

Vision 2016 and Reforming the Intelligence in Botswana

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Abstract

The Botswana government proposed to the national Parliament the setting up of an enlarged intelligence agency known as the Directorate of Intelligence and Security. It drafted and published in the Government Gazette, an Intelligence and Security Service Bill which was placed before Parliament which deferred and later approved it. However, its passing brought to the surface deep seated mistrust between Cabinet and the back bench. On the other hand and in line with the country's Vision 2016 roadmap, civil society organised debates in which academics, media practitioners and parliamentary backbenchers questioned the necessity of the reforms, the structure of the proposed agency and the timing of the bill. Taking Vision 2016 as a benchmark, this article critiques the Intelligence and Security Bill and provides insight that could help future reforms. Its main argument is that the proposed Intelligence and Security Services Bill and Law contradict Vision 2016 in many fundamental ways. Its other argument is that the Bill and Law contradict the emerging trends in leading liberal democracies in the region and abroad.

Vision 2016

In 1997, Botswana completed a national document entitled 'Vision 2016', envisaging, among others, 'a safe and secure nation'. Here the emphasis was on crime, road safety and national defence. Under crime, 'by the year 2016, serious and violent crime and the illegal possession of firearms will be eliminated, as will the distribution of and use of addictive drugs. The growth of white collar crime will be halted so that all stakeholders can have confidence that their assets and investments are safe' (Long Term Vision for Botswana, 1997:9). Still under crime, the document notes that 'by the year 2016, violation of the physical well-being and human rights of individuals will have been eliminated. The abuse of spouses and children will be completely eradicated' (Long Term Vision for Botswana, 1997:9). Under the item of national defence, the document notes that 'the nation will feel confident that their basic human rights are not infringed by acts of foreign or internal aggression or terrorism. A small, alert, well trained, and disciplined and fully accountable Botswana Defence Force will serve the nation, protecting its security and stability' (Long term Vision for Botswana, 1997:10). Emphasis on violent crime, road safety and national defence, is a clear identification of the shared challenges facing the government and its citizens, calling for partnership in all attempts aimed at addressing them. But as we shall see, the government of Botswana has drawn up an Intelligence and Security Bill that primarily talks about the security of the government, totally ignoring the national vision of shared responsibilities and the need for partnership between government and citizens for the protection of their democracy and security.

The vision document also identified an 'open, democratic and accountable nation'. Here the official emphasis is on decentralised institutions, accountability of all citizens including the state president, regular and unfettered competition for political office, an increased role for civil society, a morally and ethically upright society that will be matched by a leadership of the same qualities, and enhanced role for traditional leaders (Long Term Vision for Botswana, 1997:10-11). With such a national vision, one would expect the Intelligence and Security Bill of 2006 to embody some of the above principles, such as an open, democratic, accountable, safe and secure nation, and an increased role of civil society.

In contrast, Botswana's Intelligence and Security Bill heavily borrows from textbook definitions of security intelligence and completely ignores the citizens as partners and the Vision 2016 as a guiding document. Textbooks commonly define security intelligence as 'state's gathering of information about and attempts to counter perceived threats to its security deriving from espionage, sabotage, foreign-

influenced activities, political violence and subversion' (Gill, 1994:6). Botswana's Intelligence and Security Bill of 2006 merely reproduced the textbook listing without incorporating its own national vision. Its Intelligence and Security Bill defines security threats in textbook terms as:

(a) any activity relating to espionage, sabotage, terrorism or subversion, or intention to engage in any such activity directed against, or detrimental to the interests of Botswana...but does not include any lawful advocacy, protest of dissent..., (b) any activity directed at undermining, or directed at or intended to bring about the destruction or overthrow of, the constitutionally established system of the government of Botswana by unlawful means, (c) any threat or act of violence or unlawful harm that is directed at or intended to achieve, bring about or promote any constitutional, political, industrial, social or economic objective or change in Botswana and includes any conspiracy, incitement or attempt to commit any such act or threat, (d) any foreign-influenced activity within or related to Botswana that is detrimental to its interests and that is clandestine or deceptive (Republic of Botswana, Intelligence and Security Services Bill, 2006: preliminary).

From Gill's definition, the classical legitimate mandate of the intelligence is to collect data and to act on espionage, sabotage, foreign-influenced activities and subversion.

Williams makes the observation that 'some service mandates have omitted the concept of subversion from the areas that the intelligence is required to collect intelligence data, as experience has shown that it can be too easily stretched to justify the surveillance and suppression of peaceful, lawful advocacy' (2001:2). This means that subversion is no longer a legitimate mandate for the intelligence of established democratic and peaceful countries as it interferes with the rights of citizens to organise lawful protests and to engage in legitimate lobbying activities. In contrast, its inclusion in the Botswana Intelligence and Security Bill is a failure to appreciate that Botswana is now an established liberal democracy where its citizens engage in lawful political activities and are ready to be partners in the national intelligence community. Subversion is primarily a problem for decaying democracies and authoritarian states where citizens are regarded as threats to the government.

