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# Evaluation of the civilian intelligence service oversight model: A South African perspective

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**University of the Witwatersrand**

**School of Governance**

# Evaluation of the civilian intelligence service oversight model: A South African perspective.

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# Abstract

Intelligence serves as a cornerstone of state security, fulfilling a vital role in the protection of national interests and guarding against threats. Despite its secretive nature, intelligence operations and mandates are entrusted with significant statutory powers across nations to uphold state security. To ensure the rule of law and the protection of citizens' civil rights, robust governance frameworks are imperative.

This research seeks to evaluate the effectiveness of South Africa's civilian intelligence oversight system post-1994. Central to this evaluation are the regulatory and institutional arrangements governing intelligence services and officials. Drawing upon governance principles encompassing oversight, transparency, accountability, and democratic control; the study also explores institutional norms and standards. Furthermore, it explores the potential impact of aligning societal and constitutional values with regulatory and oversight mechanisms.

Research results indicate weaknesses in the existing civilian intelligence oversight model. This highlights inadequacies in holding intelligence services and officials accountable. Consequently, the research advocates for reforming the civilian intelligence oversight system. Emphasis must be placed on reviewing legal frameworks, oversight institutions and mechanisms, and procedural measures to enhance transparency and accountability. Rather than a complete overhaul, the research recommends targeted improvements to existing mechanisms.

Moreover, the study underscores the need for better integration of societal and constitutional values into intelligence oversight arrangements. Aligning these values with regulatory frameworks is essential to ensuring coherence and efficacy in governance practices.

## Declaration

I declare that the thesis titled “Evaluation of the civilian intelligence service oversight model: A South African perspective” to be my own work, that it has not been previously submitted for any degree or examination purposes at this or any other university, and that all the sources used or quoted, have been indicated and acknowledged.

**Osiel Bongani Radebe** **Date: 09 July 2024**

## Dedication

With heartfelt gratitude, I dedicate this thesis to my beloved family: My rock, my supportive wife, Omphemetse, whose unwavering love and encouragement have been my guiding light throughout this journey. Thank you for being my pillar of strength and for always believing in me. I love you, Wame. To my precious boys, Kabelo, Phahlani, and Bongani Jr. you are my source of joy and motivation, inspiring me to strive for excellence every day.

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My late aunt, Jeanette “Mam’ncane” Dlame
My brother, Pule Makgajane.
My friends, colleagues, and former colleagues
My Godchild Bontle Mohlabi
My In-laws, the Lethoko and the Moropa families

My supervisor, Professor Antoni Van Nieuwkerk for his academic support and invaluable guidance throughout this journey. His mentorship has not only been instrumental in shaping this research but has also opened the world of academia for me. His insights, encouragement, and commitment have been a constant source of inspiration, and I am deeply appreciative of the opportunities for growth and learning he has provided.

This is a timely thesis that seeks to contribute knowledge and deepen our understanding of the effectiveness of civilian intelligence oversight and accountability mechanisms to intelligence and oversight practitioners, academics, oversight bodies and civil society. Earned not given.

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## List of Acronyms

| | |
|---|---|
| **AGSA** | Auditor-General of South Africa |
| **BOSS** | Bureau of State Security |
| **CASAC** | Council for the Advancement of the Constitution |
| **COSATU** | Congress of South African Trade Unions |
| **CSO** | Civil Society Organisations |
| **DMI** | Directorate of Military Intelligence |
| **IAD** | Institutional Analysis and Development |
| **JSCI** | Joint Standing Committee on Intelligence |
| **NA** | National Assembly |
| **NCOP** | National Council of Provinces |
| **NDP** | National Development Plan |
| **NICOC** | National Intelligence Coordinating Committee |
| **NIS** | National Intelligence Service |
| **NSC** | National Security Council |
| **NSMS** | National Security Management System |
| **OIGI** | Office of the Inspector-General of Intelligence |
| **IGI** | Inspector-General of Intelligence |
| **PAIA** | Promotion of Access to Information Act |
| **POSIB** | Protection of State Information Bill |
| **RICA** | Regulation of Interception of Communications and Provision of Communication-Related Information Act |
| **SANDF** | South African National Defence Force |
| **SANEF** | South African National Editors' Forum |
| **SAPS** | South African Police Service |
| **SSA** | State Security Agency |
| **SSR** | Security Sector Reform |
| **SSC** | State Security Council |
| **SADC** | Southern Africa Development Cooperation |
| **FXI** | Freedom of Expression Institute |
| **R2K** | Right2Know Campaign |

| | |
|---|---|
| **NUMSA** | National Union of Metalworkers of South Africa |
| **TAC** | Treatment Action Campaign |

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# Chapter One: Introduction

## 1.1 Introduction

The practice of intelligence or spying is the second oldest profession known to humanity (Herman, 1996). For centuries, it has been an advantage for rulers, leaders, or states, including non-state actors to seek information about their opponents (in secret) to gain an advantage, inform decision-making or address a particular problem to advance their course (Herman, 1996). This information would mitigate or counter any threat, reduce risk, and enable action to transfer or manage the risk. Over time, this practice has played a crucial role in protecting the country's national interest, sovereignty, and territorial integrity (Van den Berg, 2018). Throughout history, those entrusted with governance employed intelligence to advance their ambitions and protect their territorial integrity (Hutton, 2009; Van den Berg, 2018).

In current democratic states, intelligence services play an essential role in maintaining constitutional order, and preserving, and upholding democracy (Caparini, 2007). The intelligence structures covertly and overtly gather, analyse, and disseminate information to relevant government institutions as policy guidance and forewarning (Lucas, 2018; Van den Berg, 2014; 2018). Thus, intelligence serves as a foundation for enhancing and maintaining national security while informing policy imperatives and policymakers in protecting national interests (Dube, 2013; Gill, 2010; Lucas, 2018). Additionally, it significantly contributes to informed policy and decision-making processes at an operational level (Johnson, 2005; Lester, 2012).

Nevertheless, if left unchecked, the inherently secretive nature of intelligence practices can potentially lead to abuses of power as the intelligence services operate outside the boundaries of the law, and violate citizens' civil liberties (Caparini, 2007; Gill, 2010). To address these concerns, effective civilian intelligence oversight mechanisms, are equipped with updated processes, procedures, and systems. These rules and internal controls have been instituted to ensure necessary checks and balances on intelligence operations and practices. The democratisation of the intelligence community aims to enhance governance processes through the adoption of a civilian intelligence oversight model (Masiapato, 2017). In this research, democratisation or democratic

control of intelligence refers to subjecting intelligence functions and activities to scrutiny of state institutions, such as the legislature and civilian oversight mechanisms.

This research explores the evaluation of the South African civilian intelligence oversight model to assess its effectiveness. It scrutinises the current intelligence oversight system responsible for monitoring and overseeing the activities of the intelligence service. This assessment includes an analysis of the legal framework, intelligence oversight mechanisms, and the institutions charged with overseeing the intelligence community, such as parliamentary oversight. The study particularly focuses on the organisational and operational aspects to determine the mechanisms' effectiveness. This research argues that the operational dynamics of the civilian intelligence oversight model play a crucial role in shaping its effectiveness. Furthermore, the study investigates how well the oversight model incorporates and reflects societal values such as openness, transparency, accountability, and the rule of law, as well as how effectively it protects citizens' civil liberties.

Furthermore, the study adopted the Institutional Rational Choice framework as the lens through which to determine the effectiveness of civilian intelligence oversight mechanisms. Ostrom introduced this framework in 1982 to help explain the role of public institutions and policy imperatives (Ostrom, 2007). This theoretical framework has been used in various academic disciplines such as Economics, Political Science and Public Administration to understand policy and institutional problems (Ostrom, 2007). The framework emphasises how institutions shape human behaviour and collective action. Thus, institutions provide the rules and incentives that shape the behaviour of individuals within the institutions to achieve goals as noted by Ostrom in 1982.

