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14. ABSTRACT

The primary intelligence oversight committee in Botswana, the Parliamentary Committee on Intelligence and Security (PCIS) has failed to provide an oversight report on the activities of the Directorate of Intelligence and Security Services (DISS) since 2010. The legislative committee is tasked with a mandate to oversee the financial expenditure and administrative needs of the DISS, but does not have the mandate to oversee the operational activities of the intelligence agency. The only oversight structure with a mandate to oversee the operational activities of the DISS is the Tribunal, a three-member appellate body that does not have the capability to oversee the DISS's activities at planning or during active operations. The Tribunal also does not have the democratic independence to initiate investigations against the DISS at its own discretion. This weakness in mandate, as provided for by the Intelligence and Security Services (ISS) Act of 2008, affords the Director General (DG) DISS the power to make decisions without accountability to any oversight entity. To ensure accountability by the DISS, Botswana should review the ISS Act and adopt the judicial oversight mechanism as its primary intelligence oversight body because, apart from resisting political influence, the professional maturity of Botswana's judicial system has the power to ensure legality and propriety of the DISS. The judicial intelligence oversight mechanism is also better placed to oversee the intelligence operations in all the

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MASTER OF MILITARY STUDIES

BOTSWANA AND THE CASE FOR JUDICIAL OVERSIGHT OF THE INTELLIGENCE SERVICES

SUBMITTED IN PARTIAL FULFILLMENT OF
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Mentor and Oral Defense Committee Member: **Dr. William Gordon**
Approved: _____
Date: 4/5/18

Oral Defense Committee Member: **Dr. Matthew Flynn**
Approved: _____
Date: 4/5/18

Oral Defense Committee Member: **Mr. Michael Cicere**
Approved: _____
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Executive Summary

Title: Botswana and the Case for Judicial Oversight of the Intelligence Services

Author: Major Mbako Ray Molopo, Botswana Defence Force

Thesis: This paper discusses the challenges that led to the collapse of the Parliamentary Committee on Intelligence and Security (PCIS) of Botswana, and proposes that in order to strengthen the democratic accountability and oversight of the Directorate of Intelligence and Security Services (DISS), Botswana should adopt the judicial oversight mechanism as its primary oversight body. This is because apart from the fact that the judicial mechanism is least prone to political influence, it has the capability to oversee intelligence activities in all phases of its execution: at planning stages before the start of (*ex-ante*), during, and after the completion of operations (*ex-post facto*). The judicial oversight mechanism is better placed to ensure propriety and legality of the activities of the Directorate of Intelligence and Security Services (DISS).

Discussion: National Security is an important function which a democratic government has to provide in order for its citizens to enjoy their civil liberties. This important role is performed by the state, employing instruments of national security like the intelligence services to ensure this realization. A balance between carrying out intelligence activities without violating human rights by the intelligence services is difficult to do. The evidence to this fact is the complaints from different sections of the community, allegations, and litigations against intelligence agencies which dominate the scene in many countries.

To address the challenge of human rights abuse by the intelligence services, countries have come up with oversight mechanisms to ensure the intelligence agencies perform their duties within the legal framework, and are accountable for their actions. The oversight mechanisms adopt different forms and combinations; they can, for example, be legislative, judicial, executive, or expert-based depending on the country's preference.

In countries that practice the legislative oversight mechanism, the oversight committee members are elected parliamentarians representing the electorate. The committee is viewed as a democratic oversight mechanism that is representative of the different political parties in parliament, and the expectation is for the selected committee members to be apolitical and serve the interests of the nation. The other expectation is for the legislative oversight mechanism to be robust in its mandate to oversee the whole spectrum of intelligence activities; this ensures intelligence accountability in legality and propriety by the intelligence agencies.

In instances where the primary legislative oversight mechanism doesn't have the robustness of oversight, there is a need to augment the weak primary oversight mechanism with another oversight mechanism with the intention of strengthening the primary oversight mechanism. The judicial oversight mechanism has been shown to be a better and robust oversight option to strengthen a weak primary oversight mechanism. This is because the judicial oversight mechanism is an independent arm of governance that is least likely to be affected by politics, and its mandate ensures human rights and the rule of law are adhered to by all for democracy to prevail.

Conclusion: The main reason for the collapse of Botswana's Parliamentary Committee on Intelligence and Security (PCIS) is linked to the weak provisions of intelligence oversight in the Intelligence and Security Services Act (ISS Act). The oversight mandate of the PCIS in the ISS Act doesn't allow for any form of investigation into the operations of the DISS by the PCIS, nor does it provide for the PCIS to direct the Tribunal which has the powers to investigate the DISS, to do so. The Tribunal, an appellate oversight mechanism based on, and somewhat structured on the United Kingdom's oversight mechanism structures is also weak in its mandate. The appellate body lacks an active oversight capability, and its transparency and democratic independence is questionable owing to its composition and its reporting links to the executive branch. An alternative oversight mechanism is the judicial oversight model that is adopted, as a primary oversight mechanism, by democratic countries like Canada, Australia, and South Africa. These countries' intelligence oversight mechanisms continue to perform well in delivering their mandate, and it is upon these grounds that Botswana should review the ISS Act to provide for the adoption of the judicial oversight mechanism as a primary oversight mechanism. The reputation of autonomy and the apolitical nature of Botswana's judicial system serves to support this recommendation.

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Preface

The 21st century security challenges are complex, and global security is arguably faced with more challenges than ever before especially with the explosion of social media, advanced technology, and a borderless world. Countries employ their security organs to try and address these challenges, and in the process also ensure that such instruments of national security account to relevant authorities. This paper is driven by the fact that in Botswana, a worrisome situation with a potential to endanger the country's national security and democratic ideals is shaping up. The primary intelligence oversight mechanism, the Parliamentary Committee on Intelligence and Security (PCIS) has absolved itself from the mandate of intelligence oversight, and the activities of the Directorate of Intelligence and Security Services (DISS) are not accounted for to ensure for adequate national security since the last parliamentary intelligence report in 2010. The dire situation continues despite evidence by court pronouncements, and allegations that the DISS has, in some instances, acted outside its mandate. The paper seeks to identify weaknesses in the intelligence oversight mechanism in Botswana, and to propose what needs to be done to address such weaknesses. The paper will interrogate Botswana's Intelligence and Security Services Act (ISS Act) of 2008, and consider four countries- the United Kingdom, Canada, Australia, and South Africa which, just like Botswana, are democratic countries with a parliamentary system of governance. The countries' intelligence oversight models are considered to identify the strengths in the mechanisms, and identify best practices from which Botswana's failed intelligence oversight mechanisms can learn from.

