

# CHAPTER SEVEN

## The democratic subsidy in Namibia's intelligence oversight mechanisms

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### Introduction

The ideal framework for organising society at all levels is generally accepted to be that of a democracy. Nonetheless, the very notion and practice of democracy is often highly contested and even questioned by some whose own societies embrace or impose, at best, limiting and highly centralised systems of governance and, at worst, outrightly authoritarian and repressive governance systems. In this chapter, we use an agonistic normative idea of a democracy to evaluate the place and implications of intelligence services to limiting or enhancing democratic governance in Africa and Namibia in particular. We acknowledge that there is no single understanding of, or consensus on, what a democracy is, but also underscore the axiom that there are certain fundamental elements that are consistently associated with democratic systems. These include, among others, guarantees for and protections of fundamental human rights, open, participatory and inclusive governance systems and the rule of law (see Held, 2006; Christians et al., 2009). This does not mean that democratic societies are or should be impervious to social contestations as this is far from the truth. We draw on Mouffe (1999; 2005) and Gramsci's (1957/2021) work, to argue that conflict is indeed an immanent element of democratic politics and polities. Nonetheless, it is useful to be specific about the kind of conflict that is consonant

with democratic politics. In our view, social conflict over everyday governance issues which simmers below the plane of violence and reflects contestations over exigent social issues in society is, arguably, not only immanent in a democracy, but also desirable, as it is hardly the case that consensus and homogeneity in public opinion will ever be achieved, let alone crystallise (see Mouffe, 1999; 2005). As such, the question about how to properly provide oversight of the operations of intelligence services in any society is likely to arise, mutate and stabilise in the flux and flows of everyday discourses in formal political institutions and processes, as well as in the public domain. Contestations over how best to integrate the operations of intelligence services within the architecture of a democratic society and its institutions will ineluctably be shaped by the politics of which they are a part within a competitive multiparty and multi-stakeholder democracy.

In this chapter, we argue that debates and contestations about the role and limits of intelligence services, to the extent that they are occasioned and manifested, are not an aberration of democratic politics, but constitute the sinews of its imperfect fabric. These debates reflect the range of views about how best to organise and govern society at particular points in its history. Such debates are mostly possible and nourished in democratic rather than authoritarian societies. It is in this context that we analyse debates over the accountability of intelligence services in Namibia. As some have already highlighted, debates about the role of intelligence services in Namibia reflect the tension between the legacy of the liberation struggle and contemporary preoccupation with the virtues of democratic politics, which put citizens' rights at the centre of the operation of public institutions and delivery of public services (Bolliger, 2023). We, therefore, examine the dimensions of this dialectic and locate it within radical conceptions of democratic politics. The chapter starts off by outlining the historical and contemporary context within which to understand the organisation and practices of intelligence services in Namibia. Its theoretical and philosophical framing of democracy is discussed in the next section, after which the chapter explicates the existing paradox of Namibia's democracy in so far as this pertains to the role of intelligence services

in the country. An attempt at imagining a democratic framework for the operation of intelligence services in Namibia is presented just before concluding the chapter. Originally, this chapter was meant to be based on qualitative interview data gathered from a range of key informants, including former and current intelligence service officials, civil society and journalists, among others. However, the authors could not gather the necessary data, owing to challenges in securing ethics clearance for the study, hence this analytical chapter.

## **Historical and contemporary context**

Postcolonial Namibia has significantly upended the brutally oppressive, genocidal, authoritarian, sectarian and racist socio-economic and political system of its former colonial oppressors, Germany and apartheid South Africa. Not only is Namibia acknowledged and highly regarded as a multiparty constitutional democracy, it has also significantly created opportunities for its previously marginalised and brutalised Black population (see Global State of Democracy Initiative, 2024). For example, according to the World Bank, Namibia 'halved the poverty rate between 1993 and 2016' (2021, p. 1). However, despite these achievements and its status as an upper-middle-income country, Namibia continues to grapple with social challenges such as inequality (with the second-worst margin in the world), poverty and unemployment (World Bank, 2021). In addition, the country's democratic system is still a work in progress, a reality evident regarding the shaky transparency and accountability of its security sector, in particular, the intelligence service, which is the focus of this chapter.

When the South-West Africa People's Organisation (SWAPO) party turned up at the newly instituted Constituent Assembly, following the landmark elections of November 1989 that saw Namibia gain independence from then apartheid South Africa, it did not have a democracy-inclined constitutional proposal to place on the negotiating table, and certainly not anything that contained a strong bill of rights (Wiechers, 2010). What it did have were Soviet-style proposals for the organisation and structure of the future

Namibian state, heavily drawing on 'East European ideology and constitutional thinking' (Wiechers, 2010, p. 87) that emphasised strong party control over all arms of state power, the executive, legislature and judiciary. The SWAPO proposals which, according to Wiechers (2010), were officially never unveiled at the post-election constitutional negotiations, in the wake of the collapse of the East European communist bloc following the fall of the Berlin Wall in 1989, had become 'extremely suspect' and the party rightly surmised that its proposals were out of step with the historical moment. In the end, as the constitutional negotiations were about to get under way, Wiechers (2010) recounts, SWAPO hastily cobbled together a 'new' position that resembled the 1982 Constitutional Principles,<sup>1</sup> a move that ultimately enabled the relatively smooth crafting and drafting of a constitution in two months, as the majority of the proposals tabled by other parties for inclusion in the future Constitution were in some way also based on these same principles. However, while the 1982 Constitutional Principles reflected broad democratic convictions and the Namibian Constitution that came into force on 21 March 1990 was substantially democratic, the ruling party's attitude to governance in the post-independence period continued to reflect the undemocratic, old East European ideology and thinking with which it had arrived at the negotiating table in late November 1989.

We highlight this point to argue that since its birth in April 1960, through the liberation struggle years (from 1966 up to 1989), and up to independence on 21 March 1990, SWAPO had not been and was not a perfect movement for democracy. While the party started out, in its very first political manifesto in 1961, by espousing democracy and freedom, by the mid-1970s, as Du Pisani and Lindeke (2009,

1 The 1982 Constitutional Principles actually emerged from an all-party conference convened in Geneva, Switzerland in early 1981, under the supervision of the Western contact group (USA, UK, France, Canada and West Germany) to flesh out matters related to the Constituent Assembly and the content of the future Namibian Constitution. In 1982 these principles became part of UN Security Council Resolution 435 of 1978, which prescribed the processes and conditions for Namibian independence from apartheid South Africa.

p. 6) note, it had started 'breathing the air of socialism'. By then it had become the pre-eminent pro-independence movement and the radical change sought in its political programme reflected a centralising of power in the hands of a coterie of senior leaders, who in post-independence Namibia are colloquially referred to as the 'old guard' (Dauth, 1996). Saunders (2003, p. 88) notes that by independence SWAPO had been 'highly authoritarian in its practices' and hierarchical. By then (the late 1980s) as Melber (2003, p. 14) points out, it was 'not democratisation that was the priority agenda item for Namibia, but decolonisation'. As Melber (2003, p. 14) states:

The agenda was first and foremost shaped by the goal to establish a formally legitimate and internationally recognised sovereign Namibian state. By implication, many of the forces involved may have had the expectation that this required democracy as the basis of a lasting political system. Explicit evidence for this, however, remains scarce and scattered.

