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INTELLIGENCE SERVICES AND DEMOCRATIZATION IN AFRICA

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DECLARATION

I, Matilda Tembesi Lijembe, hereby declare that this research project is my original work and has not been presented for academic award or qualification in any institution of higher learning.

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DEDICATION

I dedicate this research project to Jehovah Elohim, who created this opportunity for me to attend the NDC course. I also dedicate it to my parents Joseph and Ziporah Lijembe, who devoted their lives to the education sector in Kenya.

ACKNOWLEDGEMENT

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

ACHPR   - African Charter on Human and Peoples' Rights

ACHRs   - American Convention on Human Rights

APRM   - African Peer Review Mechanism

ANC   - African National Congress

AU   - African Union

BNI   - Bureau of National Investigations

CIA   - Central Intelligence Agency

CID   - Criminal Investigations Department

CISSA   - Committee of Intelligence and Security Services of Africa

DRC   - Democratic Republic of Congo

DSI   - Directorate of Security Intelligence

DSO   - Directorate of Special operations

ECHR   - European Convention on Human Rights

FFP   - Fundamental Freedoms and its Protocols

FSRB   - Foreign Service Research Bureau

ICCPR   - International Covenant on Civil and Political Rights

ICSECR   - International Covenant on Social, Economic and Cultural Rights

JIC   - Joint Intelligence Committee

JSCI   - Joint Standing Committee on Intelligence

KANU   - Kenya African National Union

MIU   - Military Intelligence Unit

NEPAD   - New Partnership for Africa's Development

NIA   - National Intelligence Agency

NICC   - National Intelligence Coordinating Committee

NLC   - National Liberation Council

NIS   - National Intelligence Service

NSA   - National Security Adviser

NSAC   - National Security Advisory Committee

NSC   - National Security Council

NSIC   - National Security Intelligence Committee

NSIS   - National Security Intelligence Service

OAU   - Organization of African Unity

R&D   - Research and Development

SASS   - South African Secret Service

SSA   - Sub-Saharan Africa

SSR   - Security Sector Reform

SB   - Special Branch

UDHR   - Universal Declaration on Human Rights

UK   - United Kingdom

UN   - United Nations

US   - United States

List of Figures

ABSTRACT

This study addresses issues surrounding democracy as an ideology and how it influences the operations of intelligence services in Africa. The study identifies Kenya as a case study since it has been recognized as one of the African states that had a dark past in terms of human rights and which has enacted a new Constitution through a popular vote. The objectives of the study are; to investigate the influence of democracy on intelligence services, to establish the role of intelligence services and how they are affected by political regimes in Africa and to investigate the democratization of intelligence services in Africa with focus on Kenya. Official government documents, news reports and other literature on the intelligence system in Kenya, as well as studies of intelligence oversight within democracies are the primary sources of data. The study uses purposive sampling to select the respondents from relevant government departments. The main interest is on government officials in the NIS, the judiciary, parliament, provincial administration, the police, civil society and government officers who sit in the National Security Council. Some of the major findings of the study are that the intelligence service in Kenya has undergone a dramatic change in terms of the way it operates compared to the practice during one-party rule. The study also established that different government institutions have the mandate to conduct oversight over the functions of the intelligence service in Kenya. Parliament for instance is able to scrutinize and approve yearly budget spending for the intelligence service, though the oversight procedures face challenges due to the provision in the Constitution for confidential expenditure for secret services. As an organization, NIS has been reformed in accordance with norms and practices developed in contemporary Western democracies, mostly through exchange programmes and direct involvement in training and capacity building. As Kenya continues the process of democratic consolidation, the issue of intelligence oversight remains vital to ensure political accountability and financial efficiency. Oversight of intelligence is also important to the political initiatives Kenya has undertaken to improve its political stability and national security.

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1   Background of the Study

The principles that define democracy in a state are completely opposite to the principles of intelligence and its operationalization. This state of affairs presents a dilemma in democratic states on how to democratize the security agencies so that they serve the interests of the citizens as opposed to those of the regime. The problem emanates from the fact that democracy requires openness and public accountability while on the other hand intelligence, by its nature, requires secrecy in order to protect national security.[1] Hastedt, states succinctly:

"The four elements of intelligence are clandestine collection, analysis and estimates, covert action, and counter-intelligence."[2]

While these functions are common to most intelligence agencies, the exact manner in which they are distributed within the organization differ from state to state and depends on their level of democracy.

Kasrils opines that the operationalization of intelligence services in a democracy may cause a political stand-off due to the two opposing ideologies. While on one hand the intelligence service is crucial in protecting national security, and that of the citizens, the cloak of secrecy could be used by the intelligence agencies to undermine the basic human rights of the citizens in the pretext of protecting national security.[3]

The increasing need for accountability among intelligence services in Africa has been informed by the need to align the objectives of the intelligence services with the objectives of democratically-elected governments in order to restore the public's trust of the intelligence

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[1] Loch K. Johnson, 'The CIA and the Question of Accountability', in *Intelligence and National Security*, Vol. 12, No. 1 (January 1997), pp. 178-200: 181
[2] Glenn P. Hastedt, *Controlling Intelligence: Studies in Intelligence*, (New York: Frank Cass, 1991), p. 5
[3] Ronnie Kasrils, 'To Spy or Not to Spy? Intelligence and Democracy in South Africa', in L. Hutton (ed), *To Spy or Not to Spy? Intelligence and Democracy in South Africa*, Institute for Security Studies, Monograph 157, February 2009

agencies. The transparency in the administration of intelligence agencies is thus important in a democracy to enable the government retain public acceptance and trust.[4] In Sub-Saharan Africa, many states began to embrace democratic principles in the early 1990s at the end of Cold War, when authoritarianism faced increased opposition locally and internationally. Democratization was characterized by emergence of multi-party systems and increased urge for accountability by governments to its citizens.[5] In some cases, this was a re-democratization, where some states reverted to the competitive multi-party system of independence.

The British colonial government established the 'Special Branch' (SB) in 1926 with main aim of safeguarding their interests in Kenya and to enhance control over the Africans.[6] Initially it was a section in the Criminal Investigation Department (CID) under the Police. Faced by the threat of Mau Mau revolution in 1952, the SB moved away from the CID but remained under the Police. At independence, the SB technically remained under the Police but operated under a Presidential Charter, which gave it some independence from the Police. In 1986, the SB changed its name to the Directorate of Security Intelligence (DSI) but continued to operate under the Presidential Charter but still under the Police. In 1998, the DSI became the National Security Intelligence Service (NSIS) through an Act of Parliament and this was an attempt to break away from its dark past. Following the promulgation of the new Constitution in 2010, the NSIS evolved into the current National Intelligence Service (NIS) in 2012 so as to conform to the provisions of the new Constitution.

Currently the NIS has its mandate and scope defined by the Constitution[7] and the National Intelligence Services Act 2012, which also provides for the establishment of

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[4] Hans Born & Ian Leigh, 'Democratic Accountability of Intelligence Services', *Geneva Centre for the Democratic Control of Armed Forces,* Policy Paper No. 19, (2007), p. 3
[5] Ibid.,
[6] Mildred A.J, Ndeda, 'Secret Servants: A History of Intelligence and Espionage in Kenya, 1887–1999', Report Submitted to the National Security and Intelligence Service of Kenya on 30th January 2006, p. 110
[7] Sections 239 & 242, Constitution of Kenya, 2010

oversight bodies for the NIS.[8] The promulgation of the 2010 Constitution created several challenges for the NIS, as it opened up democratic space. The Constitution, which is the supreme law, requires absolute respect for human rights and accountability for all government institutions, NIS included. There are also major challenges of funding and accountability, with the confidential expenditure cloak sometimes being used to evade accountability. There are also challenges of poor coordination with other security organs like the military and the police which are supposed to complement the work of the NIS. The NIS is also expected to play a key role in ensuring national security and protecting the rights of citizens. However, NIS can also subvert those rights and undermine or destroy the democratization process.

1.2   Statement of the Problem

Kenya has undergone tremendous political changes in the last two decades, from the single-party era, where poor governance and human rights abuses were rampant to the multi-party dispensation, where democratic principles are upheld and adhered to and security organs operate under the rule of law. Key government institutions have undergone major democratic changes, especially the Kenya Police, the judiciary and the NIS. All the reforms undertaken in these institutions have been aimed at enhancing effectiveness, efficiency and accountability.

While the intelligence services play an important role in democratic states, there has been a challenge of enhancing their efficiency, effectiveness and accountability due to the cloak of secrecy that is required for the smooth running of their operations. Democratic principles require that government institutions be accountable to the general public, but this does not outrightly apply to the intelligence services since openness leads to a threat to national security, which the agencies are mandated to safeguard. Finding the right balance

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[8]Section 29, National Intelligence Act, 2012

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between the need for secrecy and the protection of the rule of law is a formidable challenge to all states, irrespective of their constitutional differences.

It is often posited that the challenge of democratic control of intelligence agencies lies in the need to exercise oversight of a state organization that has the ability to operate in secret. The justifiable need for secrecy has, however, in many African states become a blanket of secrecy, the norm rather than the exception, providing cover for ethically questionable operations, corruption, and abuse of power, inadequacy and inefficiency.

The oversight and accountability of intelligence services in emerging democracies in Africa has become an increasingly important issue, as historically intelligence agencies have been misused for personal or group interests, often at the expense of the citizens. Intelligence and the use of secret methods have been used to give leverage over political rivals and to maintain positions and power.

Despite these challenges, few studies are available in the aspect of intelligence services and the effect of democratization on such institutions. This forms the basis for the current study, which seeks to establish how the democratization of the intelligence services has affected the performance and also how the intelligence services relate with other government institutions in achieving their set mandate.

1.3   Research Questions

The study is guided by the following questions:

1. How has democracy influenced intelligence services in Africa, and specifically Kenya?

2. What is the effect of political regimes on intelligence services in Kenya?

3. To what extent has the democratization of intelligence services succeeded in Africa?

1.4 Objectives of the Study

This study assesses the role of security intelligence services and the democratization process in Africa, with special reference to Kenya. The study is guided by the following objectives:

1. To investigate the influence of democracy on intelligence services

2. To establish the role of intelligence services and how they are affected by political regimes in Africa

3. To investigate the democratization of intelligence services in Africa with focus on Kenya.

1.5 Literature Review

The literature looks at the emerging themes in democracy and intelligence. It also looks at how democracy has influenced intelligence services, the role of intelligence services and how various political regimes have affected their operations. The literature also looks at the efforts Kenya has made to democratize her intelligence services.

1.5.1 Democracy

Democracy originated from two Greek words *demos*, meaning people and *kratos*, meaning rule. Athenian democracy can be traced to the 5th century, when it emerged as a direct democracy as opposed to representative democracy. Isakhan however argues that there has been new evidence that democracy existed in other parts of the world in different forms. For Isakhan, democracy, in its simplest form, is community governance, where democracy is the face-to-face discussions amongst villagers in a village council and the delegation of power from the villagers to the village elder to the council of village elders. This perspective however loses its appeal when modern democracies are taken into consideration.[9]

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[9] Benjamin Isakhan, 'Engaging "Primitive Democracy," Mideast Roots of Collective Governance', *Middle East Policy*, Vol. 14, No. 3, (2007), pp. 97–117

Britain is one of the best examples of democracy in the world, tracing its democratic practice from as early as 13th century, with parliament acting as a representative government complimented by the monarchy. The first philosophers on democracy emerged in the 17th century one of them being John Locke, who first suggested the supremacy of the will of the people in a democracy, which no government should disobey. Locke put emphasis on the formation of civil governments, which he argues are best placed to protect the peoples' lives, property and liberty. According to Locke, the government has the mandate to protect the 'natural rights' of the people, meaning those rights are held by all men because they have the ability to reason. Any government that failed to do so or usurped power to which it was not entitled was tyrannous and the people have the right to rebel against that government. Locke's ideas were borrowed from ancient Greek and Roman ideals of government that state there are natural, or 'universal,' rights equally held by all people in all societies. Jean Jacques Rousseau, a French philosopher, contributes to the democracy literature with a doctrine based on the 'General Will', where he saw the people as the ultimate source of all authority. He argues that every individual has a duty to form the state and as such cannot give up that sovereignty, even if they wished to.[10]

In Britain, after the Glorious Revolution of 1688 and the resultant Bill of Rights, the constitutional monarchy continued to co-exist with the representative authority of Parliament. The Glorious Revolution was an important event in that it established the supremacy of Parliament and also demonstrated the right of the people to change their form of government if they believed that government no longer protected their rights.[11] Over the years, the concept of a constitutional monarchy spread to other states in Europe and by the 19th century, it had taken root in most parts of Europe. Constitutional monarchies, with increasing power granted to the people, were established in Belgium, Italy, the Netherlands and the

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[10] Howard Spodek, *Since 1100,* (Upper Saddle River, N.J.: Prentice Hall, 2001), pp.480–481
[11] Ibid. p. 482

Scandinavian countries.[12]

In Africa and Latin America, democracy spread to most countries during the events of Cold War in the era dubbed the 'Third Wave' in 1974 and gained more ground with the fall of Soviet Union and the Berlin Wall in 1989. According to the Economist Intelligence Unit, although almost half of the world's population lives in a democratic set up of governance, new, emerging threats to democracy, which are related to diminishing resources in some parts of the world, is leading to increased public dissent and hampering political development.[13]

1.5.2 Democracy in Africa

Historical evidence supports the practice of democracy in African societies even before the colonial era. Democracy was characterized by participatory governance and the respect for the will of the people in various African societies. A well-known African maxim "three heads are better than one" implied that democratic values were part of African culture. Although most African administrative structures were hereditary, there were high levels of representative democracy and to some societies direct democracy was practiced. Many African indigenous governments were open and inclusive and where societies were centralized, kings and chiefs rule by consent. The African set up of administrative structures were based on mutual separation of duties and responsibility to the rulers by the servants. Decision making was also a highly inclusive process that involved having community representatives to contribute in decision-making.[14]

One of the best examples of direct democracy was practiced by the indigenous political system of the Igbo of southeastern Nigeria. Other kingdoms such as Nri, Onitsha,

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[12] Iqtidar Karamat Cheema, 'A Conceptual Framework of the Dynamics of Democracy', *Journal of Political Studies,* https://www.academia.edu/3614859/Dr_Iqtidar_Karamat_Cheema_A_Conceptual_Framework_of_the_Dynamics_of_Democracy, (Accessed 05.03.2015)

[13] David Held & Anthony McGrew, (eds.), *The Global Transformations Reader*, (Cambridge: Polity, 2000), pp. 181-190

[14] George B. N. Ayittey, *Africa in Chaos* (New York: St. Martin's, 1998), p. 91

Oguta, and Osomari were hereditary systems but practiced representative democracy. For the Ibo community, the villages varied in size and population, and during general assembly, at this level, every male adult directly participated in the legislative and decision-making process pertaining to public affairs. This general assembly consisting of adult males is known as the *Ama-ala* or *Oha*, and was held in an open square. During this gathering, public matters are brought up and every male attendee who wants to contribute to the debate or discussion was entitled to a hearing. After thoroughly discussing the matter, the leaders from each lineage within the village retire for *izuzu* (consultation). Participating in *izuzu* was crucial and treasured, as it was restricted to men of substance, wit, and prestige who possess the wisdom to analyze all strands of thought and suggest a compromise that the *Ama-ala* would accept. After the *izuzu*, a spokesman is selected, based on his power of oratory, persuasive talents, and his ability to put the verdict in perspective, to announce the verdict. This decision is either accepted by the *Ama-ala* by general acclamation or rejected outright, and in the event of the latter, the view of the assembly prevails by popular assent. Women had their own assemblies, which followed the male pattern. African social and political structures were never a matter for men alone and women in the pre-colonial era had powerful political roles.[15]

This village system was similar to the ancient Greeks city-states, as each village was 'autonomous' and 'sovereign' in most matters affecting it and tolerated no interference or dictation from any other group. At the village-group level, consisting of several villages, a representative system evolved whereby each village elected or appointed its own delegate to the village-group assembly. At all levels, the common denominators were consultation, participation and consensus.[16]

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[15] Victor C. Uchendu, *The Igbo of Southeast Nigeria* (New York: Holt, Rinehart and Winston, 1965), p. 39
[16] Ibid. p. 41

The Agikuyu community forms a good case for pre-colonial democratic governance in Kenya. The setting was framed in a similar manner as was the Igbo of Nigeria. The setting of the administration structure was based on direct participation of the people in which there was no absolute ruler and the ruler ruled through the assistance of the legislative assembly. The origins of Gikuyu democracy are embodied in a historical-political legend, where a despotic monarch who was ultimately overthrown by the people, initially ruled the Gikuyu. After his overthrow, the government changed from despotism to a democracy, which was in keeping with the wishes of the majority of the people. This popular revolution is known as *itwika,* and signified the breaking away from autocracy to democracy. Government among the Kikuyu villages was vested in the elders of one generation or age-set known as *riika* (plural, *mariika*) and the accession to power of a new generation took place at recurring intervals, inaugurated by the handing over ceremony known as *ituiko*. This was determined by the circumcision of most of the firstborn grandsons of the ruling generation. Essentially, circumcision was the only qualification, and it conferred recognition of manhood and the full right of citizenship. Legislative duties were given to the senior elders representing the various constituent villages.[17] Consultation, representation and consensus, as in the Igbo system, were the main features of Kikuyu indigenous political system and the voice of the people or public opinion ruled the country.

In some African societies, democratic systems took the form of representative or constitutional monarchies similar to the English political system, with well-crafted mechanisms of checks and balances. In these systems, society and government were more centralized and the power of the monarch was limited by representative bodies or agencies. The Oyo Empire, which flourished in southwestern Nigeria from 1600 to1860, provides a classic example of this system. At the head of the Oyo Empire was the *Alafin* (emperor) who

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[17] Jomo Kenyatta, *Facing Mount Kenya: The Tribal Life of the Gikuyu* (London: Hollen Street Press, 1959), p. 196

was the most important figure in the political system. Although, in theory, the *Alafin*'s power was absolute, in practice, another organ, the *Oyomesi*, limited his power. Furthermore, the need to retain public confidence and loyalty delimited the king's exercise of absolute power. The *Oyomesi* served as a representative council of state consisting of seven members from each of the seven wards that made up the empire. Collectively, they were the kingmakers, and they commanded the imperial army with *Bashorun,* one of its members, as the commander-in-chief. Under a rigid system of checks and balances, the power of the *Alafin* was held in constant check by the *Oyomesi.* Another body, the *Ogboni,* made up of freemen of integrity, age, and experience and appointed by the *Alafin* with *Oyomesi*'s approval, in turn, regulated the authority of *Oyomesi.* The *Oyomesi* blunted the powers of what could have otherwise degenerated into a one-man dictatorship.[18]

The Buganda Kingdom of Uganda presents another good example of a 'king', or *Kabaka*, whose powers were checked by parliament. While the *Kabaka* was, in principle, supreme, he ruled the kingdom in conjunction with a *Katikkiro* (prime minister) and a *Lukiiko* (parliament). The *Lukiiko* was made up of the chiefs of outlying districts that comprised the kingdom. Although in theory the *Kabaka* was not bound to take the advice of the *Katikkiro* and the *Lukiiko,* in practice he could not afford to ignore them. The *Katikkiro* could condone or even instigate plots against the king through other ambitious princes, as the *Kabaka* did not become king through an automatic succession arrangement, as one would expect in a monarchy. Instead, he was elected from among a number of competing princes who equally had legitimate claims to the throne. Even when a reigning *Kabaka* picked a possible successor, it was not binding because he had to meet the necessary criteria for enthronement as adjudged by the kingmakers. Although the political system of Buganda was based on kingship, it was a representative monarchy in which

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[18] Robin Law, *The Oyo Empire, c. 1600–c. 1836: A West African Imperialism in the Era of the Atlantic Slave Trade* (Oxford: Clarendon, 1991), pp. 65–82

parliament and the prime minister not only ensured representation and participation of the people in government according to the concept of modern democracy but also limited the powers of the king to avoid tyranny.[19]

The colonial period was characterized by dictatorship and wanton brutality by the colonial governors and there was no democracy for the Africans. However, in the post-colonial period, most African states started with multi-party democracy at independence but had a poor record of sustaining it. African leaders soon adopted the undemocratic practices of the former colonial powers and abuse of human rights, curtailed freedom of expression, imprisonment of political rivals on flimsy grounds, ethnic mobilization, favouritism and nepotism split states into ethnic groups, rendering it impossible to form governments based on popular consent.[20]

For Africa, the wind of democratization as known today began to gather steam in the 1990s after the collapse of the Soviet Union. Democratization is process of democracy, and implies a transitional stage of government from non-democratic to the various emerging forms of power sharing, governance and public accountability.[21] In many countries in Africa, democratization has been halting, incomplete, and frequently reversible. In Cote d'Ivoire and Zimbabwe, things seem to have worsened, as stable semi-authoritarian political regimes became less stable and more authoritarian. The ideas embedded in democracy, which are that they chose their leaders, have a say in how they are governed, are involved in decision-making, are empowered to demand transparent, accountable and humane leadership, began taking shape in Africa. The subsequent democratic agitation could be regarded not as a

[19] M. S. M. Semakula Kiwanuka, *A History of Buganda: From the Foundation of the Kingdom to 1900* (New York: Africana, 1972), p. 125, 189

[20] Felix Odhiambo Owuor, 'Democracy Assistance: Spaces for Improvement', http://www.cmi.no/file/?1321, (Accessed 10.11.2014)

[21] Cherif Bassiouni, 'Toward a Universal Declaration on the Basic Principles of Democracy: From Principles to Realization', in *Democracy: Its Principles and Achievement*, Inter-Parliamentary Union Geneva, 1998

process of 'democratic birth', but a process of 'democratic renewal'.[22]

With the emergence of foreign governance structures, the African countries in the post-colonial era tried to embrace constitutional democracy. The challenge of moving from the traditional mind-sets in the way people are governed has led to consistent political instability in Africa as a whole.[23] The constitutional democracy embraced after independence was majorly defined by electoral processes for selecting the representatives. This led to diverse attention by rulers from advancing the progress of their countries to concentrate on submerging the political competition in the opposition. This led to the rise of authoritarian rule in most countries after they attained independence. Through this poor transition, the practice of democracy was not well accentuated as it was in mature democracies. The major challenge for African countries making democratic transitions is how to preserve and consolidate democracy amidst threats and challenges by politicized militaries, morally bankrupt political classes, fragmented civil societies, pervasive and palpable lack of democratic traditions, ethnic tensions and dysfunctional political, economic and legal institutions.[24]

Democracy is currently the most popular form of governance, with an estimated 60 percent of people living under governance systems defined by democratic governance structures. This is because being democratic today now signifies being good and admissible into the comity of nations as opposed to the isolation meted out to regimes considered to be despotic.[25] Similarly, research has linked democratic rule to improved development in countries with stable democratic political organization.[26] According to Erskine, there is a

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[22] Michael Bratton & Nicholas van de Walle, *Democratic Experiments in Africa: Regime Transition in Comparative Perspective,* (Cambridge: Cambridge University Press, 1997), p. 56
[23] T Adediran, 'Democracy and the Rule of Law: History, Concepts and Contending Ideas in Nigeria', in A. Ajomo et al (eds), *Democracy and the Rule of Law* (Lagos; Obafemi Awolowo Foundation, 1996), p. 127
[24] Ibid., p. 128
[25] Ibid, p. 131
[26] Patrick Chabal & Jean-Pascal Daloz, *Culture Troubles: Politics and the Interpretation of Meaning*, (London: Hurst & Company, 2006), p. 278

relationship between practice of democracy or poor practice and progress of the specific countries in terms of development. In some countries like Liberia, democracy came while the post-war country was still dependent on 13,000 UN peacekeeping troops.[27]

Pre-colonial Africa had its forms of democracy, ranging from direct democracy, as practiced in some societies like the Igbo of southwestern Nigeria, the Agikuyu of central Kenya, and constitutional monarchies like the Oyo in southwestern Nigeria and the Buganda of Uganda. These were destroyed by the colonial rulers, who did not provide any democracy for the Africans. The post-colonial African rulers tried to imitate the western-style democracy with poor results and abuse of human rights and denial of freedoms were rampant. With the end of the Cold War in 1991, democratization began in Africa, with varying results. The main challenge for African states is how to become and consolidate democracy.