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Introduction to Intelligence Oversight

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.

-James Madison, Federalist No. 51

This paper advocates that oversight- that is, a process which aims to hold an organization accountable for its activities and policies,[1] is essential for the effective functioning of Botswana's intelligence services, specifically the Directorate of Intelligence Services (DISS). The need for effective intelligence oversight traces back to the times when it became apparent in the United States of America (USA) and Canada, that the countries' intelligence agencies were ineffective, and also committing human right abuses. In the United States (US), the Central Intelligence Agency's (CIAs) operational failures during the Cold War period and human rights abuse allegations[2] led to the establishment of the Church-Pike Committee in 1975, to investigate the allegations. In Canada, allegations against the special police force, the Royal Canadian Mounted Police (RCMP) also led to the formation of the McDonald Commission in 1977. Both Commissions discovered malpractice by the intelligence organizations, and advanced recommendations to improve the structures and operations of the intelligence organizations. One of the recommendations, which resonated in many countries, was to reform the intelligence oversight mechanisms for better accountability.

Following the recommendations from the US and Canada commissions, different countries, over a period of time, adopted different country-specific oversight mechanisms to oversee intelligence activities. For example, the United Kingdom and Botswana have adopted the Parliamentary mechanism as the primary oversight model, whereas Canada, Australia, and South Africa prefer he judicial model of primary oversight. The country-specific oversight mechanisms could focus on legality, propriety, effectiveness, efficiency,[3] or a mix of these to oversee the three phases of intelligence operations: before, during, and after

operations. The aim of the country-specific intelligence oversight mechanisms is to ensure the intelligence community provides adequate national security without violating democratic human rights in the society.

In Botswana, the courts have found the Directorate of Intelligence and Security Services (DISS) guilty of the unlawful use of intrusive methods of investigations and torture on a few occasions. In the midst of such transgressions by the DISS, Botswana's Parliamentary Committee in Intelligence and Security (PCIS), the primary intelligence oversight mechanism, has collapsed due to a number of reasons. This paper discusses the factors which led to the collapse of the PCIS and proposes that in order to strengthen the democratic accountability and oversight of the intelligence services, Botswana should adopt the judicial oversight mechanism as its primary oversight body. This is because, apart from the fact that the judicial mechanism is least prone to political influence, it has the capability to oversee intelligence operations in all phases of execution: at planning stages before start of (*ex-ante*), during, and after the completion of operations (*ex-post facto*)[4]. The judicial oversight mechanism is better placed to ensure propriety and legality of the activities of the Directorate of Intelligence and Security Services (DISS).

Objectives of Democratic Oversight

The primary institution of intelligence oversight in Botswana is the parliament, a democratically elected authority, with the appellate Tribunal as the other mechanism of oversight. Democratic accountability demands that the activities of the government and its agencies are accountable, either by an internal or external oversight mechanism, to ensure the overseen entities are effective in their mandate. James Madison says, "all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments."[5] The three separate democratic arms of government that ensure accountability

of each other are; the executive, legislature, and the judiciary. This default oversight mechanism on governance ensures accountability, and it extends to government agencies and organizations like the intelligence services.

The intelligence services oversight involves at least one of the three mechanisms: the executive, legislative, or judiciary. The provision of national security is a continuous activity to which the intelligence services have a critical role to play. This important security task should be continuously monitored to ensure accountability of the state entities involved in national security.

Botswana Oversight Mechanisms- An Oversight Gone South

The Parliamentary Committee on Intelligence and Security (PCIS)

The Chinese use two brush strokes to write the word "crisis." One brush stroke stands for danger, the other for opportunity. In a crisis, be aware of the danger- but recognize the opportunity.

-Richard M. Nixon, The Rules and Tools for Leaders

The PCIS is a legislative intelligence committee established by the Intelligence and Security Services (ISS) Act of 2008. The committee is an independent, democratically elected authority charged with a primary role of intelligence oversight. The committee oversees the activities of the DISS, a national intelligence organization formed in 2008, which is controlled, administered, and directed by the Director General (DG) DISS.

In addition to the important role of oversight, the PCIS also serves as a body that ensures and assures the public of the credibility of the DISS, so as to try and garner the much needed public support for the activities and mandate of the DISS.[6]

The parliamentary committee also provides a forum where the legislators conduct their oversight mandate beyond the interference and scrutiny of the main parliament, the public, and media. The parliamentary sanctity of the committee makes for a better review of the laws

which govern the DISS and the intelligence organization's financial needs. The PCIS's effectiveness ensures the intelligence outfit does not find itself exploited by the executive lest it leans towards authoritarian tendencies. The existence of the committee also offers an opportunity for parliamentarians to appreciate the intelligence that the Executive branch uses to direct national policy.

Mandate:

Article 38 of the Intelligence and Security Service (ISS) Act of 2008 mandates the intelligence committee "to examine the expenditure, administration, and policy of the Directorate."[7] The PCIS mandate, according to this provision, is generally administrative; it empowers the PCIS to audit and review the financial and administrative side of DISS operations excluding the operational aspect of the DISS. The mandate also empowers the PCIS to review and advise the parliament on the policies governing the DISS, but it does not mandate the committee to audit whether the DISS operates within its mandate or not. The mandate of the PCIS is therefore to ensure the efficiency and effectiveness of the DISS's financial and administrative activities, to the exclusion of the legality and propriety of DISS's operations. The democratically elected parliament, therefore, has no authority to hold an intelligence organization, which is prone to human rights violation and impropriety, to account for its activities.

Composition:

The President consults the Leader of Opposition and the Speaker of the National Assembly, as per article 39 of the ISS Act of 2008, to establish a nine-member PCIS. The numerical party representation in the nine-member committee is relative to the party's numerical strength as represented in the National Assembly, and the committee members then choose the Chairman.[8]

Effectiveness:

The PCIS is ineffective because it is presently non-existent. Even before its demise in 2014, the intelligence committee had a 2010 intelligence report to present as its current intelligence oversight document. The absence of the PCIS has left the country prone to abuse by the DISS. This is a situation which no country would want to find itself in, where oversight mechanisms do not account for intelligence agencies.

The ineffectiveness is mainly due to the weak intelligence oversight mandate provision in articles 38 and 39 of the ISS Act of 2008. The differences in interpreting article 38 by members of the committee led to the opposition parties' committee members to boycott the PCIS indefinitely. This came about when the members of the opposition in the PCIS realized they could not convince the committee chairman, from the majority ruling party, to consider the opposition's view on the impropriety and illegality of DISS activities. Article 39, which numerically favours the ruling party, and the monopoly of the chairmanship position, did not leave the numerically disadvantaged opposition committee members with much to do other than boycott the PCIS. The ineffectiveness of the PCIS due to a weak intelligence oversight does not only affect activities within the committee, but it also has a wide range of effect because the role of DISS in national security is wide.

