

An ethics perspective to South Africa's civilian intelligence governance regime

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Abstract

The role of national security entities in public administration, with specific reference to civilian intelligence structures, is a public policy issue of concern and interest across the globe, particularly with regard to questions of governance and public accountability. Governments need intelligence services to serve national and/or political interests, but these must, by nature, operate in conditions of secrecy. The gap between these two elements can be a source of misgovernance and/or abuse of power. We argue that the credibility of South African intelligence structures has been negatively impacted by failures and omissions of accountable governance since the emergence of a democratic dispensation in 1994. In particular, the article focuses on the effects of politicisation on effective governance of the country's intelligence function. We propose an ethical governance model, framed by a transformative approach and grounded in ethical stewardship, as a way to give effect to constitutionally defined expectations regarding the purpose and management of the country's intelligence function.

Key words: Commission; constitution; decision-making; deontological; ethics; governance; illegal; independence; intelligence; legitimacy; oversight; politicisation; resources; reformative; standards; transformative; utilitarianism; values; virtue.

Introduction

Reports over several decades now indicate that the South African intelligence services have been subject to policies and practices that are inimical to

democratic governance and have fallen short of constitutional and legislative requirements. In this article, we argue that effective and accountable governance of the intelligence services must crucially involve a concept of ethical stewardship over public resources. The concept of stewardship, it will be argued, requires an understanding of how ethics can effectively inform the practices, norms and standards of intelligence governance. The available academic literature and reports in the printed media are appraised, with an emphasis on the access this allows to the subjective experience of actors involved in intelligence governance and practice. Overall, the aim is to present an ethical stewardship model for the governance of intelligence services that can allow for changes in intelligence management and practices in South Africa over time (Fu & Tsui, 2003; Steele, 2002).

Intelligence governance and practice: the literature

Globally, the literature on intelligence policy and practice suggests that the intelligence profession always faces serious challenges of governance. These include the need to adhere to legislative prescripts, to apply these to the management of resources, to contribute to policy formulation and to take account of stakeholder interests (Born *et al.*, 2005). These challenges are compounded by a commonly perceived mystique that surrounds intelligence work (Spector, 2021), which can seem to support the view that formal, public scrutiny of intelligence practices might undermine their effectiveness (Hunter *et al.*, 2021; Evans, 2020).

According to Bellaby (2011), relatively few studies track ethical governance of government intelligence services in relation to crucial developments in intelligence policy and practice in the twenty-first century. A study by Bendix and Stanley (2008) of Security Sector Reform (SSR) in Africa indicates that evaluations of security around the continent tend to focus on police, defence or judicial reform, rather than on national intelligence institutions. Studies by Tsholofelo (2014) and Tendi (2016), among others, propose that the politicisation of intelligence in Africa poses an ethics risk to governmental and institutional legitimacy.

The fundamental principles of the intelligence function

The core function of intelligence is understood to be both a process (collection) and a product (analysis). The aim of collection is to obtain intelligence information through contacts and informants, sometimes without the authority of the custodian of such information. The aim of analysis is to assist policy makers in decision-making through describing, explaining, evaluating and forecasting potential threats or opportunities within a national security setting (Coyne *et*

al., 2013; Marrin, 2011). South Africa's main legislation on the matter essentially conforms to this outline (RSA, 1995).

Ensuring a balance between the aims or principles of democratic governance and intelligence effectiveness is a complex and often elusive issue for liberal democracies (Tsholofelo, 2014). The challenges involved are compounded by the fact that the intelligence services must, in some contexts, operate under conditions that may be inimical to the democratic requirement of transparency. This lack of transparency can allow space for the abuse of power and resources by members of the intelligence services where their activities are not adequately controlled. One such abuse is that intelligence services may become politicised for factional ends. Charges that the South African intelligence function has been politicised in recent years are a matter of widespread public concern (Marais, 2021; Tolsi, 2021).

Politicisation defined

In general, subversions of the intelligence function in South Africa are generally described as 'politicisation'. To contribute some clarity to the matter, we briefly outline an operative concept of politicisation.