The current research applied this framework because it offers a robust analytical frame for researching institutional dynamics, such as relevant actors, institutional rules and policy processes, incentive structures, and constraints within the intelligence oversight sector. Through this framework, the research analysed and evaluated how oversight institutions are designed, their legislative and operational mandates, internal decision-making processes, and how they influence behaviour in the intelligence sector. Unambiguous rules are one of the measures to encourage compliance, while vague

and unclear arrangements may promote abuse. Also, in explaining dynamics within oversight institutions, the theory highlights how institutions shape interactions and behaviour patterns over time. Employing the framework provided an assessment of incentives that drive behaviour among intelligence officials, intelligence oversight practitioners, oversight institutions and policymakers. This understanding is crucial for appreciating decision-making regarding transparency and accountability. Additionally, the theory supports the identification of institutional constraints such as resource limitations and bureaucratic inaction that led to policy failures. Uncovering these obstacles allows the research to develop policies and strategies that strengthen oversight mechanisms and promote democratic governance.

This study aims to evaluate the effectiveness, challenges, and alignment with constitutional values of transparency, accountability, and governance of the civilian intelligence oversight and accountability model in South Africa post-1994, providing insights for improving democratic oversight mechanisms in the intelligence sector.

### 1.2 Research Context and Background

Prevalent literature on intelligence governance in South Africa tends to discuss and distinguish the intelligence governance sector, particularly by differentiating between the periods before and after 1994 (Africa, 2009a, 2009b; Dombroski, 2006; Fazel, 2009; Liebenberg, Schutte & Minnaar, 1999; O'Brien, 2005). The primary objective of this distinction is to mark the varied intelligence governance approaches in the distinct eras and dispensations by different government administrations (Africa, 2009b). This distinction is relevant in this research because it provides contextual value for understanding the current institutional and legislative setting of intelligence sector governance.

#### 1.2.1 Apartheid Era

The study contextualises the pre-1994 apartheid era period when the intelligence community served the white minority government to maintain dominance over the Black majority population, lacked democratic oversight and operated with a militaristic posture (Hannah et al., 2005). In this era, the study examines intelligence governance specifically from 1970 to 1994. It is crucial to understand the discourse of this era within the context of an authoritarian culture characterised by a lack of accountability,

governmental misconduct, and the instrumental role played by intelligence structures in facilitating these actions (Hannah et al., 2005). As Africa (2009a) and Hannah et al. (2005) note, this undemocratic approach resulted in a total lack of scrutiny, human rights abuses, and non-existent institutional checks and balances.

### 1.2.2 The Post-1994 Democratic Transition

In the post-apartheid era, significant reforms aimed to make the intelligence community democratic, accountable, and transparent (Hutton, 2007). In the period after 1994, South Africa adopted a constitution founded on the rule of law, human rights, and transparency (Levy, 2004; Richards, 2010). The Constitution of the Republic of South Africa, No. 108 of 1996 (hereafter referred to as the 1996 Constitution or the Constitution) established civilian intelligence oversight mechanisms. The Constitution also allows for enabling legislation and regulations to further entrench civilian intelligence oversight mechanisms (Hutton, 2007).

The subsequent Security Sector Reform (SSR) process similarly led to legislation regulating intelligence services and corresponding democratic oversight mechanisms. The SSR aimed to make the security sector democratic, transparent, and more accountable (Hutton, 2007). SSR, in this research, refers to a process of transforming the institutions and practices of a country's security sector, which includes the military, police, intelligence agencies, and other bodies responsible for maintaining national security. This process also aimed to improve the security sector's effectiveness in fulfilling its mandate to protect citizens' civil liberties and maintain stability (Hutton, 2007). However, despite these major reforms in the intelligence sector, challenges persist almost three decades later.

### 1.2.3 The Constitution and Legislative Framework

According to Born and Leigh (2005) and the European Commission for Democracy through Law (2007), any intelligence oversight mechanism based on a sound legal framework is authoritative and legitimate. In the South African context, the 1996 Constitution is foundational, promoting constitutional values such as the supremacy of the Constitution, separation of powers, an independent judiciary, transparency, accountability, and the rule of law. Section 209 (2) empowers the Minister for Intelligence to oversee internal intelligence structures. Section 199 establishes a multi-

party committee, the Joint Standing Committee on Intelligence (JSCI), responsible for overseeing civilian intelligence service. The committee embodies constitutional principles of openness, transparency, and accountability. Additionally, the Office of Inspector-General of Intelligence (OIGI) ensures compliance with the regulatory framework, and counter-intelligence activities and conducts investigations. The Intelligence Services Oversight Act 40 (1994) further regulates intelligence oversight functions. The Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 (2002) regulate communication interception by relevant intelligence structures. The White Paper on Intelligence outlines the philosophical approach of the intelligence community.

### 1.2.4 The Role of Chapter 9 Institutions

Chapter 9 of the 1996 Constitution outlines the creation of state institutions that support constitutional democracy. Among these institutions are the Human Rights Commission, the Commission for Gender Equality, the Public Protector, and the Auditor-General (Madue, 2016). These entities play a vital role in maintaining democracy by safeguarding human rights, upholding the rule of law, and monitoring the responsible use of public funds (Madue, 2016). Chapter 9 institutions conduct limited oversight over intelligence structures. Though not directly involved, their mandates align with ensuring compliance with human rights, good governance, and democratic values (Dube, 2013; Madue, 2016).

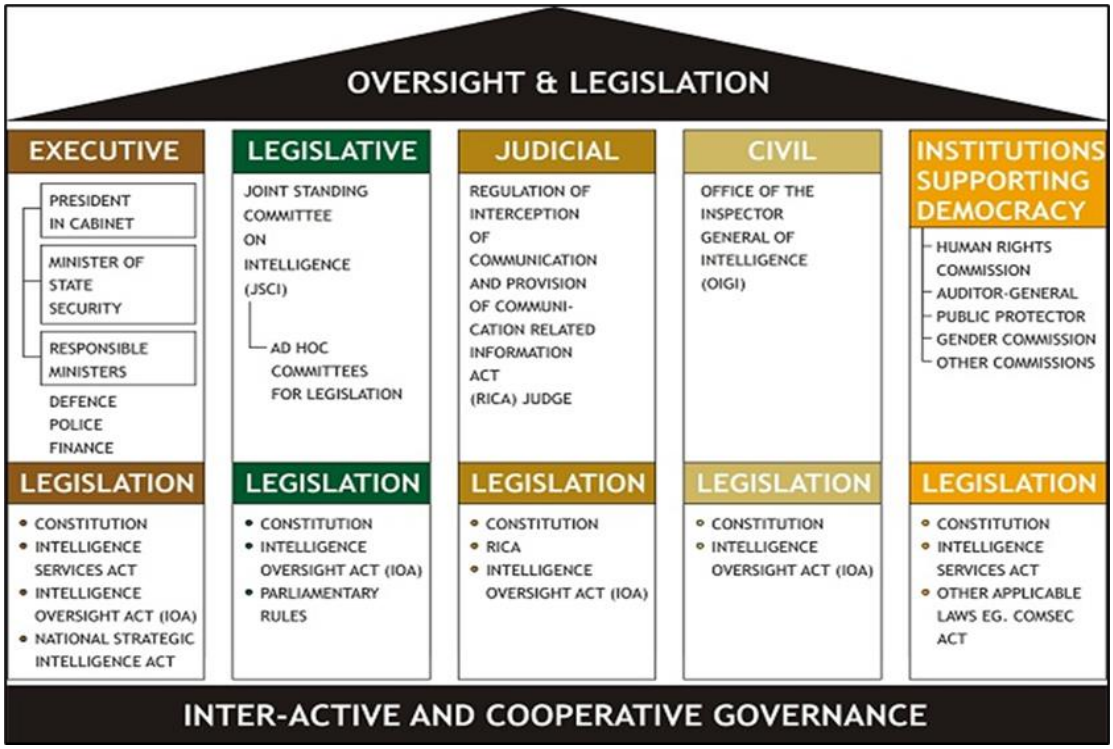
### 1.2.5 Challenges and Inefficiencies

Despite the improved regulatory framework, institutional changes and democratisation of intelligence, intelligence agencies have demonstrated inefficient functioning, marked by scandals, violations of legal frameworks, financial irregularities, and executive overreach, particularly since 2009 (Dube, 2013; High-Level Review Panel on State Security Agency, 2018; Nathan, 2009; Nathan, 2017). These challenges demonstrate weaknesses and gaps in the legislative framework, institutional performance, and actual oversight effectiveness. They include (i) the creation of parallel intelligence structures called the Principal Agent Network project, (ii) violation of the legal framework and Constitution, (iii) abuse of intelligence funds, (iv) lack of adherence to internal financial controls, (v) the politicisation of intelligence, (vi) executive overreach, and (vii) political factions within the intelligence community (High-