Some of the broad effects are: first, the ineffective PCIS has cut the link between the DISS and the nation, without which the public view the activities of the DISS with suspicion, as evidenced by persistent allegations levelled at the intelligence agency; second, the inability of the DG DISS to answer to some questions posed by the Parliamentary Accounts Committee (PAC),[9] highlights the danger the ineffectiveness of the PCIS pose to the effective functioning of other governmental organizations; third, there is no guarantee in the operational effectiveness and efficiency of the DISS and this compromises national security; fourth, there is no oversight mechanism to confirm or ensure that the strategic intelligence

aligns with national priorities; and finally, the country cannot guarantee the DISS provide value for tax payers' money due to a lack of financial oversight.

The inability by opposition members to convince the ruling party-affiliated intelligence committee chairman to convene sittings for discussion suggests that the current ISS Act legislative provision for numerical representation may be more of a hindrance than a facilitator to the effectiveness of the committee. Should it happen that the ruling party also attains absolute majority in parliament, the numerical advantage will skew heavily towards the ruling with no counter-voice to balance activities within the committee. In this case, the chairmanship position in the committee becomes perennially in the hands of those in majority.

The casual approach or a lack of urgency to resolve this matter by the parliament should be a concern for the nation because an effective DISS is responsible for the safety of Botswana and its people. Botswana's "casual state of affairs" mentality should change, and public officials should be more responsible and responsive to the needs of the country. As a comparison, the United Kingdom employs an oversight mechanism almost similar to that of Botswana, especially with respect to proportional numerical representation, but that has so far not hindered the operations of the intelligence oversight committee. The need for a non-partisan approach in the committee far outweighs personal and partisan battles, maybe because unlike Botswana, the UK has to deal with criminal activities like terrorism which engage the intelligence agencies more. A partisan approach to oversight in the UK's case has no place, unlike in Botswana where the security challenges may not be that grave in comparison.

Challenges to Effective Parliamentary Committee on Intelligence and Security Oversight

Partisan Politics

Politicians are usually driven by an incentive for re-election, and their activities are by nature partisan. The opposition usually intends to present itself as a better option to the ruling party; it criticizes and scrutinizes governmental policies and presents itself as a better alternative.[10] On the other hand, the ruling party usually tends to resist adopting input from the opposition because that would give the opposition some political mileage. The political landscape is not any different in Botswana as evidenced by the tug-of-war between the ruling and opposition parties in the PCIS.

Article 39 of the ISS Act provides for the ruling party to monopolize the chairmanship of the intelligence committees, as has been the case thus far. The chairmanship will be for the BDP, and will probably remain so as long as the BDP remains the majority party. The ISS Act does not provide for a balanced or near-balanced representation of political parties in the committee, and this encourages the primacy of partisan alignment in the committee's activities. The fact that the opposition parties collectively boycotted the intelligence committee seems to suggest that they felt out-numbered, disadvantaged, and eventually frustrated due to the numerical disadvantage, which could not offer a chance to affect proceedings of the intelligence committee. The "winner takes all" numerical representation, provided for by article 39, tends to work to the detriment of the effectiveness of the PCIS, especially in instances where party colour matters the most when it comes to the decisions of the committee. Such an unfortunate situation should not find a place in a democratic country like Botswana, and a reform of the intelligence oversight mechanism to accommodate best practices is overdue.

To ensure minimal partisan inclinations in the activities of the oversight committee, countries like the US have adopted a near-balance model of numerical party representation; the ruling party always has an advantage of one committee member to the minority regardless of the proportional representation in the Senate. The majority and minority leaders of the Senate choose members of the intelligence committee in order to minimize the influence of the executive branch on the committee, and the chosen intelligence committee then chooses the chairman and vice chairman from across party lines. Instead of having the next senior legislator from the ruling party assume the chairmanship role in the absence of the chairman, the vice chairman takes charge.[11] The alternate chairmanship role ensures the committee conducts its mandate in good faith; the vice-chairman should not have inclinations to reverse the chairman's previous decisions because they were partisan. The US model also ensures that the minority members in the US Senate Intelligence Committee have equal access to information that the majority members have,[12] and this facilitates discussions from a common base knowledge within the committee.

For a country like Botswana with a relatively new intelligence apparatus, it is important that the foundation of the intelligence legislative framework is effective. This is so because such a foundation determines the success or failure of the mechanism it supports, which in turn has a bearing on democratic governance. The legislative framework should be strong enough that it not only negates the tendency for partisan tendencies within the oversight mechanisms, but also seeks to support and strengthen the mechanisms to deal with other deficiencies like knowledge gap.

Intelligence Knowledge Expertise Gap:

The relegation of investigatory powers to the secretive, appellate Tribunal which, unlike the PCIS, has some professional and intelligence-background capability to provide oversight of intelligence, sets the scene for perfect confrontational and partisan attitudes

within the intelligence committee. The PCIS suffers more from the intelligence-knowledge gap when compared to the Tribunal because the PCIS committee members, in almost all of the committees up till 2013, did not have either a legal or intelligence background to adequately deal with intelligence oversight. This knowledge gap results in some major decisions settled by the majority rule style of decision making, whether such decisions are right or wrong, rather than the merit-based decisions. In this situation, the correct numerical minority lose out on decisions because the overriding majority based their decision on the power of numbers versus that of merit. The ISS Act article 39 favours such deliberations in a committee with an intelligence-knowledge gap like the PCIS. The 2009 and the 2013 incidents where the committee chairman had differences with opposition parties' members as to how to approach allegations against the DISS and its DG could be a result of the legislators' lack of understanding of the approach to such an intelligence operational dilemma, in the midst of differing interpretations of the ISS Act.

Legislators faced with intelligence-knowledge gap eventually opt to execute committee decisions within the majority's comfort zone. The legislators faced with such challenges may opt to avoid confrontation with the intelligence agency in order to minimize exposure of the intelligence-knowledge deficiency. In a politically charged environment like Botswana's intelligence committee, such actions pit those in favour of confronting the intelligence agency against those who are not, and the result is not desirable in most cases as it may irrevocably divide and render the oversight committee defunct.