Politicisation with respect to intelligence services can be understood as a range of (possibly related or overlapping) activities. These include (a) the application of intelligence practices in the world of politics and political disputes (Marrin, 2013, p. 38); (b) the provision of intelligence products that seek to please incumbents in power, thus violating the requirements of independence and objectivity (Marrin, 2013, p. 33; Pillar, 2010, p. 2); (c) partisan uses of intelligence, either as determined by policy makers (top-down), or as determined by intelligence practitioners (bottom up), to the extent that such approaches are intended to support organised political groups (Marrin, 2013, pp. 32-39; Gookins, 2008, p. 65); and (d) compromising the objectivity of intelligence to serve policy or political aims (Latham, 2012; Pillar, 2010, p. 1).

In South Africa, politicisation is often associated with cadre deployment (Du Plessis, 2021; Franks, 2014; Maja, 2020; Sonjica, 2021), an approach whereby the ruling party, the African National Congress (ANC), has assigned key roles in the civil service to political appointees with little or no expertise, experience and qualifications relevant to their roles (Ngcukana, 2021; Shava & Chamisa, 2018; Thebe, 2017). Scholars and commentators argue that the approach undermines the public administration values of "responsibility, independence and technical capacity" (Lora, 2007, p. 14), as well as strategies directed at organisational and management improvements in public institutions (Twala, 2017).

It is common cause that intelligence work functions in a political space governed by policymakers who are also its primary clients (Pillar, 2010). Therefore, there is always likely to be some tension between the formal and informal arrangements of intelligence governance and management.

Intelligence politicised

In democratic South Africa, concerns such as these have been highlighted by ongoing reports of the politicisation of the country's intelligence services. These include the 2008 Ministerial Review Commission (MRC), the 2018 High-Level Review Panel on the State Security Agency (SSA), and the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (hereafter the Zondo Commission), which completed its hearings in August this year (2021) and is scheduled to submit its final report at the end of the year. In this section we briefly review some of the main allegations.

On 5 February 1998, then South African National Defence Force Chief, General George Meiring submitted a report to former president Nelson Mandela, containing allegations of a “left-wing plot” against his administration by some ANC veterans. A subsequent Commission of Inquiry on the matter found that the report was procedurally flawed and based on a disinformation campaign by former apartheid securocrats (Daley, 1998). In October 2005, it was reported that South African businessman and ANC veteran Saki Macozoma had claimed that a surveillance operation had been conducted on him and his family by members of the National Intelligence Agency (NIA) based on claims that he was part of a plot against the administration of former president Thabo Mbeki (*News24*, 2005; OIGI, 2006).

A 2006 report by the Office of the Inspector-General of Intelligence (OIGI) concluded that claims of “counter-revolutionary threats” were contributing to internal ANC party disputes (OIGI, 2006, p. 18). In 2013, claims emerged of a supposed “rogue unit” comprising former and serving officials of the NIA that was alleged to have conducted intelligence investigations within the South African Revenue Service (Sars) (Cowan, 2019; Lackay, 2015). In August 2021, former minister of Human Settlements, Water and Sanitation, Lindiwe Sisulu, registered a complaint against the SSA, claiming that the communications of departmental officials in the Eastern Cape had been intercepted and that the officials had been “harassed” (Merten, 2021b).

Also in 2021, testimony by intelligence officials to the Zondo Commission included allegations that three cabinet ministers had abused intelligence

resources in support of the administration of former president Jacob Zuma (Balfour, 2021; Venter, 2019). The claims correlated with certain findings of the 2018 SSA report regarding Zuma's administration, including that the civilian intelligence function had become “a private resource to serve the political and personal interests of particular individuals” (Jafta, 2021, p. 3; Brock & Copley, 2016; Dolley, 2018). There were also claims that “a special operations intelligence unit, set up under Zuma’s watch, undertook operations that were ‘clearly unconstitutional and illegal’” (*The Africa Report*, 2021, p. 1).

Challenges to effective governance

Many now argue that the role of the intelligence services in ensuring national security must be underpinned by constitutionally defined ethical standards (Cilliers, 2021; Salminen, 2010; Osifo, 2012; RSA, 1995).