Williams also notes that the textbook definition of national security should move away from the protection of states and their established order, to the defence of democracy and civil rights so that only a state mindful of liberty deserves security and that a clear distinction be made 'between irksome but benign heterodoxy and genuine threats to the country's liberal democratic identity' (Williams, 2001:2-3). In this regard, the Botswana Intelligence and Security Bill, does not clearly distinguish between 'irksome but benign heterodoxy and genuine threat', and this makes it incomplete and unsuited for a working liberal democracy. A distinction between irksome but benign heterodoxy and actual threat is important for purposes of safe guarding democratic action by members of civil society and citizens and for tackling genuine security threats. Williams' intervention shows that the intelligence is meant to protect the citizens and a democratic political order, and not just any order. While there is evidence that South Africa, Australia, Canada and Germany have re-focused their intelligence in line with liberal democratic principles, Botswana has not, and continues to follow textbook and statist definitions of the security intelligence which takes government security to be national security. Post-apartheid South Africa is a living example of how a security orientation that places emphasis on peacefulness and neighbourliness can shape the intelligence community of the country. In its 1994 White Paper on the Intelligence, South Africa observed that

the principles which will therefore guide the defence and security community centre on the understanding that South Africa shall be committed to resolve internal and external conflicts primarily through non-violent means; that national, social and individual security shall be sought primarily through efforts to meet the social, political, economic and cultural needs of the citizenry; and that South Africa shall pursue peaceful and cooperative relations with neighbouring states in order to promote regional security, stability and development (quoted in O'Brien, 1996:173).

This post-apartheid South African security orientation is clearly liberal in its approach and is intended to guide the intelligence away from statist pursuits, towards the collection of data that could promote peaceful resolution of internal and external conflicts, promote regional cooperation, enhance regional security and deepen regional stability. This also means that the tasking of the intelligence is done in line with the principles guiding the national orientation of that state. It should be noted that post apartheid South Africa's experience sharply differs with that of Botswana where the authorities approached security intelligence in a more secretive and hurried manner, passing the Bill quickly through Parliament with limited input from civil society.

The literature on intelligence agencies observes that they perform four primary functions: (i) collection, (ii) analysis, (iii) counterintelligence, and (iv) covert action (Boraz and Bruneau, 2006). These are treated separately below for easy referencing. The aim of the following section is to establish whether the performance of the above functions in Botswana, incorporate the principles of the national vision or not and whether they are in line with liberal democracy.

Collecting Intelligence Data

The world view of the leadership and the security principles they envision greatly influence the mandate they give to the intelligence and therefore the kind of fields and intelligence data which they collect. For instance, anti-liberal tendencies such as militarism, interventionism and ideological purity on the one hand, and liberal tendencies such as partnering with citizens, peacefulness, toleration of diverse activities and regional cooperation, on the other hand, shape the orientation and structure of intelligence agencies. Sometimes the vision of the leadership of liberal democracies mismatches that of the nation as in the current case of Botswana and this generates mistrust between the state and the citizens, and vulnerability of the latter.

William Keller (1989) and the Geneva Centre for the Democratic Control of Armed Forces (DCAF, 2006) identify three kinds of intelligence based on whether they collect security intelligence information to serve the nation and in partnership with citizens or to serve the leadership in isolation and against the citizens or to serve the security forces against the government and citizens: First, there is *a bureau of domestic intelligence*, which Keller regards as the desired agency for a liberal democracy which channels its resources into the acquisition of information that could assist the exposure and prosecution of serious threats to the country's security, operating according to clear and strict guidelines, and refraining from direct coercion of fellow citizens. This means that the intelligence of a peaceful liberal democracy must identify genuine threats, be friendly to the citizens and must win their trust. In that case, the concerns of the citizens are also the concerns of the intelligence. This partly means that 'clearly the intelligence cannot do whatever it chooses; precise user needs are a major element' (Herman, 1996:288). This also means that the intelligence in a peaceful and friendly democratic country that sees citizens as partners, collect information with them to meet precise needs of the nation (the general society such as business, civil society and individuals) and of the different sectors of government such as the police, military, immigration, wildlife and so on.

Second, Keller identifies *a political police*, which he associates with decaying democracies or authoritarianism, and 'is simultaneously insulated from outside oversight but more likely to be drawn into the intrigues of power cliques in the government or a significant political party. Tasking from these sources rarely follows routine guidelines, and may compel the agency to gather information on, and then harass, citizens in opposing parties or groups who present no threat to the country's security' (1989:156). Such an intelligence agency is primarily used against political opponents of the ruling elites, sees opposition politicians and trade unions as enemies and suppresses citizens. While a political intelligence could be preferred by the political leadership, other ministries prefer an intelligence that focuses on illegal immigrants, on drug abuse, and on economic intelligence. On the other hand, the business community prefers an intelligence that focuses on armed robberies and threats to property and investment, civil society

wants one that focuses on dealing with corruption in high office, human rights violations and domestic violence and so on. Except for the political leadership, all other sectors do not want an intelligence that infiltrate and breaks lawfully registered organisations such as trade unions.