Another challenge which compounds the legislator's intelligence-knowledge gap is the lack or loss of intelligence institutional memory within the committee; apart from the fact that the intelligence committee is relatively new in its formation and role to have gathered enough experience in intelligence oversight, the change of committee members with every election is inevitable in the world of politics. A committee member may not be available to the

committee because the member has either lost the political seat during the elections, or because the member's re-election back to the committee at the end of the member's tenure in the committee has not taken place. The intelligence services may exploit this loophole in order to avoid effective oversight because with every new oversight committee, there is that lack of technical expertise which the intelligence agency can exploit to evade effective oversight. Seasoned oversight committees with years of experience and institutional memories are able to navigate this challenge because they have refined their processes to meet such challenges.

To mitigate the intelligence-knowledge gap found within the PCIS, article 31 of the ISS Act establishes the Tribunal. It does not suffer from the intelligence-knowledge gap as much as the PCIS due to the qualifications and background of the members.

The Tribunal

Mandate:

The function of the Tribunal is to investigate complaints against activities of the Directorate, and its restrictions are as follows: it shall not investigate any complaint which relates to matters subject to judicial proceedings; matters it considers prejudicial to national security; and any matter it considers not worthy, malicious, or not registered in good faith.[13]

Composition:

Articles 31-37 of the ISS Act establish a three-member Tribunal chaired by an equivalent of a High Court Judge, with two other members selected from the general public but one of whom shall have a professional background in the security services.[14] The current chairman of the Tribunal is Justice Dr. Zein Kebonang, and one of the other two members is a retired police officer with an intelligence services background.[15] The President appoints the Tribunal after consultation with the Leader of Opposition in the National Assembly, and it is not

permanent but convenes when required in order to address public grievances against the DISS.

Effectiveness

The Tribunal presents an oversight mechanism with investigatory powers not mandated for the PCIS. However, as an appellate body, its mandate is not robust enough to provide or assist the PCIS with active intelligence oversight. It does not have pre-operational oversight powers nor those for ongoing intelligence operations. It cannot autonomously initiate an investigation; this presents a weakness in the mandate of an oversight mechanism because remedial solutions are reactionary rather than pro-active in nature. Such a mandate cannot ensure propriety and legality before the DISS undertakes its operations, and it presents a chance for the intelligence organization to intentionally disregard some legally binding factors which pose constraints to intelligence operations.

Secondly, PCIS cannot direct the Tribunal to initiate an investigation against, nor report its findings on the DISS back to the democratically elected authority, the PCIS. It is fair to assume that in a situation where the parliamentary intelligence oversight mechanism does not have the power to proactively investigate the activities of the DISS, there would be another oversight mechanism to do that on behalf of the PCIS; the alternate mechanism would be subject to receive directions to investigate, and report its findings back to the PCIS. Unfortunately, this is not the case in Botswana, and the Tribunal is not subordinate to the PCIS, but it acts as an intelligence ombudsman.

So, the current situation where the PCIS is non-functional has put the democratic oversight of intelligence in Botswana in a compromised position. The Tribunal reports to the executive, and its activities and findings, if any exist, have not yet reached the public for indulgence. The nation remains uncomfortable at the thought that there may not be efficient

monitoring of the activities of the DISS. This also does not help the intelligence agency's case considering the love-hate relationship the agency has with the public.
Finally, the Tribunal is politically appointed, and this brings into question the actual independence of the body, its impartiality, and transparency more so that its reporting link directs straight to the executive, and the reports are seldom made public.

The Tribunal provides an appellate oversight mechanism which cannot provide a continuous monitoring of the DISS's activities. It is not a reliable alternative to the democratically defunct PCIS, nor is it strong enough in its mandate as a secondary or support oversight mechanism to the parliamentary mandate.

Meanwhile, as the country battles with not having an intelligence oversight mechanism to oversee the activities of the DISS, what is the intelligence agency up to? As mentioned before, national security is a continuous task for the DISS, and a defunct PCIS cannot stop DISS's critical role of ensuring safety of the citizens. However, as has always been the case, allegations of the organization's transgressions are a part of its activities.

Activities of the DISS which prompt for Oversight- When the Dog Walks the Handler

It all began with the best of intentions.

-Henry Kissinger, Diplomacy

The DISS is a national security intelligence agency, or domestic intelligence defined by Richard A. Posner as "intelligence concerning threats of major, politically motivated violence, or of equally grievous harm to national security, mounted within the nation's territorial limits, whether by international terrorists, home-grown terrorists, or spies or saboteurs employed by foreign nations."[16]In addition to its critical role of national security, the DISS collects and analyses intelligence for formulation of strategic policies. Just like any 21st century intelligence organization, it faces challenges of having to execute its mandate of national security whilst at the same time ensuring propriety and legality. The Achilles heel in

the organization's ability to execute this balancing act is the fact that the organization has always had a love-hate relationship with the public since its inception in 2008. The DISS's unpopularity is partly due to the secretive nature of its activities, and also its past negative actions which present the agency as untrustworthy to the public.[17]

According to Marina Caparina, "intelligence agencies must be perceived as performing a necessary function, operating efficiently and effectively, accountable for their actions and those of their members, and under the firm control of elected authorities. As with any other public sector activity, citizens of democratic countries should expect effectiveness, efficiency, sound management and good value for money from the state's intelligence sector."[18] The DISS finds itself perceived by the public as unaccountable and irrelevant to democracy in Botswana mainly because the agency's successes are rarely publicized in comparison to its failures and alleged transgressions. For a stable democratic country like Botswana that has enjoyed peace since its independence, the need for a domestic intelligence agency like the DISS is hardly appreciated despite the challenges of global terrorism and organized crime which exist in the 21st century. The national intelligence agencies however, do not help their cause if they are constantly implicated in matters which do not endear them to the public.

An intelligence organization which strives for accountability in its mandate usually finds favour and support from both the government and the public; this results in a cordial working relationship and interaction between the intelligence agency and the public, and the opposite to this statement is true.

A BBC sponsored global study in 2005 reported citizen dissatisfaction with governments: in political, parliamentary, and judicial systems ranging from 60 percent in North America to 73 percent in Eastern and Central Europe respectively; the most trusted institutions were academics, churches, and disciplinary institutions like the armed forces.[19] The African

continent scored a 61 percent citizen dissatisfaction in the study, and some of the contributing factors are the leadership styles adopted by many African states: dictatorship or authoritarian rule.