Level Review Panel on State Security Agency, 2018; Judicial Commission of Inquiry into State Capture, n.d.). The disconnection between legislative intent and practical implementation at the operational level underscores the need for continual evaluation and improvement in the country's intelligence governance model.

The figure below depicts the intelligence governance (oversight and applicable legislation) regime adopted after 1994. It is a graphic representation most effectively interpreted from the bottom upwards, starting with the foundation grounded in the legal and constitutional framework, emphasising the interactive and cooperative governance of intelligence governance. The different components of the model are constructed upon this base, with the outcome being accountability and oversight (State Security Agency, 2016).

**Figure 1: Intelligence Governance Regime: Oversight Mechanisms and Legislation**




Source: State Security Agency, 2016

### 1.3 The Rationale for the Research

In this research, the focus of the investigation is appropriate and necessary given the state of the intelligence sector. Since 2009, there have been several reasons for an

academic evaluation of the South African civilian intelligence oversight model adopted after 1994.

Firstly, the efficacy of the civilian intelligence oversight model is critical democratisation of intelligence that ensures intelligence services adhere to the law, as envisioned by the 1996 Constitution and enabling laws outlined in the above context and background section. The oversight model's efficacy is vital because it safeguards citizens' human rights and civil liberties. Oversight mechanisms are crucial for supervising and scrutinising the intelligence agency's actions and decisions.

Second, the civilian intelligence structures must be aligned and integrate South African constitutional values such as democratic norms and standards, human rights, transparency, the rule of law, and accountability. An assessment of the oversight model plays a role in identifying gaps or weaknesses in the oversight model system.

Third, while civilian intelligence agencies form part of the essential element in the national security apparatus, their actions and decisions must be subject to adequate monitoring to ensure that they function in an open, transparent, and accountable manner. This will build public trust and confidence in the intelligence services.

Fourth, like other nations worldwide, South Africa is confronted with new and changing security concerns like terrorism and cybercrime. It is, therefore, critical to assess whether the present intelligence oversight systems can adequately address these issues that intelligence agencies ought to forewarn.

Lastly, the current study used the Institutional Rational Choice framework to develop a theoretical and security framework for intelligence oversight in the South African context. This framework offers a valuable lens through which to analyse the complex interplay between institutional arrangements, individual behaviour, and policy outcomes in the context of civilian intelligence oversight and accountability. It suggests that actors within institutions make choices based on their self-interest and that the rules and norms of the institution influence these choices. In the context of intelligence oversight and accountability, the framework was used to analyse the choices made by actors within the intelligence governance institutions, such as intelligence officials, oversight structures and mechanisms, and how the rules and norms of the institution

influence these choices. It provides insight into how institutions function and whether they fulfil their mandates to protect national security while being transparent and accountable.

### 1.4 Research Proposition

Since 1994, the effectiveness of the civilian intelligence oversight and accountability model adopted in South Africa in promoting good governance has been questioned (Dube, 2013; Masiapato, 2017; Netshitenhze, 2005). Indeed, Africa (2009) and Hutton (2007) argue that maintaining democratic governance relies on striking a balance between the imperative of secrecy in intelligence practices and the necessity for transparency and accountability as essential components of good governance. Similarly, authors such as Musila (2018) propose strategies for improving transparency, accountability, and oversight with cross-cutting elements within each mechanism, namely the executive, legislature, and judiciary. Despite this, the 1996 Constitution has been central in shaping democratic governance, protecting human rights, and transforming previously repressive intelligence services (Nathan, 2010). Equally, Dlomo's (2004) study found that the South African intelligence parliamentary oversight mechanism is effective. Therefore, a framework to improve the effective functioning of the South African multi-agency oversight system is critical for good governance to enhance fragmentation, lack of coordination, cooperation, and collaboration (Masiapato et al., 2020).

Consequently, the civilian intelligence oversight model and systems require legislative, policy and institutional reform at an operational level. The current research argues that the reform must infuse and improve existing legal and regulatory measures that foster good governance. These measures should include improving accountability, transparency, the rule of law, etc. Additionally, institutional reform of the existing oversight model and systems is crucial for implementing the oversight mandate. The reform should focus on structural redesigns and institutional changes in mechanisms responsible for oversight, as well as processes and procedures to ensure transparency and accountability.

### 1.5 Research Conceptualisation

The research conceptualisation addresses the four crucial pillars: problem statement, purpose statement, research questions and propositions.

#### 1.5.1 Problem Statement

The South African civilian intelligence service is critical in protecting national security. However, its activities must be subject to appropriate oversight to ensure that it operates with transparency, accountability, and legality. Yet, there are concerns that the existing oversight model may not effectively hold the intelligence service and officials accountable. Questions are also raised on the oversight model's alignment with constitutional values.

Also, there is limited research on the effectiveness of measures and intelligence oversight and accountability mechanisms. Factors such as the specific nature of the intelligence activity, the legal and political context, and the level of public trust in government institutions can all affect the effectiveness of these measures. Additionally, the classified nature of intelligence activities can make it challenging to conduct evaluations and accurately assess their effectiveness. Despite these limitations, it is acknowledged that oversight and accountability mechanisms play an essential role in ensuring the legality, appropriateness, and effectiveness of intelligence activities and operations.

Moreover, democratic control of the intelligence community and agencies is an ongoing matter and dilemma facing liberal democracies across the globe (Born & Leigh, 2005; Dube, 2013; Hutton, 2007; Geneva Centre for the Democratic Control of Armed Forces, 2003; Leigh, 2003). This is due to the nature and importance of intelligence service to government and the need for information, policy imperatives and governance. However, democratic values of openness, transparency and accountability are critical in intelligence governance (Masiapato et al., 2020; Gill, 2010). On the other hand, the intelligence community play a significant role in ensuring that democratic requirements and demands, such as governance principles and government policy development, are achieved (Cole, 2015; Geneva Centre for the Democratic Control of Armed Forces, 2003; Lester, 2012). To support and achieve these democratic demands, governments provide the intelligence sector with

legislated powers that have the potential to undermine the very democracy it is meant to protect and violate the citizenry's civil liberties (Geneva Centre for the Democratic Control of Armed Forces, 2003). It is through democratic control that these powers can have checks and balances based on the legislative framework and institutional arrangements geared to ensure civilian intelligence oversight and accountability. Yet, little is known about what constitutes the effectiveness of intelligence oversight mechanisms and systems. These are the measures and mechanisms that ensure intelligence oversight and accountability (Farson, 2012).

It is also noteworthy that oversight and accountability measures within the intelligence sector are significant and evolving, but there is minimal information on the empirical and normative understanding of their theoretical and conceptual mechanisms (Bolto, 2019).