Finally, Keller identifies *an independent security state* as one which is beyond manipulation and pursues its own agenda of observation and intimidation. An independent security state in this regard has 'its resources, operations and targets, concealed from even the most powerful members of the political elite, who may find themselves under surveillance' (Keller, 1989:156). Other authorities confirm this by noting that 'the intelligence services are still the least controlled entity, as well as being the most difficult to control' (DCAF, 2003:2). But according to Boroz and Bruneau, complete independence of the intelligence or lack of oversight by the Executive and Parliament, could arise under the following conditions: if the elected politicians have little interest in the intelligence to the extent of failing to provide policy parameters and oversight (that is, if Cabinet and the President do not give precise tasks to the intelligence which then occupies its time with whatever it can think of); if elected politicians wish to disavow knowledge of operations and to avoid seeming to have condoned illegal activities; if the politicians know very little about the intelligence and have no informed opinion; if the role of politicians (parliamentarians) in national security is ill-defined; and if the intelligence has the capacity to hide its disobedience and has justifications for not taking constraints seriously; and if the intelligence believe that politicians fail to make national security a priority, that they cannot and will not handle secret information properly and that they will blame the intelligence if anything goes wrong (Boroz and Bruneau, 2006: 32-33).

What comes more clearly in the proposed Botswana Intelligence and Security Bill is that the role of Parliament was completely undefined and it was not even mentioned. However, the passed Bill acknowledged that Parliament should play an oversight role. The role of citizens and academics is also left undefined. (However, the Commander of the army, Lt. Gen Masire, promised at a workshop in 2008 that Botswana will soon embark on a national security review in which views of the citizens would be solicited).¹ The failure to include Parliament and civil society in intelligence matters was in sharp contrast with most liberal democracies as will be shown in the last section.

The reasons for reforming the Botswana security intelligence were not clearly stated in the Intelligence and Security Bill. The only stated but unhelpful official reason for reforming it was that 'the regional and global environment has changed necessitating a review in Botswana's approach to national security concerns' (Nasha, 2006). What precisely has changed is not stated and what new principles are going to inform it are also not stated. This raises two important worries. Either Botswana's intelligence has been operating without guidelines and thus exposing citizens, parliamentarians and academics to its power, or the guidelines are not known to the other sectors that matter, and therefore not promoting an open, democratic and accountable intelligence service. Most sectors of the Botswana society (including members of the Parliament, civil society, academics and individuals) suspect that they are under intelligence surveillance (Maundeni, 2007). What is clear from the 2007 parliamentary debates and civil society seminars is that legislators and the general society wanted an intelligence that was friendly to the citizens, observed laws, operated under clear guidelines and did not place citizens under undue surveillance.

The function of collecting intelligence data relies on human intelligence (humint), primarily ambassadors, defence attaches stationed in other countries and spies. From experiences of the American CIA, an intelligence that is friendly to its citizens and sees them as partners, rely extensively on academics through (i) asking a professor who just visited a foreign country to share his/her experiences; (ii) asking a professor who is planning to conduct research in foreign countries, to also collect intelligence data; (iii) sponsoring professors to attend international conferences in order to interact with foreign scholars and public officers who might be willing to share ideas (Johnson, 1987:107). In this way, the CIA is able to use academic and other experts at gathering data for its intelligence collection. 'Among other things, the

directorate and others in the CIA have sponsored 300 conferences since 1982 and sent (overtly) over 1,500 analysts to conferences sponsored by others' (Johnson, 1987:108). This is an important recognition that intelligence officers have limited data collection capacity and that academics are important partners in the security intelligence arena. Thus, the intelligence and academics in America have willingly cooperated for purposes of collecting intelligence data.

In contrast, the Botswana Intelligence and Security Bill, and the general security culture, did not see academics and civil society leaders as partners in the function of collecting intelligence data. This is partly because the Botswana intelligence culture viewed security intelligence in anti-liberal and statist terms and not as a national project that required partnership with citizens and other experts. Botswana's intelligence community has not been friendly to its academics, who feared and mistrusted the intelligence and suspected that it unduly defined them as a security threat and placed them under constant surveillance (*Mmegi*, 26 February 2007). The deportation of Professor Kenneth Good (an Australian) in 2006 is rightly or wrongly perceived as confirmation that the intelligence spied rather than worked with professors for intelligence data collection. Such fears and mistrust are most likely to generate (i) poor human intelligence data, (ii) mistrust between the intelligence and academics and no sharing of data collection methods, (iii) mistrust between academics and students over suspicions that the latter are informers.