The contribution of the intelligence services in the public dissatisfaction is the close links and proximity to the executive branch which the intelligence services find itself in, especially in the absence of effective intelligence oversight mechanisms. The executive branch adopts a 'patrimonial' or 'neo-patrimonial' political culture: "a situation where a ruler and his or her officials are perceived to be above the law and insulated from a rational legal order or from constitutional rule."[20] There is a great possibility for such a culture to affect the national intelligence agencies eventually as they frequently interact with, or are in a position of privilege to interact with the executive branch. This political culture becomes untenable in situations where intelligence oversight mechanisms are weak or non-existent resulting in unchecked transgressions by the intelligence organizations on the population, under the protection of the executive branch.

The absence of the PCIS has led to continued allegations of corruption and impropriety against the DISS. It is important to highlight a few cases where the DISS is linked to alleged transgressions to understand why the intelligence agency is not held in high regard in Botswana.

The first case is the murder of John Kalafatis, an alleged criminal shot and killed by members of the security forces in 2009.[21] The public likened Kalafatis' killing to a "Hollywood film-style" murder scene in the manner in which it happened. The incident provoked passionate discussions about the relevance, mandate, and necessity of the DISS, which had a year in existence when the incident took place. The operatives involved in the incident, who happened to be members of the Military Intelligence Unit (MIU), were guilty and sentenced to prison; they would later receive a Presidential pardon leading to another

nationwide debate as to what the role of the executive branch was in the incident. Although the perpetrators of the crime were from the military, the nation suspected a behind-the-scene DISS involvement because such an incident took place just when the DISS had newly formed. The nation became paranoid and fearful of the DISS thereafter, wondering how much of a coincidence is it that such an incident happens when the DISS becomes a part of Botswana's intelligence community.

The second case involves the unlawful use of intrusive techniques by the intelligence agencies on Major General Pius Mokgware (ret); the Military Intelligence Unit (MIU) covertly listened to the General's phone conversations until one of the MIU operatives made a mistake and alerted the General through a misdirected phone message in 2010.[22] The scandal, which ended with an out of court settlement between the government and the General, exposed the use of intrusive methods of investigation on a citizen in violation of the General's right to privacy. Suspicion of the DISS's involvement by the public was still present in this case too; the public suspected a DISS-led inter-agency operation intentionally designed to place the blame on the MIU other than the newly formed DISS. The controversial activities of Botswana's intelligence community prior to the formation of the DISS were minimal, and the public perception that the sudden increase in intelligence activities was due to the DISS was in that regard. The admission of guilt by the government indicates a violation of societal expectations by the intelligence organizations: that of safeguarding the ideals of a societal democratic environment in which the intelligence outfits operate and live.[23]

The third case whose court decision happened after the demise of the parliamentary intelligence oversight committee is that in which the DISS acted beyond its mandate in September 2014 by the Lobatse High Court. The court instructed the DISS to pay compensation to Phillip Tlhage who had laid charges of harassment against the intelligence

agency.[24] Harassment and torture allegations against the DISS have dominated the activities of the organization since its inception, an example being the 2009 incident in which security forces personnel alleged detention and torture by DISS operatives following the disappearance of an assault rifle from a police station.[25]

The fourth and current case unfolding in the courts is that in which three business people appeared before the courts to answer for charges of money laundering in the week of December 11, 2017. The management of a DISS Fund Management company is accused of money laundering of about BWP 250 million, and one of the accused Directors, Bakang Seretse, claims the alleged criminal activity took place at the request of the DG DISS. Correspondence by senior government officials in the Ministry of Minerals and Green Technology suggests a transaction from the government to the account of the Fund Management company took place, and that there was a request by the DISS to divert money initially disbursed to the National Petroleum Fund to now, the purchase of surveillance and security equipment in Israel.[26] The court case is still in its early stages, but this is yet another situation where allegations against the DISS keep resurfacing in the absence of oversight. The absence of financial oversight, which is the role of the defunct parliamentary intelligence committee, offers the DISS an undesired opportunity to use tax-payers' funds without consideration because the financial control mechanisms are not effective.

Whilst Botswana is grappling with activities of the DISS amidst the love-hate relationship which the public has with the intelligence organization, countries which share the same democratic ideals in governance and oversight of state organs have developed their own intelligence oversight mechanisms. The oversight mechanisms are either parliamentary, judicial, or a combination of the two processes. The mandates of such mechanisms are different from that of Botswana, and the oversight of intelligence has not experienced the

challenges that Botswana has; they are therefore models for consideration for effective intelligence oversight.

United Kingdom Intelligence Oversight

Intelligence and Security Committee of Parliament (ISCP)

The United Kingdom, just like Botswana, has a parliamentary intelligence oversight mechanism to oversee its intelligence community, and a Tribunal as an appellate body that deals with public complaints against the intelligence services. The Investigatory Powers Act of 2016 creates a new oversight mechanism, the Investigatory Powers Commissioner's Office (IPCO),[27] to augment the existing oversight mechanisms.

Mandate

Article 2 of the UK Justice and Security Act of 2013 indicates the role for the Intelligence and Security Committee of Parliament (ISCP) is to oversee the expenditure, administration, policy, and operations of the security services.[28] Her Majesty's government may assign the intelligence committee other relevant matters, but the parliamentary committee has no power to investigate on-going intelligence operations.[29] Before the adoption of the 2013 Justice and Security Act, the role of the ISCP, according to section 10 of the UK ISS Act 1994, was to oversee the expenses, administration, and policy of the intelligence services. The 2013 security act strengthened the mandate of the intelligence oversight committee through the introduction of the power to investigate the intelligence services.

The UK also has a Tribunal that is an appellate body which deals with complaints of the public against the intelligence organizations. Its function is to investigate complaints against the domestic intelligence service (MI5) by the members of the public,[30] and it reports directly to the Prime Minister who after ensuring sensitive information is not made public passes it on to the parliament.[31]

The newly formed IPCO, a "larger, more powerful and outward facing regulator headed by the serving appellate judge,"[32] provides an independent oversight of the intelligence community and other public authorities.[33] The IPCO takes over the audit, inspection, and oversight responsibilities of electronic surveillance[34] from oversight entities like the Office of Surveillance Commissioners (OSC).

Composition

The Prime Minister, after consultation with the Leader of the Opposition, appoints committee members from the House of Commons and the House of Lords. The committee members elect the chairman of the committee,[35] and the committee's reporting channel is to the Prime Minister.[36]

The UK, like Botswana, also has an independent Tribunal which augments the parliamentary oversight mechanism. The body consists of "judicial members" who are serving members of the judiciary, and "non-judicial members" who are either retired legal practitioners or are senior legal practitioners who are not full-time judges.[37] The IPCO is a thirteen-member judicial appellate.