Yet the reports outlined above strongly indicate an ongoing politicisation of the country’s intelligence function over several decades. Our contention is that this expresses a conceptual grey area between formal function and actual practice that has been exploited by political actors and members of the intelligence services and that this grey area requires particular emphasis on oversight based on stewardship and clearly identified ethical standards for the intelligence function. Underlying these, in turn, are a number of governance failures, enabled by structural ambiguities in the definition of the scope of command and control accorded to the administrative and political heads of the SSA.

In broad terms, this aligns with the 2018 SSA report’s recommendation of “urgent development” of a National Security Strategy (NSS) in which “the concepts, values, policies, practices and architecture involved in South Africa’s approach to security” could be redefined and refined (GCIS, 2019:3). However, that description does not identify specific institutional issues that would merit attention on this approach. In the next section we outline several lacunae in the country’s intelligence governance that contributed, in our view, to the development of these illegal and unethical practices.

Command and control

An overlap of the roles and responsibilities of the (now defunct) minister for State Security and those of director-general of the SSA was highlighted during the latter’s testimony at the Zondo Commission in January 2021. There was disagreement about whose primary responsibility it was to declassify information and ensure non-disclosure of sensitive information relating to personal identities and intelligence operations (DOJ&CD, 2021a). It was not

the first time that an unclear demarcation of functional responsibilities was flagged as a concern. The 2008 MRC report noted that critical areas of the intelligence legislation required review. Among its recommendations were:

- amending the National Strategic Intelligence Act of 1994 to provide that the minister receives reports on national strategic intelligence, as well as intelligence relating to threats to the security of the Republic and its people;
- ensuring that the minister's powers in relation to intelligence reports were covered in a ministerial directive approved by the Joint Standing Committee on Intelligence (JSCI);
- amending the Act to provide that intelligence structures may supply intelligence to government departments only with the minister's approval;
- the supply of intelligence to the president by NIA, the South African Security Service [as it was then known] and the National Intelligence Coordinating Committee, and access to the president by the heads of these bodies, to be regulated by legislation, regulations or a presidential directive, the rules to clearly state that intelligence supplied to the president must also be provided to the minister;
- the intelligence legislation to provide for disciplinary measures against, and the dismissal and suspension of, the heads of the intelligence structures (MRC, 2008,12-13).

Among other measures, the 2018 SSA report calls for a review of ministerial powers as they relate to the administration of this body. It proposes that the formal appointment of the head of the SSA should remain with the president, while the administrative process of filling this position should be similar to that covering the appointment of the director of public prosecutions (GCIS, 2019).

Oversight

An over-arching theme of the conclusions and recommendations of these commissions is reflected in the range of testimony on abuses of the intelligence function submitted to the Zondo Commission in January 2021 (DOJ&CD, 2021a). This is that parliamentary and intelligence oversight organs had consistently failed to exercise effective oversight of the country's intelligence functions (Merten, 2021a).

The 2008 MRC review report recommends that the OIGI should have an ombudsman function (regulatory compliance role) rather than dealing with

significant intelligence failures, the efficiency and effectiveness of intelligence operations, or human resource complaints. The report indicates that the OIGI's limited resources could impact its ability to give effect to its mandate (MRC, 2008). The 2018 SSA report argues that the JSCI will need a dedicated capacity to fulfil its oversight responsibility (GCIS, 2019).

The 2008 MRC was an initiative undertaken at a ministerial level (Kasrils, 2006). As such, it was not regarded as having status relevant to cabinet decisions (JSCI, 2010, 2014). However, its terms of reference were more broadly defined than those of the 2018 SSA report. Our view is that the concerns it expresses remain relevant to current concerns regarding intelligence governance. In fact, the recommendations of both reports are similar in several respects (see Appendix), but they remain unimplemented.

A key element in the failure of governance has been the lack of an ethical understanding of intelligence governance. This is implicit in the ruling party's 2021 National Anti-Corruption Strategy, which outlines a plan to establish dedicated ethics offices in government departments, the task of which will be to provide an ethical framework for all government business processes (RSA, 2021; Dlodlo, 2019a).