1.5.3   Intelligence and Intelligence Services

Warner states that while the literature on intelligence is replete with studies on the reform of intelligence in the established democracies (such as the US, UK, and Israel), there is much less on how the developing democracies engage in reforms of its intelligence services after the end of the non-democratic regimes. This is due to many reasons, but probably most important is that in some emerging democracies, intelligence still remains a 'taboo' subject, which limits researchers' and scholars' access to information. Similarly, 'intelligence literature' is yet to be accepted as valid in the academic environment.[28]

Kent defines intelligence as knowledge, an organization and an activity. Knowledge is the way intelligence services collect and analyze information, the finished intelligence product that agencies provide to policy-makers. Intelligence is also the organization, the agency and how it is organized; and as an activity, intelligence is the way the agency goes

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[27] Patrick Chabal & Jean-Pascal Daloz, *Culture Troubles: Politics and the Interpretation of Meaning*, (London: Hurst & Company, 2006), pp. 359-381

[28] Michael Warner, 'Building a Theory of Intelligence Systems', in G. Treverton (ed.), Mapping the State of Research on Intelligence, (New York: Cambridge University Press, 2009), p. 115

about collecting the information.[29] Lowenthal builds on Kent's definition and gives three facets to intelligence - a process, a product and an organization. In intelligence as a process, certain types of information are requested, collected, analyzed and disseminated and includes the way certain types of covert action are conceived and conducted. Intelligence is the product of the analysis and intelligence operations themselves; and as an organization, intelligence is the units that carry out those various functions.[30]

Johnson and Wirtz define counter-intelligence as the protection of government secrets from hostile and sometimes friendly foreign powers. As with intelligence, counter-intelligence is an activity, a product and an organization. As an activity, counter-intelligence consists of counter-espionage and security. Counter-espionage is offensive, aggressive and involves identifying specific adversaries and developing detailed knowledge of the operations they are planning, then infiltrating and disrupting the plans. Security is passive or defensive and entails putting in place static defences against all hostile and concealed operations aimed at the state, regardless of who may be trying to carry them out. This information includes screening and clearance of personnel, offices, installations and programmes to protect intelligence information and operations. Beyond these actions, other measures include armed guards, alarm systems, passes and restricted areas. As a product, counter-intelligence is reliable information about hostile foreign intelligence services and other threats like terrorist cells within the state. This information includes its organization structure, key personnel, methods of recruitment and training and details of specific operations. Counter-intelligence is an organizational unit responsible for protecting intelligence personnel and installations and to carry out counter-espionage activities.[31]

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[29] Sherman Kent, *Strategic Intelligence for American World Policy*, (Princeton: Princeton University Press, 1949)

[30] Mark M. Lowenthal, *Intelligence: From Secrets To Policy*, 3rd edition, (Washington DC:CQ Press, 2006), p. 6

[31] Loch K. Johnson & James J. Wirtz (eds), 'Counter-Intelligence', in *Intelligence and National Security: The Secret World of Spies,* (New York: Oxford University Press,), p. 295-297

1.5.4 Influence of Political Regimes on Intelligence Services

According to Gill, intelligence structures may be autonomous from state control and, through use of information that others do not have, have the ability to determine state policy. Gill further states that intelligence services can be classified by the degree of power they possess, measured in the degree of autonomy from external political control and oversight they enjoy; and in the degree of their penetration of society, which can be used to draw conclusions on the nature of the state. Gill groups security intelligence services in all types of political regimes, authoritarian and democratic, into three categories: the Bureau of Domestic Intelligence, Political Police and the Independent Security State. The Bureau of Domestic Intelligence has limited and specific powers derived from a legal charter or statute and its primary function is to gather information relating to the criminal prosecution of security offenses. The British MI5 is a good example of this type of security intelligence service. The Political Police operatives have greater autonomy from democratic policy-making and are more insulated from legislative and judicial scrutiny than the Bureau of Domestic Intelligence. This type of security intelligence service responds almost exclusively to the political elites or party in power and focuses on internal political opposition groups and conducting aggressive countering operations against domestic political opposition to the existing regime. The security intelligence services in many authoritarian regimes in South and Southeast Asia would fall into this category.[32]

The Independent Security State is a security intelligence service characterized by a lack of external controls and oversight, even from the authoritarian regime it is supposedly protecting. It differs from the political police because it determines its own goals, which may not coincide with those of the political elite. Since it enjoys a high degree of autonomy from

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[32] Thomas C. Bruneau & Kenneth R. Dombroski, 'Reforming Intelligence: The Challenge of Control in New Democracies', http://www2.warwick.ac.uk/fac/soc/pais/people/aldrich/vigilant/bruneau.pdf, (Accessed 05.10.2014)

the routine political process, this type of security intelligence service keeps its funding and policies hidden from the governmental policy-making process, and its targets and countering activities are authorized by the service itself, not elected officials. Examples of independent security states include the South African intelligence apparatus during periods of the de Klerk regime and the *Securitate* of Romania during President Nicolae Ceaucescu's rule.[33]

1.5.5 Intelligence Services in Kenya

Boinett says intelligence services in Kenya were established in 1926 by the British colonial powers for the purpose of securing its interests. Originally, the Special Branch (SB) was a small section in the CID, which was under the Kenya Police. Boinett points out that when the Mau Mau uprising broke out in 1952, the colonial government imposed a state of emergency in Kenya that lasted until 1960. SB became a full department under and the Kenya Police and expanded to cover volatile regions, especially Kikuyu, Meru, Embu and Rift Valley regions. The SB, together with the CID, Military intelligence and the Kenya Police Reserve arrested, tortured and intimidation not only members of the Mau Mau rebellion but the general Kenyan population in an effort to stamp out the revolution.[34]

Boinett states that at Kenya's independence in 1963, the SB remained technically under the Kenya Police but operated under a Presidential Charter. Although Africans replaced most of the British intelligence officers in the SB, some were retained as expatriate officers and so the same colonial mentality was inherited.[35] In 1964, the Police Service Commission and the National Security Council were abolished via a constitutional amendment. Another amendment was made in 1969, which removed all safeguards and gave

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[33] Thomas C. Bruneau & Kenneth R. Dombroski, 'Reforming Intelligence: The Challenge of Control in New Democracies', http://www2.warwick.ac.uk/fac/soc/pais/people/aldrich/vigilant/bruneau.pdf, (Accessed 05.10.2014)
[34] Wilson Boinett, *The Origins of Intelligence Systems in Kenya*, in S. Africa & J. Kwadjo (eds), Changing Intelligence Dynamics in Africa, (Nairobi: Global Facilitation Network-Security Sector Reforms, 2009), p. 24
[35] Mwangi Kagwanja, *Killing the Vote: State Sponsored Violence and Flawed Elections in Kenya*. (Nairobi: Kenya Human Rights Commission, 1998) p. 81

the President the powers to appoint and remove the Police Commissioner. The SB was given a new Presidential Charter under which to operate. In 1986, the SB was transformed into the DSI under another Presidential Charter. Boinett argues that this move opened up the intelligence agency to exploitation by the provincial administration through provincial and district security committees. Between 1986 and 1995, the provincial administration took over the functions of the ruling party Kenya African National Union (KANU) and directed the DSI and the Kenya Police. The intelligence system descended into a deep hole, becoming a political instrument of repression that carried out political assassinations and all kinds of illegal activities. People were arrested and arraigned in court on trumped-up evidence extracted through torture.[36] Although the role of the DSI had became more and more openly questioned from the onset of multi-party politics in 1992, there was little substantive challenge and torture, violence and intimidation of the opposition continued until Boinett took over the SB in 1996.[37] The historical origins of the Kenyan intelligence system bear similarities to many others in Africa.

Kenya's intelligence service reforms began in 1998, when the DSI transformed into the National Security Intelligence Service (NSIS) through an Act of Parliament. NSIS was now separated from the Kenya Police and made independent. NSIS also lost the authority to search, arrest, and prosecute suspects and warrants for searches and seizures have to be obtained from a judge in the High Court. Similarly, the NSIS was directed to focus on security, terrorism and corruption and leave out political issues.[38]

The reforms carried out in 1998 elicited praise for the new Kenyan intelligence services. Incidences of unlawful arrests, torture and invasions of privacy were greatly reduced and the NSIS avoided political interference as much as possible. However, the 2007-8 post-

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[36] Mwangi Kagwanja, *Killing the Vote: State Sponsored Violence and Flawed Elections in Kenya.* (Nairobi: Kenya Human Rights Commission, 1998), p. 27
[37] Wilson Boinett, *The Origins of Intelligence Systems in Kenya*, in S. Africa & J. Kwadjo (eds), Changing Intelligence Dynamics in Africa, (Nairobi: Global Facilitation Network-Security Sector Reforms, 2009), p. 28
[38] Ibid. p. 30

election violence in Kenya, which pitted the Party of National Unity against the Orange Democratic Movement, brought into question the role of the NSIS in warning and therefore preventing the violence. Although the Waki Commission faulted the NSIS for failing to translate good intelligence into accurate operational intelligence for the policy-makers, which would have prevented and effectively dealt with the violence, the violence was seen mostly as a political failure and not an intelligence failure.[39]

Following the promulgation of the 2010 Constitution, the NSIS underwent further reforms, and in 2012, the National Intelligence Service Act was enacted. NSIS transformed again into the National Intelligence Service (NIS) where its mandate and scope is defined under the National Intelligence Service Act 2012. The Act provides for the functions, organization and administration of the NIS pursuant to Article 239(6) of the Constitution; and provides for the establishment of oversight bodies for accountability purposes.

1.5.6 Democratization of Intelligence Services

In authoritarian regimes, the intelligence services are used to maintain, manipulate, sustain and influence and power. There is usually one intelligence service where internal and external espionage functions overlap and are shrouded by almost total secrecy. Intelligence organizations serve the regime and answer only to it. They engage in law-breaking and human rights abuses against their own people, are used to identify domestic opponents, neutralize opposition to the government, and seek through a variety of means, including control over media, to generate domestic apathy.[40]

The wave of democratization brought with it the need to have democratic control over intelligence organizations. For emerging democracies, transitioning from authoritarian to

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[39] Philip Waki, *Commission of Inquiry into Post-Election Violence*. Nairobi, Kenya, 2008, http://www.hackenya.org/index.php?option=com_content&task=view&id=74&Itemid=593, (Accessed 14.09.2014), p. 372ff

[40] Kieran Williams & Dennis Deletant, *Security Intelligence Services in New Democracies: The Czech Republic, Slovakia, and Romania* (London: Palgrave, 2001), pp. 17-20

democratic regimes, balancing between intelligence effectiveness and transparency proved to be extremely difficult.Since intelligence services in dictatorships had grown large in size and influence and almost autonomous, they were able to resist democratic control. However, as democratic principles took root in emerging democracies, intelligence organizations established structures that control them but also allow them to function efficiently.[41] The precise democratic rules adopted had to take into account the different political histories and cultures, as these would determine their success or failure.[42] However, some emerging democracies still face the challenge of integrating reforms into intelligence agencies due to their past transgressions, which linger for decades in peoples' hearts and minds. As in most cases, the new intelligence services are built on the ruins of the former, non-democratic intelligence agencies and preserve the personnel, premises and other assets of the non-democratic institutions. This triggers the populace's disdain and mistrust and Watts argues that "transition populations tend to favour the destruction of intelligence apparatuses, not their reform".[43]

Gill notes that the greatest challenge faced by many democracies around the world when it comes to the effective intelligence services, more so among emerging democracies, is balancing democratic space with the proper intelligence.[44] This can be attributed to the negative legacy of their involvement in human rights abuses and arbitrary and violence to eliminate domestic opposition. Due to this negative legacy, there is little awareness of intelligence functions and organizations by the public and even political leaders do not know enough about intelligence to be able to have an informed opinion about it. In some emerging

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[41] Peter Gill, *Policing Politics: Security Intelligence and the Liberal Democratic State*, (London: Frank Cass, 1994), p. 60-61
[42] Peter Gill & Mark Phythian, *Intelligence in an Insecure World*, (Cambridge: Polity Press), 2006, p. 149
[43] Larry L. Watts, 'Intelligence Reform in Europe's Emerging Democracies', *Studies in Intelligence*, Vol. 48, No. 1, 2004
[44] Op.cit., Gill, *Policing Politics: Security Intelligence and the Liberal Democratic State,* p. 82

democratic states, there are also fears that the intelligence apparatus has accumulated, and is still collecting, information that could be useful later, especially on political leaders.[45]

It is now unanimously accepted that intelligence services need to democratize the ways in which they operate. Matei and Bruneau define 'democratization of intelligence' as

"…establishing an institutional framework whereby democratically elected civilians can control the intelligence agencies and at the same time maximize their potential for effectiveness."[46]

However, 'democratization of intelligence' or democratic intelligence is confusing and oxymoronic. While democracy demands transparency and accountability, intelligence operates under the cloak of secrecy. Similarly, the tenets of democratic governance are transparent decision-making and the acceptance of responsibility by those making the decisions, while secrecy and refusal to take responsibility for intelligence failures are a necessary condition for intelligence.[47]

Watts provides a clear illustration on the delicate balance between democracy and intelligence. He argues that the reason democratic intelligence oversight is ideally split among the three branches of government is to avoid concentration of power in intelligence and to promote transparency and accountability among those who hold the critical responsibilities of safeguarding the nation's secrets, thwarting the espionage of others and collecting sensitive information vital to the national interest.[48]

Intelligence oversight in a democracy is part of a larger principle known as vertical and horizontal accountability. Vertical accountability refers to the accountability of decision-makers to the public. This can occur via elections, recalls, referenda, judicial review and

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[45] Thomas C. Bruneau & Kenneth R. Dombroski, 'Reforming Intelligence: The Challenge of Control in New Democracies', http://www2.warwick.ac.uk/fac/soc/pais/people/aldrich/vigilant/bruneau.pdf, (Accessed 05.10.2014)
[46] Florina Cristiana Matei & Thomas C. Bruneau, 'Intelligence Reform in New Democracies: Factors Supporting or Arresting Progress', *Democratization*, Vol. 18, No. 3, (2011), p. 606
[47] Peter Gill & Mark Phythian,, *Intelligence in an Insecure World*, (Polity Press, Cambridge, 2006), p. 148
[48] Larry L. Watts, Intelligence Reform in Europe's Emerging Democracies, *Studies in Intelligence,* Vol.48, No. 1, (2004)

other mechanisms. In democracies, decision-makers are accountable to the citizens who hold the ultimate power, which they pass over to elected representatives. Officers of these agencies may be appointed or bureaucratically promoted, but they still serve the public interest under the scrutiny of elected public officers. Horizontal accountability is the capacity of state institutions such as Parliament and the Judiciary to check abuses by other public agencies and branches of government, including intelligence.[49]

It is a widely held belief that intelligence services are not subject to the laws and authority of the judiciary. However, in democratic states, the judiciary now examines a wide range of intelligence activities under the law, including the Constitution. For instance, in the US, federal judges have automatic access to classified material, while their clerks have to be vetted to see such information. Judges interpret the laws that affect national security to reach compromises between the closed world of intelligence operations and the rule of law. In effect, the judicial review of intelligence matters has developed into a system of oversight.[50]

Democratization of intelligence is also part of Security Sector Reform (SSR), a relatively recent concept in state transformation, development and post-conflict peace-building. Notions of democratizing societies, good governance with transparency and accountability, peaceful transformation of societies and human security have recently made inroads in security thinking.[51] Security and peace are seen as a public good and SSR addresses security problems and tries to improve the situation through institutional reforms. Society as a whole, as well as its individual members, benefits from an increase in security.

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[49] Paul Buchanan, 'Democratic Oversight of Intelligence Agencies: A Primer', The Interpreter, USA, (2014), http://www.lowyinterpreter.org/post/2014/05/05/Democratic-oversight-of-intelligence-agencies-A-primer.aspx?COLLCC=3866472456&, (Accessed 16.11.2014)
[50] Fredric F. Manget, 'Another System of Oversight: Intelligence and the Rise of Judicial Intervention', in L. K. Johnson & J. J. Wirtz (eds), Intelligence and National Security: The Secret World of Spies, (New York: Oxford University Press, 2008), p. 384
[51] United Nations Development Programme, "*Human Development Report 1994*", (New York: Oxford University Press, 1994)

The SSR must be understood as a broad concept that also concerns a more efficient use of scarce resources to improve security. Democratic, civilian control over security forces is crucial for the provision of security for the population.[52] However, democratization is no guarantee of improved security. The fact that democratization has so often been associated with rising political violence is probably no coincidence since it challenges established privileges and raises political expectations, which are not always fulfilled.[53] Hence, the crux of SSR is the creation of institutions capable of providing security and developing effective civil oversight over them.

The citizens of a democracy enjoy the freedom to form and join organizations; the right to express their opinions; to vote in free and fair elections; to run for public office; to seek out alternative sources of information; and to rely on government policy-making institutions controlled by elected officials.[54] Therefore, policy-makers in a democracy must balance security needs with social welfare expectations by seeing to it that the military, police and security intelligence organizations are subject to civilian control and oversight. The government itself is accountable to the institutions of a democracy.[55]

1.5.7 Summary of Literature Review

There are divergent views on when democratic forms of government began, with Debrunner and Larsen arguing that although there is no evidence that the word democracy existed before the 5th century, democratic principles were practiced in several areas of the world. However, scholars like Isakhan believe that democracy originated from the ancient Greeks. European scholars like Locke and Rousseau also built on ancient Greek and Roman

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[52] Ruben P. Mendez, 'Peace as a Global Public Good', in Kaul, Inge, Isabelle Grunberg & Marc Stern, Global Public Goods, (Oxford University Press Oxford, 1999), pp. 382–416

[53] Robin Luckham, 'Democratic Strategies for Security in Transition and Conflict', in Gavin Cawthra and Robin Luckham (eds), Governing Insecurity, (London: Zed Books, 2003), p. 29

[54] Richard M. Bissell, Jr., Jonathan E. Lewis and Frances T. Pudlo, *Reflections of a Cold Warrior: From Yalta to the Bay of Pigs* (New Haven: Yale University Press, 1996), p. 207

[55] John Higley & Richard Gunther, *Elites and Democratic Consolidation in Latin America and Southern Europe* (Cambridge: Cambridge University Press), 1992, p. 3-4

ideals of government, human rights and sovereignty to give democracy its basic tenets.

Pre-colonial Africa also had various democratic values and ideals, with some societies having decentralized systems while others were monarchical with checks and balances. The Igbo of Nigeria and the Kikuyu of Kenya were decentralized like the ancient Greek city-states with no single, paramount leader, but had village systems, where each village was 'autonomous'. The monarchical systems of the Oyo of Nigeria and the Baganda in Uganda were like the European monarchical systems, with a powerful king but there were other organs to delimit his exercise of absolute power.

The colonial governments destroyed these pre-colonial African systems and post-independence African leaders did little to restore democracy but continued with the undemocratic practices of the colonial rulers. Owuor, Bassiouni and Adediran agree that with the demise of the Soviet Union in 1989, waves of democracy began to blow in Africa and the transition from authoritarianism to democracy brought new challenges for the African governments. The major challenge even now is how to protect and strengthen democracy despite resistance from militaries, politicians, negative ethnicity and weak institutions. Democracy cannot be realized unless African countries meaningfully address the human and structural problems that threaten democratic reform. Democracy will flourish only if it is embraced by political elite who agree to play by the rules of democracy. Thus, consolidation of democracy in Africa depends in large measure on the ability of political elite to subordinate selfish interests to the public good.

Bruneau and Boraz argue that intelligence services carry out four functions – collection, analysis, counter-intelligence and covert action. However, for Betts, the functions of intelligence services are collection, correlation, analysis and dissemination of the information. While they agree on collection and analysis, they disagree on the functions of counter-intelligence, covert action, correlation and dissemination of the information.

Adediran, Gill, Bruneau and Boraz are of the view that although intelligence and intelligence agencies assist governments deal with threats to their national interests, intelligence agencies in undemocratic states are likely to engage in human rights abuses while carrying out their duties. However, even as former authoritarian states begin to democratize their intelligence agencies, there is still a lot of ignorance by civilian politicians and the public of their basic human rights and intelligence functions.

Williams and Deletant agree with Buchanan that all states, whether authoritarian or democracy, have at least one intelligence service. In an authoritarian regime, they operate in almost total secrecy and answer only to the regime. In a democracy, they are held accountable by a system of checks and balances between the three arms of government. Gill also agrees with them on how intelligence services operate in a dictatorship, adding that they usually grow large in size, influence and autonomy and resist democratic control, while in democratic states, they have established structures that allow them to function only within the rule of law. Watts agrees that by splitting intelligence oversight between the three arms of government, it avoids concentration of power of intelligence in one arm and promotes transparency and accountability.

States seek to survive and protect their national interests in an anarchic international system. Intelligence services play a crucial role in preserving national security by ensuring that states identify and neutralize real and potential external and internal threats. However, with democratic norms and human rights taking centre stage in international politics, states must ensure that their intelligence services operate within domestic and international law. Therefore, this study examines how African states, with special reference to Kenya, are democratizing their intelligence services so as to be able to operate efficiently and effectively in protecting the state while complying with international norms.

1.6   Justification of the Study

For a state to operate effectively in any political system, it needs an intelligence service. As the organization charged with national security and regime protection, it is important that the intelligence service operates within the rule of law. Reforming intelligence services in emerging democracies is therefore one of the most important and difficult activities facing any government.

With the exception of South Africa, very little has been written on intelligence in Africa. Due to the secretive and repressive nature of intelligence services in Africa, the role and functions of intelligence services have mostly been misunderstood by the public, misrepresented by politicians and the media and under-appreciated by scholars. However, in the last two decades, intelligence services in Africa have undergone profound changes, forced to do so by the West following the end of the Cold War and the emergence of new threats like terrorism, cybercrime, drug and human trafficking. To meet these challenges, intelligence services in emerging democratic states in Africa have had to redefine the way they operate. As they implement reforms, they have been forced to juggle between meeting these new security challenges and adhering to democratic principles, especially in the area of respecting the rule of law and human rights. Even as intelligence services reform, conflicts between the intelligence services and the civil society/public continue, albeit on a fewer occasions and on a lesser scale than during the Cold War period.

This study aims at demystifying the role and functions of intelligence services in Africa. It also aims to provide new knowledge to the academia on how democratization is affecting intelligence operations. It also aims at appreciating the significant and critical role that intelligence plays in national security in a challenging and democratic environment. In doing so, the study looks at the role of intelligence, its significance in policy-making and explains its exceptional need to do so in secrecy.

The debate on the formulation of a theory of intelligence continues, and scholars and practitioners have not been able to agree on any suggestions. This study makes a contribution to this debate bringing into perspective the various conceptualizations and thoughts of scholars and practitioners and relating them to Kenyan context. By also examining the challenges faced by Kenyan intelligence services as they democratize, lessons learnt will assist other African countries that are democratizing or contemplating to democratize their intelligence services.

Kenya was chosen as case study because it is one of few African countries that has reformed its intelligence service following a highly politicized past. If authoritarian regimes are to reform the tools and manuals must be available, and Kenya has been open and willing enough to allow the sensitive issue of reforms in its intelligence service to be studied.

This study aims to strengthen the National Security Council (NSC), the National Security Advisory Council (NSAC) and other key policy-making organs to develop stronger oversight policies by exposing loopholes and shortcomings in the present oversight controls of the NIS. This will help to set out clear policies and guidelines on the mandate of the National Intelligence Service. In addition, this study aims to contribute to action-oriented strategies and policies by the government and other key agencies, actors and stakeholders on how best to utilize the intelligence service.