Effectiveness

The parliamentary intelligence committee has an *ex-post facto* oversight into the intelligence community operations following the reforms adopted in the UK Justice and Security Act of 2013. The introduction of the limited investigatory powers is an improvement in the parliamentary intelligence committee's mandate when compared to the provisions in the ISS Act 1994. The introduced reform in the UK's Justice and Security Act is the "missing part" in Botswana's ISS Act which resulted in the collapse of Botswana's PCIS.

The IPCO increases the effectiveness of the UK's intelligence oversight mechanisms, but its role is still *ex-post facto* as it entails auditing intelligence activities. This move by the UK

serves to make its intelligence oversight mechanisms lean and responsive, but not effective in terms of reviewing all phases of intelligence operations.

As regards annual intelligence reports, the UK's intelligence oversight mechanisms are effective as per article 3 of the Justice and Security Act 2013. The December 2017 report went through the Prime Minister for editing before being presented to parliament,[38] and this ensures sensitive matters of national security aren't disclosed. ISCP is therefore effective in its annual reporting to parliament.

Other countries have a different approach to their oversight mechanisms; Canada, Australia, and South Africa have Inspectorates of Intelligence as primary oversight mechanisms with investigation powers and reporting links to the parliamentary committees of the respective countries. They do not have the appellate Tribunal, but the Inspectorates of Intelligence serve the purpose in addition to being primary oversight mechanisms.

Canadian Intelligence Oversight

National Security and Intelligence Committee of Parliamentarians (NSICOP)

Canada introduced a parliamentary intelligence oversight committee in 2017, after persistent pressure by some critics who believed the time was right for Canada to strengthen its intelligence oversight mechanisms in line with countries like the US, UK, and France.[39] Many quarters within the legislature considered the previous oversight system, the Security and Intelligence Review Committee (SIRC), not representative of the democratically elected parliament, nor strong enough to hold the intelligence community accountable. As an example, Justice Simon Noel's report published in *Toronto Star* revealed Canadian Security Intelligence Service's (CSIS) illegal investigative techniques without the approval of the judicial system.[40] The CSIS's activities gave impetus to the calls for Canada's intelligence oversight mechanism reform, which would establish the parliamentary oversight committee.

Mandate

Article 8 of the National Security and Intelligence Committee of Parliamentarians (NSICOP) Act of June 2017 describes the mandate of the NSICOP committee as to review: "(a) the legislative, regulatory, policy, administrative, and financial framework for national security and intelligence; (b) any activity carried out by a department that relates to national security or intelligence, unless the appropriate minister determines that the review would be injurious to national security; and (c) any matter relating to national security or intelligence that a minister of the Crown refers to the committee."[41] The act prevents the committee from reviewing active operations related to national security or intelligence, or to access information on ongoing operations.[42] The committees' access to information allows for only that which is not injurious to operations. The Canadian intelligence oversight mechanism which has access to intelligence operations is the Executive Directorate of the Inspector General (EDIG).

The Inspector General's task is to review operational activities of the CSIS: operational policy and operational activities.[43] The EDIG audits issued warrants and *ex-post facto* (retrograde) activities of the intelligence operations, [44] and also investigates complaints from the public against the CSIS.[45] The EDIG provides the judicial oversight mechanism and reports its findings to the Minister; its reports are not for public consumption unless the NSICOP initiated the investigation. An EDIG report as a result of an investigation directed by NSICOP goes through the editing process by the Minister before presentation to the parliament, and those not initiated by the NSICOP are not made public.

Composition

The NSICOP consists of up to ten members and a chairman, appointed after consultation between the Prime Minister and the leaders of any of the following: relevant caucuses and groups recognized in the Senate, or opposition parties, depending on which group the

selected committee member belongs to.[46] The Prime Minister recommends the chairman of the committee, and the committee has the power to summon any person to appear before it during the conduct of its activities.

Effectiveness

The NSICOP intelligence oversight mandate is similar to that of the UK's ISS Act of 1994: to review financial, policy, and administrative matters, with no powers to investigate operational activities of the intelligence organizations. It lacks the *ex-post facto* investigatory powers which the UK's Justice and Security Act of 2013 introduced to strengthen the ISCP. The powers to investigate intelligence operations is the mandate of the EDIG, which reports to the NSICOP only if the origin of the instruction to investigate came from the NSICOP.

The EDIG is effective in its mandate as a judicial oversight system because it has the capability to hold the CSIS to account with respect to propriety and legality. The EDIG also addresses public complaints against the CSIS, which improves its effectiveness in ensuring the CSIS does not violate human rights. Even though the EDIG mandate is effective in legality and propriety, it lacks the capability to interrogate the activities of the CSIS before or during the operations; it has an *ex-post* mandate as a mechanism which audits issued warrants rather than reviewing the issue of warrants to the CSIS.

However, unlike the UK and Botswana's intelligence oversight mechanisms, Canada's NSICOP has the power to direct the EDIG to conduct an investigation on activities of the CSIS, and receive a report. Botswana and the UK parliamentary intelligence committees do not have such a direct investigatory mandate with other intelligence oversight mechanisms.

As for the mandate of reviewing and reporting on the activities of the CSIS to parliament, the Canadian intelligence oversight mechanisms have so far managed to deliver as per the mandate. Local media outlets reinforce the legitimacy of annual reports by the intelligence oversight mechanisms with respect to CSIS operations,[47] as they report on the work the

mechanisms carry out during the year. The annual reports edited by the Prime Minister[48] indicate among others, the committee's findings and its recommendations.

Another country which practices a legislative and judicial intelligence oversight model is Australia. Although Australia's judicial oversight model is similar to that of Canada, it is more robust in comparison with respect to mandate.

Australian Intelligence Oversight

Australia has a robust intelligence oversight mechanism which oversees the Australian Intelligence Community (AIC): the Australian Geospatial-Intelligence Organization (AGO); the Australian Signals Directorate (ASD); the Australian Security Intelligence Organization (ASIO); the Australian Secret Intelligence Service (ASIS), to ensure for both internal and external oversight.