Additionally, while secrecy in intelligence operations is a significant and accepted factor, it is an intervening variable, which Bolto (2019) believes is notable but poorly understood. Authors and researchers such as Bruneau (2001), Caparini (2007), Farson (2012), Gill (2010), and Wegge (2017) point to the lack of research on intelligence governance in academia. Most published studies are limited to American, French, Canadian and British intelligence governance (Bruneau, 2001; Farson, 2012). Wegge (2017) agrees with Caparini (2007) that this research gap is particularly evident in intelligence oversight and accountability systems. This involves tasks assigned to overseers and their working domains. Wegge (2017) particularly emphasises the problem of conceptualising effective accountability mechanisms. Farson (2012) and Bolto (2019) also observe the limited studies that attempt to determine the effectiveness of oversight models and the need to develop an evaluative framework of accountability within secretive agencies. Van den Berg (2014) points to little agreement on the theoretical framework of intelligence analysis, which leads to difficulties when assessing concerns in intelligence governance. For this reason, Bolto (2019) believes the accountability conceptual framework within intelligence structures requires clarification.

In the South African context, the situation is like the rest of the world; studies have revealed that there is limited literature and theory on the civilian intelligence oversight

model, institutional and regulatory framework arrangements, and accountability mechanisms (Dube, 2013; Fazel, 2009; Masiapato, 2017; Masiapato et al., 2020; Nathan, 2010). The need for determining the effectiveness and efficiency of intelligence scrutiny and accountability has become greater due to the weakening and failure of oversight mechanisms experienced in South Africa between 2009 and 2019 (Judicial Commission of Inquiry into State Capture, n.d.). Governance systems in such arrangements are crucial as they guide the internal operational processes of the mechanism. However, the intelligence sector's core challenges include accountability, transparency, responsiveness, respect for the rule of law and ineffective internal organisational processes (Dube, 2013).

### 1.5.2 Purpose of the Research

This research aims to investigate the effectiveness of the established South African civilian intelligence oversight model and recommend areas of improvement. The investigation focused on how the oversight model or the mechanism's regulatory and institutional arrangements hold the intelligence service and officials who work within these institutions accountable. The study further explored and sought to understand the alignment of the existing intelligence oversight mechanisms with the values and expectations of South African society.

### 1.5.3 Research Questions

#### 1.5.3.1 Primary research question:

- How does the South African intelligence oversight model ensure good governance through oversight, transparency, and accountability?

#### 1.5.3.2 Secondary research questions:

- What are the institutional and regulatory weaknesses of the model?
- What effect does the lack of implementation of a regulatory framework have on transparency and accountability?
- How does secrecy in the intelligence sector impact the alignment of societal values with oversight mechanisms?
- How should the South African civilian intelligence oversight arrangements be structured to promote and foster individual accountability?

## 1.6 Delimitation of the Research

This research did not discuss the South African intelligence agency's structures, functions, mandate, operations, and activities. Areas in the intelligence functions contain sensitive information and classifications; thus, publicly discussing them may be unlawful. As a result, the assessment of the intelligence oversight model will not extend to the intelligence oversight mechanisms applicable in the South African National Defence Force (SANDF) and South African Police Service (SAPS) in detail because oversight of these security structures has a regulatory regime under different legislation (Africa & Mlombile, 2001). There are questions about civilian intelligence relevant to the security sectors in general. This study will only broadly reference national intelligence structures that include the police and defence force (Africa & Mlombile, 2001).

## 1.7 Justification of the Research

Following the establishment of democratic governance in 1994, South Africa implemented oversight mechanisms for the intelligence sector, mirroring practices in liberal democracies worldwide (Levy, 2004). Richards (2010) highlights that adopting such practices can enhance the functioning of state institutions that support democracy. Despite these measures, there has been a notable lack of transparency and accountability in South Africa's intelligence sector, especially between 2009 and 2019, a period marred by state capture and grand corruption, as confirmed by the Judicial Commission of Inquiry into State Capture in 2023.

Given these concerns, this research aims to evaluate the civilian intelligence oversight model in South Africa, identify systemic gaps, and offer insights to enhance transparency and accountability within the intelligence service. The study's findings assess the impact of existing weaknesses and provide recommendations for improving the oversight model.

Conducted using a qualitative research approach, this study combines interviews and literature review to collect data. It seeks to contribute to the existing body of knowledge on intelligence oversight, addressing the current research gap in this area. This research is crucial and timely, as effective intelligence oversight is fundamental to

democratic governance, ensuring that intelligence agencies operate within legal and ethical boundaries.

### 1.8 New Contribution to Knowledge

This research makes new contribution to the existing knowledge of civilian intelligence service oversight. The knowledge will be useful for academia and for the intelligence sector.

Firstly, the research provides a framework for evaluating the effectiveness of the civilian intelligence oversight model in achieving its intended objectives. It includes gaps in the legal and regulatory framework, weaknesses in the institutions and bodies responsible for oversight, or problems with the processes and procedures used to ensure transparency and accountability, providing new insights into the effectiveness of the intelligence oversight system.

Secondly, the study will also contribute to existing knowledge by providing a theoretical lens through which to understand and interpret the complex and multifaceted issues surrounding the civilian intelligence oversight model in the South African context. The framework can help provide a basis for understanding how the intelligence oversight model in South Africa relates to broader issues of democratic governance and the protection of civil liberties. For example, using the concept of accountability as a theoretical framework allows the research to examine how the oversight mechanisms ensure that the intelligence service is accountable to the public and democratic institutions and how it promotes openness, transparency, and accountability.

Thirdly, the current research examines the integration of societal values in the intelligence oversight model and how well the oversight mechanism considers these values in its decision-making process. This could provide new insights into how oversight models can better align with the values and expectations of society.

Lastly, this research provides new insights and understanding of the civilian intelligence service oversight model and could help to inform future policies and practices related to civilian intelligence oversight.

## 1.9 Chapter Outline

The dissertation is divided into the following chapters:

**Chapter One: Introduction to the Research**

This chapter introduces the entire research project. It provides context to the study and identifies research aims, including the research proposition, problem statement, and research questions. It also discusses the significance and limitations of the study.

**Chapter Two: Literature Review**

This chapter reviews the relevant literature on the civilian intelligence oversight and accountability model. It discusses the conceptual and theoretical framework that forms the foundation of the research, including the fundamental pillars of research conceptualisation and key variables.

**Chapter Three: Research Methodology: Research Approaches, Procedures and Methods**

This chapter delves into the research methodology, detailing the qualitative approach adopted for the study. It outlines the research design, procedures, and data collection methods employed. Both primary and secondary research techniques are discussed as integral parts of the data collection process. The Chapter also covers data analysis process

**Chapter Four: Regulatory Framework and the Civilian Intelligence Oversight Model in South Africa**

This chapter presents a literature analysis concentrating on the regulatory framework that guides the multi-institutional mechanism. It also explores the civilian intelligence oversight and accountability model implemented in South Africa post 1994, identifying the regulatory and institutional weaknesses within the system.

**Chapter Five: Presentation of the Research**

This chapter presents the research results derived from primary data. The findings are conveyed in a narrative format with minimal numerical explanation and are integrated with a literature analysis.

**Chapter Six: Discussion of the Findings**

This chapter provides an in-depth analysis of the research findings, explaining their significance and interpreting the results. It delves into the implications of the findings and examines how they align with the research aims and questions. The discussion emphasises the analytical perspective in the research, highlighting key insights and their relevance to the study's objectives.

**Chapter Seven: Summary, Conclusions and Recommendations**

This chapter summarise the research outcomes, conclusions, and recommendations.

## 1.10 Chapter Summary

This study aims to evaluate the effectiveness of the current civilian intelligence oversight model adopted in South Africa to ensure transparency and accountability and protect the citizens' civil liberties. It examined the legal and institutional framework for civilian intelligence oversight. This research is vital because it will help identify gaps or weaknesses in the current model and make recommendations for improvement.