1.7   Theoretical Framework

This study is based on the realism concept of intelligence services as advanced by Phythian. This view sees realism on several basic assumptions, which are that the international system is anarchic, states seek to survive and states act rationally. While Phythian agrees with the first two assumptions, he does not agree that states always act rationally, and this heightens the need for good intelligence. Phythian's idea of good intelligence it is based on a focus to 'uncover impossible' knowledge, and thus to provide

advance warning of any trouble ahead and so reduce fear.[56] The basic principle in realism perspective is that if national security and state survival are paramount, then the state must provide security for its citizens by protecting its territory, the population and valued way of life.[57] This view holds that the intelligence services therefore seek to protect the state from any source of threats at all levels, from the global, regional and even internal infiltration. Robert Jervis also agrees that intelligence is vital for states' survival. To survive, states have to understand their environment and be able to evaluate their adversaries. Without intelligence, a state will "thrash out blindly or allow threats to grow without taking counter-measures".[58]

Morgenthau is one of the proponents of the realism ideology and he suggests that the core business of political activity is the acquisition and possession of power, and the deployment and uses of power.[59] He sums this up by saying that

> "…politics is a struggle for power over men and whatever its ultimate aim might be, power is its immediate goal and the modes of acquiring, maintaining, and demonstrating it determines the technique of political action".[60]

Structural realists however have set the interrelationships between the state and the international community in terms of diverging state threats by setting the differences of the states in terms of power and strength. This hierarchy of states leads to a struggle for power, as states to try to dominate each other. The international system is therefore characterized by international conflicts that can only be resolved through war.[61]

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[56] Mark Phythian, 'Intelligence Theory and Theories of International Relations: Shared Worlds or Separate Worlds?' In Intelligence Theory: Key Questions and Debates, Studies in Intelligence, (London: Routledge, 2009), p. 59, p.60ff

[57] Ibid., p. 59

[58] Robert Jervis, 'Intelligence, Civil-Intelligence Relations, and Democracy', in T.C Bruneau and S. C Boraz (eds), Reforming Intelligence; Obstacles to Democratic Control and Effectiveness, (Austin: University of Texas Press, 2007), p. vii

[59] Op. cit., Mark Phythian, 'Intelligence Theory and Theories of International Relations: Shared Worlds or Separate Worlds?' p. 63ff

[60] Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 3rd edition, (New York, Knopf 1965), p. 195

[61] Robert Jackson & Georg Sorensen, *Introduction to International Relations: Theories and Approaches*, 4th edition, (Oxford: Oxford University Press, 2010), p. 59

From the categorization of countries, this view raises the issues of allies and state enemies. Two phenomena emerge, state ego and immoral and selfish nature of the powerful state in relation to the weaker less powerful state. Robert Gates said "The nation is at peace because we in intelligence are constantly at war".[62] The core concern of intelligence within international relations is the state and its security, whether national or regional.[63]

Kenneth Waltz argues that international relations is a domain of anarchic, non-hierarchic political structures and that order is not imposed by a higher authority but by interactions of formally equal political actors. In the anarchic orders, each state is a separate, autonomous and formally equal political unit that can only rely on itself to realize its interests. He also argues that the principle differences between states are not their functions but their capabilities, or resources, to achieve their objectives.[64] By saying a state can only rely on itself to realize its interests, Waltz was referring to national security and Sheptycki qualifies this argument by saying that a dominant intelligence paradigm prevails, the 'national security intelligence' paradigm, which "…is predicated largely on the assumptions of international relations realism".[65]

While applying realism to intelligence activities, Toni Erskine says that the Hobbesian realism is not amoral by definition but rests on the moral duty of states to protect her subjects. Intelligence activities are therefore justified if they serve the well-being of the state and the nation lends legitimacy to intelligence collection as currently practiced.[66]

Realism gives insights about assessing the democratization process in Africa and the role of intelligence services. From independence, African states have practiced *realpolitik,* or

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[62] Mark Phythian, 'Intelligence Theory and Theories of International Relations: Shared Worlds or Separate Worlds?' In Intelligence Theory: Key Questions and Debates, Studies in Intelligence, (London: Routledge, 2009), p. 54

[63] Peter Gill & Mark Phythian, *Intelligence in an Insecure World*, (Cambridge: Polity Press, 2006), p. 21

[64] Ibid., p. 16-17

[65] J. Sheptycki, 'Policing, Intelligence Theory and the New Human Security Paradigm: Some Lessons from the Field', in Intelligence Theory: Key Questions and Debates, Studies in Intelligence, (London: Routledge, 2009), p. 166

[66] Toni Erskine, '"As Rays of Hope to the Human Soul"? Moral Agents and Intelligence Gathering', *Intelligence and National Security,* Vol. 19, No. 2, 2004, p. 359-381

power politics, which can be traced back to the great Greek historian Thucydides in the 5th century.[67] Thucydides believes that inequality between states was inevitable and natural, as all states were also highly unequal in their powers and capabilities to dominate others and to defend themselves.[68] African leaders use their incumbency to tilt the balance in their favour and there is still an inadequate commitment to multi-party democracy and politics by political leaders who sometimes mouth the niceties of democracy, but use undemocratic means to remain in power.[69] Africa's experience in multi-party democracy has been checkered and tortuous and elections are always acrimonious affairs and usually followed by recriminations and accusations of vote-rigging, vote-buying, and gerrymandering. Newly-elected leaders start off swearing to maintain democratic systems but after some time fall prey to autocracy and authoritarianism.[70]

1.8   Hypotheses of the Study

1. Despite the democratization of intelligence in Kenya, the intelligence services have not been kept under check

2. Intelligence services in Kenya regularly violate citizens' rights to privacy and freedom

1.9   Methodology

The study used qualitative research approaches. Respondents were identified using the Delphi method and purposive sampling to produce maximum variation within a sample. Respondents were chosen based on their work and experience in the field of intelligence. Primary data was collected through questionnaires, and given to serving NIS officers, current

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[67] Jack Donnelly, *Realism and International Relations*, (Cambridge: Cambridge University Press, 2000), p. 1
[68] Robert Jackson & Georg Sorensen, *Introduction to International Relations: Theories and Approaches*, 4th edition, (Oxford: Oxford University Press, 2010), p. 61
[69] Denis Venter, Democracy and Multiparty Elections in Africa: Recent elections in Zambia, Zimbabwe and Lesotho, Eastern Africa Social Science Research Review, Volume 19, Number 1, January 2003, pp. 1-39, https://muse.jhu.edu/journals/eastern_africa_social_science_research_review/v019/19.1venter.pdf, (Accessed 10.11.2014)
[70] Ibid.

members of the NSC, NSAC, National Security Intelligence Committee (NSIC), Judges of the High Court, members of the Parliamentary Committee on Defence and Foreign Relations and the Administration and National Security Committee, Ministry of Foreign Affairs, the County Commissioner and Deputy County Commissioner(s) on a voluntary basis. Secondary data was collected through books, journals, articles and periodicals. This helped capture what has already been done on intelligence from global, regional, national and local levels.

The collected data is sorted and analyzed using document analysis and thematic analysis techniques, based on the emerging issues under study. The results obtained are presented in the form of narratives.

1.10 Chapter Outline

Chapter One comprises of the introduction, which gives a brief background of the study, statement of the research problem, objectives of the study, justification of the study, literature review, theoretical framework, hypotheses and methodology of the study.

Chapter Two delves into the various conceptualizations of intelligence and democracy and how this study employs these concepts.

Chapter Three examines the influence of democracy on security structures in Africa and how they are confronted by the challenge of constructing rules, controls and oversight mechanisms.

Chapter Four is an examination of the democratization of the NIS and the challenges it has faced in the process.

Chapter Five sums up the major findings of the study in line with the objectives and hypotheses of the study, concludes and gives recommendations.

CHAPTER TWO

A CONCEPTUAL ANALYSIS OF DEMOCRACY AND INTELLIGENCE

2.0   Introduction

Despite being seemingly paradoxical, democracy, which implies transparency and accountability, and intelligence, which is by nature shrouded in secrecy, can be made compatible to each other, depending on how democratic governments understand, define and interpret these two concepts. To understand a concept, it must be defined and while the concepts of intelligence and democracy do not have universal definitions, several scholars and practitioners have come up with their own definitions and conceptualizations of democracy and intelligence. This chapter examines these various definitions and conceptualizations.

2.1   Understanding the Concept of Democracy

For the ancient Greeks, democracy was a government in which all the citizens assembled together to elect officials, try criminals and determine their foreign policy.[1] In theory, this was rule by the people and for the people, a form of direct democracy in which all citizens could speak and vote in assembly, as opposed to rule by one, (autocracy), or a few (oligarchy). In practice, Athenian democracy did not extend equality to all persons, as direct participation was only allowed for male citizens and small political elite. It excluded the majority of the populace consisting of women, slaves and foreign residents. Limited as Athenian democracy was, the West still draws inspirations from it.[2]

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[1] Iqtidar Karamat Cheema, *A Conceptual Framework of the Dynamics of Democracy*, Journal of Political Studies,
https://www.academia.edu/3614859/Dr_Iqtidar_Karamat_Cheema_A_Conceptual_Framework_of_the_Dynamics_of_Democracy, (Accessed 05.03.2015)
[2] Apollos O. Nwauwa, Concepts of Democracy and Democratization in Africa Revisited, http://upress.kent.edu/Nieman/Concepts_of_Democracy.htm, (Accessed 13.11.2014)

2.2   Defining Democracy

The flexible use of the concept of democracy has created a fundamental problem of definition. Since Roman and Athenian times, the meaning of democracy has continually shifted, producing many variants and diverse forms of interpretations. Democracy is now a relative concept; it no longer means the same thing to all peoples and cultures at all times and therefore it is not surprising that by the word 'democracy', a thousand scholars may have a thousand divergent opinions.[3]

The ancient Romans took a practical approach to everything, including the principle of democracy. The social conditions and divisions that existed within the Romans community determined the political institutions they adopted and, therefore, they did not concern themselves with the construction of an ideal government, but instead fashioned political institutions in response to problems as they arose.[4] Therefore the Romans called their system a *rēspūblica*, or republic, from the Latin *rēs*, meaning thing or affair, and *pūblicus* or *pūblica*, meaning public. For them, a republic belonged to the Roman people, the *populus romanus*, a rather than by a monarch. Being a public thing, a republic implicitly contains elements of democracy, and translated into modern times, a republic is a *representative* democracy, in which the people choose representatives who in turn decide the issues of the day alongside other branches of government. A republic protects the rights of the minority from being completely dominated by the majority. So although all eligible citizens have equal say in decisions, the unalienable rights of individuals are protected. By contrast, Greek or Athenian democracy was the *'rule of the people'*, which implies a *direct* democracy*, rule by the supreme majority, where all eligible citizens get equal say in decisions, and an individual, or

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[3] T Adediran, 'Democracy and the Rule of Law: History, Concepts and contending ideas in Nigeria', in A. Ajomo et al (ed), Democracy and the Rule of Law (Lagos; Obafemi Awolowo Foundation, 1996)
[4] Jackson Spielvogel, *Western Civilization: A Brief History* (Belmont, Calif.: Wadsworth, 1999)

a group of individuals making a minority, have no protection against the powerful majority.[5]

Morlino notes that in looking at aspects of democracy, one must begin with its ideal definition. The minimal definition of democracy suggests that this should consist of at least universal adult suffrage; regular, free, competitive and fair elections; multi-partyism; human rights, freedom and equality.[6] Lipset describes democracy as a political system that supplies regular constitutional opportunities for changing the governing officials. For Lipset, economic development involving industrialization, urbanization, high standards of education and a steady increase in the overall wealth of society are basic conditions for sustaining democracy.[7] Haas defines democracy as the distribution among offsetting institutions so that the individual liberty is protected,[8] while for Dahl, democracy is a political system designed for members of an association and for political purposes.[9] Tony Smith defines democracy as "free elections contested by freely organized parties under universal suffrage for control of the effective centers of governmental power."[10]

Dahl also observes that there is no single theory of democracy, only theories that vary slightly.[11] There are four main models of democratic theory. One is protective democracy theory, where government exists to protect the rights of individual citizens. The second is the pluralist democracy theory, which states that citizens are disinterested in becoming involved and those who are do so through smaller political groups, or elites, who compete for power in areas related to specific issues and values. The third is developmental democracy theory, where citizens are engaged in civic issues and focus on what is best for society as a whole.

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[5] Robert A. Dahl, 'The Roman Republic', Democracy, *Encyclopedia Britannica*, http://www.britannica.com/EBchecked/topic/157129/democracy/233830/The-Roman-Republic, (Accessed 20.05.2015)

[6] L. Morlino, *Democracy between Consolidation and Crisis. Parties, Groups and Citizens in Southern Europe*, (Oxford: Oxford University Press, 1998)

[7] Seymour Martin Lipset, 'Some Social Requisites for Democracy: Economic Development and Political Legitimacy, *American Political Science Review*, Vol. 53, No. 1, (1959), pp. 69-105

[8] Richard Haas, 'Paradigm Lost', *Foreign Affairs*, Vol. 74, No. 1, (1995), pp. 43-62

[9] Robert Dahl, 'A Democratic Paradox', *Political Science Quarterly*, Vol. 115, No. 1, (2000), pp. 35-40

[10] Tony Smith, *America's Mission: The United States and the Worldwide Struggle for Democracy in the Twentieth Century* (Princeton, N.J.: Princeton University Press, 1994), p. 13

[11] Robert Dahl, *Preface to Democratic Theory* (Chicago: University of Chicago Press, 1965), p. 1

The fourth is participatory democracy and focuses on encouraging more citizen involvement.[12]

The above conceptualizations are based on the Western concept of liberal democracy and reflect an Anglo-American cultural bias. They reduce the concept of democracy to elections, multi-party system and universal suffrage and any deviation becomes an abnormality. Makinda does not agree with this and proposes that democracy should be conceived "as a way of government firmly rooted in the belief that people in any society should be free to determine their political, economic, social and cultural systems. But the form it takes can vary according to the particular circumstances of any society.[13] For Makinda, African societies were socially and politically structured so that everybody participated according to his ability, ages-status and wishes. African democracy, therefore, transcended the realm of politics and constituted an integral part of the peoples' culture, which allowed everyone to have a sense of belonging. It was a practical democracy, which required people to be more sensitive and responsible for their neighbours' well-being. This is not to say that there was a total absence of social stratification based on wealth and age. There were also commoners and offenders, who were stigmatized because they violated or trampled on other peoples' rights or well-being.[14]

There is no acceptable clinical or scientific definition of democracy and developing an international definition of democracy or even a consensus as to its content is an uphill task. Therefore it would be more realistic to look into the values, principles, goals and methods that emerge as a consensus among scholars, experts and civil society activists representing all regions and major cultures of the world. For similar reasons, it is important to begin any consideration of democracy with the citizen, rather than with governmental institutions, as the

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[12]Kelly S. Meier, Four Basic Theories of Democracy, Kelly S. Meier (Dr.), Four Basic Theories of Democracy, http://classroom.synonym.com/four-basic-theories-democracy-11726.html, accessed on 12.01.2014

[13] Samuel M. Makinda, 'Democracy and Multi-Party Politics in Africa,' *Journal of Modern African Studies,* Vol. 34, No. 4, (1996), p. 365

[14] Ibid.,

citizen is both the starting point and the focus of the democratic process. It is from the citizens that democratic governments receive their authorization, and it is to the citizens that they remain accountable and responsive, both directly and through the mediating organs of parliament and public opinion. At the same time, that process requires certain qualities among its citizens to be effective and sustainable. One is the ability and willingness to play a part in common affairs, whether local or national, sectional or societal, and to acknowledge some responsibility for them. The second is respect for the rights of other citizens, an acknowledgment of their equal dignity, and the recognition of their right to an opinion, especially when it differs from one's own. The essential counterpart to the democratic principles of popular control and political equality is thus a publicly active citizen body which is capable of exercising tolerance.[15]

If the starting point of democracy is the right of citizens to contribute towards the decisions that affect their lives on a basis of equality with others, then it requires a framework of other rights to make this basic political right effective. These other rights include freedoms of expression, association and assembly. The right to unimpeded expression of opinion requires the existence of independent media and of legislation preventing undue concentrations of media ownership. The right of free association includes the right to found new associations for economic, social and cultural purposes, including political parties. The right of peaceful assembly entails the right of free movement within and between countries. None of these rights can be exercised effectively without the liberty and security of the person and the guarantee of due legal process. Democracy is thus inseparable from fundamental human rights and freedoms, and from the responsibility to respect the same rights and freedoms for others.[16]

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[15] David Beetham, 'Democracy: Key Principles, Institutions and Problems', *Democracy: Its Principles and Achievement,* in Inter-Parliamentary Union Geneva, 1998
[16] Ibid.,

Democracy in any of its meanings requires the existence and free exercise of other basic individual and group rights without which no democracy, however perceived, can exist. On 8th November 2007, the UN General Assembly proclaimed 15 September as the International Day of Democracy, which provides an opportunity to highlight the centrality of this universal core value and to review the state of democracy in the world. The UN states that many democratic countries choose to have a bill of rights to protect people against abuse of power. A bill of rights is a list of rights and freedoms guaranteed to all people in the country. It limits the power of government and may also impose duties on individuals and organizations. When a bill of rights becomes part of a country's constitution, the courts have the power to enforce these rights.[17]

Basic rights are, *inter alia,* the right to life, liberty, property, due process of law, equality, non-discrimination and judicial access and review. Each one of these basic rights in turn gives rise to other substantive rights, which are all dependent on procedural rights for their fair and effective implementation. These rights are the right to freedom of thought, conscience and religion or belief; freedom of expression, association and peaceful assembly; and freedom of movement. No one is subject to arbitrary arrest or detention, torture or other cruel, inhuman or degrading treatment or punishment. Everyone also has the right to know and act upon his rights, participate in free and fair elections, fair and public trial if charged with an offense, own property alone or in association, exercise individual enterprise, and enjoy his economic, social and cultural rights. These rights are contained in the Universal Declaration on Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Social, Economic and Cultural Rights (ICSECR), and other human rights instruments, norms and standards. Regional conventions with implementation mechanisms such as the European Convention of Human Rights

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[17] United Nations Association of Slovenia, (2008) Cankarjeva 1/II, SI-1000 Ljubljana

(ECHR), Fundamental Freedoms and its Protocols (FFP) and the American Convention on Human Rights (ACHR) have significantly contributed to the strengthening of the fabric of democracy. The African Charter on Human and Peoples' Rights (ACHPR) system of enforcement is moving in the same direction as its counterparts in Europe and the Americas, but at a slower pace.[18]

The linkage between democracy, human rights, and the rule of law was evidenced in the Charter of Paris for a New Europe which states that:

> "Human rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first responsibility of government. Respect for them is the essential safeguard against an over-mighty State. Their observance and full exercise are the foundation of freedom, justice and peace. Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person. Democracy, with all its representative and pluralist character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially. No one will be above the law."[19]

The term democracy is often used interchangeably and without distinction to three different concepts. One, democracy is seen as a process, with all its mechanisms, procedures and formalities, from political organization to elections. Two, democracy as a state, or condition, including the processes of democracy and democratic outcomes; and three, democracy as an outcome, that is, putting into effect policies and practices which are generally agreed upon by the people. Such an outcome may or may not be the result of a condition or state, and it may or may not be the product of democratic processes. [20] These three concepts are neither mutually self-excluding nor contradictory but are on the same range. However, it is important to distinguish between them because in a sense they represent three levels or stages of democracy. Whatever meaning and content is given to the term

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[18] David Beetham, 'Democracy: Key Principles, Institutions and Problems', *Democracy: Its Principles and Achievement*, in Inter-Parliamentary Union Geneva, 1998
[19] Charter of Paris for a New Europe, Paris 1990
[20] Cherif Bassiouni, 'Toward a Universal Declaration on the Basic Principles of Democracy: From Principles to Realization', *Democracy: Its Principles and Achievement*, in Inter-Parliamentary Union Geneva, 1998

democracy, what essentially distinguishes it in essence from other systems of government are the right of popular participation in governance, and the legitimacy of government and governance.[21]

2.3   Democratic Institutions

For a democracy to be effective there has to be a set constitutional political institutions that secure and assure the protection of basic human rights of the citizens. A compulsory aspect for such institutions is popular authorization, public accountability and responsiveness to society. Popular authorization is achieved through regular competitive elections using the secret ballot, which ensure voters have a choice of candidates and policies and the opportunity to remove politicians who no longer command their confidence. Although elections form a key mechanism for popular authorization, they are limited on their own without institutions that secure public accountability. Here, the task of parliaments is to keep the policies and actions of the executive under continuous scrutiny, and they require sufficient powers and independence to do this effectively.[22]

Democratic accountability also requires that all non-elected public officials, in this case the intelligence services, military, and police be accountable to the elected officials. All public officials have to act within competencies explicitly authorized by parliament or the constitution. Since democratic accountability is underpinned by the basic principle of the rule of law, the judiciary must be independent from all executive interference. Again, for public accountability to be effective, there has to openness of the activities of the non-elected officials to public inspection in accordance with the principle of freedom of information. Democratic institutions also need to be responsive to public opinion and open to independent

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[21] Cherif Bassiouni, 'Toward a Universal Declaration on the Basic Principles of Democracy: From Principles to Realization', *Democracy: Its Principles and Achievement*, in Inter-Parliamentary Union Geneva, 1998

[22] David Beetham, 'Democracy: Key Principles, Institutions and Problems', *Democracy: Its Principles and Achievement*, in Inter-Parliamentary Union Geneva, 1998

sources of expertise. In addition, they should also provide scope for the views of the public and provide mechanisms of citizen redress.[23]

Popular authorization, public accountability, responsiveness to society gives political institutions the distinctive hallmark of a democracy. Although democratic institutions may take different forms according to the culture and tradition of a given country, there must also be a limit to their possible range of variation consistent with democracy.[24]

2.4   Democratization process

If democracy is a delicate form of government that requires a participative citizenry and strong institutions, then democratization is the process in which non-democracies transition toward that system. Haynes defines democratization as substantial and institutionalized redistribution of power from an authoritarian entity toward elected institutions and their appointed national and local institutions.[25] Democratization can also be referred to as the process of democracy, or a 'transitional stage' of government from non-democratic to the various emerging forms of power sharing, governance and public accountability in new regimes. As a process, democratization implies a series of evolutionary developments, which include democratic and economic reforms.[26]

Democratic processes should not be measured in terms of what they are intended to achieve, but by what they actually achieve. On democratic reforms, these processes include access and openness of public institutions to the citizenry without discrimination or intimidation; transparency in the workings of public institutions; integrity of the processes; and mechanisms of accountability that are capable of effecting outcomes and effectively

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[23] David Beetham, 'Democracy: Key Principles, Institutions and Problems', *Democracy: Its Principles and Achievement*, in Inter-Parliamentary Union Geneva, 1998

[24] Ibid.,

[25] J. Haynes, *Towards Sustainable Democracy in the Third World*, (London/Basingstoke: Palgrave Macmillan, 2001), p. 67

[26] Cherif Bassiouni, 'Toward a Universal Declaration on the Basic Principles of Democracy: From Principles to Realization', in *Democracy: Its Principles and Achievement*, Inter-Parliamentary Union Geneva, 1998

redressing wrongs.[27]

Given human nature and the political process, perfect democracy, beyond the smallest group size, may simply not be attainable at all. Everyone has a right to cast a vote for an individual in the legislative assembly but as Davies points out, representative institutions such as parliament are of little political value to the people if the electorate is not sufficiently interested in its own government to vote and may become a mere instrument of tyranny or intrigue. Or if they vote at all, they sell them for money, or vote at the beck of someone who has control over them, or for whom they desire to appease. Popular elections then, instead of being a security against misgovernment, become an additional wheel in its machinery.[28]

2.5   Conceptualizing Intelligence

Warner suggests the need for a conceptual re-evaluation of intelligence to turn intelligence into a broad-based analytical discipline that could be programmatically examined, addressed and subsumed by the mainstream social science tradition.[29] To achieve this, it is necessary to look at how various scholars and practitioners have conceptualized intelligence. Kent perceives the intelligence process as a careful division of labour between the intelligence analysts and policy-makers, although the relationship becomes more unbalanced in practice. He argues that unless an intelligence organization knows why it exists, what use its product are going to serve and what sort of policy actions were being contemplated with the available resources, intelligence analysis would suffer. Without guidance from the consumer, the intelligence organization would have problems in adapting itself so that it is of greatest use to the consumer and avoiding the danger of collecting the wrong information. Without some direct communication with intelligence analysts, the

