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Intelligence oversight systems in Uganda: challenges and prospects

Asiimwe Solomon Muchwa

ABSTRACT

This paper highlights deficiencies in Uganda's national security civilian intelligence services' oversight systems and their implications for the democratic governance of the security sector. It argues that the intelligence sub-sector in Uganda still lags behind as far as adhering to democratic governance norms is concerned. The legislature and civil society organizations which are supposed to ensure that intelligence organizations operate within the rule of law find veritable challenges due to some legislative ambiguities. The paper recommends that the laws governing intelligence services should be amended to give more definite mandates to the legislature and other oversight bodies.

Introduction

It has been observed that intelligence and security services can be characterised according to the states they serve.¹ The primary concern of the intelligence services of totalitarian states are domestic threats. However, those in democratic states are mostly concerned with external threats and have less power because they attract extensive oversight from democratically elected officials; hence they are responsive to people's concerns.²

Oversight means supervision and a general review of institutional performance with particular attention to failures to carry out mandates, to preserve discipline and to avoid inefficiency, and poor productivity. It is performed by bodies, units and processes that provide supervision and watchful care of an organization. It is important to distinguish between internal and external oversight. Internal oversight assists the executive heads of an organization by providing advice on internal control and management practices based on a systematic and independent review of the organization's operations, control and command. External oversight bodies also play a fundamental role in advising and assisting the organization in discharging its functions.³ External oversight, for example by Parliament or civil society, also supervises the internal oversight of an organization to see whether there is proper management and control; and this paper looks at how this external oversight is performed on the intelligence services in Uganda.

During the last quarter of 2019, Ugandans who had appealed to Parliament to restrain the Internal Security Organization (ISO), the country's premier civilian internal counterintelligence organization, from illegally holding their relatives in 'safe' houses, were shocked to learn that Parliament could not come to their help. More mesmerizing was the refusal by the Minister for Security to bring the Director General of the ISO before the human rights committee of Parliament as he had been asked by the committee to respond to numerous allegations of illegal detention and torture. These issues did not only signal a poor relationship between the executive and the legislature in matters of security governance in the country, but they also prompted questioning of the relevance of the existing security sector oversight mechanisms generally, and with regard to the intelligence services in particular.

Following the above incidents, comparisons between the current and the pre-1986 intelligence systems ensued, with some commentators likening this undemocratic behavior to the pre-1986 era in Uganda's history in which state intelligence services operated above the law.⁴ These events raised the following questions. Why did Parliament fail to act in respect of the minister of security who failed to bring the internal security leaders to account? Is there a weakness in the law? Who else, apart from Parliament, could the civilians facing torture from the ISO have turned to for redress? Those events also ignited more debate on the mandate of civilian intelligence organizations in a democratic dispensation.

It is a well-known norm in societies that claim to be democratic that intelligence services must operate under a clear legal framework that serves four major purposes, the first being to ensure that the roles and responsibilities of each security agency are clearly stipulated. Second, is to define the powers and limits of intelligence organizations. The third is to define oversight institutions of security organizations while the fourth is to enhance public trust in the security agencies, which helps to increase the legitimacy of government.⁵ By the Parliament of Uganda failing to help civilians held in safe houses and not being able to hold the officers responsible to account, major questions arose pertaining to the intelligence oversight system in the country.

Finding answers to these questions requires looking into the legislative framework for intelligence oversight systems; hence this is the main objective of this paper. However, the Ugandan case may be comparable to other African cases. Therefore, this paper also considers South Africa as an example of an African state that has institutionalized legislative oversight of intelligence. Hence, a brief mention of that case is important before we turn our attention to Uganda.

South African intelligence oversight

The intelligence sector in Africa, like elsewhere, has been viewed as a core arena of state security outside of the purview of Parliament and other oversight bodies.⁶ However, presently, some positive efforts in intelligence management can be noticed in some countries like Ghana, Kenya, Uganda, South Africa, and Senegal. Although this article is primarily concerned with Uganda it refers to South Africa which is comparatively more open. Contemporary intelligence services in South Africa have their roots in formations from the time of white minority rule.⁷

Article 198 of the 1996 Constitution of South Africa spells out the principles of a new security dispensation and declares that the security services must be structured and regulated by national legislation. It also requires that members of the security services must act in accordance with the Constitution and the law. It also stated that no member of a security service may obey a manifestly illegal order.⁸ This gives the security personnel the confidence to respect the rule of law without fear of reprimand by their seniors.