Like many liberation movements the world over, SWAPO had over the course of the war for independence increasingly organised itself (both in response to perceived infiltration by the enemy and in efforts to ward off internal rebellions and leadership discontents over the years) along 'strictly hierarchical and authoritarian lines, otherwise they would hardly have had any prospect of success' (Melber, 2003, p. 12). That is to say, the culture within the party and the movement was not one that could be said to have been democratic in nature. This means that while SWAPO's liberation fighters were fighting the brutal authoritarianism of apartheid colonialism, they were themselves prone to authoritarian violence and coercion from within.

In this regard, Saul and Leys (2003, p. 70) are adamant that there 'is no room for doubt as to the seriousness of the indictment levelled against the SWAPO leadership regarding its human rights abuses in exile. There is a wide range of recorded testimony.' They, and others, have pointed to the organisation's pre-independence security and intelligence apparatus, firmly in the grip of the movement's senior leadership, which with time had become increasingly paranoid

and authoritarian in response to real and perceived internal and external threats. The organisation's security apparatus was primarily responsible for the perpetration of widespread human-rights abuses among its rank-and-file members, especially from the late 1970s and throughout the 1980s, up until the independence elections in November 1989. Links (2019, p. 5) notes that in

the process of ostensibly countering enemy espionage and infiltration – in a prolonged campaign that reportedly involved arbitrary arrests and detentions, torture, mutilation, and mass disappearances – the organisation had itself built a formidable internal security and intelligence capability and apparatus. Historical and witness accounts paint a picture of a Soviet-style 'secret police' that wielded power with ruthlessness and impunity.

In other words, the SWAPO leadership relied heavily on this Soviet-style 'secret police' to maintain command and control through repression, coercion and a culture of fear among the movement's rank and file (Saul and Leys (2003, p. 70). This centralised command over internal security and intelligence functions at the very top of the movement was ultimately carried over into independent Namibia, as we shall discuss later in this chapter.

What the foregoing illustrates is that at the time of Namibia's attainment of independence on 21 March 1990, the political force that was to dominate politics in post-independence Namibia, SWAPO, following the November 1994 presidential and parliamentary elections, was not imbued with strong democratic convictions as noted by Dobell (1998). What this meant, practically, regarding the transfer of state power post-independence was that an authoritarian system of government was taken over by a partly authoritarian-inclined new political elite through a process in which 'new societies carried within them essential elements of the old system which they had fought' (Melber, 2003, p. 12). So, even though the transfer of political and state power came about through democratic means, the governance structures of the 'old' state and the culture of the newly installed governing elite were not democratically inclined (Wiechers, 2010).

Arguably thus, the 'new' post-independence state to some extent initially and significantly appropriated and reflected undemocratic governance tendencies and approaches of the old apartheid state. This tendency was not unique to the Namibian context, of course, but was evident in other postcolonial, postindependence societies on the continent as well.

Regarding intelligence governance, Du Pisani (2003, p. 2) notes that the state and the security sector, which includes the intelligence services, are 'intimately connected' and that the nature of the security sector reflects the nature of the state, and vice versa. In the Namibian context, this has historically meant that the intelligence, and broader security services have largely been shielded from any sort of meaningful public scrutiny. This lack of transparency is a core characteristic of the postindependence Namibian state and is, as already noted, a hangover of the Cold War era ideological disposition of the SWAPO ruling elite, which has allowed the establishment, as Bolliger (2023) argues, of an authoritarian intelligence culture in a democratic state. On a practical level, this has meant that post-independence intelligence-related policy and governance matters have not tended to be publicly discussed and debated (Du Pisani, 2003). By effectively casting the secrecy shroud of 'national security' over any and all things intelligence-related, Namibian authorities have to a large extent succeeded in silencing any debate over or criticism of its intelligence activities and governance practices, thereby ensuring that such matters are not accorded appropriate importance or, for that matter, widely understood within the broader polity. In this way, the Namibian ruling elite has for more than three decades managed to avoid transforming intelligence governance to reflect a significantly more democratic dispensation. As Du Pisani (2003) notes, regarding democratic governance of the broader state security sector, this should be read and derived from subarticle 1.2 of the Namibian Constitution, 'which recognises the sovereignty of the people as the foundation for state power'. Du Pisani concludes that the state of democratic governance – marked by significant deficiencies and shortfalls – of the broader security sector, and notably the intelligence service, signifies that Namibia is still in a state of democratic transition and consolidation. At the time of

writing this chapter, Du Pisani's assessment was already just over two decades old, and the situation – deficiencies and shortfalls in democratic governance of the state security sector – remains true, as demonstrated by Bolliger (2023) and others.

## **Agonistic pluralism qua democratic politics**

The operations of intelligence services are counterintuitive to democratic sensibilities for various reasons, prominent among which is the element of openness that juxtaposes against the former's penchant for secrecy. By their very nature, democratic societies are open and democratic institutions accountable to citizens, and yet intelligence services are usually neither open nor accountable due to their secretive nature (see Hillebrand, 2012). It has also been generally acknowledged that intelligence services are imperative for security reasons and for generating relevant intelligence for various sectors of a country's sociopolitical and economic landscape to help inform policymaking (see Caparini, 2007; Hillebrand, 2012). Nonetheless, given the potential risk of abuse and excess in the operations of intelligence services, it is imperative that some effective oversight be provided on this sector of governance (Caparini, 2007; Hillebrand, 2012; Aradau and McCluskey, 2022; Kniep et al., 2024). Without this oversight, it is very easy for intelligence services to be abused in ways that egregiously violate human rights, reminiscent of operations of such notorious organisations as the Gestapo in Hitlerite Germany (Stackhouse, 2021), the NKVD and later KGB in the Soviet Union (Bateman, 2016), the United States' Central Intelligence Agency (Absher et al., 2023), the Stasi of East Germany (Lichter et al., 2021) and almost all intelligence services of colonial governments on the African continent and post-independence authoritarian systems (see Shaffer, 2021).