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[27] Cherif Bassiouni, 'Toward a Universal Declaration on the Basic Principles of Democracy: From Principles to Realization', in *Democracy: Its Principles and Achievement*, Inter-Parliamentary Union Geneva, 1998

[28] Philip Davies, 'Ideas of Intelligence: Divergent National Concepts and Institutions', *Harvard International Review*, Autumn 2002

[29] Michael Warner, 'Wanted: A Definition of 'Intelligence',' in C. Andrew, R. J. Aldrich, & W. K. Wark (eds.), *Secret Intelligence: A Reader,* (London: Routledge, 2009) p. 6

consumer, through ignorance,

"…may ask for something the organization is not set up to deliver, or he may ask for so wide a range of information that the totality of resources of the organization would be fully deployed for months, or he may ask for something which though procurable is not worth the effort."[30]

For Kent, intelligence is simultaneously knowledge, an activity, and an organization. Intelligence is the knowledge that highly placed civilians and military personnel must have to safeguard the nation. Kent raises an important point. Intelligence is knowledge, not just facts or data. Similarly, intelligence is an activity, the collection of data that is processed into information that can be used by intelligence analysts to assess the validity and importance of the new information. This information can then be used, in conjunction with background data, to develop intelligence products that describe the strategic environment and provide estimates of the future. Intelligence is also the organization that carries out the activity and produces the knowledge.[31]

Since Kent's definition of intelligence, many alternative approaches to intelligence have been suggested by a succession of authors. Agrell finds that intelligence agencies themselves define intelligence as the resulting product of collection, evaluation, analysis, integration and interpretation of all available information regarding issues relevant to foreign policy.[32] Jennifer Sims defines intelligence as "the collection, analysis, and dissemination of information for decision-makers engaged in a competitive enterprise".[33] But most importantly for her, good intelligence is not so much about getting it right but getting it more right than the opponent and winning. Sims excludes covert action from her definition of intelligence because, she argues, covert action is better understood as secret policy-making. Intelligence

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[30] Sherman Kent, *Strategic Intelligence for American World Policy*, Princeton, NJ: Princeton University Press, 1949, p. vii

[31] Ibid.,

[32] Wilhelm Agrell, *Konsten att gissa rätt*, Lund: Studentlitteratur, (1998), Lund University, Research Policy Institute, http://www.sebastian.bay.se/contents/intelligence_theories-a_literary_overview.pdf, (Accessed 15.01.2015)

[33] Jennifer Sims, 'Defending Adaptive Realism', in *Intelligence Theory: Key questions and Debates*, (London: Routledge, 2009), p. 154

may be a support function to covert action, but no more of a support function than it is for diplomacy or war. So while some intelligence agencies execute policies of terror on behalf of a tyrant, such policies are not intrinsic to their functions.[34] On the other hand, Sims also excludes secrecy while defining of intelligence, arguing that secrecy is not integral to the concept of intelligence and it is certainly not a defining characteristic of all intelligence systems. She further argues that everyone, from diplomats to Commercial Attaches, dilute the concept of intelligence.[35] She also explains that states can win wars using intelligence although predictions using raw power showed they would lose and that some states can win wars using intelligence although they are militarily inferior.[36]

Walters, a former Deputy Director of Central Intelligence, offers a slightly more de-tailed definition of intelligence. He says "Intelligence is information, not always available in the public domain, relating to the strength, resources, capabilities, and intentions of a foreign country that can affect our lives and the safety of our people."[37] This definition is helpful because it brings out the idea that intelligence is related to information that is not generally available. By stating that the needed information is not readily available, Walters shapes intelligence as an activity to gather that same information. However, he only addresses the informational aspects of intelligence and excludes non-state actors. Perhaps a CIA operations officer using the pseudonym R.A. Random offers the best definition when he proposes the following definition:

> "Intelligence is the official, secret collection and processing of information on foreign countries to aid in formulating and implementing foreign policy, and the conduct of covert activities abroad to facilitate the implementation of foreign policy."[38]

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[34] Jennifer Sims, 'Defending Adaptive Realism', in *Intelligence Theory: Key questions and Debates*, (London: Routledge, 2009), p. 159
[35] Ibid, p. 161
[36] Ibid. p. 154
[37] Vernon Walters, *Silent Missions*, (Garden City, NY: Doubleday, 1978), p. 621
[38] R. A. Random, 'Intelligence as a Science', *Studies in Intelligence*, (Spring 1958), p. 76, in Michael Warner, "Wanted: A Definition of 'Intelligence': Understanding Our Craft," *Studies in Intelligence,* Vol. 46, No. 3, 2002, www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/vol46no3/article02.html

Although Random's definition still focuses on foreign policy and foreign states, the advantage is that it highlights the fact that intelligence involves official, that is, government activities to gather information that other groups are attempting to conceal or prevent the government from obtaining. While foreign policy and strategy are not synonymous, the two terms could be interchanged in the definition above without harming the meaning. The collection, analysis, and dissemination of secret information to strategists provides them a key tool needed to develop sound courses of action by identifying critical strengths and vulnerabilities of other players, important trends and factors driving the strategic situation, and projections of reactions to proposed courses of action. This definition also addresses the use of covert activities in support of foreign policy, bringing forward the concept that intelligence is more than an informer of strategy and may also serve as a means for carrying out a strategy. Both these roles of intelligence - as an source of information used in the development of strategies and as a tool to be used in implementing those strategies - work best if intelligence is fully integrated in the strategy team.[39]

Lowenthal agrees with other scholars that intelligence can be analyzed in three different ways - as a process through the intelligence cycle; as a product distributed to various policy-makers; and as institutions of intelligence services/communities, which deliver various 'services' to the government and active efforts to shape the world as well as merely reporting about it.[40] He however highlights secrecy as a defining factor and what makes intelligence unique in regard to *information*. He further emphasizes that intelligence is "information that meets the stated or understood needs of policy-makers and has been collected, processed and narrowed to meet those needs."[41] Len Scott, Peter Gill and Mark Phythian agree with Lowenthal that that secrecy is the defining key in understanding intelligence and the veil of

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[39] John Aclin, 'Intelligence as a Tool of Strategy', in The US Army War College Guide to National Security Issues, Volume I: Theory of War and Strategy, J. Boone Bartholomees, Jr., (ed.), Strategic Studies Institute, US Army War College, Carlisle, PA, (2010), pp. 263-277
[40] Mark Lowenthal, *Intelligence: From Secrets to Policy*, (Washington DC: CQ Press, 2002), p. 8
[41] Ibid, p.1ff

secrecy distinguishes intelligence from other functions that support decision-makers.[42]

Odom differentiates between information and intelligence, arguing that the latter is produced by a process of analysis or evaluation of the former.[43] Collecting information can be done in two ways: either openly, or overtly, through the review of already published materials like newspapers, radio, periodicals, trade, political, economic and military journals, as well as internet sources; or by covert means through aggressive techniques of penetrating the secrecy and privacy of others. Intelligence or information comes from a variety of concealed sources such as human spies, defence attachés and diplomatic reporting, intercepted communications and signals and satellite imagery. These clandestine means are used to 'steal' information that potentially hostile nation-states or trans-national terrorist groups want to hide.[44]

Warner sees a dilemma on how to separate intelligence from other information activities in support of government. According to Warner's definition, four elements merit scrutiny: *secrecy, state activity, understanding/influencing* and *foreign entities*. There is a general consensus that *secrecy* of action, or clandestinity, is an important component of intelligence because it can provide a comparative advantage for the nation conducting intelligence. However, intelligence is not just about secrets, states also need to keep secrets, and thus someone in the state must be good at keeping them. Under *state activity*, Warner looks at how different nation-states conduct intelligence. Intelligence for national policy-makers is different from intelligence for other decision-makers operating in competitive environments. That is so because intelligence for states can mean life or death and that is why intelligence predates the nation-state, when sovereign powers decided to go to war with one

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[42] Michael Warner, 'Intelligence as Risk Shifting', in *Intelligence Theory: Key Questions and Debates*, Studies in Intelligence, (London: Routledge, 2009), p. 18

[43] W. E. Odom, 'Intelligence Analysis', *Intelligence and National Security*, Vol. 23, No. 3, (2008), pp. 316-335: 323

[44] R. L. Russell, 'Achieving All-Source Fusion in the Intelligence Community', in L. K. Johnson (ed.), *Handbook of Intelligence Studies,* (London: Routledge, 2007), p. 190

another for control of territory and populations and to execute traitors who divulged their secrets.[45] Secrecy includes clandestine activity, that is, covert actions or concealing ones intentions, as well as information, that is, seeking information that will later be turned into intelligence. These two terms have been expanded to fit better with an ancient understanding of secrecy and statecraft.[46] Chinese writer Sun-Tzu (circa 300 BC) treats espionage as both information and action, including the range of disciplines now labeled foreign intelligence, counter-intelligence and covert action. According to Sun-Tzu, they had to be supervised together in order to be effective and they had to work in secret. "When these types of agents are all working simultaneously and none knows their method of operation, they are called 'The Divine Skein' and are the treasure of a sovereign."[47] This may be the earliest known expression of an organizing principle for intelligence work and the importance of secrecy in intelligence.

Intelligence involves *understanding*, therefore *influence* should be included as a part of the definition. If 'knowledge is power' then intelligence is a form of power itself. Gill and Phythian argue that intelligence provides the basis for decisions by policy-makers after fully interrogating the alternative courses of action open to them and their costs and benefits.[48] Thus, in practice intelligence/information is judged by its ability to support a chosen course of action, which has been formed even before the search for information, thus creating a reversed knowledge/power relationship. As for *foreign entities*, all regimes use intelligence against all manner of challenges, domestic as well as foreign, and so it would be too limiting to restrict the definition to foreign entities only.[49]

Herman adopts Kent's theory of intelligence, and defines intelligence as a kind of

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[45] Michael Warner, 'Intelligence as Risk Shifting', in *Intelligence Theory: Key Questions and Debates*, Studies in Intelligence, (London: Routledge, 2009), p. 19, 24

[46] Gregory F. Treverton et al, 'Toward a Theory of Intelligence', Workshop Report, *National Security Research Division, RAND Corporation Conference Proceedings Series*, (June 2005)

[47] Sun Tzu, *The Art of War*, as translated by S B. Griffith (New York: Oxford University Press, 1963), p. 145

[48] Peter Gill & M. Phythian, *Intelligence in an Insecure World*, (Cambridge: Polity Press, 2006), p. 33

[49] Op.cit., Treverton et al, 'Toward a Theory of Intelligence', (June 2005)

knowledge, the type of organization which produces the knowledge and the activity pursued by the intelligence organization. He also defines intelligence agencies as organizations in government with *intelligence* in their name and live, breath and produce intelligence. However, Herman also adds secrecy, news, information and covert action to Kent's theory, even though these components are implied in it. Herman also presents the various conceptualizations of intelligence as a spectrum, ranging from the broad definitions that approach intelligence primarily as all-source analysis, typified by Kent's view and favoured by the US, to narrow interpretations that focus on intelligence collection, particularly covert collection, preferred by the British. There is a fundamental difference in these definitions and their adoption will determine how various states approach intelligence and craft their institutions and legislation.[50]

2.6   Intelligence and Intelligence Services

Intelligence is information that meets the stated or understood needs of policy makers and has been collected, refined, and narrowed to meet those needs. Intelligence services are key components of any state, providing independent analysis of information relevant to the external and internal security of state and society and the protection of vital national interests. Intelligence is useless if it is disseminated too late or is irrelevant to the government's policy agenda.[51]

According to Mellon, an intelligence service is a government-sponsored agency devoted to the gathering of information (intelligence) to retain state or national goals and attain national security. Various means of gathering that information may include espionage, the interception of communication, code-breaking, analysis, cooperation with other law enforcement agencies and private and public sources all designed to be analyzed for the good

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[50] Michael Herman, *Intelligence Power in Peace and War,* 5th edition, (Cambridge: Cambridge University Press, 1996), p. 1ff
[51] Dylan Hendrickson, 'Key issues in Security Sector Reform', *The Conflict, Security & Development Group, Working Papers 1*, (1999)

of the institution. Security intelligence focuses on national security, while foreign intelligence on collecting information regarding the political, economic, and military activities of foreign states as they pertain to the security of the nation.[52]

The way a state conceptualizes the definitions of intelligence will determine how it will craft its intelligence institutions and legislation. These conceptual divergences of intelligence are relevant when comparing Britain and the US. Intelligence services in these two states conceptualize intelligence differently, and they do not realize they were talking — and hence thinking - about entirely different things when they were talking about intelligence.[53] For the US, intelligence refers to 'finished' intelligence that has been put through the all-source analysis process and turned into a product that can provide advice and options for decision makers. Hence, in the US context, intelligence production means analytical production. In British practice, intelligence includes raw information collected from open sources, classified material and secret sources. All this information goes straight into policy-making circles without passing through a separate, intervening analytical stage. For the British, intelligence refers more narrowly to those kinds of information not available from the 'normal product' of departmental activity and also means raw intelligence collection.[54] Both the British and US intelligence institutions therefore reflect their respective conceptualizations of intelligence.

The way intelligence services of non-democratic societies therefore view themselves differs fundamentally from the self-perception of intelligence services in democratic societies. Non-democratic states typically define their agencies as security services rather than intelligence services since they have their roots in the pursuit of counter-revolutionary and dissident forces at home and abroad. For example, agencies of revolutionary regimes like

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[52] Jérôme Mellon, 'Understanding Intelligence Services'*, 21st Century European Context*, (2006)
[53] Philip Davies, 'Ideas of Intelligence: Divergent National Concepts and Institutions', *Harvard International Review*, Autumn 2002
[54] Ibid.

the former Soviet KGB and the Chinese Department of Public Security and Department of State Security evolved out of an almost paranoid concern about threats to regime survival rather than policy needs for information.[55] Warner argues that non-democratic regimes create and use intelligence agencies to ensure the 'survival' of the regime. They "feel themselves beset by enemies from rival classes, races, or creeds and they build counter-intelligence states... to defend themselves from wreckers, saboteurs, *kulaks*, or non-Aryans".[56] The non-democratic regimes use their intelligence apparatus' to control, intimidate, manipulate, abuse, and oppress their ideological enemies, both domestically and abroad, with no respect for human rights and liberties, and without being democratically accountable to the people, but rather to a few political leaders. With time, as the regimes tend to increasingly rely on the intelligence agencies, their power and size increase and they shift from 'political polices' to 'independent security states,' which continue to become autonomous from the regime and become insulated from any scrutiny.[57] Since the regime now relies on the intelligence service to retain political power and it has become powerful in its own right, establishing democratic controls over it becomes extremely difficult.

2.7   Intelligence and Human Rights

The European Convention on Human Rights (ECHR), which entered into force in 1953, draws its inspiration from the UDHR. This study adapts the ECHR as it is the only international human rights agreement that provides such a high degree of individual protection. The ECHR groups human rights that a state has to protect into three categories - absolute, limited and qualified. This section will only look at those affected by intelligence activities. In the absolute category, they are known as the non-derogable rights, or those that cannot be restricted in any circumstances, even in wartime or public emergency. They

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[55] Philip Davies, 'Ideas of Intelligence: Divergent National Concepts and Institutions', *Harvard International Review*, Autumn 2002
[56] Michael Warner, 'Building a Theory of Intelligence Systems', in G. Treverton, (ed.), *Mapping the State of Research on Intelligence*, (New York: Cambridge University Press, 2009), p. 103
[57] Ibid., p. 105

include the right to life and the prohibition of torture, inhuman and/or degrading treatment/punishment. However, even though these rights are non-derogable, there are circumstances under which states may take life without contravening it, for example, defence against unlawful violence and effecting lawful arrest. The limited rights category contains the right to liberty and security of the person, fair trial and freedom of thought. They are derogable in times of war or any public emergency threatening the life of the nation. The qualified category includes the right to privacy, freedom to manifest religion or belief, freedom of expression, freedom of assembly and freedom from discrimination. They are derogable in circumstances like national security, public safety, and prevention of disorder, protection of the rights and freedoms of others.[58]

This therefore means that there needs to be a careful balance between rights and security. When dealing with temporary threats, respective roles of law, ethics and rights will determine the appropriate policies to be implemented. With absolute rights, there can be no balance since the rights are non-derogable. In the limited rights category, there is little space for a balance, while in the qualified rights category, there is space for balance.[59]

Threats to rights occur throughout the various stages of what is described as the intelligence process. For example, profiling is one technique for deciding who is to be targeted for surveillance, which, if based on ethnicity or religious affiliation rather than behavior, is discriminatory. Information gathering is the stage at which the threat to rights is most obvious. Most of the information gathered by intelligence agencies actually comes from open or published sources, but the agencies' particular skill is in obtaining information covertly, and it is this that constitutes the greatest infringement of rights.[60]

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[58] Peter Gill, 'Security Intelligence and Human Rights: Illuminating the 'Heart of Darkness'?', *Intelligence and National Security*, Vol. 24, No. 1, (February 2009), pp. 78–102
[59] Ibid.
[60] Ibid.

To avert the abuse of human rights by intelligence services, it is necessary to have an ethical framework and a structure for oversight. In the ethical framework, the rules for the conduct of intelligence will be laid down in the most general way by a statute. Normally, the final brick in all of these new legal structures is some mechanism for oversight or review of intelligence agencies and their activities, often including a legislative committee but sometimes including other bodies such as inspector-generals and committees of 'wise persons' appointed by the legislature. Ministerial directions can provide more detail but the most detailed guidelines will be written internally to the agency. However, the enforcement of these rules depends on a combination of training, management and discretion. Discretion is necessary because most organizations have parallel 'official' and 'unofficial' structures of power that sometimes overlap or conflict.[61]

This is where ethics and discretion become crucial. There are strongly held views that there is no place for ethics in intelligence, especially when examining espionage. Erskine however, disagrees and explains how the three main approaches - realist ethics, consequentialist and deontological - might be applied to intelligence activities. For her, realist ethics borrows from Hobbesian realism and rests on the moral duty of the sovereign to protect her subjects and therefore intelligence activities are legitimate and justified if they serve the well-being of the state. The consequentialist approach judges actions by the value of their consequences and may extend consideration to the interests of those outside the immediate national political community. This means that intelligence activities will be acceptable if they maximize the good through balancing the benefits of increased knowledge against the costs of how it might have been acquired. However, there is a need for 'structured reasoning' to ascertain the circumstances under which rights might be infringed in order to achieve a desired outcome. In the deontological approach, there is no need for such

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[61] Toni Erskine, 'As Rays of Light to the Human Soul? Moral Agents and Intelligence Gathering', *Intelligence and National Security*, Vol. 19, No. 2, (2004) pp. 365–366

calculations as some actions are simply prohibited. This is because one's action may become universally adopted by all other agents and people may be treated as tools, not ends in themselves. Many intelligence methods, including deployment of deception and coercion, fail to meet such standards, as intelligence activity usually involves mixtures of manipulation and deception. For the realist, this can be utilized as long as it is in the national interest; for the consequentialist, it can be utilized as long as the benefits of the knowledge outweigh the costs of acquiring it. For the deontologist, however, such methods should not be utilized.[62]

Some of the techniques that infringe on human rights are targeting, gathering through technical surveillance, use of human sources and cooperation/renditions. Targeting is done through profiling, which began after the 9/11 attacks in the US to identify Muslim extremists. As safety measures, the US intelligence developed profiles of suspects by developing data warehouses that link different public and, in some cases, private databases in ways that breach earlier data protection principles aimed at protecting privacy. This system is discriminatory, as it involves ethnic and racial profiling, which reinforces alienation.[63]

Techint involves gathering intelligence through technical surveillance and infringes on the right to privacy. However, Techint can be allowed by developing a statutory framework that involve legality, subsidiarity (using intrusive techniques as the last resort), accountability (prior authorization, record keeping and monitoring) and using the information obtained only for the purpose for which it was obtained. Humint is the use of human sources or informers and interrogation methods are the most fraught of all information-gathering methods and can raise profound human rights issues. This is because informers need to be very close to illegal activities if they are to be able to provide useful information, thus raising the issue of legality. One way of going round this is to register informers and then authorize

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[62] Toni Erskine, 'As Rays of Light to the Human Soul? Moral Agents and Intelligence Gathering', *Intelligence and National Security*, Vol. 19, No. 2, (2004) pp. 365–366

[63] Peter Gill, 'Security Intelligence and Human Rights: Illuminating the 'Heart of Darkness'?', *Intelligence and National Security,* Vol. 24, No. 1, (February 2009), pp. 78–102

them to carry out those duties. Interrogation refers to the extent to which coercion may be used to gather information from detainees. Since states do torture, it would be better to minimize its use by requiring advance judicial authority for its use in certain extreme situations. However, beyond the legal instruments, there is the issue of ethics and one of the strongest arguments against torture is the 'slippery slope' argument: that once torture or inhuman treatment is permitted in 'extreme' cases, it steadily becomes a new norm.[64]

Cooperation/renditions take place when a suspect is returned to a state where he or she is alleged to have committed a crime. These have great implications for human rights, especially when it involves an undemocratic state, as they are based on a desire to avoid the restrictions on interrogation that go on in states with poor human rights records. This transnational intelligence cooperation threatens the promotion of democracy and human rights.[65] Ball states that information exchange with authoritarian regimes comes with a price. Illiberal agencies may demand that intelligence services in liberal democracies spy on émigré or dissident groups on their behalf.[66] Apartheid South Africa, for example, was tipped off to the activities of the African National Congress (ANC) and the location of Nelson Mandela by intelligence services in Western democracies whose publics opposed apartheid.[67] Democracy and freedom are the central values of Western democracies, but they have come to mean so many different things that they are almost meaningless and they are even being used to support the most anti-democratic policies.[68]

2.8   Democratic Control of Intelligence Services

The law provides the necessary basis for intelligence as much as any other state

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[64] Peter Gill, 'Security Intelligence and Human Rights: Illuminating the 'Heart of Darkness'?', *Intelligence and National Security,* Vol. 24, No. 1, (February 2009), pp. 78–102
[65] Douglas L. Bland, 'A Unified Theory of Civil-Military Relations', Armed Forces & Society, Vol. 26, No. 1, p. 19, 1999
[66] Nicole Ball, 'Good Practices in Security Sector Reform', in Herbert Wulf (ed.) *Security Sector Reform, Bonn International Center for Conversion*-BICC, (2000)
[67] Shannon Field, (ed), *Peace in Africa, Towards a Collaborative Security Regime*, (Johannesburg: Institute for Global Dialogue, 2004), 28
[68] Op.cit., Ball, 'Good Practices in Security Sector Reform', (2000)

activities in democracy. Even in a crisis situation, necessary intelligence activities have to be carried out with respect for human rights, and much thinking needs to be done as to how this can be achieved. This is realized by establishing democratic control over intelligence services, or through a process called the democratization of intelligence. Matei and Bruneau define the democratization of intelligence as "establishing an institutional framework whereby democratically elected civilians can control the intelligence agencies and at the same time maximize their potential for effectiveness."[69] However, Warner recognizes that the automatic transmission of law into policy should not be assumed. Even if new policy guidelines were to be created, great care would have to be taken in terms of training, including ethics and supervision to ensure a new structure of 'plausible deniability'.[70]

Lowenthal argues that the concepts of democracy and intelligence create the secrecy-transparency dilemma, whereby intelligence necessitates secrecy in order to remain effective, while democracy mandates transparency. This poses a problem while establishing public accountability due to the challenges of striking the right balance between transparency and secrecy. For Lowenthal, there is no one-time solution and seeking the right balance should be an ongoing theme with respect to the changing threat scenarios.[71] Bruneau, while acknowledging that some intelligence activities are necessarily secret or are required to maintain secrecy in order to be effective, also recognizes the challenge of integrating intelligence within a democracy. He however, maintains that intelligence could be made compatible in a democracy through a trade-off between the two and by democracies investing in keeping their intelligence agencies effective.[72]

Recent efforts to democratize structures for intelligence have not been able to achieve

