</sup> Republic of South Africa, Office of the Inspector General of Intelligence, *Executive Summary on the Final Report of the Findings of an Investigations into the Legality of the Surveillance Operations carried out by the NIA against Mr S Macozoma, Extended Terms of Reference, Report on the Authenticity of the Allegedly Intercepted E-Mails, Media Briefing*. 23 March 2006. Office of the Inspector General of Intelligence, 2006. [www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc](http://www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc).

<sup>288</sup> Stefaans Brummer and Sam Sole, "Saki, the Spooks and the French," *Mail & Guardian*, 16 February 2007. <http://www.mg.co.za/article/2007-02-16-saki-the-spooks-and-the-french>.

<sup>289</sup> Stefaans Brummer and Sam Sole, "Axe hangs over Spy Chiefs," *Mail & Guardian*, 21 October 2005. <http://www.mg.co.za/article/2005-10-21-axe-hangs-over-spy-chiefs>.

<sup>290</sup> Examples of the politicization of intelligence related to the presidential succession battle include the hoax e-mail scandal and the Special Browse Mole Report.

outsourced a sensitive, and as it turned out, illegal task such as the interception of the e-mails of prominent politicians; rather than relying on potentially untrustworthy colleagues and counterparts within the NIA and the other state intelligence organizations.

The hoax e-mail scandal is murky, contested terrain. Although it was rejected by the ANC National Executive Committee; an internal ANC Commission largely absolved Masetlha of any wrongdoing in relation to the scandal.<sup>291</sup> In contrast, the report of the Inspector General of Intelligence was highly critical of Masetlha's role in the scandal; the findings of which have highlighted not only the inefficiency and corruption but also the criminality of the outsourcing of intelligence in this case.

First and most importantly, following an investigation, the Inspector General of Intelligence concluded that the intercepted e-mails were in fact fabricated by Kunene and were not authentic.<sup>292</sup> Second, the Inspector General of Intelligence found that Masetlha, who introduced the e-mails into the NIA, while vouching for their authenticity, nevertheless kept them, with few exceptions, within his 'exclusive domain and custody.'<sup>293</sup> Third, the outsourcing to Kunene of the interception of e-mails was not only illegal- a judicial warrant for such interceptions was not secured, but was also not subject to mechanisms of oversight and accountability.<sup>294</sup> Only

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<sup>291</sup> Adriaan Basson, "What ANC Hoax e-mail report says," *Mail & Guardian*, 11 November 2008. <http://www.mg.co.za/article/2008-11-11-what-anc-hoax-email-report-says>.

<sup>292</sup> Republic of South Africa, Office of the Inspector General of Intelligence, *Executive Summary on the Final Report of the Findings of an Investigations into the Legality of the Surveillance Operations carried out by the NIA against Mr S Macozoma, Extended Terms of Reference, Report on the Authenticity of the Allegedly Intercepted E-Mails, Media Briefing. 23 March 2006*. Office of the Inspector General of Intelligence, 2006. [www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc](http://www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc).

<sup>293</sup> Republic of South Africa, Office of the Inspector General of Intelligence, *Executive Summary on the Final Report of the Findings of an Investigations into the Legality of the Surveillance Operations carried out by the NIA against Mr S Macozoma, Extended Terms of Reference, Report on the Authenticity of the Allegedly Intercepted E-Mails, Media Briefing. 23 March 2006*. Office of the Inspector General of Intelligence, 2006. [www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc](http://www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc).

<sup>294</sup> Republic of South Africa, Office of the Inspector General of Intelligence, *Executive Summary on the Final Report of the Findings of an Investigations into the Legality of the Surveillance Operations carried out by the NIA against Mr S Macozoma, Extended Terms of Reference, Report on the Authenticity of the Allegedly Intercepted E-Mails, Media Briefing. 23 March 2006*. Office of the Inspector General of Intelligence, 2006. [www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc](http://www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc).