As some have argued, the boundaries of oversight mechanisms are as amorphous as they are diverse (see Kniep et al., 2024). Broadly speaking, they can be categorised in terms of the binary between formal and informal arrangements, a point to which we shall return below. However, they can also be broken down into more specific

mechanisms that include, *inter alia*, executive-level oversight, legislative oversight, judicial oversight, international oversight, oversight by the media, civil society and political-interest groups, among others (Caparini, 2007; Hillebrand, 2012; Kniep et al., 2024). Considering the complex and overdetermined oversight matrix evident in most democracies, we argue that the ideal typical normative framework for thinking oversight of intelligence services is Mouffe's (1999; 2005) approach to radical democracy via the model of agonistic pluralism. The approach takes, as its departure point, the view that not only is conflict a necessary element of democratic societies, but it is also inherent and ineradicable (Mouffe, 1999; 2005). As such, contestations and differences about what role the country's intelligence services should play reflect actual debates about what kind of society Namibians want. Such debates are ineluctably informed by the country's sociohistorical memories, citizens' lived experiences in contemporary Namibia and citizens' aspirations for a democratic Namibian imaginary, going into the future. These are higher-order considerations whose nature and shape can be discerned from a refraction of perceptions about the organisation and operation of the country's intelligence services.

According to Mouffe, consensus over such big social questions is hardly achievable and, when it is achieved, such consensus remains tenuous, given the immanence and ineradicable nature of social conflict in democratic societies (1999; 2005). As the social world itself transforms, new challenges and questions about the role of public institutions, not least intelligence services, will emerge and be the subject of further debates about engagement with and reformulation of oversight mechanisms. The social implications of such factors as artificial intelligence, climate change, inequality, geopolitical tensions, transterritorial threats posed by terrorism, and the displacement of people and war, among other things, require dynamic and versatile intelligence services, albeit operating within democratic parameters. It is this latter proviso which casts conflict as ineradicable and the transformation of intelligence services as an existential imperative. For example, threats such as those posed by terrorism, artificial intelligence and geopolitical tensions may require some significant degree of secrecy and flexibility which may

undermine effective formal and informal oversight of the operations of intelligence services.

The contested nature of democratic space can also be aptly explicated in terms of Gramsci's conception of hegemony. For Gramsci, hegemony is achieved through moral leadership and the subsequent consent of dominated social groups (1957/2021). However, it has also been argued that every hegemonic instance is always in a precarious and unstable position that has to be struggled for in perpetuity as it is in uneasy co-existence with counterhegemonic forces which challenge the very instance of such hegemony (Miliband, 1990). In democratic societies, this is manifested in the continuous contestations between different social and interest groups over how best to organise society for the maximum benefit of all. This terrain of political contestation is marked by competing interests and interpretations of the social sphere, which interpretations are reflected in policymaking, the formulation of national laws, development policies, the balance between fundamental freedoms and their limitation, governance structures and the structure and condition of formal and informal oversight mechanisms, *inter alia*. It is on this basis that we argue oversight mechanisms on intelligence functionaries in Namibia must be analysed in a holistic manner. For example, it is our contention that informal mechanisms of oversight are as important as formal ones, and they operate both in contest and to complement each other. Either way, this can enhance oversight of, and the accountability of, intelligence functionaries. First, where they complement each other, the whole oversight edifice becomes that much stronger and, where they are in tension, the issues at stake are made visible for further debate, consideration, negotiation and resolution. That way, democracy is occasioned in contested praxis. Second, contestations about the role of intelligence services in and of themselves are symptomatic of functional macro-oversight mechanisms and democratic agonism. In the absence of democracy, it is almost unheard of that the operations of intelligence functionaries would even be a subject of scrutiny and contestation.

Furthermore, as some have observed, formal oversight mechanisms tend to be either too close to and dependent on the very

institutions over which they are expected to provide oversight, or they may be reverent of and play an advocacy role for intelligence functionaries, which stunts their oversight potential (Kniep et al., 2024; Caparini, 2007). As such, more open and democratic societies, such as Namibia, enable multilayered and diverse points of oversight of intelligence services, even though formal mechanisms of oversight are either absent or under-developed, and operate in collaboration with the state and its intelligence infrastructure. In the following section, we draw on empirical material to demonstrate that, although Namibia's formal oversight mechanisms on intelligence functionaries require more work, the country's democratic subsidy affords and expands the scope of such oversight mechanisms beyond the limits of formal arrangements and realities.

## **Tension between democratic and authoritarian tendencies in Namibia**

The bane of post-independence politics in Africa has been the tension between continuities of authoritarian colonial legal/institutional arrangements and discontinuities necessitated by the constitution of democratic post-independence polities. This tension is reflected in the schizophrenic co-existence of repressive legal provisions inherited from the colonial state and the progressive constitution of a postindependence democratic dispensation, as evinced, primarily, in democratic national constitutions. For example, as shown by Fesmedia Africa's African Media Barometer country reports, a significant number of African countries have retained the colonial Official Secrets Laws in one form or the other. Almost invariably, most postindependence African states retained the colonial security infrastructure that bears the authoritarian tinge of its original architects (Shaffer, 2021). Given the incompatibility between these and the imagination and subsequent constitution of postindependence democratic African societies, the place and role of intelligence services inevitably becomes a contentious and urgent issue. As such, colonial traces in the constitution and governance of post-independence intelligence systems, of necessity, require

that there be effective formal oversight mechanisms and a broader enabling democratic environment where informal oversight structures and functionaries can emerge and operate unencumbered.

As some have noted, formal oversight mechanisms can be institutionalised nationally and internationally, through *inter alia*, relevant legislation and judicial mechanisms, parliamentary and special investigative bodies, as well as intelligence functionaries' own internal oversight mechanisms among others (see Goldman and Rascoff, 2016; Gill, 2020). However, beyond these are also informal oversight structures which include, among others, news media through their monitorial role (Christians et al., 2009; Hillebrand, 2012), as well as civic society and whistleblowers, among others (Kniep et al., 2024). Be that as it may, the latter's efficacy is contingent on an enabling democratic environment. Free, plural, independent and diverse news media with unfettered access to information; a vibrant, free and independent civil society; along with protected whistleblowing channels are indispensable pre-conditions for effective informal oversight mechanisms. In this section, we argue that despite gaps in Namibia's formal intelligence oversight mechanisms, the country's democratic subsidy has so far enabled some functional informal intelligence oversight activities. This does not mean nor suggest the redundancy of formal oversight mechanisms. Rather, we believe in the need for and primacy of formal intelligence oversight systems because they are required to be accountable to the citizenry, but we also acknowledge, in some cases, both the fact of their ineffectiveness, at best, and their absence, at worst, which necessitates functional informal intelligence oversight. In the ensuing discussion, we explicate the state of both formal and informal oversight mechanisms, showing how the country's democratic subsidy has allowed some scrutiny over intelligence services in the absence of effective oversight structures and functionaries.