Parliamentary Joint Committee on Intelligence Services (PJCIS)

Mandate

The Parliamentary Joint Committee on Intelligent Services (PJCIS) is responsible for the review of administration and expenditure of AIC agencies, addresses relevant matters referred to it by the responsible Minister or Parliament, and submits its reports and recommendations to the Parliament and the Minister.[49] The committee, however, does not have inquiry powers to review operations of the intelligence agencies under its responsibility, ether *ex-ante,* during, or *ex-post facto.*[50]

The Inspector General of Intelligence and Security (IGIS) from the Attorney General's office provides internal oversight, and its task is to ensure the Australian Intelligence Community (AIC) operates within legal means, the AIC does not violate human rights in its activities, and to investigate misconduct alleged against the AIC.[51]

Article 8 of the IGIS Act 1986 provides the IGIS with a unique power to investigate active intelligence operations as a result of complaints by the public, the responsible minister, or on

the initiation of the Inspector General (IG),[52] for any activity that may seem out of line with the mandate and processes of the agency. For example, article 8(d) empowers the IG to investigate, in the case of the Australian Security Intelligence Organization (ASIO), whether "(i) the collection of intelligence concerning a particular individual is, or is not, justified by reason of its relevance to security; or (ii) the communication of intelligence concerning a particular individual would be for a purpose relevant to security; to enquire into whether that collection is justified on that ground or whether that communication would be for that purpose, as the case may be."[53] The investigatory powers of the IGIS cover all the phases of intelligence activities: pre-operations, during operations, and post-operations. This shows that the oversight mechanism of the IGIS "is not merely ex post facto in nature and can be initiated at any time that some form of impropriety is suspected or otherwise judged to have taken place."[54] This affords the IGIS the status of a review body, rather than just overseeing the processes of ASIO.

Composition

The PJCIS comprises eleven members: five Senators and six House of Representatives' members,[55] and the Governor General appoints the Inspector General (IG) following nomination and consultation between the Prime Minister and the Leader of Opposition.[56]

Effectiveness

The PJCIS has *ex-post facto* powers on financial and administrative matters of the intelligence organizations but does not have any operational mandate. The IGIS is highly effective because it has the capability to oversee intelligence operations in all their phases: *ex-ante,* during, and *ex-post facto.* This kind of oversight mechanism is different from the UK, Canadian, or Botswana mechanisms. Despite the effectiveness of the IGIS, Australia seeks to reform its judicial oversight mechanism to ensure its effectiveness.

Australia believes that although the Attorney General's office is practically suited to deal with the legality and propriety of activities of the AIC because of its expertise and professionalism, some reform is needed. The Australians believe the reform should adopt the IGIS as the primary oversight body, as is the case in New Zealand, reporting its findings to the PJCIS, the Minister, and the Prime Minister.[57] Currently, the PJCIS cannot direct the IGIS to initiate an investigation, and this is the improvement Australia seeks to make.

On the mandate to deliver annual reports, the Australian intelligence oversight mechanisms are effective; the IGIS makes recommendations which are acted upon by the AIC.

As the Australian 2017 intelligence review report seeks to reform its country's oversight mechanisms to make it more responsive, South Africa uses an oversight model with similar provisions to those of Australia.

South African Intelligence Oversight

The Parliamentary Joint Standing Committee on Intelligence (PJSCI)

The South African intelligence oversight mechanism is made up of the Parliamentary Joint Standing Committee on Intelligence (PJSCI) established by article 2(1) of the Intelligence Services Oversight of 1994,[58] and the Office of the Inspector-General of Intelligence (IGOI), established by article 7(1).[59]

Mandate

The role of the PJSCI in oversight deals with the administration and financial management and expenditure of the intelligence services. Article 3(f) mandates the committee to order an investigation by, and receive a report from the IGOI pertaining to complaints members of the public file with the committee.[60] The committee has an *ex-post facto* role in intelligence oversight.

The IGOI's mandate includes investigation of: "complaints of misconduct, illegality, transgressions of the constitution, and abuse of power by the intelligence organizations."[61] The initiation of such an investigation could either be by the PJSCI, a member of the public, or a member of an intelligence organization; the jurisdiction of the IGOI includes operations of, and the legality of activities of, and laws and policies governing the intelligence organizations. The intelligence oversight mandate is *ex-post facto*.

Composition

The composition of the PJSCI is a 15-member body staffed according to proportional representation of parties in the South African National Assembly,[62] and the head of the IGOI is a political appointee by the President.

Effectiveness

The South African intelligence oversight mechanisms are effective in comparison to Botswana's oversight mechanisms, but just like the Canadian mechanism, it does not oversee all the phases of the intelligence operational spectrum. It is, however, an effective model when compared to Botswana's mechanism of intelligence oversight.

A notable difference exists between the intelligence oversight mechanisms of Botswana and South Africa. In South Africa, a link exists between JSCI and IGOI: the IGOI is the primary oversight mechanism and the PJSCI has a mandate to instruct the IGOI to initiate an investigation; the IGOI then reports its findings to the PJSCI. As for Botswana, PCIS has no mandate to direct the Tribunal to initiate an investigation against the DISS, and the Tribunal reports only to the executive

An oversight mechanism which is robust enough in its mandate is therefore required in the context of Botswana. Oversight mechanisms of the countries reviewed above, in exception of the United Kingdom, have a judicial system of the Inspectorate of Intelligence mandated with the propriety and legality of intelligence activities. The judicial oversight is

therefore strong in this respect, and is independent enough to withstand the pressures of politics.

Judicial Oversight- What the Doctor Ordered

> *The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.*
>
> *-James Madison, Federalist No. 47*

The judicial oversight mechanism ensures propriety and legality of intelligence operations. An independent judicial system functions outside the influence of politics and intelligence services making an effective intelligence oversight tool. The legal professionals are ethically duty bound to execute their mandate independent of the appointing authority.[63] Due to this factor, the judicial intelligence oversight mechanisms serve to strengthen the legislative oversight mechanisms when there is a link in the mandate to investigate and report back to the originator of the investigation.

The strength of the judicial oversight lies in a number of factors; first, it brings about the value of liberal concepts and protection of the citizen's rights as opposed to executing the will of the appointing authority; in the national context, it is the "central counter-majoritarian institution responsible for protecting the rights of democratic minorities."[64] This is important because, in Botswana for example, the ruling party dominates the government: the executive and legislative decisions are a product of the dominant party, which in most cases makes decisions along the partisan promises which won the party the elections. The judiciary, on the other hand, has not won any elections to carry out its judicial mandate; it depends on professional ethics to ensure the government and its agencies are accountable to the public. The judiciary does this by scrutinizing the legality and due process of governance without being a part of that system.

Secondly, the evolution of the judicial system with time allows it to deal with judicialization of politics: the ability of courts to not only deal with matters relating to commercial or criminal activities, but of politics too.[65] This evolution is visible in Africa as the courts gain the autonomy to make decisions outside the influence of the executive branches in various countries. A recent example is the 2017 Presidential election in Kenya where the Constitutional court declared the first round of elections not free and fair, and thereby ordered a re-run.