The importance of an ethically framed governance approach

We agree that efforts to address intelligence governance challenges – in particular the effects of politicisation – must recognise that the politicisation of intelligence is as much a matter of professional ethics as one of law or regulation (Marrin, 2013). In general, management theorists argue that ethics can be understood “as a self-regulation device which is, as a moral duty, intended to support the law”, whether in an administrative or corporate setting (Steinmann, 2008:136). We explain the governance problems outlined here as resulting from the politicisation of the intelligence function in terms of Svensson and Wood's (2011, p. 23) conceptual framework of corporate ethics.

Applicability of corporate ethics as a conceptual framework

A corporate ethical structure establishes infrastructural arrangements to inculcate and promote clear ethical standards of performance that effectively frame the manner in which an organisation's results are achieved and how personnel relate to each other (Svensson & Woods, 2011). Ethical processes, then, include the manner in which personnel practices, for example, are given effect.

The ethics framework used here outlines four principal, interconnected topics as regards the management of ethics: (1) understanding the distribution of

power within and mutual interdependence between organisations; (2) the need for ethical structures to manage this; (3) managing ethical processes through these structures; and (4) monitoring their performance.

Organisations with ethics structures need to conduct strategic planning that ensures that they deal effectively with these four broad areas (Svensson & Wood, 2011). Effective ethical processes require ethics training for personnel across the organisational hierarchy. Organisations need to ensure clear internal communications on proper engagement with various stakeholders. Performance appraisal should be a structural feature of an organisation's ethical structures. Our view is that the overall function of ethical structures is to inculcate trust. An important part of this is establishing an ethos of 'why we serve'.

A stewardship model of intelligence governance

The ethical stewardship model has its origin in stakeholder theory, which considers institutional managers to be stewards of their structures and processes, and emphasises that their motives for governance should be aligned with the interests of various stakeholders. Ethical stewardship is concerned with “honouring of duties owed to employees, stakeholders and society, while also seeking to reinforce the importance of ethical governance in dealing with employees and in creating organisation systems that are aligned to organisational values as defined by Constitutional prescripts” (Caldwell *et al.*, 2008, p. 153). Stewardship emphasises service over self-interest (Caldwell *et al.*, 2008, p. 154). The stewardship model, then, covers leadership and governance generally, but requires an ethical frame (Visvanathan, 2020). Ethical structures need to be included in a stewardship model of the governance of intelligence practices and processes.

Public governance is defined as “the formal and informal arrangements that determine how public decisions are made and how public actions are carried out, from the perspective of maintaining a country's constitutional values when facing changing problems and environments” (OECD, 2011, p. 2). South Africa's public governance model is formally defined in the context of a normative system of ethical values and virtues in which procedures for governance are clearly expressed and aligned to the aspirational outlook of an accountable, efficient and effective public service. Clearly, the governance of the country's intelligence function falls under such a formal definition. Our view is that a stewardship model of governance will contribute to grounding the abstract formulation of public governance outlined here.

Virtue ethics as theoretical foundation to a stewardship governance model

Proposing an ethical stewardship model raises the question of an appropriate understanding of ethics. Ethics is concerned with what is good or right in human interaction. A standard view is that there are three general theories of how 'good' and 'right' are structured: utilitarianism, deontological ethics and virtue ethics (Spoerl, 2018; Rachels, 2003). Utilitarianism takes the view that 'good' is the greatest good of the greatest number (Rachels, 2003); deontological ethics takes the view that the 'good' is observance of (absolute) duty (Spoerl, 2018); and virtue ethics takes the view that 'good' is the expression of an individual's character (Rachels, 2003). The merits of these approaches have been extensively debated (de Colle & Werhane, 2008; Sweet, 2008) and we will not pursue their complexities here.