## **Gaps in Namibia's intelligence oversight**

As has already been discussed and as various authors (Saul and Leys, (2003; p. 70) Links, 2019; Bolliger, 2023) have noted, the

authoritarian intelligence culture that permeated SWAPO's internal security apparatus during, especially, the latter half (mid-1970s to 1989) of the liberation-struggle era has been carried over into the postindependence transitional democratic dispensation. This authoritarian intelligence culture has been built into Namibia's legal framework that has been established to govern the operational and intelligence-gathering activities of the Namibia Central Intelligence Service (NCIS), the formal successor in independent Namibia to SWAPO's security and intelligence arm of the liberation-war era. This obtains insofar as such laws significantly limit any sort of meaningful formal democratic oversight of the operations and, specifically, the communications surveillance function of the NCIS's intelligence-gathering activities.

Du Pisani (2003, p. 3) posits that governance means more than 'government' and 'implies a productive partnership between the legislature, the executive, the civil service, civil society and the academy' in handling intelligence-related matters. Interestingly, he does not mention the media as part of this 'productive partnership'. That said, here it is necessary to note that oversight structures in 'the legislature, the executive, the civil service' would constitute the formal intelligence governance structures or mechanisms, while 'civil society and the academy' (along with the media) would constitute the informal. Du Pisani (2003), drawing on Weiss and Gordenker (1996, p. 42), loosely takes governance to refer to 'intergovernmental relations, norm and policy setting, policy execution, political/public oversight at both the national and multilateral (sub-national) levels'. In the Namibian context, intelligence governance should be discussed in the context of a liberal democracy, since the Constitution of the Republic of Namibia establishes Namibia as a liberal democracy. Ideally, Du Pisani notes, in a liberal democracy, intelligence governance should take the form of a 'democratic political control' dispensation, which he describes as follows:

Democratic control implies that the [intelligence service] acts in ways which the citizens as a whole approve of. This in turn means that the government which the people elect is the first source of control, followed by parliament, followed possibly by

the courts (to ensure the integrity of the constitution). The issue goes beyond that of narrow control, and means a complex interrelationship between the state, political society and civil society (2003, p. 4).

Furthermore, Du Pisani (2003, p. 4) argues that the 'key principles of good governance in the security sector', as espoused by the United Kingdom (UK) government's former Department for International Development (DFID),<sup>2</sup> best exemplify the 'democratic political control' of intelligence services in liberal democracies. These principles can be summarised as follows:

- Security sector organisations, particularly the security forces, are accountable both to elected civil authorities and to civil society.
- Security sector organisations operate in accordance with international law and domestic constitutional law.
- Information about security sector planning and budgeting is widely available, both within government and to the public, and a comprehensive and disciplined approach to the management of defence resources is adopted.
- Civil-military relations are based on a well-articulated hierarchy of authority between civil authorities and the defence forces, on the mutual rights and obligations of civil authorities and the defence forces, and on a relationship with civil society that is based on the respect for human rights.
- Civil authorities have the capacity to exercise political control over the operations and expenditure of the security forces and civil society has the capacity to monitor the security forces and provide constructive input to the political debate.
- An environment exists in which civil society can actively monitor the security sector and be consulted on a regular

2 The Department for International Development was dissolved in September 2020 and has been superseded by the Foreign, Commonwealth and Development Office (FCDO).

basis on security policies, resource allocation and other relevant issues.

- Security-force personnel are adequately trained to discharge their duties in a professional manner consistent with the requirements of democratic societies.
- Fostering an environment supportive of regional and sub-regional peace and security has a high priority for policy makers (DFID, 2000).

It is against this conceptual backdrop of intelligence governance that the following discussion of the tensions between democratic and authoritarian tendencies proceeds.

## **Operational governance oversight**

The operations and activities of the NCIS are governed by the Namibia Central Intelligence Service Act (Act 10 of 1997), which details the powers, duties, functions and general mandate of the NCIS, as well as specifying oversight entities. The NCIS Act repealed the old South African National Intelligence Act (Act 19 of 1987). Regarding intelligence oversight, the law makes it clear that the Director General of the NCIS reports directly to the State President, a scenario that Du Pisani (2003, p. 2) argues is consistent across Southern Africa as a legacy and consequence of the 'ideological context of the Cold War, the protracted armed struggle against apartheid, the material interests that underpin the security sector and the state and the character of governance'. He notes that 'Security continues to be the preserve of the Head of State or a select few in the executive arm of government, especially since the survival of state elites is often the greatest security concern' (Du Pisani, 2003, p. 3).

That said, the law also makes provision for some limited oversight of the operations and activities of the NCIS by the Namibian National Assembly's Standing Committee on Foreign Affairs, Defence and Security. Nevertheless, this oversight provision can still be circumvented under certain conditions at the discretion of the Director

General of the NCIS or the State President, or both. Notably, despite the fact that the Namibian state was founded on the principle of the separation of powers, with the legislative and judicial branches, theoretically and practically, expected to serve as effective checks on the executive branch, the Namibian Parliament, a bicameral parliament consisting of the National Assembly and the National Council, has never, in the 34 years of its existence, served as a robust check on the executive branch (Lindeke, 2007). There are both political and structural reasons for this. Politically, given its dominance of the legislature since independence, SWAPO has effectively controlled the legislative agenda. Similarly, for most of the history of the Namibian parliament, the executive has numerically dominated the benches, with ministers and deputy ministers outnumbering backbenchers and opposition parliamentarians for most of the last three decades (Tjirera and Hopwood, 2009). As such, Lindeke (2007, p. 8) argues that 'party discipline and cabinet dominance have created a monopoly of the executive branch over law-making'. He adds, citing Melber (2006), that the 'National Assembly lacks robust debates on policy for the most part and is widely considered a rubber stamp for the Executive which has dominant numbers' (Lindeke, 2007, p. 11). Structural deficiencies – budget, staffing, policy and research capacity and so on – have contributed to and exacerbated the dysfunctions of the Namibian legislature (Links et al., 2023).