Human intelligence also relies 'on refugees and defectors (scientists, diplomats and some of the financial people) from areas that previously one could not get into' (Jameson, 1992). Illegal immigrants also fall in this category. It is not certain the extent to which Botswana relies on this kind of humint. What is certain is that Botswana merely deports illegal immigrants without realising their potential as a source of humint. Countries with superior intelligences use it extensively.

Collection of intelligence data also relies on technical means 'whereby signals and imagery intelligence is derived from communication intercepts, radar, telemetry and images captured from overhead or the ground' (Boraz and Bruneau, 2006:29). Technical intelligence is divided into: electronic intelligence and signals intelligence which involves the interception of people's communications back and forth' (Jameson, 1992:37). There is also overhead reconnaissance, 'which is the use of satellites and airplanes to look down and take pictures of what they see on the surface of the earth... They are often the best sources for various specific technical data, especially on other peoples' weapons systems, radars, and aircraft' (Jameson, 1992:38). This calls for sharing expertise between the intelligence and other state organisations such as the army and regional intelligence organisations. It is not clear to what extent Botswana's intelligence agencies are required to share equipment or information for purposes of intelligence data collection.

It should be noted that technological innovations democratised the world. 'The putting of the satellite into space by the USA and USSR for spying purposes ironically helped facilitate the democratisation of information' (Friedman quoted in Mophuting, 2006:4). Computerisation, the Internet, email and the web have vastly expanded communication and these naturally become targets for intelligence gathering in the fight against drugs, cross border crimes, terrorism, and so on. It should therefore be appreciated that technical means of collecting intelligence information in a highly technological world invites collaboration with academics and other citizens. American intelligence has vastly relied on academics to carry out technological research. 'Recent ORD contracts, for example, involved payment to professors at the University of California and the University of Kansas, respectively, for research papers on climate control and computer modelling' (Johnson, 1987:113). It is in Botswana's interest to reform its intelligence to be able to utilise the country's institutions of high learning for technical innovations that could be used to collect intelligence data.

There is also what is known as open source intelligence which relies on periodicals, the Internet and seminars (Johnson, 1987; Boraz and Bruneau, 2006). That is, open source is dependent on reading journals, books and magazines, searching the Internet and attending seminars where research findings are presented. This source could usefully employ citizen professors to good use and there is doubt if it is used in Botswana. It is clear that these means of collecting intelligence information cannot be performed by

soldiers and police officers alone. They require other professionals such as economists, lawyers, political scientists and so on. Non-use of such professionals could lead to the intelligence agencies collecting politically-correct data which does not aid in ensuring the security of the nation and its citizens.

The Function of Analysis

The function of analysis is central to the integrity of intelligence agencies. Independent and objective analysis builds on the professionalism and integrity of the agency and helps it to inform policy makers with relevant information. In the first instance, integrity depends on the structure of the agency. 'It is a challenge for any intelligence agency to provide accurate and independent intelligence when there may be pressure from the policy makers to produce [correct] answers' (Boraz and Bruneau, 2006:30). Here independence means not following political commands which are unlawful as in communist and present Romania (Williams and Deletant, 2001). Following unlawful political commands compromises the professionalism and independence of the intelligence agency and makes the political system to degenerate into a police state. Currently, it is not known the extent to which Botswana's intelligence community is exposed to illegal political commands such as infiltrating lawful opposition political parties and civil society organisations.

In addition, following political commands implies that objectivity is compromised in favour of certain political decisions already made by political leaders. The Romanian experience shows that an intelligence agency that is used for carrying out political commands is less objective and is difficult to reform particularly if there is no political will to do so (William and Deletant, 2001). Lack of political will to reform the intelligence in Romania is associated with the fact that former army generals who were themselves in the communist intelligence have become ministers in the 'new' order, and are unwilling to reform the intelligence (William and Deletant, 2001). In contrast, the South African experience shows that the intelligence can be successfully reformed to promote objective analysis, if there is a strong political will driving it towards democratic values and peaceful co-existence (Dombroski, 2006). The Botswana political leadership has not demonstrated any great desire to transform the intelligence into a user friendly institution that is objective, law abiding, friendly to the citizens and defy illegal political commands. However, Lt Gen. Masire maintains that it was the citizens who shied away from security related matters. But my observation is that it was civil society, Parliament, the media and academics, who sought to provide a friendly orientation onto the intelligence community. The most important point is that the different sectors are now speaking to each other and jointly attending security related workshops, and this will most likely lead to better democratic governance of the security intelligence.