In outline, we take the view that utilitarianism is unlikely to offer a useful model of ethical behaviour in the institutional context because the calculation of what constitutes the greatest good of the greatest number cannot be practically iterated for every decision, and is also open to a wide range of interpretations. Similarly, it seems unlikely that any one absolute duty can be identified in the institutional context, since institutions must, of necessity, serve a number of aims. Virtue ethics, meanwhile, proposes that an individual's characteristics, among them their abilities, intentions and motives, are key determinants of ethical behaviour. In other words, various qualities of the person, understood as traits, determine their ethical behaviour (Kaptein & Wempe, 2002). We suggest that virtue ethics presents a model of ethical behaviour that is possible within the institutional context, and which is therefore applicable within the ethical stewardship model of governance.

In a general sense, virtue ethics requires the inculcation and development of a range of virtues appropriate to a person's various roles in society. These would obviously include the ability to determine what is good for others, as well as what is good for oneself (Rossouw & Van Vuuren, 2018). They would also include more specific character traits, among them intellectual virtues such as wisdom, which matures through experience and training, and moral virtues such as concern for the welfare of others, which develop through example, habit and custom (Kaptein & Wempe, 2002; Younkins, 2012).

Any government service is required to be subject to oversight that ensures that its aims and activities are aligned with the responsibilities of the state. The political leaders and civil service managers entrusted with the direction of these

services are, on our model, the ethical stewards of the organisations responsible for delivering those services. Virtue ethics would clearly expect that the people in these roles possess or are capable of developing qualities appropriate to these responsibilities, such as positive institutional and leadership legacies (Kaptein & Wempe, 2002). They would need to be effective in developing positive relationships, in the utilisation of resources, and in upholding institutional integrity, for example (Caldwell *et al.*, 2008, p. 156). They would also need to safeguard the future of the organisation, and to demonstrate responsible leadership towards all stakeholders (Visvanathan, 2020).

The formal governance arrangement for the SSA

Reviewing progress in establishing a democratic state in post-apartheid South Africa, a 20-year (1994-2014) government review indicated that the public service inherited from the apartheid era was bureaucratic, unresponsive, risk-averse and characterised by a lack of transparency and accountability which, in turn, created an environment for corruption and the abuse of power. Hence, the drive to ensure a reformed governance system in post-apartheid South Africa (DPME, 2014; MRC, 2008).

As regards the country's intelligence function, Chapter 11 of the Constitution of South Africa specifically outlines a number of crucial pillars for intelligence governance, which, we suggest, align with the framework of virtue ethics, namely:

- The security services must act, and must teach and require their members to act, in accordance with the Constitution and the law.
- No member or any of the security services may obey a manifestly illegal order.
- Neither the security services, nor any of their members, may, in the performance of their functions (a) prejudice a political party interest that is legitimate in terms of the Constitution, or (b) further, in a partisan manner, any interest of a political party.
- The security services must give effect to the principles of transparency and accountability (RSA, 1996, pp. 116-117).

Intelligence governance, then, should ensure that the intelligence function is responsive and accountable in a democratic context (Born *et al.*, 2005). Moreover, as one commission of inquiry into the activities of South Africa's intelligence function pointed out, the Constitution requires such an approach in respect of this function of government (MRC, 2008).

However, appraised in terms of the proposed stewardship governance model, two major gaps are evident in the current governance of the country's intelligence function:

- Responsiveness to stakeholder concerns; none of the recommendations from either the 2008 MRC report or the 2018 High-Level Review Panel Report have been implemented (Nkosi, 2021; Khanyile, 2021; Tsotetsi, 2021).
- Challenges to the internal governance of value systems (Visvanathan, 2020): the development of an ethics framework for the SSA, as announced by former minister Ayanda Dlodlo in her 2019 budget speech, is still outstanding.

This does not bode well for giving effect to the inculcation of the provisions outlined in Chapter 11 of the Constitution (Udit, 2021).