A major casualty of the dysfunctions of the Namibian legislature over the past decades has been the parliamentary committee system, which has never functioned optimally (see Lindeke, 2007; Tjirera and Hopwood, 2009; Links et al., 2023). Transforming the parliamentary committee system to enable the Namibian parliament to play its oversight role more effectively formed a core part of the National Assembly's *Agenda for Change* (1995). However, the *Agenda* never really got off the ground over the nearly two-and-a-half decades since its declaration (Lindeke, 2007; Links et al., 2023). It is only over the last few years, since 2021 that there appears to have once again been significant discussions and steps taken to revive the *Agenda*. What the foregoing illustrates is that the Namibian legislature, and specifically, and especially, the parliamentary

committee system, has to date not been an effective oversight mechanism or check on the Executive branch in any sector. This effectively means that, as Lindeke (2007, p. 3) argues, from the beginning Namibia has had a 'strong or executive presidential system' with a cabinet, which has traditionally meant that 'negotiations and decisions occur within Cabinet and between ministries out of public and parliamentary view' (Lindeke, 2007, p. 8).

Against this backdrop, the notion that the Namibian National Assembly's Standing Committee on Foreign Affairs, Defence and Security is an effective oversight mechanism over the operations and affairs of the NCIS seems a rather quaint pretence. To underscore this point, in mid-2018 it was reported that in all the years of its existence up until then, 'the spy agency has apparently never submitted a report or made an appearance before' the National Assembly's Standing Committee on Foreign Affairs, Defence and Security (Links, 2019, p. 6). Media reporting at the time further stated that the committee did 'not have access to any operational information of the agency and as such has not submitted a report to parliament' (Links, 2019, p. 6). To emphasise this point further, it is imperative to consider that the NCIS has argued in court, in a high-profile 2018 High Court case brought against a newspaper to attempt to muzzle it, using the apartheid-era Protection of Information Act (Act 84 of 1982), from reporting on operational and financial matters that had the appearance of corruption, that, given what it considered the supremacy of its national security mandate, it should not be subject to either parliamentary or judicial oversight.<sup>3</sup> Ultimately, the court ruled against the NCIS's media-muzzling attempt, in a judgment that was upheld on appeal by the Namibian Supreme Court in 2019, and reaffirmed that in a liberal democracy all state entities, including those in the state security sector, were subject to the rule of law and judicial oversight.

Additionally, in the same year, two other matters that reflected an absence of meaningful official oversight of the NCIS's affairs,

3 The case was *Director General of the Namibia Central Intelligence Service and Another v Haufiku and Others* (107 of 2018) [2018] NAHCMD 174 (18 June 2018), and the judgment can be read [here](#).

explosively came into public awareness. The first was when in March 2018 it was revealed that the NCIS had been paying for the running of the offices of two Directors-General since 2015 because the old Director General, Lucas Hangula, had refused to vacate his office and retire when the new Director General, Philemon Malima was appointed in early 2015. Secondly, it also emerged that a senior NCIS official, reportedly responsible for crime intelligence, was found to have been stealing from and defrauding the service for nearly two decades to the tune of tens of millions of Namibian dollars. The matter was closed without going to trial when the official committed suicide in late 2018. These incidents taken together led Links (2019, p. 8) to conclude that:

... the intelligence service seems to be riven with corruption, mismanagement and the waste of state resources, and has abused the mantras of secrecy and 'national security' to cover up (or attempt to) illegal activities within its ranks and structures. These sorts of practices have arguably created an internal culture founded on the belief that the NCIS was not answerable to the courts or parliament and can operate outside the law.

## **Surveillance governance oversight**

Another key consideration is the nature of oversight in the context of communications surveillance governance. On paper, in terms of operational matters, the Namibian National Assembly's Standing Committee on Foreign Affairs, Defence and Security is mandated to provide a measure of formal public oversight over the communications surveillance activities of the NCIS. However, as has been noted earlier, with regard to operational matters, that the NCIS has also 'apparently never submitted a report or made an appearance before' the committee with regard to its intelligence gathering or surveillance activities (Links, 2019, p. 6).

The Namibian communications surveillance framework consists of the Namibia Central Intelligence Service Act (Act 10 of 1997) and the Communications Act (Act 8 of 2009). As indicated earlier, the

NCIS Act outlines the powers, duties, functions and general mandate of the NCIS, including the monitoring and interception of communications by its agents. The Communications Act, in Part 6 of Chapter V, also provides for the monitoring and interception of communications and is the primary communications surveillance-enabling law on the Namibian statute books. The framework, specifically in Section 24 of the NCIS Act, provides for some judicial oversight, by making it an offence for anyone to engage in communications surveillance without a warrant issued by a judge. Regulations issued under the Communications Act in April 2021 and April 2022, that brought into force Part 6 of the law on 1 April 2024, also provide for a warrant to be sought from either a judge or magistrate, in order to engage in communications surveillance.<sup>4</sup> Over the intervening years since 2009, when questioned about the status of regulations for Part 6, the standard response from the Ministry of Information and Communication Technology (MICT) had always been that consultations were ongoing (Links, 2019). That said, Part 6 of Chapter V of the Communications Act also provides for the setting-up of interception centres by the NCIS. The April 2021 regulations authorise mandatory SIM-card registration, while the April 2022 regulations provide for mandatory data retention and directs telecommunications and internet service providers to collect and store all communications data for a period of five years.

It should be noted that the new regulations also make provision for the Namibian Police Force to access customer information without court authorisation in urgent situations. These regulations were given further force in 2023 with the enactment of the Criminal Procedure Amendment Act (Act 7 of 2023), which in new sections, first, empower any police official to demand any information, document or data from anyone without a court order and, second, provide for any senior police official to gain access to the bank accounts and financial records of any person at any financial institution, once again without having to get a court order (Hubbard, 2024).

<sup>4</sup> These regulations can be viewed on the website of the Communications Regulatory Authority of Namibia (CRAN) at the following link: <https://www.cran.na/sim-registration-awareness/>.

That said, aside from the mandatory SIM-card registration and data-retention regime imposed on Namibians, a regime that effectively enables mass state surveillance – by being perpetually switched on to collect all the communications data of all telecommunications and internet users in Namibia, and storing such data for up to five years, irrespective of whether it is of investigatory interest or not – where the authoritarian intelligence culture also finds expression is in the gaps and challenges of the communications surveillance framework. The gaps and challenges that are the subject of the ensuing discussion were identified through a human-rights impact assessment of the communications surveillance framework conducted on behalf of the Windhoek, Namibia-based, Institute for Public Policy Research (IPPR) following the issuance of the regulations of April 2021 and April 2022 by Namibia's then Minister of Information and Communication Technology (ICT), Peya Mushelenga. The human-rights impact assessment was conducted by a South Africa-based, public-interest advisory firm, ALT Advisory, and a report was delivered to the IPPR in October 2022.<sup>5</sup> The ensuing discussion draws heavily from the report. The IPPR's human-rights impact assessment found that the communications surveillance framework 'falls short on a range of fronts' that would make for a more democratic oversight dispensation (IPPR, 2022, p. 28). These shortcomings are: lack of necessity and proportionality; lack of protections for metadata; provision for urgent warrantless access; lack of user notification; and a range of other transparency and oversight gaps. A brief unpacking of the issues raised by the assessment is warranted. That said, with regard to a lack of necessity and proportionality the study notes:

Best practice dictates that the privacy violations inherent to communication surveillance demand that these powers be exercised only when necessary, when responding to the most severe crimes and threats to safety and security, and only where

5 The report of this human-rights impact assessment remains unpublished, but in the possession of one of the authors of this chapter, namely Frederico Links, who had commissioned the study on behalf of the IPPR.

less intrusive measures have failed. These elements are lacking or at best inconsistently applied in the Namibian framework (IPPR, 2022, p. 28).