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[69] Florina Cristiana Matei & Thomas C. Bruneau, 'Intelligence Reform in New Democracies: Factors Supporting or Arresting Progress', *Democratization,* Vol. 18, No. 3 (2011), p. 606
[70] Thomas C. Bruneau, 'Introduction: Challenges to Effectiveness in Intelligence due to the Need for Transparency and Accountability in Democracy', *Strategic Insights,* Vol. 4, No.3 (2007), p.12
[71] Mark M. Lowenthal, *Intelligence: From Secrets to Policy* (Washington, DC: CQ Press, 2009), p. 59
[72] Op.cit., Bruneau, 'Introduction: Challenges to Effectiveness in Intelligence due to the Need for Transparency and Accountability in Democracy', p.12

compatibility between human rights and intelligence. First, new laws are a necessary condition for democratic control but they are not sufficient. From the point of view of states, the object of law is as much to empower its agencies as it is to limit their activities in the interest of citizen's rights. Secrecy is one of the aspects of intelligence and it raises key issues of legality, morality and accountability. Four elements characterize a democratized intelligence service - *responsibility, accountability, oversight* and *review* –and it is important for the terms to be clarified to avoid confusion. *Responsibility* is defined as the legal authority to act or direct action and be held accountable for results or consequences and involves those who will be held responsible for the intelligence function. This means it is necessary to clearly identify those who are responsible for any intelligence function. That responsibility comes with the authority to control the function, commensurate with the extent of responsibility. At the highest level of government, one person or group is usually designated ultimately responsible for the intelligence function. Totalitarian states and some democracies put their highly centralized government intelligence function in the hands of the head of state or a trusted subordinate. In the case where the head of intelligence is a trusted subordinate, other officers (either elected or appointed) can be designated responsible for individual departmental intelligence organizations or agencies.[73]

 Accountability is defined as the imposed liability to be called to account for decisions and actions for which one is responsible. Those designated with the responsibility for the intelligence function or an intelligence agency should also be legally liable to be called to account by some higher authority. This understanding of accountability is important, because knowing who is accountable to who allows people to identify the chain of accountability and clarify the hierarchy of responsibility. Those holding positions of responsibility for intelligence activity should also be designated accountable to a specific authority. In a

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[73] Jim Cox, Intelligence: Definitions, Concepts and Governance, Parliament of Canada, http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0922-e.htm, (Accessed 16.01.2015)

democracy, the accountability framework usually works upward, culminating in the election or appointment of people who have political control of the intelligence function and who are ultimately accountable to Parliament.[74]

Oversight is defined as the overseeing or managing of those responsible to act or direct action, which may assume higher responsibility for those results or consequences. Oversight is different from review, and it is important that these two activities are well understood before they are imposed on intelligence activity. Within governments, there have traditionally been two principal views regarding the oversight of intelligence activity. The first considers intelligence oversight to be an executive function that properly resides with elected government leaders. This is necessary to ensure the secrecy and security of information, and the sources and methods required to protect national security. Parliamentary oversight can take two slightly different forms. First, oversight bodies may be mandated to focus on the detailed work of government intelligence agencies. In such cases, members of oversight committees will be legally authorized to receive and deliberate on the most highly classified and sensitive material. However, they will also likely be legally constrained from divulging any information about what they have seen or heard in the classified discussions they are part of. If they violate secrecy laws, oversight committee members may be dealt with harshly because their access to secret information will likely be perceived as a trust granted to them in good faith solely by virtue of their positions as political representatives of the people. Second, parliamentary oversight is sometimes restricted to financial and budgetary issues for the intelligence community as a whole. Ministers and departments usually have their own oversight mechanisms. Within larger intelligence organizations, a form of 'independent' oversight may be established to assist the existing executive hierarchy. Responsibility and loyalty are of paramount importance when dealing with the oversight function, mostly

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[74] Jim Cox, Intelligence: Definitions, Concepts and Governance, Parliament of Canada, http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0922-e.htm, (Accessed 16.01.2015)

because oversight inherently involves knowledge of current and future intelligence activity.[75]

Ball argues that without vigilant oversight, intelligence networks can undermine foreign policy and circumvent safeguards established by domestic statutes and international treaties. She gives an example of transnational intelligence network arrangements, which, while benefiting the respective states through the rapid exchange of information, have a negative impact on democracy and human rights. Ball says that these transnational intelligence network arrangements can reverse policies made in democratic fora and undermine the protection of human rights. She attributes the recent human rights abuses committed by intelligence services to a systemic problem inherent in allowing intelligence services to escape the scrutiny of their transgovernmental ties.[76]

Since no oversight committee has the resources to monitor all aspects of the agencies' operations, there are some key areas to which attention should be paid. These include staffing, which involves recruitment, training, codes of ethics, international cooperation and the challenge of security networks beyond the state. They should not be left to 'insiders', who may use the minimal standards for law and rights to report. While oversight committees can never guarantee that intelligence agencies will not abuse their powers and the rights of citizens, the committee members should realize that when people believe they are acting in the interests of national security they will mislead oversight bodies, including courts.[77]

Review is defined as the after-the-fact examination of an act or direction to act, in the context of the ensuing results or consequences, which does not necessarily assume higher responsibility for those results or consequences. It is usually done by an independent person or organization. Through the review function, activity is examined after it has occurred, in the

[75] Jim Cox, Intelligence: Definitions, Concepts and Governance, Parliament of Canada, http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0922-e.htm, (Accessed 16.01.2015)
[76] Nicole Ball, 'Good Practices in Security Sector Reform', in H. Wulf (ed.) *Security Sector Reform, Bonn International Center for Conversion*-BICC, (2000)
[77] Peter Gill, 'Security Intelligence and Human Rights: Illuminating the 'Heart of Darkness'?', *Intelligence and National Security,* Vol. 24, No. 1, (February 2009), pp. 78–102

context of the ensuing results or consequences. Review mechanisms can be found inside or outside departments with an intelligence function, or both. Legislated intelligence review organizations may report independently to Parliament, or separately to a responsible minister or to both.[78]

2.9   Conclusion

Democracy is a single and universal concept, based on the free will of the people, with certain minimum conditions and defining features. Democracy may take many forms, such that in expressing their will, the people of different countries may determine different political, economic, social and cultural systems, depending on the characteristics of their societies. Democracy is not necessarily a model to be copied from certain states, but a goal to be attained by all peoples and assimilated by all cultures. It may take many forms, depending upon the characteristics and circumstances of societies and culture in question.

A great deal of effort has gone into trying to formulate a theory of intelligence without success. How the key conceptual differences in intelligence are defined shapes how intelligence would be practiced and any theory of intelligence has to incorporate the many different ideas of intelligence and their institutional and operational consequences. The same applies to democracy, which similarly has several definitions and meanings. The combination of these two concepts therefore presents a challenge to scholars and intelligence practitioners, especially when formulating democratic oversight frameworks over intelligence services.

Intelligence services have often been accused of committing human rights abuses, and this has been the driving force behind the push for democratic control of intelligence services. Responsibility, accountability, oversight and review are the key characteristics of democratized intelligence service but secrecy is an essential component of intelligence operations. Building compatibility between intelligence services and democratic institutions

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[78]   Jim Cox, Intelligence: Definitions, Concepts and Governance,   Parliament of Canada, http://www.parl.gc.ca/Content/LOP/ResearchPublications/prb0922-e.htm, accessed 16.01.2015

remains work in progress, and since there is no single solution to this dilemma, intelligence

services and democratic institutions would have to trade-off on issues as they arise.

CHAPTER THREE

STRUCTURES OF DEMOCRACY AND INTELLIGENCE IN AFRICA

3.0   Introduction

The increasing failure of democracy in Africa in recent years has left the continent politically unstable, economically crippled and incapable of resolving its conflicts peacefully. As African states struggle to establish democratic governments, they frequently succumb to authoritarian rule and face challenges of politicized militaries, weak institutions and a disjointed civil society. Even the election of civilian administrations has not guaranteed that democracy will take root. The frequent change of regimes in Africa causes instability and hinders economic growth and respect for civil rights that citizens had hoped would be the legacy of independence. To negotiate their way through such obstacles, Africa requires institutional changes consistent with democratic ideals, including passing new laws and educating citizens on democratic practices.[1]

3.1   Democracy in Africa

Most African countries were democracies at the time of their independence, as the departing British and French colonial officials left in place democratic constitutions and institutions. However, the creation of these institutions had minimal input from the African leaders and populations. In most African states, democracy did not last long, mainly due to weak state institutions, a lack of experience with and commitment to democratic procedures, especially among elites, as well as intense political rivalries, often along ethnic lines. These democratic governments were soon replaced by single-party regimes or military dictatorships. During the Cold War, Western countries ignored domestic governance issues in Africa, as they were more interested in preventing their client states from allying with the Soviet Union. This meant corruption and widespread human rights abuses in client states

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[1] Hans Born, Marina Caparini & Philipp Fulri (eds), 'Security Sector Reform and Democracy in Transitional Societies', (Baden-Baden, Germany: Nomos Verlagsgesellschaft, 2003)

continued unabated, and the West continued to support dictators such as Mobutu Sese Seko of Democratic Republic of Congo (DRC), Kamuzu Banda of Malawi and Sekou Toure of Guinea. By 1989, military, autocratic or single-party regimes governed 38 out of 45 Sub-Saharan African (SSA) countries, with only three African countries remaining democratic uninterruptedly since independence - Botswana, the Gambia and Mauritius, although the Gambia succumbed to a military coup in 1994. The lack of democracy is worsened by low literacy rates, high levels of poverty, entrenched authoritarian rulers and the reluctance of the West to intervene, as it meant losing useful allies. However, following the end of the Cold War in 1989, Western governments announced that democracy promotion would be a cornerstone of their aid to countries in Africa. A continent-wide wave of democratization began in Africa with the end of single-party rule, starting with Benin in 1991and spreading across the continent. The number of democracies in SSA rose from 3 in 1989 to 23 in 1998 and by 2009, more than 50 democratic elections had been held in Africa.[2]

The interpretation of democracy is not the same for the all the African states since it takes different forms in different countries to reflect local circumstances. Africa has however tried to find common principles and values in democracy-building through the African Peer Review Mechanism (APRM) under the New Partnership for Africa's Development (NEPAD) as mooted by the Organization of African Unity (OAU) in 2002. The African Union (AU) also adopted the African Charter on Democracy, Elections and Governance in 2007, which provides the framework for the inclusion of democratization and democracy-building in policy frameworks[3]; and the African Charter on Human and People's Rights in 1981, which promotes the respect of human rights in Africa.

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[2] Claude Ake, *Democracy and Development in Africa,* (Washington, DC: Brookings Institution, 1996), p. 135
[3] Andrew Bradley, 'The European Union and Challenges to Democracy Building in Africa',
 International Institute for Democracy and Electoral Assistance, 2009

3.2   Human rights Abuses in Africa

During the period of authoritarian rule in Africa, various forms of human rights abuses and mass atrocity crimes were committed in numerous African states. They included genocide, crimes against humanity, excessive use of force, mostly against political rivals, torture, assault, sexual violence, and extortion; others are denial of freedoms and invasion of privacy. Some of the most notable abuses have been committed in the DRC, Rwanda and Darfur in Sudan where recruitment of child soldiers, rape, burning civilians alive in their homes, unlawful killings of innocent civilians, mass killings and rape have been used as weapons of war.[4] In states like Guinea, President Sekou Toure had his political rivals arrested and taken to detention camps by the secret police, while Kamuzu Banda jailed, tortured and killed over 6,000 people during his reign. Apart from embezzling over US $5 billion from public coffers, Mobutu also carried out human rights abuses against his people.[5]

Democracy in South Africa came after years of political and economic domination by a white minority, held in power by their security forces. After the main liberation movements were banned in 1961, their members went into exile from where they continued to wage an armed struggle. Heightened repression continued throughout the 1980s, as government hit squads repeatedly attacked neighbouring countries in pursuit the liberation fighters and often, innocent civilians were the victims. Inside South Africa, a state of emergency was declared in 1986 and thousands of anti-apartheid activists were detained without trial, while government-sponsored hit squads eliminated scores of prominent activists. Thousands of civilians, including women and children, lost their lives in political violence. To carry out these executions both internally and abroad, the government mostly used the police and the Civil

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[4] Denine Walters, 'The Current Situation in Africa: Human Rights Abuses, Mass Atrocity Crimes and International Response', *Consultancy Africa Intelligence*, 2013, http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=313:the-current-situation-in-africa-human-rights-abuses-mass-atrocity-crimes-and-international-response&catid=57:africa-watch-discussion-papers&Itemid=232, (Accessed 12.01.2015)

[5] 10 Famous African Dictators, *Answers Africa*, http://answersafrica.com/famous-african-dictators.html, (Accessed 21.05.2015)

Cooperation Bureau, a section of the Special Forces of the military, which had both intelligence and operational capabilities. Within the police, the government used special units of the Security Branch of the South African Police to carry out the violent, repressive acts on the civilians.[6]

Political crises in Niger, Cote d'Ivoire, Central African Republic, Guinea, Madagascar, and Mauritania, in recent years illustrate the continuing influence of security forces on the political routes of countries in Africa. When Africa's political crises turn into coups, armed insurrections, or violent confrontations, the defence and security forces invariably become key players. For many years, such military actions were justified as an established right of state sovereignty over domestic issues. Often, they were even recognized as such by the international community.[7]

3.3 Intelligence Services in Africa

The formation of intelligence services in Africa date back to the colonial period and were created mostly to protect colonial interests. This meant that they carried out atrocities against Africans in attempts to keep them from attaining independence. But even with the attainment of independence, many European intelligence officers continued to serve in African intelligence services as expatriates, and so the same colonial attitude towards the civilian populations continued. The political elite in Africa also adopted the same tactics as the colonial governments and used the intelligence services to gain and retain political power. Therefore, African intelligence services came to be associated with limitless power, lack of accountability and impunity. To control the intelligence agencies, the heads of such agencies were not given security of tenure and a change in government sometimes meant massive layoffs for intelligence officers. The predominant role of the intelligence services, which was

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[6] Sandy Africa & Siyabulela Mlombile, 'Transforming the Intelligence Services: Some Reflections on the South African Experience', October 15, 2001, http://www.law.harvard.edu/programs/criminal-justice/south-africa.pdf, (Accessed 21.05.2015)

[7] Moussa Paye & Momar Diop, 'The Army and Political Power in Senegal', in E. Hutchful and A. Bathily (eds) *Military and Militarism in Africa*, (Dakar: Codesria Books, 1998)

not very different from political police, was therefore regime security or protection. Many intelligence services did not have their legitimate role defined and their mandate set out in law, while others, like the Special Branch (SB) in Ghana, did not have any legal basis until 1996, making them mystified and dysfunctional. In an extreme case, the SB in Ghana acted autonomously by deposing President Kwame Nkrumah in 1966, opening the path to its acute politicization and giving it a prominent role in subsequent coups in Ghana. Most African intelligence services also spied on both government and opposition figures, and engaged in extortion, torture and murder.[8]

As African states began to adopt democratic principles and reform their security sector, very few mechanisms were put in place to provide oversight or accountability for an intelligence agency's activities.[9] Most African states still lack clear mechanisms for governing intelligence beyond Parliamentary intelligence committees. At the same time, African intelligence services face serious security challenges like conflict and terrorism, and this, coupled with capacity challenges, they do not prioritize accountability and oversight. Erskine also attributes this lack of oversight to the ignorance of democratically-elected officials, whether legislative or executive, of intelligence operations. Erskine further states that in some African countries, progress in improving human rights practices, especially those of security services, has been reversed.[10] For example, in Morocco security services resumed indefinite detention of suspects in secret interrogation centres, and the government enacted a broad anti-terrorism bill that covers almost any violent crime.[11]

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[8] Eboe Hutchful, 'Preface', in S. Africa & J. Kwadjo, (eds), *Changing Intelligence Dynamics in Africa*, (Global Facilitation Network-Security Sector Reforms, 2009), p. 4-5

[9] Toni Erskine, ''As Rays of Hope to the Human Soul'? Moral Agents and Intelligence Gathering', *Intelligence and National Security*, Vol. 19, No. 2,(2004), p. 359-381

[10] Wuyi Omitoogun & Eboe Hutchful, 'Budgeting for the Military Sector in Africa: The Processes and Mechanisms of Control',: SIPRI, Stockholm (2006), p. 16-17

[11] Adolf Kloke-Lesch & Marita Steinke, Den Sicherheitskräften auf die Finger schauen. Entwicklung und Zusammenarbeit, No. 2, (February, 2002), pp. 44-47

3.4 Security Sector Reform

Barger states that when the Fourth International Security Forum was held in November 2000, the idea of Security Sector Reform (SSR) was just beginning to spread through those policy and academic communities that deal with democratization, development, defence and foreign assistance. The emergence of the concept of SSR suggested the growing acceptance of a broader definition of security other than the traditional military security of the state. In this broader definition, security has non-military elements, and the object of security is not only the state, but individuals and the society. SSR therefore expands the scope of security to include 'public security', or the safety of the individual from threats of crime, disorder and violence. SSR focuses on the use of public resources to provide security for citizens through public policy and state institutions like the military, police, paramilitary forces, intelligence agencies, border management services, the judicial system and penal institutions, as well as the state bureaucratic structures that exist to formulate policy and manage these institutions. SSR therefore refers to a holistic approach to reforming state structures responsible for providing security.[12]

SSR also emphasizes good governance, which includes the rule of law, transparent and open policy-making, a professional bureaucracy that serves the public good and a vibrant civil society that actively engages in public affairs. Good governance, when applied to the security sector, means the effective, efficient, participatory, accountable and transparent functioning of state institutions that have a monopoly of legitimate use of coercion.[13]

As reforms in other security institutions took precedence, intelligence services received less attention from scholars and those supporting the democratization processes.[14]

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[12] Deborah G. Barger, 'Toward a Revolution in Intelligence Affairs', *RAND Corporation*, Santa Monica, California, 2005)

[13] Wilhelm Agrell, 'When Everything Is Intelligence, Nothing Is Intelligence', Occasional Papers, Number 4, CIA, *Sherman Kent Center for Intelligence Analysis*, October 2002

[14] Clare Short, 'Security Sector Reform and the Elimination of Poverty'*,* A speech held at the Centre for Defence Studies, King's College, London, (1999)

Fidler attributes this to limited resources, therefore political, economic and other security institutions reforms took priority over intelligence reforms. He also blames the West for being biased against intelligence reforms. He also argues that the brutal legacy of the intelligence services in the former regimes and made the people in the emerging democracies favour the disbandment of intelligence apparatuses, not their reform.[15] However, Agrell argues that although purging intelligence personnel who had carried out atrocities during the authoritarian regime was indispensable for the transformation of intelligence, it was counter-productive, in that the purged personnel were often rehired by other institutions, with no vetting requirements and this allowed them to continue their practices in the new institutions. Others opened their own private businesses, giving competition to state agencies, as they had greater resources to procure modern equipment, while others got involved in serious corruption and organized crime activities. So no matter how many former personnel were removed, a certain number still continued to function in different capacities.[16]

For Bozeman, the slow pace of reforms in the intelligence sector under the SSR is due to the secrecy/transparency dilemma, which has allowed them to enjoy greater immunity from accountability and close oversight than other security institutions. Bozeman argues that secrecy presents unique difficulties for accountability and control because intelligence services cannot disclose their activities to the public without disclosing them to their targets at the same time. Their budgets are secret, their operations are secret and both their products and their achievements are secret. As a result, intelligence services cannot be subjected to the same rigours of public or parliamentary debate or to the same scrutiny by the media as other

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[15] Stephen Fidler, The Human Factor: All Is Not Well in Clandestine Intelligence Collection, Financial Times, London, (2004)

[16] Wilhelm Agrell, 'When Everything Is Intelligence, Nothing Is Intelligence', Occasional Papers, Number 4, CIA, *Sherman Kent Center for Intelligence Analysis*, October 2002

parts of the security sector, which is in contradiction to democratic ideals.[17] Intelligence services therefore remain the least controlled entity, as well as the most difficult to control.

The intelligence sector therefore represents the last frontier in democratization in the SSR processes. Even in established democracies, democratic governance and the rule of law reach the intelligence sector last and the development of intelligence oversight systems has followed a common path: certain activities of intelligence services encroach on legitimate democratic processes and the exercise of human rights and fundamental freedoms, provoking a season of inquiry and soul-searching, and new oversight mechanisms are created as a result.[18] Before the 1980s, the intelligence services of many countries in the West operated on executive decrees or charters and there was no legal need to obtain parliament's approval of the structure and special powers of the services. This situation changed in the US in the mid-1970s when, shocked by scandals involving domestic spying on anti-Vietnam War protesters and revelations about illegal covert operations carried out by the Central Intelligence Agency (CIA), the US Congress enacted far-reaching legislation that created a key intelligence oversight role for the Congress and other oversight mechanisms. Reforms in Australia and Canada followed and the process and gained momentum in the 1980s.[19]

Emerging democracies do not have to take this reactive approach, as the transition gives them an opportunity to lay down robust legal and institutional foundations for the oversight of intelligence services. However, the establishment of these foundations is only one small step in the complicated and challenging process of ensuring that intelligence services are not only effective in protecting national security, public safety and human rights,

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[17] Adda Bozeman, 'Political Intelligence in Non-Western Societies: Suggestions for Comparative Research', in Roy Godson, (ed.), Comparing Foreign Intelligence: The US, the USSR, the UK, and the Third World, (Washington, D.C.: Pergamon-Brassey's, 1988), pp. 115–155

[18] Todor Tagarev, 'Building Transparency and Reducing Corruption on in Defence: A Compendium of Best Practices', NATO/DCAF, Geneva, (2010), p. 64.