Addressing the governance gaps will entail, among other things:

- improving governance systems dealing with financial resource management (AGSA, 2021; Khayile, 2021);
- ensuring sanctioning mechanisms for transgressions with a strong focus on consequence management as outlined in relevant legislation, particularly the provisions covering the role and responsibilities of accounting officers provided for by the Public Finance Management Act (PFMA) and the Public Audit Amendment Act (5 of 2018); the latter legislation permits the auditor-general "to take appropriate remedial action; to provide for the auditor-general to issue a certificate of debt where an accounting officer or accounting authority failed to recover losses from a responsible person and to instruct the relevant executive authority to collect the debt" (AGSA, 2018, p. 1);
- appointing capable individuals where performance is reviewed by consistent management review and evaluation processes (DoJ & CD, 2021b; Khanyile, 2021);
- reviewing personnel training and development with a focus on ethical aspects of organisational culture and ethical conduct (Ensor, 2021);
- ensuring that oversight structures enable good governance practices and the promotion of Constitutionally defined objectives;
- creating roles for ethics officers within these structures and ensuring that they conduct regular reviews of ethical performance, including review visits to relevant organisations;
- and conducting lifestyle audits (Dlodlo, 2019b).

Implementation of these measures is a minimal requirement for giving credence to an ethical stewardship model of intelligence governance. Our view is that this approach is also necessary to address the reputation of the government's intelligence function, which has been considerably tarnished by the ongoing revelations of malfeasance, corruption and unethical conduct (Friedman, 2021; Mlambo, 2021).

Structural configuration of the SSA governance model

As of August 2021, the SSA's governance arrangements were as follows:

- Executive Control: the president appoints the minister, deputy minister and director-general with the latter administratively reporting to the appointed minister (Ramaphosa, 2021; MRC, 2008).
- Legislative oversight through the JSCI, a multi-party parliamentary committee established by the Intelligence Oversight Act (No.40 of 1994).
- Judicial oversight, which directs that all intrusive collection methods are to be authorised by an appointed judge in accordance with the Regulation of Interception of Communications and Provision of Communication-related Information Act (No. 70 of 2002).
- Civilian monitoring through the OIGI, the auditor-general and the South African Human Rights Commission (ISS, 2007).
- Internal controls implemented as part of the organisational governance model by the Executive and overseen in conjunction with line management (Stone, 2021; MRC, 2008).

In a formal sense, these arrangements conform to international governance practice, one of the aims being to ensure that external stakeholders have a say in the manner in which the civilian intelligence institutions are governed (Ball & Fayemi, 2004). They also align with the Constitutional requirement that national security organisations are accountable to government, parliament, and ultimately, the public.

However, the extensive abuses of the functions of civilian intelligence entities, as outlined earlier, indicate that these formal arrangements have lacked effective governance bodies and oversight mechanisms. Indeed, as a result of the reports, on 5 August 2021, President Cyril Ramaphosa announced the dissolution of the Ministry of State Security and the placement of the SSA under direct control of the Presidency (Ramaphosa, 2021).

This development has received mixed reactions, with some critics suggesting that the move is a matter of political expediency and not intended to give effect to efficient and effective governance (Botha, 2021; Nkosi, 2021). Others have indicated that the move fails to conform to international best practice (Nkosi, 2021). These responses raise the question of whether locating the SSA under the control of the Presidency can be seen as either transformative or reformative. A reformative approach involves “policy decisions by the executive from above with no broader participation or consultation with legislative or non-state actors” (Ball & Fayemi, 2004, p. 4). A transformative initiative entails “a more profound attempt on behalf of elected governments to ensure that the practices of security organisations are consistent with the democracies they serve” (Ball & Fayemi, 2004, p. 4).

The question is whether the re-configuration can allow for an ethical stewardship governance model as outlined in this article. It is not clear that placing the function under the direct control of the Presidency can address the measures proposed here, which, we argue, are necessary to address long-term failures of ethical governance of the intelligence function. The main risk is that the intelligence function will operate in a context of institutional dependence on the Presidency (Duncan, 2021; Slick, 2016). Such a repositioning of the SSA may be considered a potential risk if the move seeks to bolster overall government control over the intelligence function to the detriment of institutional independence as constitutionally defined (Hutton, 2009). This reasoning fits the ongoing debate regarding moves to extend presidential authority over national government entities, which are seen to be more a matter of political expediency than one of adherence to constitutional law (Augé, 2019; Coglianese, 2010; Duncan, 2021; Galeotti, 2020).