In terms of a lack of protections for metadata, the study notes:

The Namibian framework mistakenly assumes that communications data is less sensitive than the content of communications, and accordingly provides fewer protections and safeguards for its access. This is out of keeping with international best practice, which calls for all forms of communication data to be subject to the same rigorous protections and safeguards against access (IPPR, 2022, p. 29).

Concerning the provision for urgent warrantless access, it is found that, first, it is unusual to saddle a specific staff member, who might or might not be appropriately qualified to make such a decision, with the responsibility of whether to grant access to communications data in the possession of a given telecommunications service provider. Second, the assessment found that urgent warrantless access undermines the authority of the courts by allowing for accessing of sensitive data without judicial sanction. And, third, additional safeguards against abuse are absent, such as requiring law-enforcement or security agents having to seek authorisation from or provide formal notification of having accessed communications data after the fact to a relevant court (IPPR, 2022, p. 30). The study also points out that the Namibian interception framework lacks provisions for postinterception user notification.

On transparency and oversight gaps, the study notes that the framework does not provide for robust independent oversight, such as specialist judges or courts with expertise in the legal and technical questions around communications surveillance and human rights. In the same vein, the framework also does not provide for public reporting on communications surveillance-related activities. The study also found an absence of any robust complaints mechanism in the framework, such as an Ombud with powers to initiate investigations on public complaints regarding suspected surveillance abuse

(IPPR, 2022). As is demonstrated, the framework is devoid of critical transparency and accountability checks and balances that should ideally be in place in a liberal democracy. It is because of these significant weaknesses that the IPPR concludes 'a full reform process is recommended to provide better protections and safeguards for communications and communication data, drawing on developing standards and best practice internationally and in the region' (IPPR, 2022, p. 35). The IPPR's findings back up the outcomes of a constitutional assessment from June 2021 on the substance of the new data-retention regulations by the Namibian public-interest law firm, the Legal Assistance Centre (LAC), which similarly concluded:

Based on the survey of comparative law outlined here, it seems likely that Namibia's telecommunications data retention scheme might be found to be an unconstitutional infringement of the right to privacy overall, given the intrusion into the privacy of large segments of the population in a manner that has a questionable ability to serve the intended objectives (LAC, 2021, p. 22).<sup>6</sup>

It is worth mentioning that the issues raised by the LAC and the IPPR were incorporated into the Namibian civil society shadow report that was submitted to the United Nations Human Rights Committee in February 2024 ahead of the Namibian government's appearance before the committee in early March 2024 for a third periodic review under the International Covenant on Civil and Political Rights (ICCPR). Following the Namibian government delegation's interrogation by the committee, the Human Rights Committee too expressed concern with regard to the new regulations for Part 6 of the Communications Act, stating in their concluding observations, dated 28 March 2024:

The Committee is also concerned that the data retention regulations currently being implemented for Part 6 of Chapter V of

6 The Legal Assistance Centre's (LAC) assessment is titled 'Communications Act 8 of 2009: Is the collection and retention of data on telecommunications users constitutional?' and is downloadable from the organisation's website, at [www.lac.org.na](http://lac.org.na).

the Communications Act (No. 8 of 2009) may not provide adequate protections and safeguards for personal communications data. In addition, the implementation of the aforementioned regulations coincides with the implementation of mandatory SIM card registration, raising concerns in particular for persons with a particular need for confidential or anonymous communications such as journalists, whistleblowers, or human rights defenders (Concluding Observations on the Third Periodic Report of Namibia, 2024, p. 8).

The Human Rights Committee recommended that the Namibian government

... ensure that the management of the database for SIM card registration will be subject to appropriate safeguards in order to prevent hacking, data leaks, and unauthorised access by private and state authorities, including appropriate judicial or legislative authorization requirements for state authorities wishing to access the database (Concluding Observations on the Third Periodic Report of Namibia, 2024, p. 8).

This was not the first time that Part 6 of Chapter V of the Communications Act had raised concern at the Human Rights Committee. Back in 2014/2015 the committee raised similar issues, repeatedly questioning the Namibian government's delegation about the alleged unlawful existence of interception centres operated by the NCIS when Part 6 had not been operationalised at the time. This questioning followed testimony before the committee by the Namibian civil society delegation that there was anecdotal evidence that interception centres existed and were unlawfully operational.

This assertion – the alleged unlawful existence and operation of interception centres – has gained credence over recent years, following revelations that around the same time, 2014-6, that the Namibian government was repeatedly denying the existence and operation of such centres before the Human Rights Committee and in correspondence with the committee, during the second periodic review, the Namibian government was actually and actively scouting

and procuring sophisticated digital surveillance technologies in international surveillance technology markets (Links, 2019). Similarly, slightly before the second periodic review, in early 2014, a former senior SWAPO parliamentarian explosively and repeatedly claimed in the National Assembly chamber during a parliamentary sitting that the NCIS's surveillance capabilities had been weaponised in internal factional disputes and contestations within the ruling party and that senior party leaders and functionaries' mobile devices were being monitored (Links, 2019). To be clear, these and similar episodes over the years suggested that the types of communications surveillance envisaged and enabled by Part 6 of the Communications Act were already being conducted by the NCIS, wholly unlawfully, given the status of Part 6 at the time.

The foregoing exposition illustrates how authoritarian impulses in contemporary Namibia evince latter-day reproduction of the authoritarian intelligence culture of the liberation-struggle era. This culture has informed the crafting and operationalisation of an authoritarian-style framework for state surveillance in liberal-democratic Namibia. This has happened with no evident pushback from any single formal public-oversight mechanism, specifically the Namibian National Assembly's Standing Committee on Foreign Affairs, Defence and Security, which has traditionally been rather docile in the face of historically overbearing executive power in the legislature. At the same time, as this section also illustrates, it is the indirect, the judiciary, and the informal oversight actors – the media and civil society – that have been active in countering and raising awareness of the significant threats posed by the unaccountability and nontransparency that surrounds the operations and surveillance activities of the NCIS.