Masetlha and one other member of the NIA were aware of the outsourcing arrangement with Kunene.<sup>295</sup> Finally, Muzi Kunene was paid about R150 000 for the intercepted e-mails which as it turned out were fabricated rather than authentic.<sup>296</sup>

### 3.4.5.5 The Special Browse Mole Report

At the heart of the presidential succession race within the ANC were criminal charges against Jacob Zuma relating to his allegedly corrupt role in the now infamous arms deal. As part of its investigation of Zuma, the Scorpions produced the Special Browse Mole Report; a document authored by Ivor Powell, whose objective was 'not to gather direct evidence but rather to access information informally and discreetly, and on the basis of these inquiries, arrive at a preliminary analysis of threat, and to make recommendations for further actions.'<sup>297</sup> Drawing largely on 'well-sourced' private intelligence reports the findings of the Special Browse Mole report were nothing short of explosive.<sup>298</sup>

Alleging 'a conspiracy playing out both in South Africa and on the African continental stage,' the report found that, not only did it appear that Zuma's political allies such as COSATU and the SACP, and elements within the 'security and intelligence services,' were 'considering the subversion of the apparatus of the state in support of a Zuma presidency,' but also that various African heads of state and 'leaders of African politico/military groupings,' appeared 'to be providing funding and support for Zuma's

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<sup>295</sup> Republic of South Africa, Office of the Inspector General of Intelligence, *Executive Summary on the Final Report of the Findings of an Investigations into the Legality of the Surveillance Operations carried out by the NIA against Mr S Macozoma, Extended Terms of Reference, Report on the Authenticity of the Allegedly Intercepted E-Mails, Media Briefing. 23 March 2006.* Office of the Inspector General of Intelligence, 2006.  
[www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc](http://www.intelligence.gov.za/.../IG%20Exec%20Summary%2023%20Mar%2006.doc).

<sup>296</sup> Ronnie Kasrils, Minister of Intelligence, Debate on the report of the Joint Standing Committee on Intelligence (JSCI) in response to the investigation by the Inspector General, 21 September 2006, National Assembly, Cape Town, 2006. <http://www.info.gov.za/speeches/2006/06110211151003.htm>.

<sup>297</sup> *Special Browse Mole Consolidated Report*, 7 December 2006, 1.  
<http://www.friendsofjz.co.za/documents/Special%20Browse%20'Mole'%20Consolidated%20Report.pdf>.

<sup>298</sup> *Special Browse Mole Consolidated Report*, 7 December 2006, 2.  
<http://www.friendsofjz.co.za/documents/Special%20Browse%20'Mole'%20Consolidated%20Report.pdf>.

cause.<sup>299</sup> Most serious allegations, the report concluded that an investigation of Zuma for money laundering, tax evasion, contravention of exchange control regulations and conspiracy to sedition should be considered.<sup>300</sup> Vitally, the Special Browse Mole Report was leaked to COSATU and the media which unsurprisingly prompted a political storm.

Like in the case of the hoax e-mail scandal, the outsourcing of intelligence in the case of the Special Browse Mole Report needs to be understood in the context of the presidential succession battle and the related politicization of post-apartheid intelligence. The DSO's reliance on private intelligence can be explained by the incapacity of the DSO to gather foreign intelligence but also by the mistrust which characterized relations between public intelligence organizations. It is for these reasons that the Scorpions turned to private intelligence rather than relying on the NIA or the SASS, some of whose members were closely allied to Jacob Zuma.

In the wake of the leaking of the Special Browse Mole Report, a government task team was established to investigate the report; while a number of media exposes, most notably by the *Mail and Guardian* newspaper, shed significant light on the report. Importantly both the government task team and the *Mail and Guardian* highlighted the significant problems associated with the outsourcing of intelligence in the case of the Special Browse Mole Report. The findings of the government investigative task team, contained in a special report by the Joint Standing Committee on Intelligence, tabled in parliament, were nothing short of damning. The report concluded that the DSO in its use of private intelligence fell 'prey to (the) dubious activities of information peddlers,' who intent on creating divisions within the ruling party, 'produce and disseminate defamatory and subversive documents.'<sup>301</sup>

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<sup>299</sup> *Special Browse Mole Consolidated Report*, 7 December 2006, 1.  
<http://www.friendsofjz.co.za/documents/Special%20Browse%20'Mole'%20Consolidated%20Report.pdf>.