It was conducted through qualitative research methods, including a literature review and interviews. This study contributes to the body of knowledge on intelligence oversight and helps address the current shortage of research in this area. It also contributed to scientific knowledge in the identified problem statement and knowledge gaps, deepening the understanding of transparency and accountability systems.

The conceptualisation stage of the current research focuses on the study's essential elements. An introductory chapter conceptualises the study. It discusses the foundations of the study, such as background and context, research problem, research questions and purpose of the investigation. Research questions will operationalise and guide the research design. The research approach requires the foundation phase of the research to address important conceptualisation elements such as research gap analysis, limitations, significance, and ethical considerations. These elements are crucial for a research conceptualisation as they relate to specific data collection processes and related restrictions.

# Chapter Two: Literature Review

## 2.1 Introduction

This chapter reviewed and synthesised the existing and relevant literature about research aims. The chapter discusses and presents the outcomes of the literature review on intelligence governance. As discussed in Chapter One, the study seeks to evaluate the efficacy of the regulatory and institutional mechanisms that hold intelligence services and officials accountable. The investigation explored broader themes of democratic accountability, intelligence governance practices, particularly accountability and oversight, institutional norms, and standards. It also assessed the impact of incorporating societal values into regulatory and oversight arrangements. Thus, the literature review focused on the South African civilian intelligence oversight and accountability model adopted after 1994.

This chapter is an integral part of the research process as it lays a foundation for the study and ensures the results are meaningful and relevant. It will review relevant and existing literature as well as applicable research theory. The outcome of the literature review and analysis is a conceptual framework. The chapter provides a foundation for a well-planned and executed investigation into civilian intelligence oversight and accountability. Additionally, the chapter explored key research variables that provide the foundation and embed the research setting, locate the study within the academic field, assess previous research, and rationalise and justify the highlighted research area (Neuman, 2011; Wotela, 2017; Strydom, 2011). Further, the essential research conceptualisation pillars direct the relevant literature reviewed as part of the theoretical interrogation that derives a theoretical framework (Neuman, 2011; Wotela, 2017). Key variables include Security Sector Reform (SSR), security sector accountability, intelligence governance in South Africa, civilian intelligence accountability, intelligence oversight, regulatory framework, and personal accountability.

The chapter is structured into three parts: the first section summarises and synthesises relevant literature, addresses the conceptual issues, such as identifying research gaps, defining relevant research, contextualising the study within the academic field, and derived interpretive and theoretical framework. The second section outlines the

conceptual framework and explains the study's central concepts. The concluding section focuses on the critical research variables.

### 2.2 Evaluating Civilian Intelligence Oversight in Post-Apartheid South Africa

This study aims to evaluate the civilian intelligence oversight and accountability model in South Africa post-1994, examining its effectiveness, challenges, and alignment with constitutional values of transparency, accountability, and governance, to provide insights for improving democratic oversight mechanisms in the intelligence sector.

This research argues that it is essential to recognise the pivotal role that effective civilian intelligence oversight and accountability play in upholding democratic principles. Since the end of apartheid in 1994, South Africa has committed to fostering a democratic society grounded in transparency, accountability, and good governance (Masiapato et al., 2020). However, intelligence agencies, by their nature, operate with a degree of secrecy that can, if unchecked, lead to abuses of power and erosion of public trust (Goldman, 2016; Masiapato, 2017). This research evaluates the post-1994 civilian intelligence oversight model and contends that it is critical to ensure effective mitigation of these risks and aligns with constitutional values.

First, an assessment of effectiveness will determine whether the current oversight mechanisms adequately monitor intelligence activities and prevent misconduct. This analysis will highlight strengths and identify gaps that may hinder the achievement of transparency and accountability. Second, examining the challenges faced by the oversight model will provide a comprehensive understanding of the practical and systemic issues that need addressing. These challenges may include resource constraints, political interference, and insufficient legal frameworks, all of which undermine the oversight process. Third, alignment with constitutional values is a fundamental criterion for evaluating any governance model in a democratic society. By assessing how well the intelligence oversight model adheres to principles of transparency, accountability, and governance enshrined in the South African Constitution, the study ensures that the oversight mechanisms are not only legally compliant but also resonate with the broader democratic ethos. Finally, the insights gained from this evaluation will be instrumental in formulating recommendations for enhancing democratic oversight mechanisms. These improvements can lead to

greater public trust in intelligence agencies, better protection of human rights, and more robust checks and balances within the intelligence sector. Therefore, this study is vital for reinforcing democratic oversight in South Africa's intelligence sector, ensuring that it operates within the ambit of the law and upholds the values of a transparent and accountable democratic society.

### 2.3 Literature Review Approach

The approach in this literature review was based on exploring themes of intelligence governance and democratic principles. The process involved several key steps in the development of a comprehensive conceptual framework for the evaluation of civilian intelligence oversight and accountability. The research methodology and framework development began with a comprehensive review of relevant literature, including research studies and reports on the institutional, legal, and regulatory framework. This review facilitated the creation of a civilian intelligence oversight and accountability model. Through the literature review, the study defined key concepts and clearly articulated essential terms central to the research, such as civilian intelligence, oversight, governance, openness, accountability, and transparency. Additionally, the literature review established a theoretical framework to understand the relationships between these key concepts and their application to evaluating civilian intelligence oversight.

Building on this theoretical framework, the research addressed its purpose by outlining clear objectives and specific research questions that guided the study. These elements were crucial in providing a structured approach to answering the research questions. Subsequently, a research strategy and design were developed based on these questions, outlining the methods and techniques for data collection and analysis, which included qualitative methods.

Finally, the research evaluated the integration of constitutional values within the oversight model. This assessment focused on how well the oversight mechanism considered these values in its decision-making process, conducted through a logical and systematic investigation approach. This comprehensive approach ensured a thorough and coherent evaluation of the civilian intelligence oversight and accountability model.

### 2.3.1 Context and Existing Research

Since 1994, doubts have been raised about the effectiveness of the civilian intelligence oversight and accountability model implemented in South Africa, fostering good governance in the intelligence community (Dube, 2013; Masiapato, 2017; Masiapato et al., 2020). Questions have been raised about the intelligence community's inability to integrate constitutional and societal values while executing their legislated mandate and functions (Nathan, 2010). The study found that after 1994, there were limited studies investigating the effectiveness of the civilian intelligence oversight model in South Africa. This is in part due to the complex and constantly evolving nature of intelligence oversight (Masiapato, 2017). Thus, there is a need for more research and scholarly investigation of intelligence governance, including the mandate, functioning and efficacy of the civilian intelligence oversight model.

This literature review revealed that internationally, there is sufficient scholarly research on intelligence tradecraft and oversight mechanisms, particularly within developed countries worldwide (Geneva Centre for the Democratic Control of Armed Forces, 2003; Gill, 2010, 2017; Masiapato, 2017). Notable examples include countries such as Canada, Australia, the United States, and the United Kingdom (Geneva Centre for the Democratic Control of Armed Forces, 2003; Dombroski, 2001). In this study, the literature review analysis aims to highlight valuable international best practices in intelligence governance, with a particular focus on the effectiveness of oversight mechanisms and systems.

In South Africa, academics and researchers have written on aspects of the civilian oversight model, such as executive control, parliamentary oversight, and civilian oversight of the intelligence services (Dube, 2013). Authors and researchers such as Dlomo (2004), Netshitenzhe (2005), Fazel (2009), Nathan (2009), Duncan (2011), Dube (2013), Masiapato (2017), Masiapato et al., (2020) have written on the various aspects of the governance model and its mechanisms over the years. For instance, Dlomo (2004) researched parliamentary intelligence oversight in South Africa by evaluating the core business, mandate, and functions of the members of the JSCI as stipulated in the law. Netshitenzhe (2005) and Fazel (2009) conducted a comparative analysis of the roles and functions of the OIGI, particularly the concept and experience of civilian oversight of intelligence in South Africa. The research conducted by Nathan

(2009), Dube (2013), and Masiapato (2017) focused on intelligence governance, particularly emphasising intelligence oversight. Their studies paid close attention to the mechanisms, systems, and related legislative frameworks that underpin effective oversight in the intelligence sector.