Furthermore, in South Africa the Constitution places national security under the authority of the Parliament and the Executive and entrenches Parliament's powers of oversight over issues relating to national security. The legislative oversight of intelligence services in South Africa is mainly done through the Joint Standing Committee on Intelligence (JSCI). One of the key aspects that enables the JSCI to effectively conduct oversight is the multi-party nature of the Committee. However, according to the Ministerial Review Commission, out of the fifteen seats on the committee, eight of them are appointed by the President, which therefore creates concern about the objectivity and independence of the JSCI. Despite this challenge, it nevertheless provides a good example of a special parliamentary committee that can oversee the intelligence services of the country.⁹ The following are noted as good democratic practices in the South African case that can form a basis for an objective evaluation of Uganda's intelligence oversight practices:

- South African intelligence services as provided for in the Constitution are subject to the rule of law and a Bill of Rights guaranteeing freedom of association and speech and the right to privacy.
- The powers of the intelligence services are limited and subjected to multi-party parliamentary oversight.

- The legislative intelligence oversight is done through a Parliamentary Joint Standing Committee on Intelligence – a practice that has been found effective in western democracies.
- The public has a right to complain to an Inspector General if they believe their rights have been violated by the intelligence services.
- The security personnel have the confidence to observe and respect the rule of law. The constitution in South Africa states that no member of a security service may obey a manifestly illegal order thus avoiding excuses from security officers that use ‘orders’ behind orders from superiors to abuse human rights.

There are however also some noticeable challenges in the South African security oversight legal framework. Though oversight is formally institutionalised within the constitution in South Africa, strict party discipline exercised within the majority party dilutes the quality of oversight. The other weakness is parliamentarians’ lack knowledge and experience of the security and defence sector and that Parliament’s research capacity is under-resourced.¹⁰ Additionally, the Executive continues to pursue greater secrecy over defence issues when it should be moving towards greater transparency.¹¹ The Executive also enjoys an overwhelming majority in the legislature; and it retains much power with regards to the civilian control of the military and security forces. Democratic control requires robust oversight and this is contingent on, among other things, the balance of power between the Executive and the Parliament.¹² Therefore, Parliament’s oversight ability remains weak even within democratic South Africa compared to cases in Western democracies. As will be observed later, Uganda faces some of these same challenges in seeking effective legislative oversight of intelligence.

In Uganda, although the 1987 Security Organizations Act and the 1995 Constitution define the roles and limits of security organizations, there are practical loopholes within the law which are explored in this paper. But before these are analyzed, it is important to understand the nature of Uganda’s security sector within which the intelligence services operate.

Understanding Uganda’s security sector

Uganda has gone through a long period of insecurity that covers almost the whole of the post-independence period from 1962. This has manifested itself in the numerous episodes of political *coups d’état*, insurgent movements, and state-inspired reigns of terror. Particularly, between the late 1960s and the mid-1980s state intelligence services operated above the law and became infamous for orchestrating heinous human rights abuses epitomised by the murder of high-profile civil leaders such as the Archbishop of the Church of Uganda, the late Janani Luwum, killed in 1977.¹³ This, however, changed in 1987 and further in 1995 when official legislation was introduced to regulate the conduct of all security organisations including the intelligence services in the country. Specifically, under the 1995 constitution, Article 221 states that it is the duty of all security forces to observe and respect human rights and freedoms in the performance of their functions, implying that all security forces in the country must be subordinate to civilian authority, including oversight by Parliament.

Accordingly, the 1995 Uganda Constitution provides for the following security providers: the Uganda People’s Defence Forces (UPDF); the Uganda Police Force (UPF); the Uganda Prisons Service (UPS); the Internal Security Organisation (ISO); and the External Security Organisation (ESO). Also, the Chieftaincy of Military Intelligence and the Directorate of Criminal Investigations and Crime Intelligence (CICI) exist as intra-security organization intelligence departments. There are also non-statutory armed formations and militias that have been created occasionally like the Local Defence Units (LDU), the Amuka Boys in the Acholi and Lango sub-regions in Northern Uganda and the Arrow Boys in the Teso region, which complemented the statutory forces against the Lord’s Resistance Army (LRA) rebels and the Karamajong cattle rustlers. Community policing and crime prevention groups, sometimes aligned to the police, have in some cases been used to ensure security and

enforcement of law and order at a community level. Also, private security firms (PSFs) have been used from the early 1990s to fill in for the low capacity and limited reach of the Uganda Police.

However, a number of challenges have been presented by the continued reliance on these non-statutory armed formations, the first challenge being the constitutionality of these outfits. Most of them have been established in contravention of articles 208(4) and 218(2) of the 1995 Constitution. Article 208(4), for example, states that no person shall raise an armed force except in accordance with the Constitution. Furthermore, Article 218(2) states that no Intelligence Service shall be established by the Government except by or under an Act of Parliament. The above-mentioned informal security outfits have been established by express orders of the President and sometimes even by mere decisions of heads of the forces. For instance, the former Inspector General of Police, General Kale Kaihura, established the 'Crime Preventors' in 2015 as the country was preparing for the general elections of 2016. These formations have been used to collect intelligence, support the police and yet they are not clearly regulated by the intelligence legislation or even the Police Act.