<sup>300</sup> *Special Browse Mole Consolidated Report*, 7 December 2006, 17.  
<http://www.friendsofjz.co.za/documents/Special%20Browse%20'Mole'%20Consolidated%20Report.pdf>.

<sup>301</sup> Republic of South Africa, Joint Standing Committee on Intelligence (JSCI), Special Report of the Joint Standing Committee on Intelligence on the Special Browse Mole Consolidated Report document leaked to the public and investigated by Government Investigative Task Team, 27 November 2007.  
[www.pmg.org.za/files/bills/080226browsemolereport.doc](http://www.pmg.org.za/files/bills/080226browsemolereport.doc).

Furthermore, consistent with the findings of the Khampepe Commission, the report concluded that the DSO had engaged in the gathering of intelligence, illegally and without a mandate.<sup>302</sup>

A number of media reports have questioned or contradicted the findings of the government task team. For example, one report contended that two of the 'information peddlers' were in fact Nigel Morgan and Johan Smith, who the South African government had happily outsourced to in the past, most notably in the abortive Equatorial Guinea coup plot.<sup>303</sup> Nevertheless, the newspaper did reveal how the outsourcing of intelligence facilitated the abuse by the DSO of its power and prosecutorial independence.

An article penned by Ivor Powell, the author of the Special Browse Mole Report, fingered DSO head Leonard McCarthy for his improper involvement in the debacle. According to Powell, the Special Browse Mole Report was 'an informal and open-source exercise; a collection of information already in the public domain.'<sup>304</sup> As such, 'no invasive techniques or technologies and no slush funding (were) used, no agents (were) directed or undercover operations set up, there (was) no infiltration or penetration of target networks and no subterfuge or coercion in collecting material.'<sup>305</sup> Controversially, while acknowledging that he was the author of the Special Browse Mole Report, Powell contends that, not only was the report commissioned by Leonard McCarthy; but also that McCarthy instructed Powell to continue with the Special Browse Mole investigation even after Vusi Pikoli had

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<sup>302</sup> Republic of South Africa, Joint Standing Committee on Intelligence (JSCI), Special Report of the Joint Standing Committee on Intelligence on the Special Browse Mole Consolidated Report document leaked to the public and investigated by Government Investigative Task Team, 27 November 2007. [www.pmg.org.za/files/bills/080226browsemolereport.doc](http://www.pmg.org.za/files/bills/080226browsemolereport.doc); and Republic of South Africa, Khampepe Commission of Inquiry into the Mandate and Location of the Directorate of Special Operations (DSO), 3 February 2004, 72. <http://www.info.gov.za/view/DownloadFileAction?id=80441>.

<sup>303</sup> Nic Dawes; Sam Sole; and Stefaans Brummer, "Inside the 'Browse' mole row," *Mail & Guardian*, 3 August 2007. [www.mg.co.za/article/2007-08-03-inside-the-browse-mole-row](http://www.mg.co.za/article/2007-08-03-inside-the-browse-mole-row).

<sup>304</sup> Ivor Powell, "Smoke and Mirrors," *Mail & Guardian*, 1 May 2009. <http://www.mg.co.za/article/2009-05-01-smoke-and-mirrors>.

<sup>305</sup> Ivor Powell, "Smoke and Mirrors," *Mail & Guardian*, 1 May 2009. <http://www.mg.co.za/article/2009-05-01-smoke-and-mirrors>.

ordered it stopped. Most significantly however, according to Powell, McCarthy penned the report's damning and politically explosive recommendations even after, according to Powell, he (Powell) had concluded that the investigation had proved inconclusive.<sup>306</sup>

### **3.4.6 Conclusion**

The outsourcing of intelligence by the state in post-apartheid South Africa has proved popular. Explanations of such outsourcing include the incapacity of the state to deal with high rates of crime, the incompetence of public intelligence, and the politicization of the state security establishment. As the selected cases have shown, for the most part, the outsourcing of intelligence has proved inefficient, corrupt and criminal; while it has undermined what little oversight and accountability is exercised.