Similarly, authors such as Africa (2006, 2009, 2012, and 2019), Nathan (2009, 2010, 2012, 2017), Hutton (2007, 2009) and Van den Berg (2014, 2018) have also written extensively and broadly on intelligence studies and governance. Thus, to ensure the accountability of intelligence agencies and preserve the country's constitutional order, Masiapato et al. (2020) studied the functioning of the South African multi-institutional intelligence oversight model. The study found the model and the system to be fragmented, lacking coordination, cooperation, and collaboration. These researchers and authors have contributed immensely to academic work on intelligence governance in South Africa. This research references and studies the work of these authors (and other authors) because of their contribution to a theoretical and conceptual framework that provides a valuable analysis of the intelligence oversight institutional and regulatory arrangements.

### 2.3.2 Identifying Gaps and Research Needs

The literature review highlighted gaps in the current knowledge and understanding of this topic and identified areas where further research is needed. In this case, the multidisciplinary nature of the research location would include fields such as Public Policy Studies, Legal Studies, Political Science, and Public Administration, which all deal with how oversight and accountability mechanisms are designed and implemented in democratic societies.

Thus, reviewing relevant literature is central to determining theoretical and conceptual frameworks in a field of study. By reviewing existing research, the study gained a better understanding of the key concepts, theories, frameworks, and models developed to explain a particular phenomenon or address a specific research question.

### 2.3.3 Lack of Focus on Organisational Design

In the current study, intelligence governance, specifically oversight, was examined through the lens of organisational design and culture of openness at an operational level. This approach highlights the importance of understanding how intelligence

oversight mechanisms function within the operational context. Consequently, the research advocates for scholarly investigations to concentrate on the operational imperatives of intelligence oversight mechanisms to evaluate their effectiveness. The study contends that how the oversight model operates at an organisational level plays a significant role in determining its effectiveness. International authors such as Lester (2012), Cole (2015), Bolto (2019) and Musila (2018) have researched intelligence democratisation, which underscored structural arrangements within intelligence oversight and its effectiveness. Walsh (2015) expresses this view when he maintains that building intelligence frameworks is better considered through governance. A more effective process of evaluating intelligence effectiveness involves viewing intelligence agencies and communities as entities comprised of interconnected structural and functional components within an overarching intelligence framework (Walsh, 2015). Therefore, any evaluation of reforms and their influence on the effectiveness of intelligence agencies and communities should consider both the structural and functional aspects (Lester, 2012; Walsh, 2015).

### 2.4 Intelligence Governance: Research Gap Analysis and Future Directions

Intelligence governance remains a critical area of scholarly study, given its profound implications for national security, civil rights, and democratic accountability. Despite research on intelligence oversight mechanisms, significant gaps persist in understanding how these systems can be optimised to balance secrecy with transparency, and security with accountability. This section aims to identify and analyse these research gaps, highlighting areas that requires further investigations. By examining the limitations and weaknesses of current intelligence governance frameworks, this analysis seeks to provide a foundation for future research directions that can enhance the effectiveness and legitimacy of intelligence oversight model. Addressing these gaps is essential for developing robust governance structures that safeguard both national security interests and democratic values.

#### 2.4.1 The Need for Research

To assess the landscape of intelligence governance comprehensively, a research gap analysis was conducted to identify areas where further investigation and scholarly research are required. Six essential areas of intelligence governance require research

attention: "governance, process, structure, cooperation, actors/ethics, and oversight" (Gill, 2010, p. 47). The latter is a significant component of openness, transparency, and accountability. Intelligence oversight has been prevalent due to the 'democratisation' of intelligence systems since the 1980s. These oversight systems have become widespread, including parliamentary and extra-parliamentary bodies (Gill, 2017). They are formalistic, but few have appropriate powers or resources. There is still a large field in which to test out some key propositions explored in the current research, such as concern for the violation of civil liberties and the need for greater cooperation between oversight mechanisms and civil society organisations to ensure its efficacy and intelligence accountability compared with its effectiveness (Gill, 2017, p. 17). These are vital variables that relate to the democratisation of the intelligence sector. Born and Mesevage (2012) observe that future research is needed for periodic reviews encompassing the entire oversight system. This includes senior intelligence service management, the executive, the legislature, the judiciary, independent oversight structures, civil society, and the media (Musila, 2018).

### 2.4.2 Structural and Functional Weaknesses

Studies have identified the weaknesses within the intelligence governance discourse, raising questions about the purpose, structure, and limitations of oversight institutions in democratic countries around the globe (Cole, 2015; Hutton, 2007; Goldman, 2016; Musila, 2018). According to Goldman (2016), there are valid questions about current oversight structural designs and recommend an analytically relevant question of whether the design of intelligence oversight institutions serves the role that the public expects such government agencies to play. Intelligence oversight institutions designed primarily for legal compliance are necessary but insufficient to address legitimacy in the eyes of the population (Goldman, 2016). Therefore, there is a need for a broader conception of intelligence oversight that emphasises governance institutions that will rebuild trust in intelligence rather than narrow legal compliance (Goldman, 2016). Similarly, Bolto (2019) suggested a broader conception of accountability mechanisms for the Australian intelligence community as a future research concern.

### 2.4.3 Broader Conception of Accountability

The current research explored a broader conception of accountability mechanisms for South Africa as part of evaluating the civilian intelligence oversight model.

Accountability is a principle of good governance essential to ensuring that the intelligence service is open, transparent, and accountable to the public and democratic institutions (Masiapato et al., 2020). The traditional view of accountability focuses on the accountability of the intelligence service to the executive branch of government, such as the President or Prime Minister. However, for this research, a broader conception of accountability would also encompass other forms, such as accountability within the National Security Council (NSC) or coordination mechanisms. These mechanisms can help ensure that the intelligence service is accountable to various stakeholders within the security sector, not just the traditional methods such as the executive branch.

### 2.4.4 Research on Regulatory and Institutional Arrangements

This research argues there is a need for research on civilian intelligence oversight regulatory and institutional arrangements as expressed by international and South African authors. The research has encapsulated available tools such as those developed by Born and Mesevage (2012) for an ideal intelligence oversight system, which is legislation and structural arrangements. According to Gill (2017), interpretive frameworks help identify and isolate critical factors from large volumes of available information, organise the material in pre-existing research, clarify our arguments, and generate hypotheses for further research. As a result, if a research project can confirm the accuracy of observations and hypothesised relationships, the theory is developed because it can identify causal mechanisms to improve future scholarship, policy, and practice (Gill, 2017).

The literature review highlighted the lack of a theoretical framework within the intelligence governance field, and this is a knowledge gap that creates a need for further research projects and development in this area. A theoretical framework provides a lens through which to understand the data and findings, and it can be used to guide future research and inform decision-making (Wotela, 2016b). Developing a theoretical framework in the intelligence governance field can help enhance understanding of this area's complexities. It can be used to inform best practices for oversight and accountability mechanisms.

In the South African context, the weaknesses in the oversight and accountability mechanisms include failure to review the regulatory framework and gaps in the implementation and operationalisation of policy for civilian intelligence oversight and accountability mechanisms (Dlomo, 2004; Dube, 2013; Fazel, 2009; Hutton, 2009; Nathan, 2010). There is, for instance, a lack of structural independence in oversight mechanisms, which requires attention through a review of intelligence policy, legislation, and institutions (Duncan, 2018). However, Goldman (2016) observed that discussions in the last several years on the current oversight architecture are inappropriate and narrow in nature.