The Constitution provides for security management and oversight bodies that include: the executive; national security advisory bodies such as the National Security Council (NSC); the legislature and legislative select committees; the Ministries of Defence, Internal Affairs, Foreign Affairs; and Finance, Planning and Economic Development. These may be supported by other statutory oversight institutions which include the Inspectorate of Government (IG), the Uganda Human Rights Commission, the Auditor General, and the Public Procurement and Disposal of Public Assets Authority (PPDA), among others.

Despite a plethora of both civilian and military security sector agencies, in the last five years, Ugandan citizens have increasingly questioned the effectiveness of their security institutions, especially the ISO – an internal security service with a mandate of supporting the police in maintaining law and order – due to numerous insecurity incidents. Since 2015, acts of murder and waves of kidnappings have been meted out against women, Muslim leaders, a police spokesman, a prosecutor, and other groups in Kampala, Wakiso, Mukono, Masaka, Rakai, Lwengo, Bukomansimbi, and Kalungu districts in Uganda.¹⁴ In 2017, a total of 28 women were viciously murdered for example, by mutilation and insertion of sticks in their genitals, their unclothed bodies dumped in separate locations in Wakiso District.

Between 2012 and 2015, a total of 12 Muslim clerics were gunned down in various districts in Uganda by gun-wielding assailants, in all the cases riding on passenger motorcycles known in Uganda as bodaboda. In all of the above criminality, the cry was the lack of intelligence information to enable the police and other security forces to apprehend the criminals involved in exacting such heinous acts on the population. In the case of the murders of Muslim leaders, the police explained that they were perpetrated by a rebel group, the Allied Democratic Forces, which is based in Eastern Democratic Republic of the Congo. The leader of this group, Jamil Mukulu, was arrested in 2015 in Tanzania with the assistance of the Tanzanian government and brought to Uganda but is yet to be convicted by the Courts of law, a delay which could be because of lack of incriminating evidence.

Joan Kagezi, a Senior Principal State Attorney, who was prosecuting a case in which Somali nationals were accused of plotting and executing a terrorist attack on Uganda in 2010 in which over 70 people were killed, was gunned down and killed. In 2017, a police spokesman and Assistant Inspector General of Police, his bodyguard and driver, were also gunned down by assailants on a bodaboda. Similar criminal activities continued throughout 2018 and 2019 which piled more pressure on the state to account to the public for what was going on. The murders led the Ugandan public to question the ability of the government to keep them safe and secure, as the security agencies became frantic as they struggled to contain the insecurity.

The waves of murders and kidnappings created a sense of fear in Ugandans, while the security forces offered inadequate, spurious, and in some cases preposterous explanations for the cause of the waves, including the prevalence of common crime, organized criminal syndicates, poverty, witchcraft, and the Illuminati-factor.¹⁵ Whatever the explanation or scapegoat, the insecurity

exposed the unpreparedness of the security and intelligence services in Uganda to detect or prevent such serious crimes or to mount successful criminal convictions, in part because either the wrong suspects were arrested or the prosecution tendered weak evidence in court.

While commenting on the gruesome murder of the Assistant Inspector General of Police mentioned earlier, and also during the Rwenzuru attacks in 2017 on a government security installation in Kasese, a western district in Uganda in which over 100 people were killed, the President of Uganda blamed these incidents on intelligence failure.¹⁶ It was such political statements in the midst of increased incidents of insecurity and the extensive human rights abuses by intelligence agencies in the country that prompted this author to inquire into the state of intelligence services in Uganda in order to trace and diagnose the real missing link in the security oversight architecture of the country. In the next sub-section, a detailed analysis of the intelligence system in Uganda is provided.

Security intelligence services in Uganda

Uganda, like all other former British colonies, traces the history of its intelligence system back to being an offshoot of the British colonial police. The colonial security forces which were known as the King African Rifles (KAR) were used to pacify the newly acquired territories and to maintain law and order to enable the British administration to achieve its objectives of establishing an effective colonial economy. Therefore, the colonial security system was a ruler's instrument rather than the people's security force, with the aim of furthering the interests of the British Empire. The KAR was fundamentally an occupation force, established to ruthlessly subdue any challenges to British rule.¹⁷ The colonial intelligence services which can be traced from the British Police special branches did not therefore operate in the democratic interest of the indigenous citizens of Uganda, as they basically performed the role of colonial regime policing.