On the one hand, less analysis and oversupply of poorly analysed intelligence information, becomes a problem for user ministries and other authorities. 'Intelligence's entrepreneurial dynamism keeps the system healthy, but arguably it also causes the problem of intelligence oversupply, particularly in single-source material on military subjects; a lesson drawn from the Gulf war was that without this distinction [between raw data and analysis of the adversary's intentions) the recipient will often be deluded with information that cannot usefully be employed' (Herman, 1996:296). Thus, the intelligence should not share raw data with users as this may either overwhelm them (Herman, 1996) or create misconceptions among them (Jameson, 1992). In addition, the intelligence should not overly rely on military personnel as this could cloud out other perspectives. This calls for thorough multi-disciplinary analysis of the data in order to make it user-friendly. Therefore the Botswana intelligence needs to guard against practices that overwhelm the Executive and other user ministries and departments with oversupply of raw intelligence data. It should also guard against mono analysis dominated by military personnel. Such practices have the potential to render intelligence data either unusable or militaristic in outlook, and to leave the country more prone to military action. Analysis calls for multi-disciplinary experts that are trained in analytical skills and are exposed to diverse theories that guide their analysis. Here again, academics have proved to have superior analytical skills and are aware of diverse theories that can be employed to carry out such

analysis. There are examples from which the security intelligence could copy from. Often the National Census Office invites academics to write papers on different aspect of the census data. The security intelligence too needs to acknowledge that academics have the right capacity to analyse intelligence data for the good of the country and its citizens.

Objective analysis implies that conclusions of the intelligence report are influenced by a close scrutiny of all the available data from different sources, by the weight of the evidence and the coherency of the theories being applied. To promote objective analysis, the intelligence report must be policy neutral (Ransom, 1987), or detached from any government department (McLennan, 1996). Policy-neutrality means reporting reality with policy-neutral objectivity (Ransom, 1987:25). Detachment means that 'intelligence analysis is a step removed from policy-decision-making – deliberately so' (McLennan, 1996:72). Detachment also means that it is not directly part of another department or agency such as the army or the police (the proposed Directorate of Intelligence and Security is a separate entity from any department or ministry and this is a positive development in terms of promoting objective analysis). Most intelligence falters at the level of analysis, not because of shortage of information but due to misinterpreting the data (Carver, 1992; DCAF, 2003). 'Intelligence analysts are sometimes characterised by fashionable group-think – the development of a culture in which it is better to be wrong for fashionably right reasons than to commit the heresy of being for unfashionable wrong ones' (Carver, 1992:57). (Surely, this is more of a problem in the public sector than in academics where independent thinking is promoted). At other times, security intelligence analysts suffer from mirror-imaging, assuming that the people whose behaviour they are assessing and predicting are going to see the world essentially as you see it; with the same value systems, the same criteria of what is important or unimportant, the same sort of cost/benefits ratios, the same idea of what is a supportable price to pay and what is an unacceptable price' (Carver, 1992:57). Such assumptions by intelligence analysts lead to biased analysis. For instance, analysis is biased and compromised if the data is selectively analysed in order to suit existing or emerging policy positions. It is also biased and compromised if data that contradict existing or emerging policy positions is downgraded or ignored altogether. For instance, 'when preferred policies dominate decision making, overt or subtle pressures are applied on intelligence systems, resulting in self-fulfilling intelligence prophecies, or in [intelligence to please] that distorts reality' (Ransom, 1987:26).

One way to achieve policy neutrality and objective analysis in the security intelligence is the South African way of establishing a code of ethics for them. South Africa's White Paper on Intelligence and its Intelligence Services Act of 1994 outline a code of ethics incorporating the following: requiring members of the intelligence to owe their allegiance to the constitution and other democratic institutions; subordinating them to the rule of law; complying with democratic values; adhering to the principle of political neutrality and unbiased evaluation of information (Dombroski, 2006:48). The South African Intelligence Act codified these into a legal code that is enforceable.

In contrast, Botswana's Intelligence and Security Services Bill, limits its code of ethics to article 20 (1) divulging intelligence information and illegally benefiting from such information, (2) denying a parliamentary committee such information if either the director general of intelligence or the central intelligence committee classifies it as belonging to a class that cannot be disclosed, and (3) appealing such decisions to the High Court. Here Botswana's proposed code of intelligence ethics is primarily statist as it focuses on secrecy and withholding information, and does not focus on ethical ways of promoting objective analysis.

The Botswana Intelligence and Security Bill mention another element of ethical conduct. Its Article 5 requires that 'the directorate shall not, in the performance of its functions, be influenced by considerations not relevant to such functions and no act shall be performed that could give rise to any reasonable suspicion that the directorate is concerned in furthering, protecting or undermining the interests of any particular section of the population or of any political party or other organisation in Botswana'. This lone section is neither elaborated nor broken down into enforceable codes for purposes of promoting objective analysis of intelligence data that could identify real threats rather than interfere in lawful organisations.