## **The democratic subsidy in Namibia's intelligence oversight**

The foregoing discussion shows how Namibia's formal intelligence oversight mechanisms remain weak, thereby creating room for the country's intelligence services to operate outside a structured

accountability framework, if not extrajudicially. However, it is arguable that this gap is mitigated by the country's overall democratic infrastructure, which enables some significant degree of informal oversight of intelligence services. The chapter avoids a reductionist argument which conflates lack of formal oversight mechanisms on intelligence services with the broader Namibian polity's democratic profile. It is precisely because of the country's democratic affordances that its intelligence services cannot significantly operate outside democratic parameters and extrajudicially.

Namibia has distinguished itself as a democratic polity in many respects, prominent of which is its profile in terms of freedom of the press, where the country ranks very highly, globally and continentally (Fesmedia Africa, 2022; Freedom House, 2024; Reporters without Borders, 2024). The country's democratic ecosystem is evinced by political pluralism; free, peaceful and credible elections; a free and independent government; expansive civil liberties; associational and organisational rights; the rule of law; as well as personal autonomy and individual rights (Freedom House, 2024). It is this democratic environment that has arguably created conditions for expansive informal intelligence oversight affordances and activities in Namibia. For example, the case of *The Patriot* newspaper shows the multiplier dividend of democratic conditions in the country. The newspaper's ability to investigate corruption within the Namibian Central Intelligence Service (NCIS) was arguably contingent on both the freedom accorded to the press in Namibia and the availability of relevant information in the public domain (Global Freedom of Expression, 2024), which enabled investigative journalist Matheus Haufiku to establish the facts of the case. Furthermore, to its credit, the NCIS itself did not use Gestapo tactics of intimidation to silence the newspaper as would have been the case in typical authoritarian environments. Rather, the merits of the NCIS's arguments notwithstanding, the agency chose a democratic process to make its case against the publication of the story. After losing the case in the high court, the agency appealed the verdict in the supreme court which upheld the outcome of the high court, a ruling that the agency did not reject. This evinces both the social accruals of Namibia's democratic subsidy and the inherence of conflict and contestation in democratic societies.

Moreover, Namibia's democratic subsidy in terms of intelligence oversight is evident in the role performed by civil society organisations and/or think tanks. A prominent example in this regard is the monitorial role being performed by the IPPR. Among other things, it has published several papers on various key public-policy issues, including the operations of intelligence services in Namibia, and has provided critical evaluations of legislative instruments that are aimed at governing intelligence operations and people's rights to privacy in the country, going forward (see Links, 2018, 2019, 2024). The Namibia Media Trust (NMT) has also demonstrated vigilant oversight of Namibia's legal environment regarding intelligence and surveillance activities, as well as the operation of the country's intelligence infrastructure. An example of this is a press statement from the organisation published on 19 June 2018 welcoming the High Court's judgment against the NCIS in the case of *The Patriot* newspaper.

This oversight activity arguably forces the NCIS to operate within the parameters of the national Constitution and laws. In addition, another civil society organisation, the Friedrich Ebert Stiftung, published a study that critically examined the relationship between Namibia's security sector and the state in 2003 (see Du Pisani, 2003). These oversight activities remove the veil of secrecy and mystery from the operations of this sector and provide citizens with insight into the operations of the security sector, in particular the intelligence services, making them more visible and subject to public scrutiny. The public awareness borne of these activities may force the security sector to observe the law and respect the Constitution in their operations.

The surveillance and intelligence scene in Namibia has also been a subject of scrutiny at an international level. For example, an international civic organisation, Privacy International, published a report in 2016 which reviewed threats to privacy rights in Namibia (Privacy International, 2016). This also focused the spotlight on the operations of intelligence services and the legislative instruments that enable such violations in Namibia. Furthermore, organisations such as Freedom House, Reporters without Borders, Afrobarometer, Fesmedia Africa and the African Commission on Human and People's Rights, among others, provide constant oversight of Namibia's state

of democracy, which includes analysing the operations of institutions and laws that threaten the fundamental freedoms of citizens, not least the operations of the NCIS. It is imperative to underscore the fact that such oversight activities would be inconsequential in authoritarian societies that mostly disregard democratic institutions and ideas which promote the democratisation of society. Lastly, intelligence oversight in Namibia is arguably occasioned by the country's multiparty democratic dividend. The political contestation that it is obtained from political competition is inherently imbued with oversight mechanisms. Namibia is replete with critical voices in the public domain, which include politicians and activists such as Job Amupanda and Michael Amushelelo, among others, who have been freely and fearlessly criticising state institutions thereby providing effective oversight of the latter. Ultimately, it is arguable that democratic societies such as Namibia have a complex and multilayered oversight system which makes the operations of state functionaries such as intelligence services transparent to the citizens, unlike in closed and authoritarian states.

## **Securing a democratic future in Namibia**

As the previous sections illustrate, while formal oversight mechanisms for the intelligence service are deficient and arguably largely failing in their oversight mandate, it has been the informal, nongovernmental mechanisms that have, to some extent, served to provide a measure of effective oversight of the NCIS within the democratic climate established by Namibia's liberal democratic constitutional order. However, as Du Pisani (2003) noted more than two decades ago, there are limits to the type and scope of oversight scrutiny that informal mechanisms, such as civil society and the media, can provide, given the considerable and, to some extent, understandable impervious nature of the governance systems surrounding the NCIS, and to a similar degree the broader state-security sector. Over the last two decades, the resistance to democratic oversight has been progressively entrenched, which is why some have insisted an authoritarian intelligence culture largely pertains in Namibia (Bolliger,

2023). The consolidation of an authoritarian intelligence culture is especially evinced by the introduction and expansion of an intrusive and potentially authoritarian framework for enabling communications and/or digital surveillance by the NCIS since the late 2000s into the early 2020s, as has earlier been demonstrated.

Given this state of affairs, the question that remains centres around how democratic governance of the NCIS can be strengthened, both in terms of fixing and/or filling gaps in the extant legal framework and formal oversight structures with a view to infusing more transparency and impactful scrutiny by informal oversight mechanisms. It is imperative that any and all interventions be geared towards democratising the perduring authoritarian intelligence culture that has been at the heart of this discussion and establishment of a more transparent, accountable and effective culture of intelligence governance that resonates with the liberal democratic values of the Namibian constitutional order. Nonetheless, it is axiomatic that undoing the obtaining authoritarian intelligence culture will not be achieved by simply tinkering with the legislative framework or existing formal oversight mechanisms, but will require the wholesale reform of oversight approaches, including within and among civil society and the media. In this regard, proposed fixes have in some instances been on the table for a long time, while others have emerged quite recently. Some of these fixes are obvious and have been alluded to already.