Upon independence in 1962, the undemocratic and informal character of the intelligence services were inherited by post-independence Uganda. The history of formal intelligence services arrangements in Uganda is traced from the post-colonial Obote I government (1962–1971), with the creation of the General Service Unit (GSU) as a government intelligence service. Another attempt was in 1971, when President Amin, who came to power by a military coup, established the State Research Bureau (SRB) – an intelligence service that was notorious for its brutality.¹⁸

From 1979 to 1985, the country experienced various short-lived intelligence services; the National Security Agency (NASA) of the Obote II regime (1980–1985) and the Crack Force of Tito Okello's regime (1985). These served as regime survival tools, not as state agencies for the protection of national security.¹⁹ All the above intelligence services were arbitrarily established with no legal framework under which to operate. Therefore, they were used as terror instruments. They were not only brutal; they were also above all other institutions of government. Therefore, they could not subject themselves to any oversight and it is little wonder they failed to protect those governments from collapse.²⁰

The year 1986 marked a turning point in the history of the country's democratisation journey. The National Resistance Movement (NRM) government that came to power through a protracted five-year civil war established a different intelligence dispensation. The Internal Security Organisation (ISO) and External Security Organisations (ESO), as noted earlier, were established by an Act of Parliament in 1987, which provides for their establishment, constitutional obligations, and functions. It is these constitutionally established security intelligence services that this paper assesses. In the next section, a detailed analysis of their structures, performance and oversight are dealt with.

The post-1986 intelligence services: legal foundations and institutional characteristics

In Uganda there are two legally established intelligence services; the Internal Security Organization (ISO) which acts within the territory of Uganda and the External Security Organization (ESO), which acts outside the territory.²¹ In theory, the Constitution indicates ISO and ESO as the only two

intelligence services in the Country. However, in practice there are also two other well-known and powerful intelligence bodies in Uganda. They are the Chieftaincy of Military Intelligence (CMI), which is the intelligence branch of the Army (the UPDF), and the Criminal Investigations Department (CID), which is the intelligence arm of the Uganda Police, as already observed.²²

The last two are service departments of the Army and the Police respectively rather than stand-alone agencies, but they are equally as pronounced in public security affairs as the ISO and ESO. Those two agencies (the ISO & ESO) are mandated by the Security Organization Act, 1987, to collect, receive, and process internal and external intelligence data for the security of Uganda, as well as to advise and recommend to the President, or any other authority as the President may direct, on what action should be taken in connection with that intelligence data.²³ The mandate of the intelligence services in Uganda is as brief as those two lines in the legislation. However, much as it is brief it may also be described as a very wide mandate because the type of intelligence to be collected internally and externally by the intelligence security services is not clearly defined by the law.

This paper focuses on the internal intelligence service because its activities and failures are somewhat more observable than those of the external intelligence service. The structures of the internal intelligence arrangement in Uganda are after all public; for instance, there are public officers right from the Director General, headquarter directors, regional and district officers holding public offices down to the lowest level of a sub-county. The challenge for this paper is to explain how the internal national security provision has been found wanting despite this extensive national coverage by the intelligence services.²⁴ This paper shows that intelligence oversight weaknesses in the country are especially relevant.

The intelligence organizations in Uganda are coordinated by the National Security Council (NSC) provided for under Article 219 of the Constitution and operationalized by the National Security Council Act of 2000. The Council is charged with informing and advising the President on matters relating to national security, coordinating and advising on policy matters relating to intelligence and security. However, despite that important role, practically, the NSC has never been fully constituted. For instance, the President has never appointed the five other members that are required to have a fully constituted council.²⁵

The National Security Council Act also establishes District Security and Intelligence Committees, and Sub County Security Committees, with a diversity of actors. At their respective levels, the committees are supposed to inform and advise the National Security Council on matters relating to security in the district or sub county; coordinate and advise on policy matters relating to intelligence and security; review and forward to the Council the security needs and goals in the district; receive reports from the district intelligence committee; advise on any other security matter which may arise in the district or sub county from time to time; and carry out any other function as the council may assign to the committee.²⁶

These intelligence committees are supposed to collect intelligence within the district or sub-county and report to the district security committee. This sounds a very good and elaborate system, but these committees are chaired by people who are not trained career security officers, like the Resident District Commissioners (RDCs) who are presidential political appointees. RDCs in most cases are not well trained in military or intelligence issues and even if some may be their tenure of office is the most unpredictable among public servants in Uganda. Some serve for as little as six months before they are unceremoniously dropped by the President. This not only creates a loophole in the much-needed continuity in training and experience, but also creates distrust between and among security officers who usually refer to the RDCs as ignorant civilians.