Another way of ensuring objectivity is to establish a team B which makes a second analysis of the same data and draw alternative conclusions (Ransom, 1987; Carver, 1992). For instance, pre-screened academics could be invited to evaluate the same data and be at liberty to challenge the conclusions of the intelligence agency. In the case of America, objectivity is partly maintained by having full-time-academics-in residence (four a year are common in the intelligence directorate) to occasional telephone conversations on this point or that' (Johnson, 1987:108).

A third way is to require the intelligence to write its report in such a way that a minority view is also expressed for the benefit of the policy makers (Ransom, 1987). This is the principle used in Botswana's courts of law for constitutional and other important cases. The views of the dissenter are clearly recorded to demonstrate the existence of doubt in the conclusions. The Botswana security intelligence agency could be encouraged to do likewise. In other instances, objectivity is promoted by using multiple agencies to provide peer review of finished intelligence products (Boroz and Bruneau, 2006). This means the establishment of separate intelligence agencies and using them to check on one another. But creating separate intelligence agencies is of no help if they do not actually review each other's work.

In contrast, the proposed Botswana Intelligence and Security Bill seek to create a single directorate, implicitly ruling out the use of peer review mechanisms. Unfortunately, the Bill neither has an elaborate code of ethics nor provision for a team B consisting of academics, nor a provision for peer review. Thus, the Botswana Intelligence and security Bill is inadequate for the purposes of promoting objective analysis for the adequate protection of the nation. The absence of mechanisms aimed at ensuring objective analysis exposes the Botswana Intelligence and Security community to illegal political commands and to un-professionalism as evidenced by the Romanian case. The weakness of the Romanian intelligence community in terms of objectivity is both legal and political (Williams and Deletant, 2001). At the legal level, the Romanian intelligence owes its allegiance to the executive alone as in the proposed Botswana bill, and not to the constitution or the country's political principles. Obviously, the remedy of such a situation is that the intelligence must owe its allegiance to the constitution and must be accountable to the Executive, with oversight from the legislature, the judiciary, civil society and the media. In addition, the constraints must be codified in law and effectively implemented (Williams and Deletant, 2001:212). Furthermore, a legal counsel stationed within the intelligence agency is necessary, in order to provide it with proper legal direction (Baroz and Bruneau, 2006).

At the political level, the Romanian political system is dominated by former communist army generals who officially switched their ideology to social democracy but who are still imbedded in an autocratic culture in which the intelligence is used against political opponents (Williams and Deletant, 2001). Both points may be indirectly relevant for Botswana because several generals have recently retired into politics of the ruling party and these may prove to be hesitant to adequately reform the intelligence in accordance with the dictates of international best practice and vision 2016. However, Botswana's retired generals did not grow up in a communist autocratic culture, and the Romanian experience may not be directly relevant.

Biased intelligence analysis is rooted in a dysfunctional structure in which the intelligence is completely independent of civilian control and oversight as in apartheid South Africa where it degenerated into 'a military state within the state' in which military death squads were prominent (Dombroski, 2006). Here, the problem is perceivably lack of civilian leaders who could provide policy guidance to the intelligence; judicial oversight over the activities of the intelligence, parliamentary oversight to define its legitimate mandate and media and civil society activism to hold it accountable. In contrast, the proposed Botswana intelligence directorate will be under a team of public officers, consisting of selected ministers, permanent secretaries and police, immigration and army chiefs who will provide it with policy guidance. What does not come quite clearly in the Botswana bill, and yet is crucial for the integrity of any intelligence agency is a clear expression that it must follow the constitution and not the whims of an individual, and that it must be exposed to parliamentary oversight.

Counter Intelligence and Covert Action

The functions of counter intelligence and covert action involve the protection of the state and its secrets against other states or organisations with hostile intentions, and involve actions that are deniable and are untraceable. Perceived threats from other states and organisations are met with actions aimed at protecting the state and its secrets, and actions that are not easily traceable and are deniable. Here it is important that the Executive (including the police and the army), Parliament, media and academics should clearly identify and define threats facing the state. For instance, in South Africa, serious attempts have been made to identify threats facing that nation. A 1994 government White Paper identified 'new global political, social and economic problems filtering South Africa's borders. International extremists have forged links with their South African counterparts, whilst international drug cartels use our country both as transit route for their trade and as a market, thus corrupting our social system' (Quoted in O'Brien, 1996:171). The White Paper also observed dramatic increases in foreign intelligence activities in South Africa in the economy, technological and scientific fields (O'Brien, 1992:171). This clear way of identifying the threats facing the nation help to target intelligence data collection, and to plan for counter intelligence.