### 2.5 Selected Literature

In this research, relevant literature regarding evaluating the South African civilian intelligence oversight model includes academic studies, books, journal articles, reports, and analyses on this topic. The research opted for selected literature that covers and discusses the history and development of intelligence governance and oversight in South Africa and across the globe, studies on the effectiveness of the current oversight model, and an analysis of the legal and institutional frameworks in place for oversight. Furthermore, relevant literature in this research also included studies and research on institutional design, democratic oversight, and accountability mechanisms within the intelligence sector. The outcome of the literature review provided a theoretical and conceptual framework for the study, giving it context and situating it within the existing body of knowledge and research.

The key synopses of selected literature collectively highlight the significant and evolving landscape of intelligence oversight in South Africa. The literature reveals several gaps: Firstly, the weaknesses in legal frameworks, glaring ambiguities and the need for improved oversight mechanisms highlight the ongoing challenges. Secondly, the emphasis on bridging democracy and secrecy with recommendations for transparency and accountability signifies a continuous effort to strike the right balance. Thirdly, addressing inadequacies in oversight practitioners' skill sets, policy gaps, and coordination mechanisms to aid the fragmented nature of multi-institutional intelligence oversight. Lastly, institutionalising civilian and civil society oversight are

crucial steps toward enhancing the accountability and effectiveness of intelligence oversight.

## 2.6 Academic Field of Study

The literature review was conducted to describe, situate, and contextualise the investigation in the academic field of study. This helped to locate the study within the scholarly research and studies conducted on the civilian intelligence oversight model. The literature review helped identify gaps in the existing research, which this study sought to address by collecting and analysing new data. This intelligence sector governance research focused on civilian intelligence oversight and accountability.

The context is significant for the current research as it directs all components of the study, such as the research problem, purpose, research questions, and research propositions, as well as the decisions on the type of literature examined.

### 2.6.1 Defining the Study

Defining this study is crucial to lay the groundwork for a comprehensive analysis and to underscore its relevance in the broader context of democratic governance and accountability in South Africa.

#### 2.6.1.1 Multidisciplinary nature of the study

This study is multidisciplinary in nature. Multidisciplinary research brings together different disciplines to study a single problem or issue. In the case of civilian intelligence oversight and accountability, the study involved perspectives and methods from Public Policy, Political Science, Security, and Intelligence Studies, among others. The study combined perspectives and methods from different disciplines, such as to develop an integrated understanding of the complex issues surrounding civilian intelligence oversight and accountability. This research provides a more holistic understanding of the effectiveness mechanisms and can help identify potential solutions that consider the different perspectives and factors involved.

Thus, this research was not purely a security or intelligence study but straddles academic disciplines and fields of study. These established scholarly fields have relevant theoretical and conceptual frameworks. The current study applied public

policy studies and governance disciplines. Whereas governance is central to concepts such as oversight, transparency, and accountability in the present study, which involves strengthening democracy, public policy is a crucial feature because it focuses on processes and procedures, policy and regulatory arrangements that confer duties and responsibilities of mechanisms and actors (Africa, 2006; Dube, 2013; Gill, 2010; Hutton, 2007; Williams, 2008). The literature review revealed that the applicable variables addressed in the study are found in various academic disciplines. The conceptual framework and definition of concepts such as governance and security from an academic discipline point of view further demonstrate the multidisciplinary nature of the research.

#### 2.6.1.2 Intelligence practice and the concept of security

The intelligence discipline is inherently secretive, with activities such as targeting, collection, analysis, and dissemination aimed at enhancing security and maintaining power by forewarning threats and opportunities (Gill, 2010). If the objective of intelligence is to provide security for the state, its people, and its sovereignty, then it falls broadly within the field of security studies (Gill, 2010; Williams, 2008).

In the social sciences, the concept of security is contested and varies across academic disciplines (Soltani & Yusoff, 2012; Williams, 2008). Williams (2008) quotes Gallie (1956) to highlight the lack of consensus on this concept. International relations scholars define security as the "alleviation of threats to cherished values" (Williams, 2008). Soltani and Yusoff (2012) apply Wolfer's (1952) definition within political science, meaning "lack of threat and fear against the values of a nation". Different theoretical approaches interpret this concept differently (Soltani & Yusoff, 2012).

Authors like Soltani and Yusoff (2012) and Williams (2008) define the concept of security based on various theoretical approaches, including rationalism, relativism, and constructivism, which shape national security approaches and perceptions (Soltani & Yusoff, 2012; Williams, 2008). Traditionally, authors such as Buzan, Waever, and de Wilde (1998) viewed security from a military perspective, focusing on state sovereignty and protection. The end of the Cold War brought non-military threats, requiring a broader approach to security (Buzan, 1983). This innovative approach

prioritised social needs and values, impacting state power and the relationship between the state and its citizens (Buzan, 1983).

Security encompasses the fate of human collectivities and individual security, affecting human survival due to military and ecological threats. It involves the pursuit of freedom from threats across military, political, economic, societal, and environmental sectors (Buzan, 1991). This broadened the concept of security to include non-traditional sectors like the economy, environment, and politics (Buzan et al., 1998), shifting from state security to human security, guiding South Africa's intelligence philosophy (National Development Plan 2030, 2012; White Paper on Intelligence, 1995).

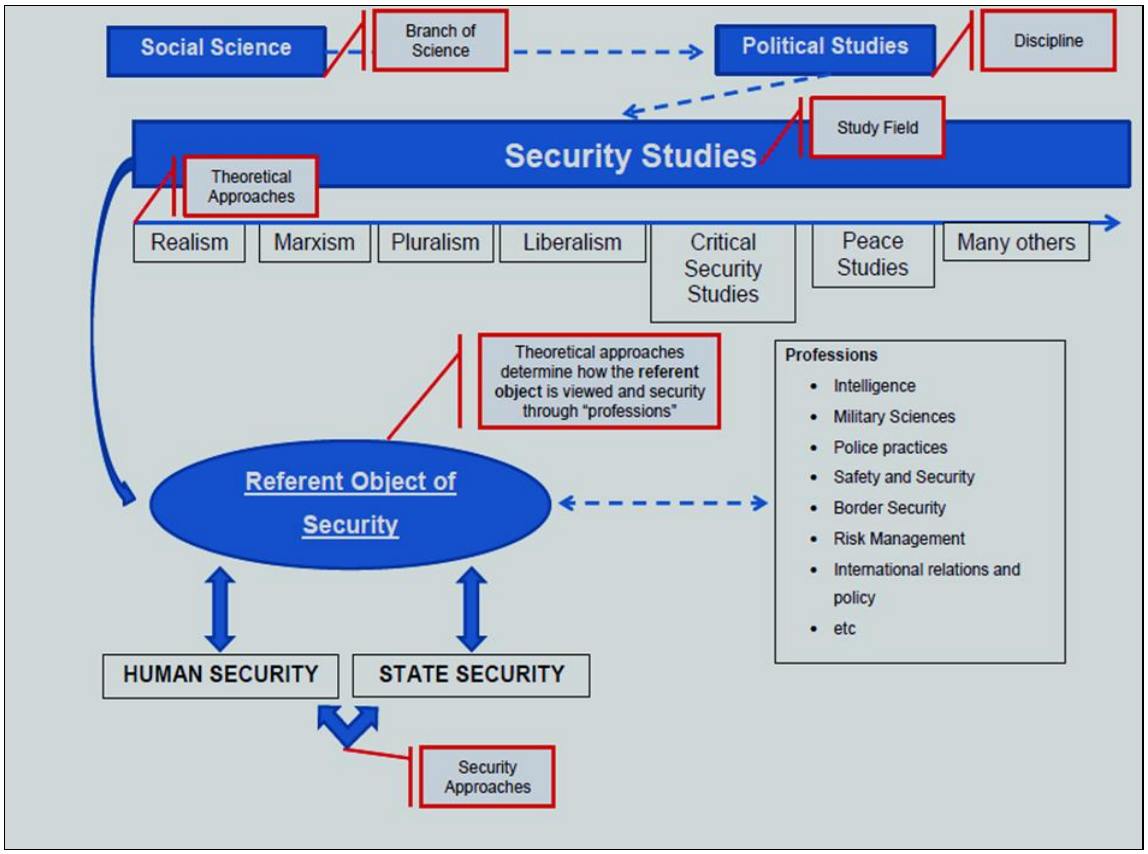
Security, defined as mitigating threats to a nation's values, is inherently political. It influences the allocation of government resources and highlights important security issues for society (Williams, 2008). Security studies should address who sets the security agenda, what security means to them, their philosophy, and how they resolve differing security ideologies (Williams, 2008). Thus, security studies are a subfield of international relations (Williams, 2008).