Finally, the judicial system offers to be a better and effective oversight mechanism with the capability to review the different phases of the intelligence operations: the "pre-operation" phase, the "during the operation" phase, and the "after the operation" phase. The review of the legality and propriety of operations before they commence offers the *ex-ante* capability, whereas the scrutiny and issuance of warrants happens before or during operations. The *ex-post facto* capability takes place when reviewing and auditing intelligence operations.

The Capabilities of Botswana's Judicial System

The capability of the courts in Botswana is not questionable, even though the judiciary in many African states tends to find itself faced with a lot of challenges. The challenges which African judicial systems grapple with are the tendency by the executive branch to influence the courts' activities by changing or delaying appointment of judicial personnel, or the tendency by the government to override judicial decisions which the government is not in agreement with. There is also a challenge of dealing with authoritarian tendencies where the government prefers to hand pick judges, and manipulate the judicial system to its advantage.[66] The handpicked officials are usually affiliates to the appointing authority, or are threatened or blackmailed into submission[67] by the appointing authority. The courts of Botswana remain capable, no matter the challenges faced.

Judicial Independence

The judicial system of Botswana has arguably dealt with some of the stress tests stated above in recent times. Examples of two prominent cases stand out for Botswana: the first one concerns the delayed decision by the President of Botswana to appoint Attorney Omphemetse Motumise as Judge to the High Court despite endorsement by the Judicial Services Commission (JSC) in 2015.[68] The government argued its case on the grounds of the powers of the appointing authority that the President acted within constitutional powers as the appointing authority, not to appoint Justice Motumise to the High Court bench. The Constitutional Court ruled in favour of the Attorney's appointment, and the government endorsed the court's decision in October 2017[69], after a lengthy two years of court battle. This case highlights the strength of Botswana's judicial system as an autonomous decision making body.

The other case involves the suspension of four High Court Judges over a petition against the Chief Justice.[70] As the case unfolded, the four Judges refused to apologise to the Chief Justice despite the JSC findings that their petition undermined the authority of the Chief Justice. The judges eventually agreed to withdraw the petitions against the Chief Justice,[71] another lengthy court battle between the government and some members of the judiciary. The ruling in this case favoured the government's decision to suspend the dissenting judges.

The two examples above present two judgements by Botswana's judiciary: one against, and another in favour of the government. The varying court outcomes underscores the autonomy and effectiveness of the judicial system in Botswana. The independent rulings establish the judicial system as a mechanism Botswana can benefit from to ensure the rule of law and accountability, especially when it regards intelligence oversight.

Judicial Effectiveness

The judicial arm therefore, offers a viable, non-politically influenced oversight mechanism which can resuscitate and augment the politically-charged legislative intelligence oversight mechanism of Botswana. The judicial intelligence oversight, as a primary oversight mechanism, has the professional capability to oversee the intelligence operations in all phases of execution. It also has the capability to assume the appellate role which, in the case of Botswana, the Tribunal carries out.

Conclusion

Findings:

Botswana's intelligence oversight mechanism failure is mainly due to a weakly crafted legislative framework of oversight: the lack of the investigative power in the PCIS's mandate, and the absence of the authority by the PCIS to direct the appellate Tribunal to investigate activities of the DISS, and report back on the findings. This has led to a conflict within the PCIS which eventually led to decisions in the committee conducted, or viewed as executed, along party lines.

The numerical minority of the opposition parties in the committee did not help the situation because, upon realizing that and the disproportionate numerical representation favours the ruling party in decision making, the committee members from the opposition boycotted the PCIS.

The Tribunal, as an augmenting oversight mechanism to the PCIS, is weak in its mandate because it is an appellate body which does not have the active investigatory powers which are lacking in the PCIS. The Tribunal is also conflicted in its appointment and democratic independence because the positions are politically appointed, and therefore it is not reliable as an independent intelligence oversight mechanism.

The Tribunal does not provide the assurance of democratic accountability of oversight because its channel of reporting links only to the executive, and the United Kingdom, from where Botswana based its Tribunal appellate system, has since adopted improved mandates for the parliamentary and Tribunal intelligence oversight mechanisms so as to strengthen oversight. Other countries which do not have the appellate Tribunal system have adopted the judicial intelligence oversight mechanisms as their primary oversight and appellate bodies.

In Canada, Australia, and South Africa, the judicial oversight mandate is the responsibility of the Inspector Generals of Intelligence. The judicial oversight focuses mainly on the propriety and legality of intelligence operations thereby allowing the parliamentary oversight mechanism to concentrate on the financial needs and administrative side of oversight. This allows for the legislators to focus on what they do better: review policy matters and financial oversight of the intelligence entities. The judicial oversight mechanism also brings the element of independence and autonomy from the executive or legislature as an independent entity.

The courts of Botswana have demonstrated this critical character of autonomy and independence in court rulings which it has pronounced in recent times, despite a seemingly suspicious interest and tendency to want to influence court decisions by the executive branch. The integrity and effectiveness of the judicial oversight mechanisms in Canada, Australia, and South Africa reinforces the need for another robust mechanism to augment the mandate of the PCIS in Botswana.

Recommendations:

BW should adopt a judicial oversight mechanism with the Inspector General of Intelligence (IGI), as the primary oversight mechanism. The judicial oversight should be subject to receive instruction from the PCIS to initiate an investigation on, and report back to the PCIS the findings on investigation on the activities of the DISS. The adopted judicial intelligence

oversight should have the powers to investigate all phases of the intelligence operations: pre-operations, during operations, and post-operations, to ensure propriety and legality.

The PCIS's role in intelligence oversight should focus on the financial, administrative, and policy issues of the DISS. The democratic power to hold the DISS accountable will lie in the ability of the PCIS to direct the judicial oversight mechanism to initiate investigations of the DISS.

The proportional numerical representation in the PCIS should change because it does not support the effective functioning of the PCIS in a politically charged environment. The majority ruling party should have a numerical advantage to the opposition by one, and the chairmanship of the intelligence committee can either be interchangeable with every incoming new committee, or be held by the party in majority whilst the vice chairmanship is held by the opposition parties. This not only prevents dominance in the committee by the ruling party, but also ensures the intentions in the conduct of negotiations are honest.

A review of the ISS Act will not only resuscitate the defunct PCIS, but will also reform and align its intelligence oversight mechanisms with best practices. It will also ensure for an effective intelligence service. The country comparison reviewed in this paper show the effectiveness of a judicial oversight mechanism in a primary role of intelligence oversight, and presents Botswana with an option which the country should rigorously pursue. If Botswana does not reform its intelligence oversight mechanisms, the PCIS will not find itself working nor delivering on its mandate in the foreseeable future, all to the detriment of Botswana's national security.

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