The president might claim that the move is intended to strengthen the intelligence function’s accountability as regards its support of the policies of the day; such a view might, arguably, receive support from international best practice. However, the SSA exists to fulfil a broader national interest function that cannot be plausibly defined only in terms of the ruling party’s needs or policies. In 2005, then-President Thabo Mbeki said: “Public accountability of our intelligence services is fundamental to the manner in which they operate as instruments of the democratic order” (Mbeki, 2005). Abuses of the intelligence function not only continued, but gained momentum in the years following. Given this, our view is that greater separation between policymakers and the intelligence function is a constitutional and operational requirement (Pillar, 2010).

Governance of the intelligence function must not, and cannot, conflate the need to address the political principals' intelligence requirements with the function's constitutionally enshrined role in the state. An ethical stewardship role as outlined here, would, in our view, ultimately be based on this fundamental understanding. The intelligence function is a principal actor in advancing national security interests for the public good (Caldwell & Karri, 2005). The formal and operational governance structures that cover the intelligence function, and those who are responsible for them, ought to be concerned with how today's decisions and actions will affect future generations (Steele, 2002).

Concluding remarks

Can the abuses of the SSA be corrected? Efforts to do so must meet both the requirement of serving the (legitimate) interests of the ruling party's national and international policies and the Constitutional requirement of serving the public good. This crucially involves serving both the policies of the government of the day and the interests of a wider range of stakeholders. A reformative approach will not address the latter point. Correcting the abuses of the state's intelligence function, then, ultimately requires a transformative approach as outlined above – which, we have argued, requires an ethical stewardship model for intelligence governance.

Giving a transformative approach real, long-term effect will require two important elements: d

(1) The ruling party and its government will need to recognise the factors that have impeded the progression and advancement towards an ethical governance regime. These have crucially involved failures to set the tone by understanding and promoting the intelligence function's Constitutionally defined role and responsibilities. They have also involved a continuing failure to establish and implement control and review mechanisms in line with the intelligence function's constitutional role and responsibilities.

(2) To address these factors, a strategy for effective oversight and control of the intelligence function that includes a strong focus on ethical practice will be needed. Intelligence governance should promote and sustain processes, standards and performance levels that underpin the realisation of the intelligence function's two main roles. Ultimately, political leaders must ensure that intelligence governance structures are ethically based, and that institutional leaders are selected for their ability to govern and execute intelligence assignments work in a constitutional framework. One important key to this is, we believe, the concept of ethical stewardship.

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Appendix 1

Table 1: Comparable terms of reference

2008 Ministerial Review Commission	2018 High Level Panel Review
<p>Assess:</p> <p>Executive control of the intelligence services</p>	<p>Assess:</p> <p>The involvement of members of the national executive in intelligence operations and measures to prevent it</p> <p>The policy framework (including legislation) that governs operational activities conducted by members of the national executive</p> <p>The effectiveness and appropriateness of the existing mechanisms in ensuring accountability and transparency</p>
<p>Control mechanism relating to intelligence services' operations</p>	<p>The appropriateness of the current structure of the Agency to its core mandates and to effective command, control and accountability</p> <p>The effectiveness of intelligence and counterintelligence coordination within the Agency and between the Agency and other South African intelligence entities and the capacity and role of the National Intelligence Coordinating Committee in this regard</p>
<p>Control over intrusive methods of investigation</p>	<p>The high-level policies and strategies, legislation, regulations and directives governing, or impacting on the mandate, structure, operations and efficacy of the SSA</p>
<p>Political and economic intelligence</p>	<p>The mandate and capacity of the SSA to examine the compatibility of its structures in relation to this mandate</p>
<p>Political non-partisanship of the intelligence services</p>	<p>The development of guidelines that will enable members to report a manifestly illegal order as envisaged in section 199(6) of the Constitution</p> <p>The effectiveness of Training and Development Programmes in capacitating members</p> <p>The institutional culture, morale, system and capacity to deliver on the mandate</p> <p>The impact on the work of the civilian intelligence agencies of the amalgamation of the previous services into one Agency and the appropriateness of this change</p>
<p>Controls over the funding of covert operations (JSCI, 2010).</p>	<p>The effectiveness of controls to ensure accountability (SA, 2018).</p>