[19] Adolf Kloke-Lesch & Marita Steinke, Den Sicherheitskräften auf die Finger schauen. Entwicklung und Zusammenarbeit, No. 2, February, 2002, pp. 44-47

but also respectful of the rule of law and democratic principles.[20] The SSR processes currently underway within the intelligence communities in Africa provide a unique opportunity for public debate on fundamental issues like the nature and character of the intelligence services. However, in most African states, interaction, engagement and participation on democratic governance for the intelligence sector by the public has generally been absent.[21] To achieve this, it requires the existence of representative institutions at all levels and a parliament where all components of society are represented and which has the requisite powers and means to express the will of the people through legislation and oversight over government activities.[22]

Although Africa is generally recognized as the theatre where the vast majority of SSR processes are necessary, the SSR processes are mostly informed by externally-driven policy frameworks and assumptions that often do not necessarily align with the realities and sources of insecurity in Africa. The components of the security sector vary according to each national context, but in general terms and in an African context, a security sector comprises of individuals, groups and institutions that are responsible for the provision, management and oversight of security for people and the state. These include the main security institutions like the armed forces, police, gendarmerie, presidential guards, anti-terrorist units, border management, customs and immigration authorities. Others are specialized intelligence and security institutions that use intelligence to preserve state sovereignty, state security and to defend vital national interests. They may be involved in security activities such as counter-espionage, counter-terrorism and the fight against all forms of organized crime.[23]

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[20] Richard Best, *The Intelligence Appropriations Process: Issues for Congress* (Washington: Congressional Research Service, 2011)

[21] Wilhelm Agrell, 'When Everything Is Intelligence, Nothing Is Intelligence', Occasional Papers, Number 4, CIA, *Sherman Kent Center for Intelligence Analysis*, (2002)

[22] Philip Davies, 'Ideas of Intelligence: Divergent National Concepts and Institutions', *Harvard International Review*, Autumn, 2002

[23] African Union Policy Framework on Security Sector Reform, http://www.peaceau.org/uploads/au-policy-framework-on-security-sector-reform-ae-ssr.pdf, (Accessed 12.01.2015)

3.5   Accountability and Oversight of Intelligence in Africa

African political leaders have not shown much enthusiasm for developing expertise in intelligence matters or tools to control the intelligence agencies. This means that intelligence reforms in emerging democracies have been slow and frequently relegated to the back burner. Due to the fact that politicians are held accountable by their constituencies and that their primary mission is to amass sufficient electoral capital in order to get re-elected, they tend to be less willing to deal with intelligence-related issues. At the same time, these matters are secret and do not offer as much publicity as other topics, except in cases of emergency or major scandals involving the intelligence community. Fear or ignorance may be another reason that contributes to this reluctance of the politicians to actively pursue control over the intelligence services.[24]

Once a state decides to reform its intelligence services, it is best placed to decide on the mechanisms and structures that are best suited for its needs. For South Africa, it reformed its intelligence apparatus in two phases as it tried to get away from the repressive and racist security agenda of the apartheid era to a new dispensation informed by democratic principles.[25] Similar transitions occurred in Ghana, where for the first time in 1996, it introduced a legislative law and judicial oversight over its intelligence service. Kenya also reformed its intelligence service in 1998 by passing the NSIS Act 1998 and introducing parliamentary oversight over the NSIS. The formation of the Committee of Intelligence and Security Services of Africa (CISSA) by the AU was to encourage structured intelligence-sharing at the regional level.[26]

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[24] Moussa Paye & Momar Diop, 'The Army and Political Power in Senegal', in E. Hutchful and A. Bathily (eds) *Military and Militarism in Africa*, (Dakar: Codesria Books, 1998)

[25] Sandy Africa & Siyabulela Mlombile, 'Transforming the Intelligence Services: Some Reflections on the South African Experience', October 15, 2001, http://www.law.harvard.edu/programs/criminal-justice/south-africa.pdf, (Accessed 21.05.2015)

[26] Eboe Hutchful, 'Preface', in S. Africa & J. Kwadjo, (eds), *Changing Intelligence Dynamics in Africa*, (Global Facilitation Network-Security Sector Reforms, 2009), p. 8

The first transformation of South Africa's intelligence services occurred in 1994, which was mainly to shed off its apartheid past. The Intelligence Services Oversight Act, 1994 replaced the National Intelligence Service (NIS-South Africa) with the South African Secret Service (SASS) to cover foreign intelligence and the National Intelligence Agency (NIA) for domestic intelligence.[27] In 1995, the National Intelligence Coordinating Committee (NICC) was formed to coordinate the activities of South Africa's intelligence services, mainly the SASS and the NIA. NICC reports to the Cabinet through the Minister for State Security. In 2009, the NIA became a division of the State Security Agency (South Africa) and is still responsible for domestic intelligence. In August 2006, the Ministerial Review Commission on Intelligence was established with the aim of the reviewing and strengthening its mechanisms of control over the intelligence services and to ensure full compliance and alignment with the Constitution. According to the Constitution of South Africa, the President must either assume political responsibility for the control and direction of the civilian intelligence services or designate a member of Cabinet to assume that responsibility. [28] In line with this requirement, the President appointed a Minister for Intelligence Services, who is accountable to the President, Cabinet and Parliament for the exercise of his or her powers and functions. The South Africa Constitution also states that that Parliament must pass a law to provide for civilian monitoring of the activities of the intelligence services by an inspector, who is appointed by the President and approved by the National Assembly.[29] The Intelligence Services Oversight Act, 1994 provides for the appointment and functions of the Inspector-General of Intelligence.[30]

[27] Sandy Africa & Siyabulela Mlombile, 'Transforming the Intelligence Services: Some Reflections on the South African Experience', October 15, 2001, http://www.law.harvard.edu/programs/criminal-justice/south-africa.pdf, (Accessed 21.05.2015)
[28] Section 209 (2) of the South Africa Constitution, 1996
[29] Section 210 of the South Africa Constitution, 1996
[30] Op.cit., Africa & Mlombile, 'Transforming the Intelligence Services: Some Reflections on the South African Experience', October 15, 2001

The White Paper also lays down rules on how South Africa's intelligence services should be governed, and these include having democratic institutions, and intelligence services complying with democratic values such as the respect for human rights of society, the rule of law, political neutrality, accountability and parliamentary oversight, a fair balance between secrecy and transparency and an ethical code of conduct to govern the performance and activities of individual members of the intelligence services.[31] The Public Finance Management Act of 1999 and the Public Audit Act of 2004 set out rigorous regulatory obligations that ensure the heads of the intelligence services have high levels of accountability in financial matters. The budgets and financial reports of the intelligence services are reviewed by the multi-party Joint Standing Committee on Intelligence (JSCI), which does not share this information with the plenary parliament as it is restricted.[32]

Despite these accountability and oversight mechanisms, the South African intelligence services are still in danger of being politicized. This is because the heads of the services and the senior officers are appointed by the president and are required to brief him regularly on the security issues. Due to their proximity to the president, they wield a lot of power and influence and sometimes bypass the official structures and are involved in political scandals. For example, in 2005, the Directorate of Special operations (DSO) carried out an operation using intrusive means and claimed that certain African governments, including Angola and Libya, were funding a plot by the then deputy President of the African National Congress (ANC) Jacob Zuma against the then President of South Africa Thabo Mbeki. DSO was disbanded in 2008 after investigations revealed that although DSO was not an

[31] Sandy Africa & Siyabulela Mlombile, 'Transforming the Intelligence Services: Some Reflections on the South African Experience', October 15, 2001, http://www.law.harvard.edu/programs/criminal-justice/south-africa.pdf, (Accessed 21.05.2015)
[32] Ronnie Kasrils, 'Intelligence in a Democracy', *Final Report to the Minister of Intelligence Services, the Honourable Ronnie Kasrils, MP*, (10 September 2008), p. 20

intelligence agency, it had carried out an intelligence activity outside its legal mandate using intrusive means.[33]

Ghana's reforms were not driven by a post-conflict settlement but by the political, economic and security challenges that had beset the country between 1981 and 2000.[34] Political instability and insecurity brought about by military coups and politicization of intelligence hampered the economic development of Ghana. A combination of donor pressure and advocacy by the civil society pushed for democratic reforms in the security and intelligence sectors. This led to Parliament passing the Security and Intelligence Agencies Act 1996, with the aim of making intelligence agencies accountable to Parliament. Section 32 of the Act was an important milestone as it required Parliament to approve requests for funds for the intelligence services. It was an indicator of the extent of integration of the intelligence services into the overall national security systems and budgets of the country.[35]

The first reforms in the intelligence services were carried out in the 1980s, after the politicization of the intelligence services and the heavy-handedness of the officers became unbearable. The basic function of intelligence was removed from the SB and transferred to the newly-formed accountable agency the Bureau of National Investigations (BNI) while the remainder of the SB was moved to the CID to expand its investigation capacity. The Foreign Service Research Bureau (FSRB), which was formed in 1958 by President Nkrumah to project his radical pan-Africanism vision abroad, technically operated under the Ministry of Foreign Affairs, but was controlled by the Office of the President. However, as intelligence tasks became more complicated, the president carved out an elite corps from the FSRB to form the African Affairs Secretariat (AAS) and put it under the administrative and

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[33] Sandy Africa, 'The South Africa Intelligence Services: A Historical Perspective', in S. & Kwadjo, J. (eds), *Changing Intelligence Dynamics in Africa*, (Global Facilitation Network-Security Sector Reforms, 2009), pp. 77-79

[34] Johnny Kwadjo, 'Changing the Intelligence Dynamics in Africa: The Ghana Experience', in Africa, S. & Kwadjo, J. (eds), *Changing Intelligence Dynamics in Africa*, (Global Facilitation Network-Security Sector Reforms, 2009), p. 95

[35] Ibid. p. 97-98

operational control of the Office of the President. After President Nkrumah was deposed in 1966, the National Liberation Council (NLC) took over the government, disbanded the AAS, dismissed some officers, and re-integrated the rest into the FSRB at the Ministry of Foreign Affairs. Successive regimes changed the location of the FSRB until the 1980s when reforms in the intelligence sector began.[36]

Ghana's first coup in 1966 initiated successive coups, in which the intelligence services had a hand in all. All these conspiracies that culminated in coups eventually led to the collapse of the intelligence apparatus after the December 1981 coup. The process of rebuilding the intelligence sector began in April 1982, when the National Security Adviser (NSA) carved out a new intelligence service from the old SB to form the BNI, marking the end of the SB. The Military Intelligence Unit (MIU) was also dissolved, all intelligence activity transferred to the BNI and the new military intelligence unit renamed Defence Intelligence. The NSA took control of the BNI, which was made independent of the Police and the Military. The NSC Secretariat became the collating centre for reports from both the internal and external intelligence agencies, and hosts regular meetings of the Joint Intelligence Committee (JIC), which is chaired by the NSC Coordinator and members are drawn from all heads of intelligence agencies, the Commissioners of Police in charge of operations and CID and senior analysts from the NSC Secretariat. These changes, although slow, laid the foundation for future oversight mechanisms.[37] The 1992 Ghana Constitution established the NSC as a framework for managing national security. It also formally recognized the FSRB and made its head a member of the NSC and placed it under the Ministry of National Security. The heads of Internal intelligence and Defence Intelligence were also made members of the NSC. The Constitution stripped the intelligence services of

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[36] Johnny Kwadjo, 'Changing the Intelligence Dynamics in Africa: The Ghana Experience', in Africa, S. & Kwadjo, J. (eds), *Changing Intelligence Dynamics in Africa*, (Global Facilitation Network-Security Sector Reforms, 2009), p. 99-100
[37] Ibid. p. 101-105

their previous anonymity and made them subject to law. In addition, Article 85 of the Constitution prohibited the executive from forming any other organization or agency with security functions, thus ending the possibility of shadowy outfits operating illegally.[38] The Constitution also created the Commission of Human Rights and Administrative Justice, whose role was to guarantee the rights and freedoms of Ghanaians and ensure that the security organs did not carry out arbitrary arrests, torture and illegal detentions.[39]

Despite these reforms, oversight over intelligence did not improve much due to the polarized politics of Ghana. When the main opposition party was defeated in the 1992 presidential elections, they boycotted the parliamentary elections, which resulted in a government-dominated House until the 1996 general elections. The absence of a strong opposition in Parliament meant that scrutiny of intelligence operations and effective oversight were missing. At the same time, turf wars between the various intelligence services continued, as they resisted being submerged under one national body, and this paralyzed the effectiveness of the NSC. However, the 1996 general elections were held with the full participation of the opposition and although the incumbent President Jerry Rawlings won the elections, Parliament was able to exert more pressure on the government for greater transparency and accountability over its security agencies. Demands for parliamentary and civil society oversight over intelligence services became a common topic in public debate, which culminated into the passage of the Security and Intelligence Agencies Act 1996. The Act clearly stated the functions of the intelligence services and provided parliamentary oversight over them. While some officers resisted this move on the grounds that intelligence operations were secret and therefore not open to parliamentary scrutiny, others welcomed the changes, as it gave them a legal basis for their previously unregulated activities and also

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[38] Article 83, Constitution of Ghana

[39] Johnny Kwadjo, 'Changing the Intelligence Dynamics in Africa: The Ghana Experience', in S. Africa, & Kwadjo, J. (eds), *Changing Intelligence Dynamics in Africa*, (Global Facilitation Network-Security Sector Reforms, 2009), pp. 106-107

guaranteed them security of tenure.[40] In 1998, the Minister for National Security released the *Policy Directives for Intelligence Agencies*, which clearly spelt out that the collection and analysis of intelligence should be restricted to the detection of illegal political activities aimed overthrowing the government.[41] Ghana recognizes that it has gone a long way in building oversight mechanisms over its intelligence services but there are possibilities of another coup, which would reverse all the gains made in intelligence reforms. The only way to avoid reversals in intelligence reforms therefore is to keep the reform process moving.

3.6   Reforms of Intelligence in Kenya

The intelligence community in Kenya consists mainly of the NIS and the Directorate of Military Intelligence (DMI). The DMI is purely military intelligence and provides military-related intelligence to military commanders. This study focuses on the NIS.

3.7.1   Evolution of the National Intelligence Service

The NIS was established by the NIS Act of 2012 and operates as a disciplined civilian organization under the Presidency. The NIS evolved from the SB, which started as a section in the CID in 1926 under the Police Commissioner. When the Mau Mau revolution broke out in 1952, the SB was made a department under the Police Commissioner. At independence, the SB remained under the Police Commissioner but operated under a Presidential Charter, which was again renewed in 1969. In 1986, the SB was transformed into the DSI under a new Presidential Charter, which remained operational until 1998, when the National Security Intelligence Service Act was enacted.[42] For the first time in Kenya's history, the intelligence service would be governed by an Act of parliament and not a Presidential Charter. For the first time, Kenyans, through their members of Parliament were able to openly talk about their

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[40] Johnny Kwadjo, 'Changing the Intelligence Dynamics in Africa: The Ghana Experience', in Africa, S. & Kwadjo, J. (eds), *Changing Intelligence Dynamics in Africa*, (Global Facilitation Network-Security Sector Reforms, 2009), pp. 106-107, p. 108-110

[41] Ibid. p. 114-115 & 117-118

[42] Mildred A. J. Ndeda, 'Secret Servants: A History of Intelligence and Espionage in Kenya, 1887–1999', Report Submitted to the National Security and Intelligence Service of Kenya on 30th January 2006, p.110

expectations of the intelligence and set limits on how far they could go when performing their duties. The most controversial issue was police powers of arrest, which parliament categorically refused to allow due to the past misuse of these powers. Parliament also sought to restrict the NSIS to security issues only and not political issues. With the passing of the Act, the NSIS was no longer at the beck and call of the president and was expected to be neutral in all political issues. The Director-General (DG) became the principal advisor to the President and the government on matters relating to national security and intelligence. Although the Act allowed the president to appoint the DG, it limited the office holder to two terms of five years each. The NSIS Act 1998 also stipulated the powers and functions of the NSIS, which were to investigate, gather, evaluate, correlate, interpret, disseminate and store information, whether inside or outside Kenya, for the purposes of detecting and identifying any threat or potential threat to the security of Kenya; to advise the President of any threat or potential threat to the security of Kenya; and gather ministerial intelligence for government Ministries, departments or agencies. For the first time, intelligence officers were required by law to apply for a warrant from a judge of the High Court to invade the privacy of people considered a security threat to Kenya.[43]

The NSIS Act also created the National Intelligence Security Council (NSIC), which comprises of the Ministers of Internal Security, Foreign Affairs, Finance, the Attorney General and the Permanent Secretary, Secretary to the Cabinet and Head of the Public Service, with the DG as the Secretary to the Council. The functions of the Council are to advise the Service generally on all matters pertaining to national security and intelligence policies; the general administration of the Service; and the expenditure of the Service. To assist the Council carry out its functions better, the Act allowed the Council to establish functional committees and so it established the NSAC and the Joint Security Intelligence

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[43] Section 22, National Security Intelligence Service Act 1998

Secretariat (JSIS). [44]

The promulgation of the Constitution in 2010 was a turning point in the history of Kenya in terms of the democratization of intelligence. An important milestone in the Constitution was the Bill of Rights. In Chapter Four, the Bill of Rights clearly spelt out the rights of Kenyans, stating that they were belonged to each individual and are not granted by the state. These rights include the right to privacy, freedom and security, freedom of association, assembly, demonstration, picketing and petition. Other rights are to freedom from torture and cruel, inhuman or degrading treatment or punishment, freedom from slavery or servitude, the right to a fair trial and the right to an order of *habeas corpus.* Every person also has inherent dignity and the right to have that dignity respected and protected, not subjected to torture in any manner, whether physical or psychological, subjected to corporal punishment; or treated or punished in a cruel, inhuman or degrading manner.

Every person also has the right to privacy, which includes the right not to have their person, home or property searched, their possessions seized, information relating to their family or private affairs unnecessarily required or revealed or the privacy of their communications infringed. Freedom of conscience, religion, thought, belief and opinion, freedom and independence of electronic, print and all other types of media, to information held by the State, freedom of association, which includes the right to form, join or participate in the activities of an association or political party of any kind and the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities are also guaranteed. Kenyans also have the right to freedom of movement, to leave Kenya and to acquire and own property of any description in any part of Kenya. [45]

The NSIS Act 1998 also established the Complaints Commission and any person aggrieved by an act by any member of the Service in the exercise of the performance of the

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[44] Section 23, National Security Intelligence Service Act 1998
[45] The Constitution of Kenya, 2010

functions of their duties could formally make a complaint. Members of the Complaints Commission are appointed by the President on the advice of the Judicial Service Commission and consists of a chairman who a person who holds or has held or is qualified to hold office as a judge of the High Court or of the Court of Appeal and four other people, one of whom must be an advocate of not less than seven years' standing; and a religious leader of national repute. The functions of the Commission shall are to inquire into complaints against the Service; and to inquire into any matter referred to it by the President under this Act and make its recommendation thereon to the President. The Commission has powers of the High Court to summon any witnesses, to administer oaths or affirmations and to order the production of any documents relevant to the investigation. If at any stage during the course of an inquiry, the Commission feels there is evidence of any breach of duty or misconduct by any officer of the Service, it shall inform the President, the NSIC or the DG and appropriate disciplinary action should be taken against the officer.[46]

With the promulgation of the 2010 Constitution, the NSIS again transformed into the National Intelligence Service under the NIS Act 2012. The Constitution established the NIS under Article 242 (1) and gave it the responsibility of security intelligence and counter-intelligence to enhance national security. The word 'Security' was removed from its name, allowing the Service to cover political activities, but under restrictions. The NIS Act was more elaborate then the NSIS Act 1998, going into details on what the Service as expected to do and not do. The NIS Act states that the powers and functions of the Service were to be exercised and performed only in the interests of national security, Kenya's foreign relations or national economic well-being. The Service was also given the responsibility to undertake security intelligence and counter intelligence to enhance national security in accordance with the Constitution. While fulfilling, its mandate, the Service had to observe and uphold the Bill

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[46] Sections 24-27, National Security Intelligence Service Act, 1998

of Rights, the values and principles of governance under Article 10(2), the values and principles of public service under Article 232(1) and the principles of national security in Article 238(2) of the Constitution. Intelligence officers also have to strive to achieve the highest standards of professionalism and discipline, prevent corruption and promote and practice transparency and accountability, comply with the constitutional standards of human rights and fundamental freedoms, train its staff to the highest possible standards of competence and integrity and to respect rights and fundamental freedoms and dignity.[47]

Intelligence officers are prohibited from carrying out police functions, undertaking paramilitary activities, committing an act of violence against a person or undertaking any activity that would further the interests of a political party or political cause, whether within or outside Kenya. While performing their duties, the intelligence officers, including the DG, should not be partisan, especially in political activities. The DG is also responsible in ensuring that the officers obey the Public Officer Ethics Act and the law relating to matters of leadership, ethics and integrity. Members of the Service are strictly barred from subjecting any person to torture, cruel, inhuman or degrading treatment.

3.7.2   Kenya's National Security System

Article 238 (1) of the Kenya Constitution states that "National security is the protection against internal and external threats to Kenya's territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests." Article 239 (1) spells out the national security organs, which are the Kenya Defence Forces; the NIS; and the National Police Service.[48]

The Constitution also establishes Kenya's security machinery to deal with national security issues. Top on the list is the National Security Council (NSC), established under

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[47] National Intelligence Service Act 2012
[48] Articles 238 & 239, Constitution of Kenya

Article 240 (1) of the Constitution. The NSC comprises of the President; Deputy President; Cabinet Secretaries responsible for defence, foreign affairs and internal security, while the Cabinet Secretary Finance is a co-opted member. Other members are the Attorney-General, the Chief of Kenya Defence Forces, the DG NIS and the Inspector-General of the National Police Service. The NSC has supervisory control over national security organs and therefore exercises executive control over the NIS. The NSC has to report to Parliament annually on the state of the security of Kenya.[49]

The NIS Act 2012 also reinforced the NSIC, giving it powers to co-opt other members who have the knowledge and skills are necessary to perform the functions of the Council but were not given voting powers.[50] In addition to the NSAC and JSIS, the NSIC also created the County Security Committees, the Sub-County Security Committee, the Maritime Security Committee and the Border Security Management Committees.

The NIS Act 2012 also enhanced the Complaints Commission and renamed it the Intelligence Service Complaints Board. Board members are appointed by the cabinet secretary and its membership remained the same, but specified that of the four members, one should be a person nominated by the Kenya National Commission on Human Rights, another a retired senior intelligence officer, while of the other two, one should be an advocate of not less than seven years standing and the other a person who has at least seven years experience in public service. The functions of the Board remain the same as in the NSIS Act 1998.[51]

The Constitution also gives Parliament powers to exercise oversight over the NIS under Article 238(2) through the relevant Parliamentary Committees. Currently, the Committees exercising oversight over the NIS are the Defence and Foreign Relations Committee, whose mandate is defence, intelligence, foreign relations, diplomatic and consular services, international boundaries, international relations, agreements, treaties and

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[49] Section 64, National Intelligence Service Act, 2012
[50] Ibid.,
[51] Sections 66-68, National Intelligence Service Act, 2012

conventions. The other one is the Administration and National Security Committee, whose mandate is national security, police services, home affairs, Public Administration, Public Service, Prisons, Immigration and the management of natural disasters, community service orders.

3.8   Conclusion

Africa has faced a myriad of security and political challenges since independence, emanating from both the external and internal environments. The political elite that admirably won the battle for independence turned into despots and unleashed a reign of terror on their citizens. Consequently, most African nations have not experienced the social balance, respect for human and civil rights, or economic development that citizens hoped would come from the attainment of independence. Intelligence services are key to overcoming these challenges, but for them to operate effectively, they must be accountable for their actions and under the firm control of elected authorities. To achieve this, African states need to adopt democratic practices and have strong security agencies that are accountable to democratic institutions.

Despite the concept of SSRs spreading in 2000 and targeted at security agencies, including intelligence services, emerging democracies in Africa still does not have enough mechanisms to provide oversight or accountability for their intelligence services. The major challenge is coming up with workable accountability and oversight mechanisms. Performance evaluation of the activities of intelligence services is knowledge-intensive, and is a difficult challenge for intelligence oversight practitioners. Although Africa may lack the expertise to carry out reforms in the intelligence sector, significant institutional reforms have been carried out, especially in South Africa, Ghana and Kenya, legislations have been laid out as accountability and oversight tools to control the activities of the intelligence services.

CHAPTER FOUR

AN EXAMINATION OF THE DEMOCRATIZATION OF THE NATIONAL INTELLIGENCE SERVICE
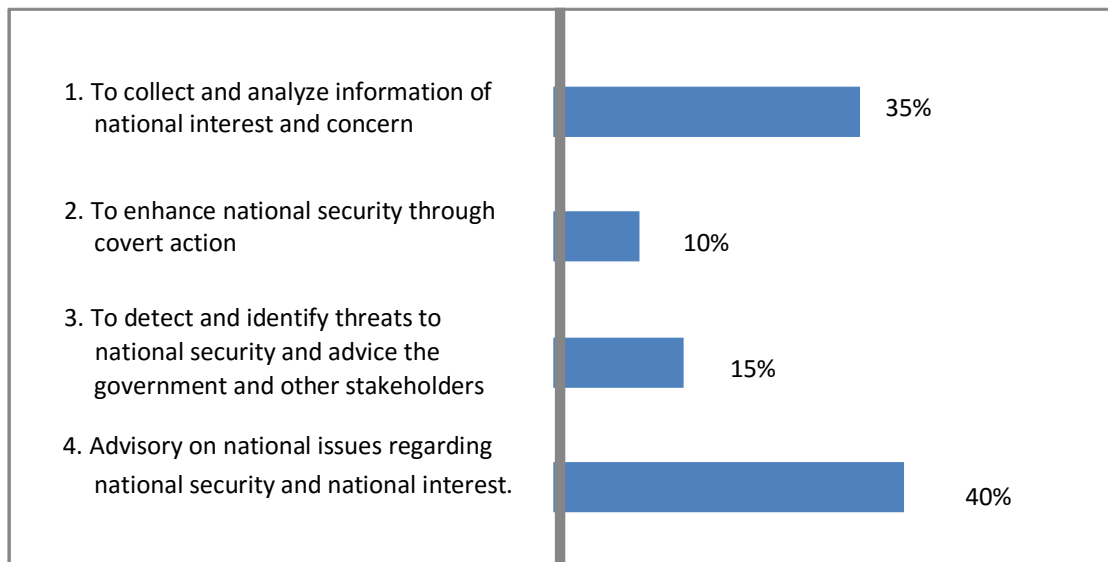
4.0   Introduction

The chapter looks at the influence of democracy on intelligence services; the role of intelligence services and how they are affected by political regimes in Africa; and the democratization of intelligence services in Africa with focus on Kenya.

