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Policy for managing access to intelligence information in post-apartheid South Africa

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ABSTRACT

Under apartheid, the South African intelligence services operated in secrecy and without the framework of a Constitution upholding basic human rights. The situation changed drastically with the introduction of a democratic political dispensation in 1994, and with the adoption of the Republic of South Africa Constitution Act, 1996. One of the fundamental rights contained in the Bill of Rights (Chapter 2 of the Constitution) was the right of access to information. The subsequent passage of legislation to give effect to this right, required all state structures - including the civilian intelligence services, the National Intelligence Agency and the South African Secret Service - to actively disclose information about themselves, and to receive and respond to requests for access to records that were made in terms of the enabling legislation.

The main issue with which the study is concerned - the balance between secrecy and transparency in a democracy - is one of a wider set of concerns related to democratic control and accountability of the intelligence and security services. The study explores policy options for reconciling the public's right to information with the intelligence services' need for a degree of secrecy with which to conduct their work. Inter alia, it compares the policy choices of three countries about how their intelligence services should function in relation to access to information legislation.

The research reveals that there was uneven and erratic compliance by the intelligence services with key provisions of the Promotion of Access to Information Act, 2000, up to and including August 2005. The weaknesses arose because of the absence of clear policy on how to implement the Act in relation to the intelligence services, and in relation to information held by the intelligence and security services.

The study therefore argues the need for a comprehensive policy package, which sets criteria for the conditions under which information should be protected from disclosure, and the criteria for determining when information no longer requires such protection. Finally, it argues for strict oversight of the intelligence services' choices around secrecy and transparency.