As Du Pisani (2003) and others (Lindeke, 2007; Tjirera and Hopwood, 2009; Links et al., 2023) have repeatedly pointed out over the years, and in line with the notion of checks and balances immanent to the separation of powers principle, weak legislative oversight over Namibian state entities and departments is ripe for overhaul. In this regard, it is necessary to revisit the long-standing *Agenda for Change* (1995) programme at Namibia's National Assembly, as it provides a road map for strengthening parliamentary oversight of all state offices, ministries and agencies, including the state-security sector. While there appears to be a stated intention and apparent attempts to revive the *Agenda* of late, more urgency is clearly required to breathe life into this democracy-enhancing transformative programme. Regarding intelligence-sector govern-

ance, the *Agenda* proposes the installation of an elevated and empowered parliamentary committee system to enhance oversight synergy between the legislature and judiciary, over the executive. This would inevitably mean that the National Assembly's Standing Committee on Foreign Affairs, Defence and Security becomes much more than what it has been to date in terms of holding the security sector, including the NCIS, accountable with regards to the latter's operations and activities.

While these transformations are progressing within the legislature's institutional arrangements, there ought to be a parallel overhaul of the legislative frameworks that speak to intelligence governance. In this regard, as has already been briefly discussed above, the Institute for Public Policy Research (IPPR) proposes specific and significant reform to the communications surveillance governance framework that underpins the NCIS's digital surveillance activities (IPPR, 2022). As previously noted, the NCIS Act of 1997 and the Communications Act of 2009 do not provide for effective democratic governance or oversight of surveillance capabilities and activities. For a way forward, the IPPR's (2022) recommendations would be a good place to start. According to the IPPR (2022, p. 35):

- The framework must be subject to clearer standards of necessity and proportionality, so that communications surveillance may only be conducted on narrowly defined grounds, where necessary for investigations of serious offences and imminent threats to national security or human life, and where less intrusive measures have failed or are not possible.
- The framework should ensure robust and independent judicial oversight of surveillance powers, by providing for specialist judges, with adequate independence and resourcing to fulfil their mandate. The process of judicial oversight must also provide due process for targets of surveillance, in the context of *ex parte* hearings.
- The framework must provide for user notification, in order for people whose communications or communications data are intercepted or accessed to be informed of any potential infringement of their rights so that they can seek recourse.

- The framework must provide for transparent measures across all agencies, oversight bodies and industry stakeholders involved in communications surveillance, including the publishing of regular transparency reports which disclose statistical information about interceptions and access to communications data.
- All standards and safeguards that apply to the interception of communications, inclusive of the recommended reforms, must apply to all forms of communication data, including historical data.
- Policies relating to the storage of communications data and mandatory SIM registration should be withdrawn and reviewed in their entirety, and subject to an evidence-based approach that considers any privacy and data protection risks, the cost of the policy and its impact on digital innovation and connectivity, the capacity and needs of law enforcement and appropriate safeguards and oversight measures.
- These recommendations necessitate wide-ranging amendments to Part 6 of the Communications Act, sections 24-8 of the Namibia Central Intelligence Service Act and the relevant regulations issued under the Communications Act.

Furthermore, something that would significantly complement the implementation of these proposed democratic governance changes or enhancements, according to the IPPR, is the creation of an independent state body or mechanism, such as an inspector general, to specifically monitor the communications surveillance activities of the NCIS. However, it is not just the formal governance or oversight mechanisms that are in need of transformation or reform, for as Du Pisani (2003) noted over two decades ago, the roles of civil society and the media, as well as academia, also require considerable strengthening in terms of providing meaningful public-interest oversight of the state-security apparatus. In this regard, it is necessary to point to the 'key principles of good governance in the security sector', espoused by the UK government's former Department for International Development (DFID), as noted by Du Pisani (2003, p. 4). As these principles posit, for informal oversight mechanisms to

play their role optimally, it is necessary that 'an environment exists in which civil society can actively monitor the security sector and be consulted on a regular basis on security policies, resource allocation, and other relevant issues' (DFID, 2000, p. 4). While the Namibian constitutional order adequately establishes such a conducive environment, it is apparent that Namibian civil society, the media and academia are considerably hamstrung by capacity and resource challenges to be able to optimally fulfil their envisaged collective informal oversight mandate. Nevertheless, it is the case that such oversight has been episodically robustly exercised, as highlighted above, which leaves considerable scope for further enhancement.

## Conclusion

The question of intelligence oversight, in any context, is fundamentally a question about democracy and the sociopolitical practices, as well as institutions, that both undergird or undermine it. Given the paradoxical position occupied by intelligence services in a democratic society, it is, to use Kant's nomenclature, a categorical imperative that independent, well-resourced, accountable and effective formal oversight mechanisms be embedded in a democratic state's governance structures. From an agonistic pluralist perspective, it is taken for granted that contention over social issues is the quintessential substance of a *bona fide* democracy. As such, not only is there contestation over the substance and structures of existing public institutions and their operations in a democratic society, but such contestations also exist over the rules of engagement in dealing with the former. This chapter has shown that, despite Namibia's status as a constitutional democracy, its formal intelligence oversight infrastructure is deeply flawed and counterintuitive to the country's general reputation as free and democratic. This caveat evidently poses a clear and present danger to the country's state of democracy and the nurturing of active and sovereign citizenship. Be that as it may, not much credit has been given to Namibia's functional and enabling democratic architecture. Arguably, and going by prevalent African standards, the Namibian situation could have been much

worse, were it not for its democratic affordances. One of the key areas in which the country's democratic subsidy is evident and functional is in intelligence oversight. On the one hand, rather than use its unaccountability, an economy of secrecy and seemingly carte-blanche powers to create a chilling environment through intimidation, harassment, death threats and outright violence to silence civil society, the media and academia, *inter alia*, the country's intelligence service, the NCIS, has demonstrated its reverence of the law and democratic institutions. Although there were/are serious objections to the NCIS's arguments in the case of *The Patriot*, it is evident that the agency took the legal course to make its case. The differences over the NCIS's arguments themselves in the court case evince a functioning agonistic democracy, where both the rules of engagement over the resolution of contentious issues and substance thereof, are subject to public contestation. Furthermore, that the case emanated from the activities of non-statal oversight actors evinces the affordances of a free society in which the media and other civic functionaries can operate unencumbered. Without the country's democratic dividend, such oversight would have been very limited, if not non-existent. Ultimately, therefore, we argue that the existence of functional formal and informal intelligence-oversight mechanisms in Namibia and the rest of the African continent is contingent on the existence of a functional agonistic democracy in which social issues are a subject of contested negotiation in the public domain on a daily basis.

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