4.1   Role of Intelligence Services

The respondents agreed that the role of intelligence services is to ensure or enhance national security, to collect and analyze information of national interest as well as to detect and identify threats to national security and give advice to relevant authorities. Another role of intelligence services to enhance national security through covert action and strategies. However, the methods of espionage, goals and tactics of covert action and the professional conduct of intelligence officers are typically hidden from public scrutiny. These views are in line with Vitkauskas' opinion that the principal task of an intelligence service is to defend the state against threats to its national security, and since these threats are usually planned covertly, the service needs intelligence to counter them.[1] The results from the study regarding the role of intelligence services according to the views of the respondents is as shown in figure 4.1 below.

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[1] Dovydas Vitkauskas, 'The Role of a Security Intelligence Service in a Democracy', *Democratic Institutions Fellowships Programme 1997-1999*, North Atlantic Treaty Organization, (June 1999), pp. 1-57:3

Figure 4.1: Role of an Intelligence Service

Bar chart showing:
1. To collect and analyze information of national interest and concern — 35%
2. To enhance national security through covert action — 10%
3. To detect and identify threats to national security and advice the government and other stakeholders — 15%
4. Advisory on national issues regarding national security and national interest. — 40%
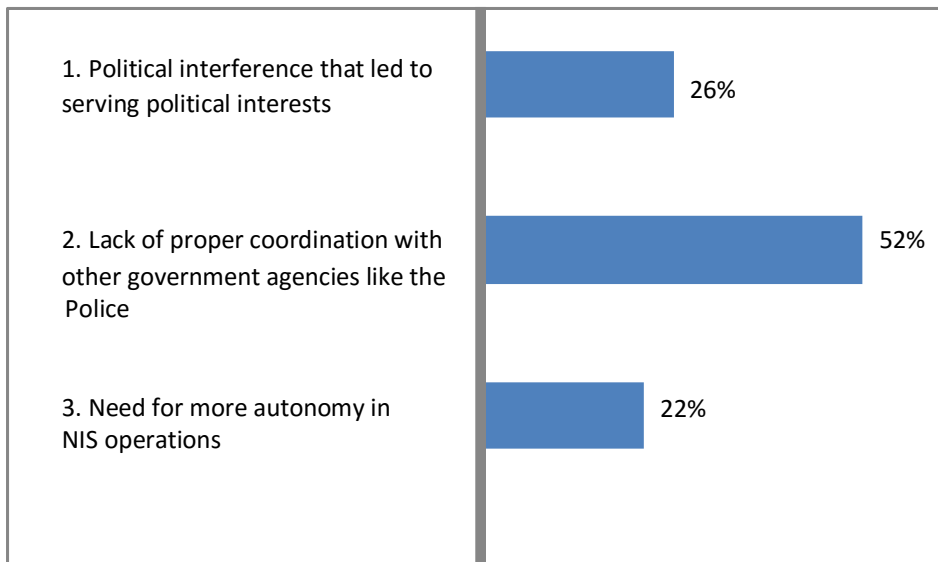
Source: Author, 2015

The National Security Intelligence Service Act 1998 and the National Intelligence Service Act 2012 changed the role of members of the intelligence service from police officers empowered to directly take action against perceived threats to national security to civilians who only advise policy-makers and law enforcement agencies on the threats.[2] The study established that the NIS officers have been carrying out their duties with respect to the rule of law and human rights. However, the NIS experiences challenges in this area due to poor coordination with law enforcement agencies, especially the Police, and political interference from influential members of the ruling political party/elite. These factors lead to moral conflicts for the NIS officers due to the ethical implications.

The study established that sometimes the NIS officers operated outside their specified mandate. One of the reasons for this was the lack of proper coordination between the relevant security agencies or government ministries/departments. The study also revealed that sometimes some NIS officers served political interests at the expense of national interests. NIS officers felt that there was need for more autonomy for the Service to deter political

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[2] National Security Intelligence Service Act, 1998 & National Intelligence Service Act, 2012

interference. These findings are in line with arguments posed by Lowenthal that if new policy guidelines were to be created, great care has to be taken in terms of training, including ethics and supervision ensure that a new structure of 'plausible deniability'.[3] These findings are as detailed in the figure 4.2 below.

Figure 4.2: Factors Challenging the Mandate of the Intelligence Service
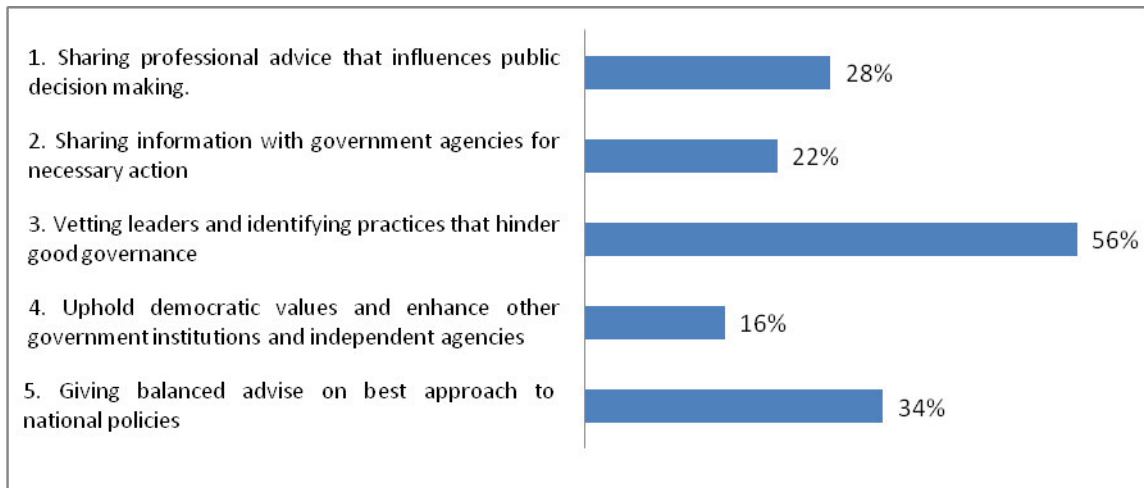

Source: Author, 2015

The role of the intelligence service in governance cannot be underrated. The quality of governance is an important indicator of a democratized intelligence service. The study established that the NIS contributes towards a high quality of governance through sharing professional advice with policy-makers and the law enforcement agencies, which ensures sound public decision-making. This finding is in line with Fidler's argument that intelligence services should work closely with other members of the government to deliver Whole-of-Government outcomes.[4] This active engagement and communication ensures a coordinated approach to intelligence activities and appropriate use of government resources. The study revealed various ways in which intelligence services contribute to improvement in quality of governance. One is through intelligence analysis as a way of reducing the ambiguity in highly

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[3] Mark M. Lowenthal, *Intelligence: From Secrets to Policy* (Washington, DC: CQ Press, 2009), p. 8
[4] Stephen Fidler, 'The Human Factor: All Is Not Well in Clandestine Intelligence Collection', Financial Times, London, 2004

ambiguous situations. The NIS officers suggested a more assertive role in the response to the security needs in the country. The Service also seeks better acknowledgement of their role and contribution to governance. The information outlined from the study findings in regard to role of NIS in governance is as summarized in the figure 4.3 below

Figure 4.3 Contribution of NIS in Governance

1. Sharing professional advice that influences public decision making. — 28%
2. Sharing information with government agencies for necessary action — 22%
3. Vetting leaders and identifying practices that hinder good governance — 56%
4. Uphold democratic values and enhance other government institutions and independent agencies — 16%
5. Giving balanced advise on best approach to national policies — 34%
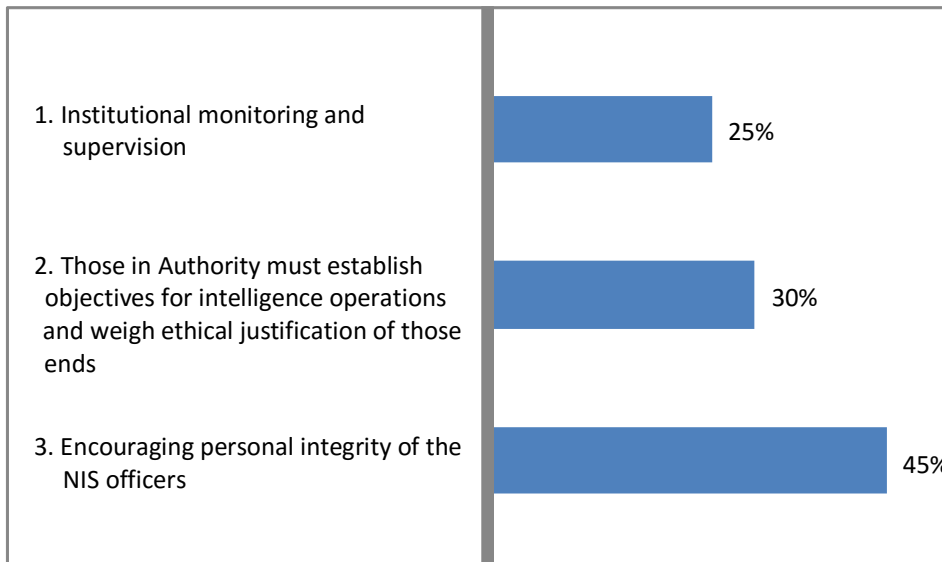
Source: Author, 2015

4.2   Politicization of the Intelligence Service

The study findings unveiled that the level of politicization in the NIS has been has been minimal in the recent years especially since the promulgation of the new Constitution in 2010. This is unlike prior 2010, when the level of politicization was high due to the low levels of democracy in Kenya and intelligence agencies were used by the executive as tools to manipulate and maintain political power. However, despite attempts at neutrality in politics, the NIS has to interact with political institutions and influential political leaders as part of its operations. These leaders sometimes request NIS officers to advance political and personal interests and have on several occasions undermined the operations of the Service by denying it funds under the guise of oversight. This necessitated the need to establish the effective ways of keeping away politicization away from the Service.

Encouraging personal integrity of the NIS officers was proposed as one of the strategies to enhance commitment to the professional mandate. This is in line with Short's proposal that an organization should do away with wrong kinds of incentives and pressures, and cultivate, monitor and reinforce professionalism institutionally.[5] Another suggestion from the study is that those who have the authority to establish objectives for intelligence operations must not only weigh the ethical justification of those ends but must also raise ethical questions about the various means being considered to achieve them. Intelligence officers in the field, in turn, must be trained to recognize ethical issues as such, and must be allowed to communicate their concerns to their supervisors without fear that this would jeopardize their careers. However, the study revealed that these strategies may not work due to the implications of the Oath of Secrecy that intelligence officers must swear before joining the Service. Like military personnel, they cannot appeal in the face of clearly improper orders from a superior, and unlike other public servants, they do not have the option of 'going public' with an issue or order they consider illegal or immoral if the internal 'whistle-blowing' procedure proves to be unsatisfactory to them. Public discussion is not possible without a gross violation of classification rules and the professional ethics of the intelligence officer. This information is as shown in figure 4.4 below.

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[5] Clare Short, 'Security Sector Reform and the Elimination of Poverty', A speech read at the Centre for Defence Studies, King's College London, 1999

**Figure 4.4 Strategies to Eradicate Politicization of NIS**

Source: Author, 2015

4.3   Influence of Democracy on Intelligence Services

In a democracy, the issue of tasking is an important tool for elected authorities in directing intelligence services to focus their attention on gathering information within desired areas of intelligence. For better oversight, democracies separate their intelligence services into foreign and domestic security intelligence. They also separate the functions of the intelligence services from those of the law enforcement agencies (national police). This study revealed that the role of the NIS as spelt in the Constitution, which had a input from citizens on what they want the role of the intelligence service to be, and the National Intelligence Act 2012, the Kenya Defence Forces, the National Police Service and the NIS have different functions. The Kenya Defence Forces' main responsibility is to deter external threats, while the National Police Service maintains law and order and deals with internal threats. The NIS collects relevant information regarding the potential threats to national security, whether external or internal. The study showed that this arraignment works well, as the functions of the Police should not be intermingled with the functions of intelligence. The study findings in this regard were recorded as shown in the Figure 4.5 below.

Figure 4.5: How Democratic Changes have Influenced Democracy
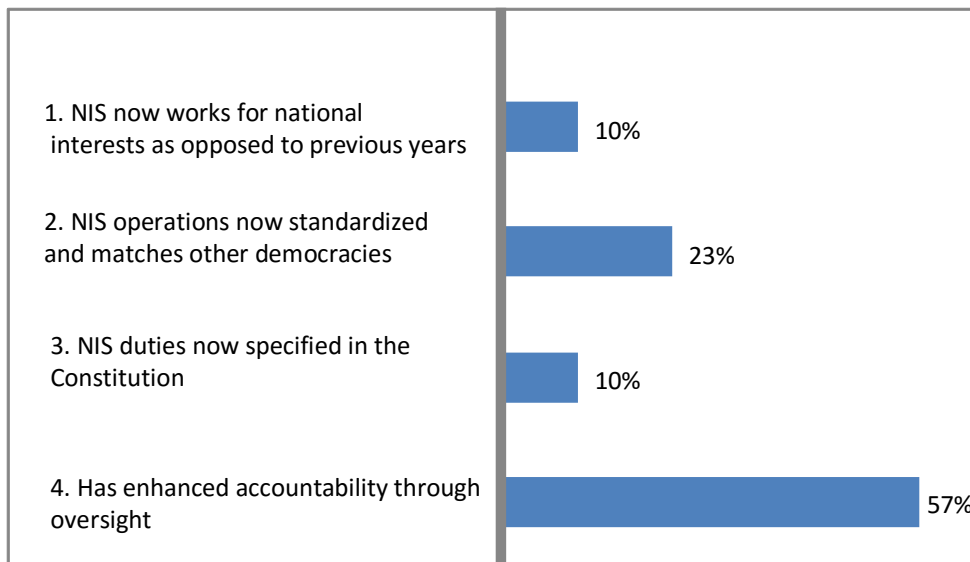
Source: Author, 2015

The democratization process in the country has generally seen all constitutional bodies undergo reforms to conform to the Constitution. The NIS, being a crucial institution in enhancing the implementation of the Constitution and also affected by the changes in the Constitution, also underwent reforms. The major sections of the Constitution that directly affected the NIS operations were the Chapter Four on the Bill of Rights and Chapter Six on Leadership and Integrity. The study found that after promulgation of the Constitution in 2010, the NIS aligned its operations with specific guidelines of the Constitution through the National Intelligence Service Act, 2012, which defined the framework for its operation. NIS operations were also standardized by benchmarking with best international intelligence services. Accountability is now evident with a professional Code of Conduct guiding the operation within the agency as opposed to 'orders from above'. These findings complement arguments by scholars like Gill who say that the intelligence services should be law-abiding and uphold human rights, act fair among political organizations, both opposition and the government.[6] Similarly, the NIS changed its focus and began working majorly for national interests and for the benefit of the citizens. This is in line with Davies' point of view that

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[6] Peter Gill & Mark Phythian, *Intelligence in an Insecure World*, (Polity Press, Cambridge, 2006), p. 149

Performance evaluation of the activities of intelligence services is knowledge-intensive, and therefore should be subjected to some level of control for accountability.[7]

The study reveals that the changes had a positive effect on all organs of the NIS. The officers no longer feared that they would be forced to use questionable techniques to collect intelligence. Another positive effect was that the Service could no longer accumulate too much political power and therefore become difficult to control. This has been achieved through accountability and oversight. However, those given responsibility for accountability and oversight feel that the veil of secrecy remains a major hindrance to the reforms and has been misused to evade accountability by rogue intelligence officers to conduct operations that are above their mandate.

Intelligence and democracy are two concepts that on face value, do not appear to be in sync. Intelligence implies secrecy while democracy goes hand-in-hand with transparency and accountability, which are achieved through well-structured oversight. SB and DSI operations were characterized by secrecy and confidential expenditure due to the nature and their work and the political regimes of their times. The study has however established that Parliament has been able to integrate intelligence operations and democratic accountability and transparency by establishing a proper level of oversight for the NIS. This is in line with Matei and Bruneau's views that democratization of intelligence means "establishing an institutional framework whereby democratically elected civilians can control the intelligence agencies and at the same time maximize their potential for effectiveness."[8] Bruneau, while acknowledging the challenge of integrating intelligence within a democracy, recognizes that some intelligence activities are necessarily secret or are required to maintain secrecy in order to be effective. He therefore recommends that intelligence could be made compatible with

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[7] Philip Davies, 'Ideas of Intelligence: Divergent National Concepts and Institutions', *Harvard International Review*, Autumn, 2002

[8] Florina Cristiana Matei & Thomas C. Bruneau, 'Intelligence Reform in New Democracies: Factors Supporting or Arresting Progress', *Democratization,* Vol. 18, No. 3 (2011), p. 606

democracy through a trade-off between the two and by democracies investing in keeping their intelligence agencies effective.[9] The NIS has used training and capacity building of its staff to ensure effectiveness of NIS and strived to provide unbiased intelligence to policy-makers. NIS also worked closely with the Commission on the Implementation of the Constitution (CIC) to ensure a proper framework for the democratization of NIS. On the other hand, various government organs have formulated a clear foreign policy that promotes national interests. These finding resonates with Todor, who emphasizes good governance that includes the rule of law, transparency and open policy-making; a professional bureaucracy that serves the public good; and a vibrant civil society that actively engages in public affairs. Tagarev also suggests that training should involve outlining the constitutional implications in regard to the mandate of the intelligence officers.[10]

Foreign policy is a major factor when it comes to advancing national interests in relation to international matters. According to Barger, the global nature of security issues and increased foreign threats has led to the need for intelligence-sharing across states and regions.[11] In this respect, the study found that part of the efforts made to democratize the NIS was through implementation of proper foreign policy to promote and protect national interests. It is believed that through sharing of information with more experienced democracies like the US and European states, the NIS has been able to borrow best practices and contributed to reforms in the Service. Through this, the NIS has become more effective and is able to provide impartial intelligence to policy-makers. These strategies are summarized in the Figure 4.6 below.

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[9] Thomas C. Bruneau, 'Introduction: Challenges to Effectiveness in Intelligence due to the Need for Transparency and Accountability in Democracy', *Strategic Insights,* Vol. 4, No.3 (2007), p.12

[10] Todor Tagarev, 'Building Transparency and Reducing Corrupt on in Defence: A Compendium of Best Practices', *NATO/DCAF*, Geneva, 2010, p. 64

[11] Deborah G. Barger, 'Toward a Revolution in Intelligence Affairs', *RAND Corporation*, Santa Monica, Calif., 2005

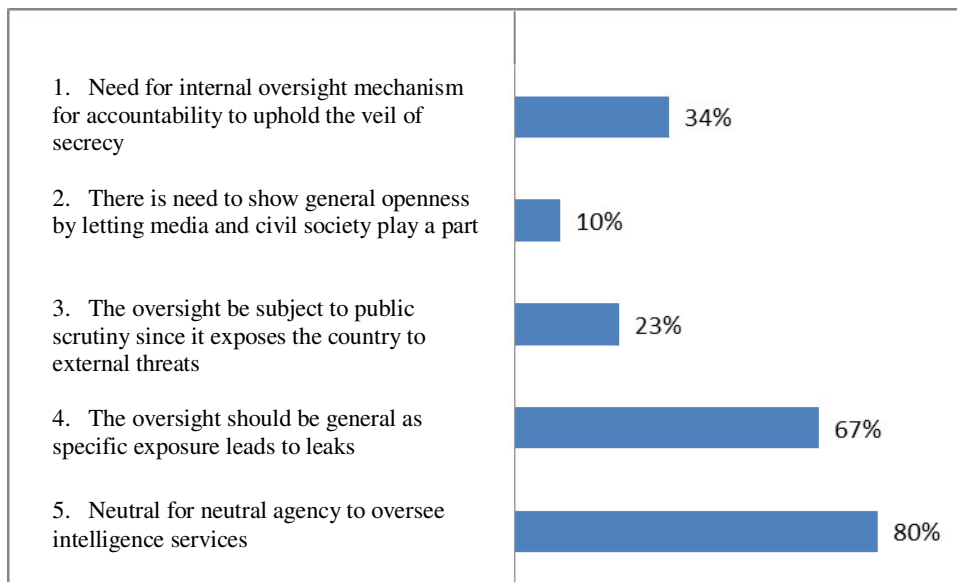**Figure 4.6: Actions toward Democratization of the NIS**
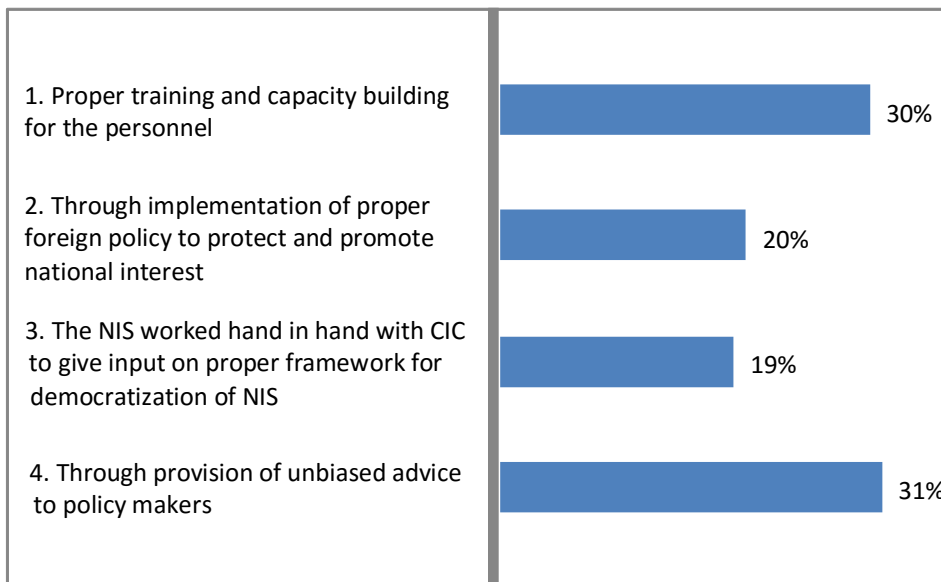
Source: Author, 2015

4.4.1 Oversight for the Intelligence Services

According to Bissell, in a democracy a great deal of attention is paid to the effective conduct of legislative oversight of intelligence communities.[12] Parliament has a duty make certain that the civil rights of citizens are not impaired by the operations of the intelligence service. This oversight is vital for transitional democracies because it gives an elected government full power over the intelligence community and access to the information about intelligence agencies' activities and their final intelligence product. Legislative oversight concerns the policies and administrative aspects of intelligence agencies, the efficiency of the intelligence community, and its budget, which gives a parliament power over intelligence. In democracies, this is looked at as a type of control through the prism of the common principles of intelligence oversight. The study sought to establish the opinion on whether the oversight structures currently available are proper and adequate to conduct oversight for the NIS. The findings are as shown in figure 4.7 below.

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[12] Richard M. Bissell, Jr., Jonathan E. Lewis & Frances T. Pudlo *Reflections of a Cold Warrior: From Yalta to the Bay of Pigs* (New Haven: Yale University Press, 1996), p. 207

Figure 4.7: Proper Oversight for Intelligence Services

1. Need for internal oversight mechanism for accountability to uphold the veil of secrecy	34%
2. There is need to show general openness by letting media and civil society play a part	10%
3. The oversight be subject to public scrutiny since it exposes the country to external threats	23%
4. The oversight should be general as specific exposure leads to leaks	67%
5. Neutral for neutral agency to oversee intelligence services	80%

Source: Author, 2015

The study established that the proper oversight for intelligence services can be achieved through setting up a neutral body to oversee the intelligence services, contrary to Bissell's argument that proper oversight should be done by elected representatives.[13] According to those in support of this view, the rationale for such an agency is to have a forum of oversight that understands the specific requirements of NIS and the reason why some expenditures and activities of the NIS are inevitable. Warner also supports this view, arguing that the intelligence services by nature should be excused from public scrutiny since public exposure endangers national security.[14] Those in support of this view propose that such an agency can then be accountable to the political institutions at a general level. This was complemented by the suggestions made by NIS officers of the need for oversight bodies not to ask for specific information on expenditure, since this could lead to leaking crucial information to enemies of the state.