Also, at the sub county level, the sub county security committees are chaired by sub county chairpersons who are elected people but not security trained personnel. While this is important in as far as democratisation of intelligence and security governance is concerned, it leaves a lot of gaps in the intelligence systems. For example, sub county chairpersons usually treat intelligence and security duties as secondary to their core roles because they do not appreciate what intelligence is and what it is not. All the career intelligence officers sitting in both the district

and sub county security committees like the District Internal Security Officer (DISO), and the Gombolola (sub county) Internal Officer (GISO) are subordinate to the political appointees or the elected leaders who normally experience coordination problems in intelligence gathering and reporting. It is surprising that the Parliament of Uganda, that has the mandate of oversight, has never seen the loopholes identified here as necessitating a review of the intelligence management legislation.

Apart from the above-mentioned official intelligence agencies and structures, occasionally, as noted earlier, non-statutory armed formations and militias have been created in response to particular insurgencies or insecurities to help in gathering intelligence. On top of that, some NRM Party (the ruling party) functionaries have time and again created unofficial outfits also claiming to gather intelligence, like the Popular Intelligence Network (PIN), Kalangala Action Plan (KAP), and the Crime Preventers, usually headed by highly connected politicians. Unfortunately, because of the lack of effective oversight in security issues, the formal intelligence services get sidelined in terms of budget and other provisions whenever these informal arrangements are made.

This arrangement creates a problem in defining intelligence in Uganda and in determining its scope. The legal instrument may be relatively clear about ISO and ESO as the intelligence organisations and their mandate. However, the public gets confused as to which agency does what, and where does one report intelligence information or any transgressions by any of the operatives of the respective departments. In addition, although attempts are made to make a distinction between civilian and military intelligence services, for example, some analysts tend to refer to the ISO and the ESO as civilian intelligence organisations and the CMI as a military intelligence organisation. In practice, however, both are staffed with officers from the military.

In all, Uganda is not short of intelligence agencies or structures for information gathering as seen above; however, there may be too many, leading to uncoordinated security operations. This multiplicity of security intelligence agencies has often led to operational clashes, which the media has often exposed. This is especially the case between the CMI, police and the ISO. For example, the Director General of ISO, Col (Rtd.) Frank Kaka Bagyenda, was reported by the media as accepting that the ISO was arresting suspects involved in crimes, yet the responsibility of arrest is given to the police, and the police complained publicly about this action by the ISO.²⁷ These issues raise a number of questions about the oversight of these agencies. For example, in 2019, the Parliamentary Human Rights Committee was prevented from visiting a 'safe' house managed by the ISO where it was suspected that people were illegally confined and were being tortured.²⁸

At the time of writing this paper (mid-2020) the country woke up to the news of a raid by the CMI on the ISO 'safe houses', which was a clear indication of the existence of turf wars among the security intelligence agencies in Uganda. In a media interview, the Director General of ISO admitted that he was being fought by elements within security circles.²⁹ Despite this unprecedented event, in recent times Parliament did not summon the Ministers concerned to provide explanations. This could be because the last time Parliament attempted to summon the Director General of ISO through the Minister for Security he refused to appear, as already noted above.

Having highlighted the structure and character of the intelligence services in Uganda, in which some gaping holes have been revealed, the focus turns next to an analysis of oversight challenges in Uganda in order to suggest ways of providing enhancing democratic governance of the intelligence sub-sector.

Intelligence oversight challenges in Uganda

The term intelligence oversight sounds contradictory given that traditionally the intelligence services have been known to, and legally allowed to, operate secretly because of the belief that secrecy aids their effectiveness. However, Gill & Phythian advise that it is necessary for a democratic country to carry out oversight of their intelligence services irrespective of the special role they play in national security provision. This is not only to ensure effectiveness but also in order that, just as intelligence agencies engage in surveillance to carry out their security and safety tasks, overseers are able to carry

out surveillance on them to ensure that the agencies do not threaten the security and safety of citizens. However, for this to happen a country must have strong structures that are also backed by effective legislation.³⁰ While in Uganda all other government departments have clear lines of oversight with a clear corresponding parliamentary committee, this is not true for the intelligence services.

The prevailing intelligence oversight model in Uganda theoretically indicates that all three arms of government – the executive, the legislature and the judiciary – have a kind of oversight role vis-a-vis the intelligence services, as in democratic societies in general. It may also be assumed that the environment is conducive for other statutory and non-statutory bodies to play their complementary oversight roles. The practice, however, indicates a different picture because the prevailing legal framework for oversight of the intelligence services is not in harmony with other legal frameworks in the country, thus presenting serious oversight challenges, as illuminated in the following paragraphs.