### **3.5. Conclusion**

The relationship between the state and private intelligence in post-apartheid South Africa is contradictory: the state has been hostile towards private intelligence, yet has simultaneously outsourced intelligence.

The hostility of the state towards private intelligence has been demonstrated both by the state's criticism of private intelligence, and by moves to better regulate the private intelligence industry. Explanations of the state's hostility towards private intelligence include concerns relating to the scant oversight and accountability of the profit orientated private intelligence industry; the potential for private intelligence actors to provide cover for hostile foreign interests; and the employment, in the private intelligence industry, of the apartheid old guard. Although some progress has been made, the most recent efforts to regulate the private intelligence industry yielded little; which in the context of the reliance of senior government officials on private intelligence, is hardly surprising.

As demonstrated by numerous cases, the outsourcing of intelligence by the state in post-apartheid South Africa has proved popular. Explanations of this outsourcing of

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<sup>306</sup> Sam Sole, "Browsed and Beaten," *Mail & Guardian*, 1 May 2009. <http://www.mg.co.za/article/2009-05-01-browsed-and-beaten>; and Ivor Powell, "Smoke and Mirrors," *Mail & Guardian*, 1 May 2009. <http://www.mg.co.za/article/2009-05-01-smoke-and-mirrors>.

intelligence include state incapacity or weakness, especially to tackle soaring rates of crime; and concerns regarding the incompetence and politicization of post-apartheid intelligence. Mechanisms of intelligence oversight and accountability in post-apartheid South Africa have proved deficient, and the outsourcing of intelligence has only further undermined what little effective oversight and accountability is exercised. Against this backdrop the outsourcing of intelligence has most often been characterized by inefficiency, corruption and criminality.

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## **Conclusion**

Part of the contemporary outsourcing of a wide range of military and security roles and functions; the outsourcing of intelligence by the state, while no less controversial, is less well understood. Neo-liberal ideology has underpinned the outsourcing of this sensitive function although all indications are that such outsourcing has proved neither efficient nor effective. Characterized by inefficiency, corruption and criminality, the outsourcing of intelligence has serious implications not only for the delivery of this important public good but also for the exercise of effective oversight and accountability. This has certainly proved the case in post-apartheid South Africa where; on account of the state's hostility towards, and reliance on private intelligence, the relationship between the state and private intelligence can be best described as contradictory.

### **(i) The State and Private Intelligence**

Whether the state is seen as synonymous with country or government, the monopoly of the legitimate use of force is central to most definitions of the state. This is not to suggest that, in practice, the state has monopolized force. On the contrary, there are few if any states which have achieved an absolute monopoly of violence. This does not however negate the principle that the monopoly of legitimate force should belong to the political sovereign. Hobbesian explanations of the legitimacy of the state have proved popular among scholars who have argued that citizens cede their natural rights to the state which guarantees the security of their property and person. More recently scholars have argued that legitimacy lies in the provision by the state of a range of public goods and services, including security. Not that the state cannot outsource the provision of these public goods and services. The state can and does delegate work. However, following Max Weber, while the state is entitled to outsource work, it cannot outsource the responsibility for such work.

One public good which has increasingly been outsourced is intelligence. Together with a host of other military and security roles and functions; intelligence has been outsourced by states, both weak and strong, and democratic and undemocratic. As

part of national defence, the outsourcing of intelligence has been condemned by critics who have argued that such functions should resist efficiency calculations. For these critics the outsourcing of intelligence concerns the issue of legitimacy. The more recent view however is that the state is too weak and incompetent to provide many public goods and services.

Explanations of the outsourcing of intelligence are rooted in the neo-liberal agenda. Following characterizations; the incompetent, cumbersome and corrupt state outsources to the flexible, efficient and competent private sector; where the state does not have the capacity or capability to provide the good or service in question; and/or, where the private sector can provide the good or service more efficiently and effectively than the state. But is the promise of efficient and effective outsourcing supported by the available evidence? More often than not, the answer is no.