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[13] Richard M. Bissell, Jr., Jonathan E. Lewis & Frances T. Pudlo *Reflections of a Cold Warrior: From Yalta to the Bay of Pigs* (New Haven: Yale University Press, 1996), p. 207

[14] Michael Warner, 'Building a Theory of Intelligence Systems', in G. Treverton (ed.), in *Mapping the State of Research on Intelligence,* (New York: Cambridge University Press, 2009), p.

Other suggestions for proper oversight were based on having internal mechanisms for oversight, as these enhance bottom-up accountability of the Service and hence enable the reasonable oversight by external bodies. This opinion was however contested by those who feel that no government body can be accountable to itself and they cite the clause that allows the NIS to incur confidential expenditure, which in the past has raised eyebrows from oversight bodies, especially in parliament. There was a suggestion from the study findings that there is need for the NIS to be more open to the media and general public, since with the reforms allow for more public accountability. However, this is not recommended, as it could expose the state to internal and external threats.

Members of Judiciary however suggested that overall, functional division and structural changes inside intelligence communities should be based on common principles that democracies use to enhance the oversight of their intelligence agencies. The separation of intelligence from the law enforcement function, professionalization of intelligence agencies, and creation of all-source intelligence analysis are common norms that help democracies to control the intelligence community. Members of the Judiciary recommended that the norms of operation and accountability should be established within a legal framework and spelt out in accordance with the national legislature.

4.4.2   Challenges to Achieving Proper Oversight for Intelligence Services

Legislative oversight concerns the policies and administrative aspects of intelligence agencies, their efficiency and budget. Kenya's national Assembly has two departmental committees that provide oversight to the NIS. One is the Defence and Foreign Relations Committee, whose functions cover the defence, intelligence, foreign relations diplomatic and consular services, international boundaries, international relations, agreements, treaties and conventions. The second one is the Administration and National Security Committee, which oversees national security, police services, home affairs, Public Administration, Public

Service, Prisons, Immigration and the management of natural disasters and community service orders. Parliament faces several challenges in carrying out its oversight role. According to the study, one of the challenges is that members of both Committees have limited understanding of the nature of intelligence and how oversight is supposed to be carried out.
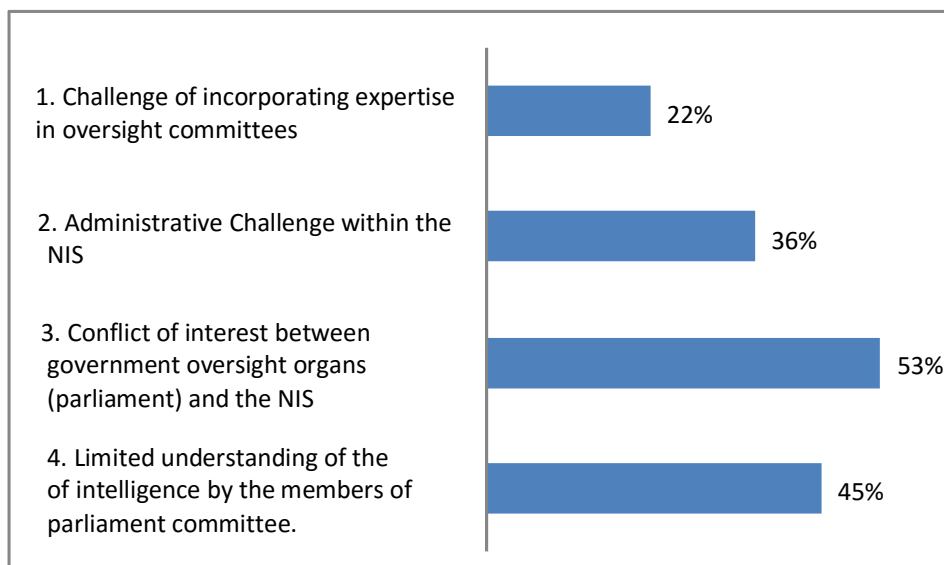
Another challenge is the legal protection on non-disclosure of information that could lead to ineffective oversight. The National Intelligence Act 2012 gives a detailed set of rules as to how this should be conducted, as well as the activities of NIS officers that need to be scrutinized. All government institutions that conduct intelligence fall within the mandate of the Committees. This mandate also allows other independent bodies of the state to conduct oversight, such as the National Audit Office, the Ombudsman or a court. However, intelligence officers are not obliged to reveal the information, as this may expose the operations of the Service. At the same time, the Committees are tasked to check the intelligence operations and management practices, yet they are not allowed by law to access classified intelligence products.

The conflict of interest between government oversight organs (parliament) and the NIS also came out in the study. Citing this challenge, the NIS officers felt that these Committees are empowered to verify that the Services' activities comply with the constitutional and legal requirements. The Committees are also empowered to investigate illegal intelligence operations, hold hearings on the presidential nominees for director positions, and assess the Service's Annual Reports after they have been submitted to the full Parliament. The Committees can also request data and investigate directors of the Service, and their staff members, as well as conduct unannounced visits with full access to the Service's premises/facilities. This was seen as a kind of external interference that could be used to push incompetent directors into office through political machinations.

Another challenge reported was getting relevant NIS directors to attend Committee hearings to present required information for oversight, which complicates the efficiency of oversight proceedings. This is because the directors are usually very busy engaged in daily duties within and without the country. In order to increase the effectiveness of oversight, the Committees could use experts from the public, academia and non-governmental organizations to interview the NIS officers and/or carry out research. This would assist in lowering the bureaucratic barriers for conducting research in areas of oversight over intelligence and security studies. However, a hurdle to this is the legal implications of public disclosure of classified information and the Oath of Secrecy requirement.

Corruption was also a challenge, mostly perpetuated by people from the centres of power, who wish to misuse the constitutional privileges accorded to NIS to swindle money from the public coffers. The summary of the challenges is as shown in the figure 4.8 below.

Figure 4.8: Challenges Facing Oversight of the NIS

1. Challenge of incorporating expertise in oversight committees — 22%
2. Administrative Challenge within the NIS — 36%
3. Conflict of interest between government oversight organs (parliament) and the NIS — 53%
4. Limited understanding of the of intelligence by the members of parliament committee. — 45%

Source: Author, 2015

4.4.3 Improving Oversight Mechanisms

i. *Executive oversight*

Respondents were of the view that apart from the parliamentary oversight, it is crucial

for intelligence services to have oversight from the executive. Those who supported this view felt that it is essential that the intelligence agencies should be under democratic control, not only independent organizations like Parliament, but also from the executive. Executive oversight helps to keep intelligence agencies effective and well-managed, like any other entity or public sector bureaucracy. For this particular purpose, it is vital for democracies to establish a centralized executive body to control the operations and management of the intelligence community, as well as access to the final intelligence product at different stages of the intelligence cycle.

ii. *National Security Council*

Respondents suggested that there was need to empower a centralized executive body established under the authority of the President in order to provide effective executive oversight of the intelligence community. This was informed by the fact that the president is the symbol of national unity and the will of the people nationally is better reflected in the presidency than in the parliamentary committees, which may not have a balance membership reflecting the will of the people. In mature democracies, such functions are performed by the National Security Council (NSC), which coordinates and controls all the activities of intelligence agencies. The NSC also serves as the highest-level organization within the executive branch that provides day-to-day oversight and policy direction of intelligence, which cannot be done by the parliamentary committees.

iii. *Control of the Final Intelligence Product*

The respondents suggested that the executive should have access to the final intelligence product that goes to the policy-makers. Those in support of this proposal felt that the data should be "locked" inside the intelligence organization. One of the main issues involved in this type of oversight is the need to supervise information at each stage of the intelligence cycle (collection, processing, analysis and dissemination) to avoid situations

where the data leaves the system without approval by the top organizational management. However, some respondents faulted this approach of oversight on the basis that it could lead to leaks of intelligence, which may result in the failure of an intelligence operation. Usually, the mass media) operate as an *ad hoc* form of accountability that 'registers' these leaks and informs society about them, which prompts the intelligence service to enhance accountability.

Some respondents disapproved the proposal that the executive should have access to the Final Intelligence Product, as in instances it would not be possible to control the final intelligence product or intelligence data, a common weakness within intelligence agencies in transitional democracies. The crucial focus should be to ensure that the NIS has strict regulations and computerized mechanisms for checking and controlling access to intelligence products. The situation becomes even worse if this information can be easily accessed by hackers or corrupt officers. The study findings regarding the proposed ways to improve oversight mechanisms are as shown in the figure 4.9 below.

Figure 4.9: Improving Oversight for Intelligence Services
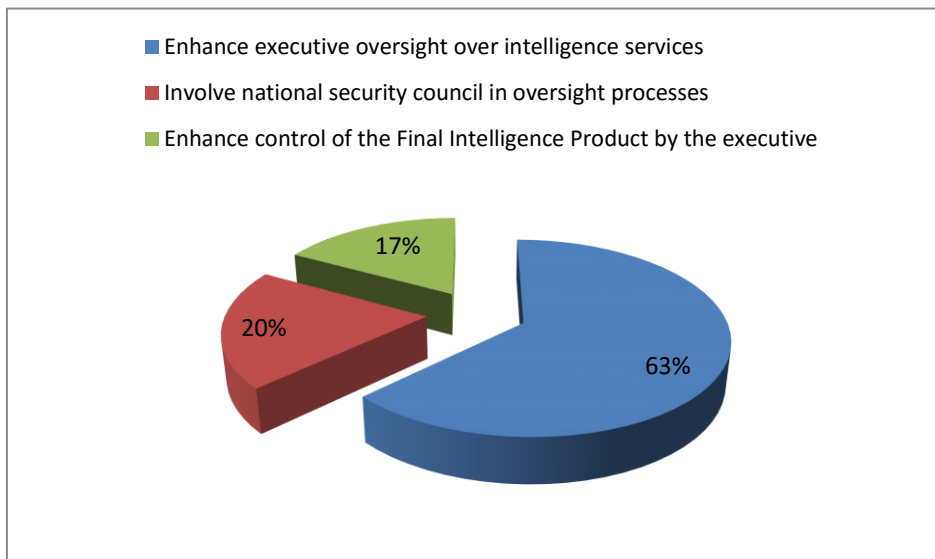
Source: Author, 2015

4.5   Success of Intelligence Services in a Democratic State

Civilian control of intelligence services can be a problematic issue, not only because of the legacies of the prior, non-democratic regimes, but also due to the inherent tension

between the secrecy of intelligence and the transparency of democracy. Knowledge is power and those who hold it want to keep it to themselves. Intelligence officers have knowledge on a wide range of issues and personalities and this gives them power. They therefore deliberately minimize the knowledge outsiders have about them and their activities. This section describes the structures and processes involved in the intelligence function; analyzes the success of intelligence services in a democratic state.

4.5.1 Parliamentary Oversight and Access to Intelligence Budget Information

The right of Parliament, through departmental committees, to oversee intelligence and security budgets are clearly spelled out in the national laws. The success of intelligence services in a democracy is therefore based on the ability of departmental committees to execute this type of control and enact official procedures to obtain information from the intelligence executives. Respondents suggested that for successful budget oversight, legislation should be enacted by Parliament, which would give parliamentarians power to oversee an intelligence budget and the exclusive right to have access to obtain secret information regarding intelligence expenditures.

4.5.2 Parliamentary Participation in the Intelligence Budget Cycle

It was suggested that for intelligence services to be a success in a democracy, a proper framework for transparency and accountability is the most important constitutional requirement, especially with regard to the national and intelligence budget process. Respondents suggested that parliamentarians can be effective in intelligence oversight through active participation in and by controlling the four main phases of the typical budget cycle: preparation, approval, execution, and audit (review).

a. Budget Preparation

Budget preparation is the phase when intelligence executives propose funding for

intelligence programmes. In a democracy, parliamentarians contribute to this process through different formal and informal procedures. Respondents from the NIS and the Parliamentary Committees cited that there has been success in that they conduct informal consultations and hold official meetings with intelligence executives to discuss budget preparation issues. Members of the Committee and the government assist each other and sometimes work together on the issue of the preparation of the intelligence budget. The Committee can scrutinize intelligence finances and has access to information regarding general intelligence expenditures without authorization power.

One area in which the Committees and the government have had disagreements concerns publication of the intelligence budget. The Committees have consistently argued that publication of the information is not sensitive, as long as it is not done every year and has the official permission of the Service. However, respondents from the NIS felt that the publication of the expenditure is fine as long as it is done for general expenditure but not for specific issues. However, members of the Committees felt that the Committee has the power to participate in drafting the intelligence budget and checking its implementation. The Committee also examines reports concerning annual intelligence budget expenditures as presented by the NIS. The intelligence budget preparation phase is more important for states that exercise a one year budget cycle. Informal consultations and formal meetings can reduce time spent negotiating with parliamentarians during the approval stage of the intelligence budget process.

b. Budget Approval

Budget approval is the phase where Parliament studies and determines the cash allocations and may, in certain circumstances, complement intelligence-related appropriations with specific guidelines. This phase requires highly qualified specialists and discussions with the parliamentary committees. According to the findings of the study, respondents agreed that

during this phase parliamentarians, particularly members of the responsible committees, can ask intelligence executives to explain the necessity of financing certain intelligence programmes. Hearings usually take place within the committees responsible for oversight. This view was held commonly by both directors of the NIS and the parliamentary committee members who participated in the study.

If the justifications are not satisfactory, the Committee members who participated in the study reported that Parliament can call executives to defend intelligence budget propositions during the open committee session, or during closed meetings with representatives of Budget and Appropriations Committee and the Finance, Planning and Trade Committee. These issues have been attributed to the success of the NIS at the height of democratic demands of the Constitution. It is important to obtain high-quality input during the intelligence budget approval process. In Kenya the intelligence budget oversight system is complicated but workable, as it provides significant amounts of information to the parliamentarians regarding the budgets of intelligence agencies. According to the Deputy Solicitor-General who participated in this study, The Appropriations Committee holds hearings on the segments of the budget under their jurisdiction. They focus on the details of the agencies' justifications, primarily obtaining testimony from agencies officials. After the hearings have been completed and the Appropriations Committee has generally received their spending ceilings, the sub-committees begin to mark up the regular bills under their jurisdiction and report them to their respective full committees.

c. *Budget Execution*

Budget execution (spending) is the phase when a parliament reviews and monitors government spending for the intelligence sector and may require procedures that allow for transparency and accountability. Active participation in this phase allows Parliament to be familiar with the current intelligence programmes and the processes of their funding.

According to the chairman of the Administration of National Security Committee, in practice, Parliament is not really involved in the execution stage and gives intelligence executives broad power to manage intelligence funds. From the findings of this study, parliament's power to oversee and control the intelligence budget lies in reviewing intelligence agencies' budgets when proposed (budget preparations), and then deciding what to approve (budget approval). According to the NIS directors who participated in this study, the success of the NIS in area of accountability has been due to the cordial freedom allowed by Parliament at this stage, which was thought to be unnecessary.

d.   Budget Audit

To get full information regarding the propriety of intelligence expenditures, Parliament calls for audits and additional reviews during or after the budget execution process. Budget audit (or review) is the phase when Parliament determines whether there has been inappropriate use of money allocated by the government to the NIS. Parliaments periodically evaluate the entire intelligence budget to ensure accountability, efficiency and accuracy of its spending. This is an aspect which has been hailed for the successful operation of the intelligence service in Kenya. Committee members who participated in this study revealed that members of the Administration of National Security Committee are given access to information, staff and budgets in order to check on the activities of NIS.

4.6   Role of Judiciary in providing oversight to Intelligence Services

The previous sections described the importance of the executive and of the parliament in relation to the accountability of intelligence and security agencies. The third branch of the state the judiciary also has a role to play, both as the ultimate guardian of the constitution and the law and through various review functions.

According to the findings of this study, the judiciary has not been reported to be routinely involved in oversight. High court judges who participated in this study reported that

the role of the judiciary is purely on guiding on constitutionality of issues under conflict between government institutions. However, respondents from the judiciary said that intelligence-related cases that reach the court are sporadic, and judges generally do not see it as their task to supervise the exercise of governmental functions but rather to review their constitutionality, legality or compliance with human rights standards as necessary. Nevertheless, because of the centrality of the rule of law as a source of control on arbitrary power in modern democracies, judicial practice is important. Judges are the final arbiters of the statutory powers that security and intelligence agencies possess.

However, on the role of judiciary in supervision of the intelligence services, most respondents cited the advantage of judicial role as positive since judges are perceived to be independent of the government; their presumably detached view lends credibility to the system of oversight in the eyes of the public. Traditionally, the courts have been perceived as guardians of individual rights and, arguably, judges are well suited to oversight tasks that involve the interests of individuals for example the scrutiny of surveillance.

There were however shortcomings reported involving the judiciary in the process of supervising the intelligence services. The problems arise from the necessary tensions and limitations in judicial review of any governmental function, especially those related to the field of security. Court procedures necessitate sensitive data being disclosed beyond the controlled environment of the security sector itself. Even if legal proceedings take place in camera, the judge, court staff and lawyers may be required to read or handle the information. This raises the difficult question of security vetting. This, according to the NIS personnel, will lead to the leaking of classified information to the public.

The more general danger is that over-intrusive control by the judges risks involving them in the tasks of the executive and blurs the separation of powers between these two branches of the state. The politicization of the judiciary may also result from the use of

judges to conduct inquiries with a security dimension. Their wider credibility and legitimacy may be at risk of being undermined. Judicial scrutiny should be sparing and suitably modest in areas of government policy where judges have no special competence, for example, in assessing whether intelligence justified a decision to take a particular action or whether it established an imminent threat to the state. Legal control by the courts proper can only operate effectively within the limited range of issues where a person's rights are affected by security decisions.

Another challenge of involvement of courts in the intelligence operations is the difficulties of handling intelligence as source material in court proceedings. The solution proposed for this by high court judges who gave their input in this study is the use of special, security-cleared legal representatives in deportation, employment and (increasingly) criminal cases.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1   The Role of Intelligence Services in Kenya

The study established the basic role of intelligence services in Kenya is advising the government on issues of national security and also collecting and analyzing intelligence of national interest. In relation to national security, the study established that the NIS served to detect and identify threats to national security and give advice to relevant authorities. The mandate of the NIS is also enshrined in the Constitution under the National Intelligence Service Act, 2012 and defines the boundaries of operation for the Service. The study also established that the NIS has been operating within its mandate since the enactment of the Act and the reforms undertaken in the Service seeking to operate in line with the current Constitution and carry out their duties with due respect of human rights.

5.2 Influence of Democracy on Intelligence Services

The study established that the NIS has made great effort towards its democratization, mostly through training and capacity-building for its personnel. Democratization involves outlining the constitutional implications in regard to the mandate of the NIS. The study also established that foreign policy has also influenced the democratization of the Service, which has been enhanced by exchange programmes with mature democracies such as the US, Canada, the UK and other European states. Through sharing of information with these mature democracies, the NIS has been able to borrow best practices, which have led to reforms.

5.3 Oversight Procedures for Intelligence Services

Legislative oversight within the NIS has been highly emphasized. This involves its conduct, efficiency and budget. The Administration and National Security Committee holds official meetings with intelligence executives to discuss budget preparation issues. Members of the Committee and the government also work together in preparing the intelligence budget.

Executive oversight is conducted with an aim of keeping intelligence agencies effective and well-managed, like any other entity in the public sector. Since the intelligence service plays a key role in advising on policy implementation and formulation, the executive should oversee the general functioning of NIS. For this particular purpose, NSC controls the operations and management of the NIS, as well as access to the final intelligence product at different stages of the intelligence cycle.

Democratic principles within a state change the way intelligence services operate. The organizational structure of the NIS is complicated and, thus, difficult to control. The intelligence agency has multi-functional duties, mixing counter intelligence and security issues, but does not conduct law-enforcement responsibilities. The mandate of the NIS is outlined in the Constitution under the National Intelligence Service Act, 2012. The main role of the NIS to ensure national security and advance national interests, and it has become very difficult for ruling regime to manipulate NIS for perpetuate itself in power. However, the Parliament has difficulties in exercising effective control over the intelligence budget due to the clause in the Constitution that allows confidential expenditure by the NIS.

The Defence and Foreign Relations Committee and the Public Accounts Committee do not inform the public concerning all of the results of parliamentary hearings and audits related to intelligence. Due to the closed nature of the intelligence service and, sometimes, the absence of official statements about the results of their work, it is difficult for oversight organs to judge the effectiveness of intelligence activities conducted and enhance accountability.

Overall, there is need for convincing branches of the intelligence organization to commit themselves to changing the way they do business. Agencies have long-held tendencies, desires, and aspirations that often lead to persistent power struggles with other branches. This mindset is perhaps the biggest challenge to developing true partnerships

across agencies and departments that deal with security. Success for intelligence services will require a long-term process of building a consciousness and culture of "jointness." This can be achieved when there is mutual confidence and respect between the interlinking institutions served by the intelligence services, real readiness to accept the new rules under democracy, and open and continuous communications inside and between the organizations. For this situation to prevail, intelligence leadership is necessary. The ability to mobilize a group of sophisticated individuals (primary characteristics of intelligence personnel) to support the reform is critical.

5.4 Recommendations

More powers should be vested in the parliamentary Committees to scrutinize the NIS operations and budget. The members of the committees should be vetted and cleared so that they may access classified information that will enable them to carry out intelligence oversight functions effectively. In addition to this, the Committees should be allowed to incorporate experts during oversight procedures in order to bring in professionalism into the process.

The Parliamentary Committees, in conjunction with the Budget Committee, should also enhance their participation in the intelligence budget process and in controlling the authorization and execution stages in particular. The Committees should also prepare and conduct compliance audits of the NIS and report the results of its work.

To enhance accountability of the NIS, the executive should provide overarching direction. With this purpose, the Office of the President, the National Security Council and the Cabinet could establish additional offices/units to deal with specifically accountability and oversight of the Service. To furthermore enhance accountability, the NIS should reorganize its organizational structure to include its own structured oversight mechanisms.

In order to increase transparency and accountability, general information concerning

the consequences of oversight proceedings on intelligence matters, as well as the results of audits in the NIS should be appropriately made available to the public. However, that information should not place intelligence operational activities at risk.

Intelligence as a source of information can be used to develop strategies and also as a tool to implement those strategies. His can only work best if intelligence is fully integrated in the strategy team.

Civilians should also be motivated to learn about intelligence so they can also provide oversight. This can be done by breaking through the current public apathy toward or fear of intelligence by initiating public debate. The public debates would demythisize intelligence, thereby allowing the public to more realistically assess its value to the country and put pressure on the government to be more transparent. This should begin with the formal and public commitment by a government to educate the public on intelligence matters. The role of the media is crucial and their awareness of intelligence needs to be enhanced.

5.6 Suggestions for Further Research

Democratization of intelligence involves innovative processes. These processes require not only knowledge of security studies, but also and most importantly applying techniques of systems management and business administration. Kenyan parliamentary leaders and senior government officials require more data regarding the activities, policies, budgets and expenditures of intelligence agencies, which is lacking due to lack of research in these areas.

Further research can be done in the areas of designing systems for enhancing accountability and developing a well-designed framework for intelligence services. This includes an analysis and evaluation of each oversight function - parliamentary, executive, judicial and civilian. This would include an evaluation of each important feature for that particular oversight, such as the existence of specialized legislation, the existence of an

independent parliamentary body (committee or sub-committee) dealing only with intelligence oversight functions, the ability of members of the oversight body to obtain information from intelligence agencies, the effectiveness of parliamentarians in conducting intelligence budget oversight, the consistency of oversight functions during each stage of the intelligence budget cycle, the existence and operational efficiency of a specialized parliamentary body dealing with oversight of intelligence expenditures and the number of professional staff.

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