First, the intelligence law in Uganda confers a preeminent role in intelligence management to the President. It is stipulated in Clause 5 that 'Each organisation shall be headed by a Director General appointed by the President and directly responsible and accountable to the President.'³¹ However, the President as a head of state with various administrative issues to handle may not be able to provide effective intelligence oversight. This is probably why, administratively, the position of Minister for Security was established by the President in the Uganda Cabinet, but the problem is that it is not legislatively anchored. And because of this, it keeps oscillating from a state minister to full cabinet minister depending on the appointee selected by the President. The challenge here is that the role of the Minister, including his/her oversight function over the intelligence agencies, is not spelt out in the intelligence legislation. This is not suitable for a sensitive ministry for security where one would not expect any ambiguities. For example, the Minister's role in security budgeting, appointment, oversight and discipline of the intelligence officials is not spelt out in the law.

Currently, the Minister for Security operates under Clause 9 of the intelligence legislation which states that 'the powers and duties conferred upon the President under this Act may be exercised by such Minister as the President may authorize for that purpose.' The exact minister is not named by the law, something that was left to the President to designate and it is clear that it is the President who is recognized by the law.³² This legal stipulation may suffice for other ministers performing other general duties. However, the duties of a minister for a specialized sector like intelligence, which is a foundation of national security, should be more explicit. The prevailing legal ambiguity on the roles of the Minister for Security does not help either the agencies or oversight institutions because they are most likely not privy to what powers the President has delegated to the Minister at any given time, nor the extent to which the Minister can be held accountable for the agencies' actions and programmes.

The executive intelligence oversight level would ordinarily be augmented by the National Security Council (NSC) which is the clearly stipulated security architecture in Uganda; but it has structural problems that will be explained in this paper. The NSC is established by the National Security Council Act, 2000, Cap. 301, as already noted above, and it is a creature of Article 219 of the Constitution of Uganda, 1995. The Constitution created the NSC with the President as the chairperson and Article 220, stipulates the functions of the NSC, including to inform and advise the President on matters relating to national security.³³ There is a functional problem, however, emanating from the NSC legislation of the President chairing this Committee; it is the President who is the main task giver and consumer of the intelligence product in Uganda. One wonders how the person to be informed and advised becomes the chairperson of the same advisory council. This presents issues of conflict of interest and it could also explain the prevailing inconsistencies in the security intelligence architecture of the country.

To achieve the effective executive oversight of the intelligence services that the framers of the National Security Council Act were looking for, the position of the Minister for Security should have been clarified in the law. It is important to specify the role and powers of the Minister over the intelligence services. Presently, the Minister for Security cannot discipline any officer under the security intelligence organisations and the Director Generals are not obliged to report to him. The legislation could have perhaps left the President to just play a supervisory role as the Minister for Security shoulders full responsibility in

matters of oversight and control of intelligence services' personnel. Unlike the President, a Minister in transitional democracies like Uganda may be easily summoned to answer before a parliamentary committee questions about any anomalies to do with the intelligence sector, such as issues of either impropriety or human rights abuse.

The other challenge in security intelligence oversight and management is the lack of harmony between the intelligence law and other recently enacted laws aimed at consolidating democratic governance in the country. For example, Parliament is not involved in the appointment of the heads of the agencies; therefore, this paper suggests an amendment to the existing intelligence legislation Clause 5, highlighted above, to read; 'each Organisation shall be headed by a Director General appointed by the President and approved by Parliament and responsible and accountable to the President and Parliament.' This would be in line with the intentions of the framers of the Constitution in Article 218, to give a controlling effect of the intelligence services to Parliament.³⁴ With this, Parliament may be able to challenge the ineffectiveness of the agencies either by liaising with the Minister or the Director Generals at any time to find out the cause, rather than assuming that the President and the Minister are in control when they are not. The National Security Council Act, 2000 should also be amended. The NSC should probably not be chaired by the President since it is supposed to inform and advise him/her. The NSC perhaps may be given the function of performing the executive oversight of the intelligence services to assist the Minister and the President. This may be done by an oversight sub-committee being established under the NSC.

The Constitution theoretically provides Parliament with a privileged position in intelligence oversight. For instance, when one reads Article 218 it can clearly be seen that the power of establishing and regulating security organizations is given to Parliament. The anomaly in the legal framework, however, is that the Security Organizations Act, instead ended up removing the intended controlling effect from Parliament by giving the power to appoint the Director Generals of the agencies to the President (Clause 5) without consulting Parliament. The same Clause enjoins the Directors to be accountable to the President alone in the entire government. This implies that the framers of the Constitution gave the power of establishing and regulating the intelligence services with one hand, and then removed it with another.