Many scholars have suggested that the outsourcing of intelligence is not efficient; and may in fact be inefficient. Certainly on the basis of the available evidence such suggestions are justified. Certain conditions need to be met for outsourcing to be efficient. These conditions include a competitive contracting process; clear contractual expectations; good oversight; repeat encounters; and perfect information. With the outsourcing of intelligence usually shrouded in secrecy, these conditions very often do not prevail. Some go even further and argue that the outsourcing of intelligence is not only inefficient but also characteristically corrupt and criminal. On serious form of corruption in the outsourcing of intelligence is the phenomenon of the “revolving door” in which the back and forth movement of employees between the private and public sectors encourages the problematic conflation of private and public interest. The outsourcing of intelligence also enables the state to engage in criminality. Such criminality involves the outsourcing of “dirty work” in which public intelligence relies on private intelligence to engage in illegal activities on its behalf.

Those who defend the outsourcing of intelligence argue that problems can be addressed by tighter legislation and improved oversight and accountability. This is

however unconvincing, especially in cases where the state is weak and relies on private intelligence because of this weakness. While in strong, democratic states, intelligence is restrained in law and subject to mechanisms of oversight and accountability; even in these states, intelligence oversight and accountability is very often deficient. The outsourcing of intelligence only further complicates poor oversight and accountability. Private intelligence actors, while restrained in law, are usually privately owned entities, which are not subject to public scrutiny; while the outsourcing of intelligence itself is usually veiled in secrecy. If strong states encounter difficulties in overseeing the outsourcing of intelligence, weak state will find such oversight all but impossible. In fact, in weak states outsourcing may exacerbate the problem of deficient oversight.

## **(ii) The State and Private Intelligence in Post-Apartheid South Africa**

The relationship between the state and private intelligence in post-apartheid South Africa can be best described as contradictory. While the state has consistently and clearly articulated its hostility towards private intelligence and has endeavoured to better regulate the industry; the outsourcing of intelligence has proved popular.

While the DSO was heavily criticised for its use of private intelligence, the NIA, the SASS, the SAPS and government departments, most notably the presidency, have all outsourced both core and peripheral intelligence functions. Part of a wider privatization of security by the state in post-apartheid South Africa, the outsourcing of intelligence can be explained, inter alia; by the persistently high levels of crime in post-apartheid South Africa which have threatened to overwhelm the state; the incapacity and incompetence of public intelligence; and the politicization of public intelligence, most notably in the context of the presidential succession battle within the ANC.

While in some cases, outsourcing enabled public intelligence to better execute its mandate; for the most part, the outsourcing of intelligence has been characteristically



inefficient, corrupt and criminal. In the case of Kroll, the Wonga Coup and the Western Cape spy saga, the outsourcing of intelligence proved inefficient and corrupt; while against the backdrop of the succession battle between Thabo Mbeki and Jacob Zuma and the related politicization of public intelligence, the outsourcing of intelligence facilitated more serious abuses such as the illegal surveillance of political opponents (in the case of the hoax e-mail scandal) and the abuse of power and prosecutorial independence (in the case of the Special Browse Mole Report). Importantly however the outsourcing of intelligence has also had serious implications for intelligence oversight and accountability. In this regard outsourcing has further undermined what are already weak and deficient mechanisms of oversight and accountability.

The contradiction in the relationship between the state and private intelligence in post-apartheid South Africa lies in the fact that while the state has outsourced intelligence, it has been consistently hostile towards private intelligence. This hostility has been articulated by a succession of intelligence ministers and senior intelligence officials, and is captured in moves to better regulate the private intelligence industry. Progress in terms of the latter has been mixed. While by the mid 2000s a more comprehensive legislative and regulatory framework governing private intelligence did exist; in the wake of the hoax e-mail scandal and the Special Browse Mole Report, efforts to better regulate private intelligence have yielded little. Defining private intelligence and determining which activities should be regulated has proved difficult while if the reliance by leaders such Thabo Mbeki and Jacob Zuma on private intelligence is anything to go by, there may be deficient political will to regulate private intelligence.

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