Thus, while South Africa is concerned about problems filtering through its borders such as international extremists that are linking with their local counterparts, drug cartels and foreign intelligences, the Botswana Bill talks the general dry language of espionage, sabotage, terrorism and subversion. Botswana would do better to specify the nature of threats facing it. If the threats are related to drug cartels, international terrorists, illegal immigrants, then the bill should explicitly say so in order to enable the proper ordering of its activities. There have been media allegations that Zimbabwean intelligence officers were posing as illegal immigrants so that they could collect information on Botswana's treatment of illegal immigrants most of whom are Zimbabweans (Zimbabwe Standard, 21 January 2007). There are also media reports that Zimbabwean soldiers were deserting the army and joining the illegal immigrants to Botswana and South Africa (Zimbabwe Standard, 21 January 2007). Thus, Botswana needs to clearly identify threats facing it in order to properly direct its counterintelligence activities.

Covert action is a serious issue facing modern democracies. For instance, a rival ruling Botswana Democratic Party faction made allegations against the security intelligence and this was denied by the authorities, including President Festus Mogae (*Mmegi*, 7 June 2007). But no attempt was made by the authorities to clarify what the position of the law was on domestically targeted covert action. There have also been allegations by trade unionists that the Botswana intelligence was involved in covert action leading up to the break up of the manual workers and mining workers unions in 2005 and 2006, respectively (*Mmegi*, 7 June 2007). As expected, this was denied by President Mogae and by the commissioner of police without clarifying whether Botswana allowed covert action against legally registered trade unions and civil society organisations. In his denial, the commissioner of police allegedly advised the unions to arrest the suspects and to hand them over to the police as if this would either expose their identity or address the legal question of illegitimate operations. In addition to denials, Botswana needs to outlaw covert action for the protection of its democracy.

In contrast, South Africa out-rightly outlawed covert action. Its 1994 White Paper on Intelligence explicitly outlaws covert action in the following terms: 'Measures designed to deliberately interfere with the normal political processes in other countries and with the internal workings of parties and organisations in lawful activities within South Africa must be expressly forbidden' (Quoted in O'Brien, 1996: 186). In addition, the South African's *Principles and Guidelines of National Intelligence*, observe that 'no intelligence and security service/organisation shall be allowed to carry out any operations or activities that are intended to undermine, promote or influence any South African political party or organisation at the expense of another by means of any acts (e.g., active measures or covert action) or by means of disinformation' (Quoted in O'Brien, 1996:186). Thus, South Africa (like Australia and Canada) has outlawed covert action by its intelligence agencies in order to promote democratic values. Peaceful and democratic countries such as Australia and Canada place emphasis on the collection of information and its systematic refinement by the intelligence agencies into finished products, leaving out action to peace

officers outside the security intelligence community. That is, the intelligence's mandate in Australia and Canada is limited to collecting and analysing intelligence information, and counterintelligence is carried out by non-intelligence agencies such as the police, the directorate on corruption, the army, and so on.

Where covert action is allowed as in Germany against extremists and in USA against terrorists, then there must be mechanisms to define legitimate and illegitimate targets, and to restrict covert action. Such mechanisms are staggered so that proper control and oversight are exercised (Williams and Deletant, 2001). Executive control over the intelligence on questions of legality and propriety is best exemplified by the Australian model where it is characterised by 'an Inspector General of security to help the government to ascertain that security intelligence operations comply with legality and propriety. The inspector, who is usually a former civil servant rather than a judge or lawyer, is authorised to review all documents, and to compel any officer to supply information. Although normally prompted by complaints from citizens, his brief is to alert ministers to potential legal or ethical violations and, through the cabinet, to pressure service directors, rather than publicly to expose wrongdoing' (Williams, 2001:10). In-built executive controls such as the presence of an Inspector General, are important in directing intelligence covert operations where they are allowed. In contrast, America restricted covert action after a series of intelligence scandals overseas (Williams, 2001). Therefore, if Botswana continues to allow covert action, it will have to restrict it so that it is not open to abuse.

In contrast, Botswana's proposed bill authorises covert action by allowing the intelligence officers to act if they are authorised by the director general of the agency who is appointed by the president without consulting the leader of the opposition. Intelligence officers may, according to article 21 (1) arrest without warrant during the course of an investigation, 21 (2) arrest for any other offence which is not related to the primary investigation, 21 (3) (a) use reasonable force for purposes of effecting an arrest, 21 (3) (b) enter and search premises in the course of effecting an arrest. Thus, Botswana diverges from the leading democracies when it comes to covert action. Botswana's Intelligence and Security Bill seeks to allocate investigative powers, analytical powers and execution powers to the same agency, without resorting to the use of non-intelligence organisations for the latter purposes.

In the case of Botswana, constraining covert action is an executive rather than a parliamentary and judiciary functions as well. Article 29 of the Bill establishes an Intelligence and Security Council consisting of permanent secretary to the president, attorney general, director and deputy director general of the directorate of intelligence. Its functions are contained in article 30 as to 'review the intelligence policies and activities; and examine the expenditure, administration, complaints by, and oversee the legal framework of, the intelligence'. While these are important functions, there is no mention of covert action and the protection of human rights, and of investigations into the activities of the intelligence.