The Executive in a democracy must report to Parliament in matters of national security. Indeed, in Uganda the Executive is theoretically accountable in matters of intelligence to Parliament but practically this stops with budget appropriation. The Minister for Security accompanied by the heads of the agencies represents the Executive to the Presidential Affairs Committee of Parliament during budget appropriation. However, on matters of national security they rarely speak in clear terms before that general committee of Parliament and, after all, the general intelligence services budget comes under the budget of the office of the President. The weakness here could be the absence of a special intelligence oversight committee in the Uganda Parliament, such as the one in South Africa, that would give confidence to the security handlers that their candid participation in Parliament would not compromise national security.

One may also cite an intelligence oversight challenge from the judiciary in Uganda. The legal framework indicates an oversight link from the judiciary to the agencies. Clause 5(1) of the Regulation of Interception of Communication Act states that a judge will issue a warrant if he/she is convinced that there are reasonable grounds for security personnel to intercept people's communications. It is, however, not clear how the designated judge establishes the reasonable grounds from the applicant. There is no evidence to indicate that this legislation has ever been operationalized since it was enacted in 2013; and this has not been challenged by any oversight body, including Parliament.

Likewise, the legal framework is assumed to allow both the statutory bodies and civil society to oversee the intelligence services. However, the Security Organizations Act, 1987, apparently contradicts the various laws that establish these oversight bodies, as already noted. The statutory bodies like the Uganda Human Rights Commission (UHRC), the Inspector of Government (I.G) and the Auditor General under the Ministry of Finance, would have an effective oversight role in relation to

the intelligence services as indicated by their respective legislations. But the intelligence law does not oblige the services to report to them; neither do those bodies have clear access to the agencies guaranteed by legislation and that is why human rights violations by intelligence operatives have been reported recently and these bodies have not acted to meet public expectations.

Therefore, inasmuch as Uganda has endeavoured to democratize security sector governance by enacting legislation aimed at promoting and protecting human rights – for example, the Whistle-blowers Protection Act, Public Access to Information Act, the Regulation of Interception of Communications Act, to mention but a few – these Acts, inadvertently or by design, seem to clash with the older security legislation of 1987. The Security Organizations Act, 1987, Cap 305, for instance, criminalizes any release of any kind of information by the staff of the intelligence services. Section 10 (1) gives a blanket statement that: ‘Any person employed or having been employed ... [who] communicates ... any information ... commits an offence and is liable ... [to] imprisonment not exceeding fourteen years.’ Section 10 (2) states that ‘Any person ... who holds communication with or gives intelligence to any person ... or ... discloses the secrets of either organisation ... commits an offence ... [and] is liable to be sentenced to death.’³⁵

The problem with Clause 10 of the Security Organization Act, mentioned above, is that it does not define the information not to be disclosed. One would wonder how whistle blowing against impropriety within the intelligence services could be attempted within such an intimidating environment. Moreover, ‘any information’ as set out in Clause 10 (1) could even mean information concerning abuse of resources or human rights.

Conclusion

The paper concludes that intelligence is a vital sub-sector of the security sector and if it is not managed well, and subjected to effective oversight, the entire national security provision is undermined. When the intelligence services are not subjected to effective democratic control and oversight, the sub-sector serves to undermine not only democratic governance and the fundamental rights of the people but also the entire security provision may be affected, as analysed above. For effective intelligence oversight to be realized, a country would need effective laws, and effective oversight structures. However, as observed above, the legal framework existing in Uganda may continue to undermine those efforts if not reviewed and amended. The prevailing intelligence legal framework lacks harmony and consequently undermines the existing oversight structures.

The paper has observed various challenges in the working and the provision of effective intelligence; for instance, the President is provided with a very dominating role in intelligence management by the prevailing intelligence legislation. This, by implication, even insulates the intelligence services from meaningful parliamentary or any other oversight. Likewise, it has also been noted that the role of the Minister for Security in the management and oversight of the intelligence services is not clear because it is not legislated; and because of this the agencies may decide to be subject or not to ministerial oversight. The Security Organizations Act likewise, removed the intended controlling effect over the intelligence services from Parliament. All that is an indication that the legal framework is not conducive for effective security intelligence oversight and this has contributed to poor security provision in the country.

Given the weaknesses and challenges identified in the Uganda intelligence oversight legal framework that could be impacting on the effectiveness of the intelligence services, this paper suggests amendments aimed at strengthening intelligence oversight. First, there is a need to amend the intelligence law to harmonise it with other recently enacted laws aimed at consolidating democratic governance. Specifically, this paper suggests an amendment of Clause 5 of the Security Organisations Act to make the President appoint the heads of the agencies with approval by Parliament. This would be in line with the intentions of the framers of the Constitution in Article 218 to give a controlling effect of the intelligence services to Parliament.