Parliamentary oversight is also crucial to properly guide the intelligence and to constrain covert action where it is allowed. For instance, almost all modern democracies have parliamentary committees that exercise an oversight function over the intelligence. For instance, Germany and USA which allow restricted covert action, Canada, Australia, Britain and South Africa which do not allow it, have parliamentary committees on the intelligence. The members of the parliamentary committee on the intelligence are appointed by the president in South Africa and by the prime minister in Britain, and elected by parliament in Germany (Nielsen, 1996:55). In Germany, Britain and South Africa, members of the parliamentary intelligence committee are drawn from all political parties represented in parliament (proportionally according to party strength in South Africa) and meet in private. In Germany, such a committee approves countries whose communication lines have to be intercepted, and where information about an individual is required, then a special authorisation must be obtained (Nielsen, 1996). In South Africa, such a parliamentary committee receive reports from auditors and other evaluators of the intelligence services, make recommendations on legislation and activities, order investigations and hold hearings on matters relating to intelligence and national security, monitor activities of the services in light of human rights and other rights entrenched in the constitution (O'Brien, 2006:183). In the USA where covert action is lawful, it is constrained by the requirement of 'notification of the House and Senate

intelligence committees of the action as soon as possible after issuance of the finding and before the operation starts. An exception remains for 'extraordinary circumstances' in the event of which the president need only fully inform the committees in a timely fashion' (Boraz and Bruneau, 2006:41). In all these cases, serious attempts have been made to either outlaw or restrict covert action through parliamentary oversight.

In contrast, the Botswana Intelligence and Security Law grudgingly included a parliamentary committee without defining its role in matters of covert action. The secrecy is enormous and the exclusion of parliament is total. Article 25 (1) of the Intelligence and Security Bill provides for a Central Intelligence Committee consisting of the president, vice president, minister of presidential affairs, minister of foreign affairs and permanent secretary to the president, commander of the army and commissioner of police (and their deputies), and director and deputy director of the Directorate of Intelligence. In sharp contrast with other modern democracies, the Botswana Law fails to define parliamentary oversight over the intelligence. Instead, the Bill seeks to establish an executive committee that is expected 'to guide the Directorate generally on all matters relating to national security and intelligence interests; to approve intelligence and security assessments; to advise the president on appropriate action to be taken, or policies to be formulated, in the interest of national security'. As such, there is no provision for a parliamentary investigation into the activities of the intelligence. This is a serious omission for a country whose Vision 2016 calls for accountability, openness and integrity.

The Botswana Intelligence and Security Law propose some judiciary oversight. Its Article 22 provides that '(1) where the Director General believes, on reasonable grounds, that a warrant under this section is required to enable the Directorate to investigate any threat to national security or to perform any of its functions under this Act, the Director General may apply to a magistrate or a judge of the High Court for a warrant in accordance with this section'. The warrant may come either before or after such search and seizure, depending on the circumstances. While this section is important, it applies to the searching and seizure of premises, places, vessels, boats, aircrafts or other vehicles that contain evidence of the commission of any of the offences referred to in the Act. But why this function cannot be left to the police, directorate of corruption and economic crime and other agencies is not clear. In other democracies, arresting powers lies solely with the police and other law enforcement agencies, and not with the security intelligence.

Conclusion

While Botswana's Vision 2016 talks of a safe and secure nation where violent crime, high road accidents, small arms-trafficking and drug abuse are eliminated, and an open, accountable and democratic nation where even the leaders are accountable, Botswana's Intelligence and Security Law ignores all these and focus on espionage, sabotage, foreign-influenced activities and subversion. While the issues listed in the Intelligence and Security Law directly affect the government, those in the Vision 2016 directly affect the citizens (business, civil society and individuals) and government. Thus, in drawing up an Intelligence and Security Law, Botswana only thought about its government and ignored its citizens. It also forgot to emphasise its democratic and peaceful political culture that it is known for worldwide. The Law neither sees citizens as partners in gathering and analysing intelligence information, nor Parliament as stakeholders in the security of the nation.

Unlike other liberal democracies where academics are involved in intelligence gathering and analysis, Botswana's Intelligence and Security Law seeks to establish a statist agency manned by security personnel with strong connections with the Executive and with little connection with the citizens and Parliament. Botswana's Law neither mentions human rights protection nor the importance of objective intelligence analysis, nor the role of Parliament in security matters. The Law envisages the Executive as the only controller and guide of the intelligence. In anti-liberal terms, the Law envisages the establishment of a parliamentary committee without clearly defined functions over the activities of the security

intelligence. The Law generated fears among parliamentarians, academics, trade unions and other civic leaders that a 'monster' is being created whose power would be directed at them.

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