Secondly, Parliament should restructure its oversight system to establish a special intelligence oversight committee to resolve the issue of suspicion. The security officials and the Minister for Security could probably become free to discuss security issues and the details of their budget in the proposed committee of Parliament with the required confidence. Also, a suggestion is made to amend the prevailing intelligence law to clarify the position of the Minister for Security for the incumbent to provide credible ministerial oversight. It is important to state the role and powers of the Minister over the intelligence service so that he/she will be more accountable on their behalf.

Thirdly, it is recommended that the government of Uganda synchronizes the intelligence law with other laws in the country aimed at protecting human rights, especially in this era where security should not just provide state security but also aim to ensure human security. For instance, when Clause 10 of the Act makes disclosure of information an offense and liable on conviction to imprisonment,³⁶ it is at variance with the Whistle-blowers Protection Act, 2010.³⁷ Likewise, the total secrecy of the intelligence services is not consistent with the fact that the country enacted a law to provide for the right of access to information, following article 41 of the Constitution.³⁸

The above recommendations, if implemented, will ensure that the intelligence services play their cardinal role of supporting national security provision effectively and efficiently without undermining principles of the rule of law.

Notes

1. Muldoon, "Russian Intelligence and Security Services," xi.
2. Ibid.
3. Zegart, "The Roots of Weak Congressional Intelligence Oversight."
4. Kabumba & Kyepa (eds.), "Militarism Kampala," 9–20; and Kabwejere, "Politics of State Formation," 94–135.
5. Wills, *Guidebook*. www.dcaf.ch accessed June 8' 2012.
6. Africa & Kwadjo (eds.), "Introduction," 1–14.
7. Africa, "The South African Intelligence Services," 61–94.
8. The Constitution of the Republic of South Africa 1996.
9. The Ministerial Review Commission on Intelligence, May 11, 2007.
10. Sylvester, *Parliamentary Oversight of Defence*.
11. Ibid.
12. Ibid.
13. Kabumba et al, "Militarism Kampala," DLP 2017 9–20; and Kabwejere, "Politics of State Formation," 94–135.
14. Hattem, "23 Women Murdered in Uganda."
15. Ibid.
16. Kasasira, "Where Were My Spies."
17. Kabumba, 'Militarism,' 10.
18. Asiimwe, *Security Studies*, 286.
19. Agaba, "Intelligence Sector Reform in Uganda," 56.
20. Kwadjo, "Changing the Intelligence Dynamics in Africa," 112.
21. The Constitution of the Republic of Uganda Article 218; and The Security Organizations Act, Cap 305 1987).
22. Asiimwe, "Amendment of the Intelligence Legislation," 123.
23. The Security Organisation Act, 1987, Clause 3 (A& B)
24. Asiimwe, "Amendment of the Intelligence Legislation."
25. The Uganda National Security Council Act 12 of 2000
26. Ibid.
27. Misairi, "We are Not Hijacking Police Mandate," 22.
28. The Independent, "General Tumwine Rejects MPS," 29.
29. The Observer Newspaper, "Colonel Kaka's Grim Crimes."
30. Gill & Phythian, *Intelligence in an Insecure World*, 149.
31. The Security Organisations Act, Cap 305 1987, Clause 5.
32. The Security Organisations Act, 1987 Cap. 305
33. The Constitution of the Republic of Uganda 1995" Article 220
34. The Constitution of the Republic of Uganda, 1995.Article 218(1)
35. The Security Organisations Act, 1987, Cap 305" Sec10(1); Sec 10(2)

36. The Security Organisation Act, 1987 Cap. 305. Clause 10 (1): 'Any person employed..by either organisation who.. releases or discloses..any information..commits an offence and is liable ..of imprisonment..' Clause 10 (2): 'Any person employed..who (a) holds communication with or gives intelligence to any person, or (b) discloses the secrets ..commits an offence of disclosure..is liable on conviction to be sentenced to death'
37. The Whistleblowers Protection Act, 2010: 'An Act to provide for the procedures by which individuals in both the private and public sector may in the public interest disclose information that relates to irregular, illegal or corrupt practices;..' Clause 2: Disclosure of impropriety; 'Subject to any other law to the contrary, any disclosure of an impropriety made by a whistleblower is protected..'
38. The Access to Information Act, 2005. (The purpose of this Act is- '(a) to promote an efficient, effective, transparent and accountable government; (b) to give effect to article 41 of the Constitution by providing the right of access to information held by organs of the State.. (c) to protect persons disclosing evidence of contravention of the law, ..in government bodies; (d) to promote transparency and accountability in all organs of the state..(e) to empower the public to effectively scrutinise and participate in government decision that affect them.')

Disclosure statement

No potential conflict of interest was reported by the author.

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