Neuman (2011) and Strydom (2011) emphasise that defining and developing concepts is critical for theory growth within a field. Gill (2010) notes that intelligence studies can benefit from social science theoretical approaches to understanding intelligence. Intelligence practice, a social practice involving risk management to manage knowledge and power, is distinguished by its secretive nature (Gill, 2010).

The figure below represents the multidisciplinary nature of the study, showing how security studies, a sub-discipline of international relations, include Intelligence, Military Science, and Public Policy. These frameworks include theoretical approaches like Realism, Liberalism, and Critical Security Studies. The lack of a theoretical framework within intelligence governance highlights a knowledge gap, underscoring the importance of research to understand civilian intelligence oversight and contribute to a robust theoretical framework.

The figure below depicts the multidisciplinary nature of the academic research location.

**Figure 2: Field of Study**




Source: Prinsloo, 2017

### 2.6.2 The Connection to Public Policy

Williams (2008) observes that multidisciplinary research in security studies ranges from detailed policy prescriptions to philosophical statements on the nature of 'reality.' In this research, phases of the public policy process that are relevant include identifying policy-relevant problems, setting policy agendas, policy design, policy implementation, and policy evaluation (de Coning, 2007; Kotze & Botha, 2003). The policy implementation phase is essential, as the literature review identified key policy interventions and strategies necessary for enhancing the openness, transparency, and accountability of the intelligence service. This is crucial as it provides a roadmap for addressing weaknesses in the oversight model and improving its effectiveness.

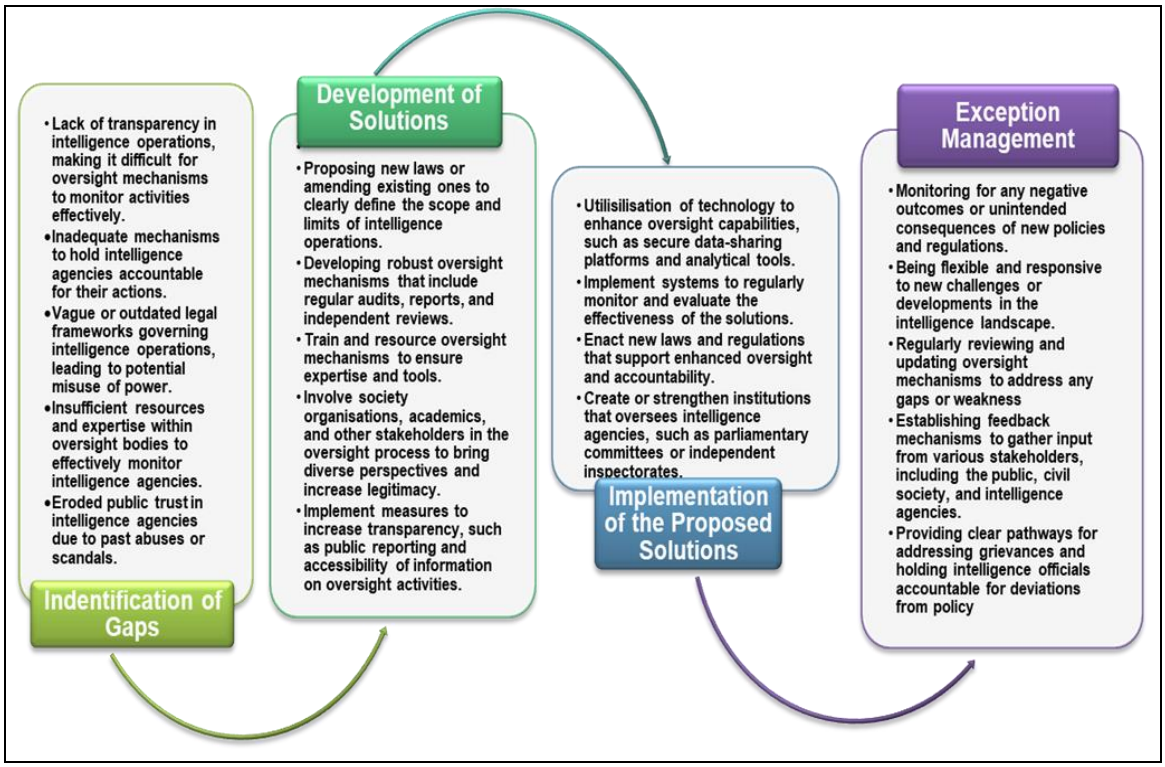
The various stages of the public policy process apply and are relevant to a study on civilian intelligence oversight and accountability. According to de Coning (2007) and Kotze and Botha (2003), the first stage is identifying gaps, referring to problems or issues that need addressing. The second stage is developing solutions, proposing, and developing potential solutions to address identified gaps in the oversight and

accountability system. This includes proposals for new laws, regulations, or oversight mechanisms to improve accountability and transparency. The third stage is implementation, which involves putting the proposed solutions into action, such as passing new laws, creating new oversight mechanisms, and implementing new regulations or adapting current mechanisms to include other governance structures like the National Security Council (NSC). The final stage is exception management, addressing exceptions or deviations from the policy (de Coning, 2007; Kotze & Botha, 2003).

The distinct stages of the public policy process are essential for identifying gaps, bringing about improvement, and accommodating exceptions that are not part of the policy (Kotze & Botha, 2003). Policy studies highlight critical phases of policy coherence and coordination to aid the intergovernmental relations of specialist bodies and inter-agency cooperation (de Coning, 2007). According to Brynard (2007), these phases can be further categorised into interlinked variables during policy implementation, indicating a complex political process influencing the achievement of the policy's objectives. Brynard (2007) proposes the following variables: first, the content of the policy, involving the complex process of setting goals and working towards achieving them. Second, the institution's context, including economic, social, and political factors. Third, implementers must commit to effective policy implementation. Fourth, clients and coalitions are vital components the government should have for successful implementation. Finally, the capacity to deliver government services to improve citizens' lives, which includes human, financial, technological, and intangible systems such as leadership or motivation (Brynard, 2007).

The below illustrates a graphic representation of a Public Policy Process for Civilian Intelligence Oversight and Accountability. The process consists of four main stages as discussed above.

**Figure 3: Public Policy Process for Civilian Intelligence Oversight and Accountability**




Source: Own Construction

### 2.6.3 Interpretive Framework

The Institutional Rational Choice framework is a robust theoretical lens for investigating the effectiveness of civilian intelligence oversight models in South Africa post-1994. Although widely used in Economics, Political Science, and Public Administration, it offers invaluable insights into policy problems within institutions, as pioneered by Ostrom (1982). The framework underscores the crucial role of institutions in shaping human behaviour by providing rules and incentives that guide individual and collective actions (Ostrom, 2007).

In intelligence oversight research, this framework helps us understand how the guidelines, regulations, and rewards established by oversight institutions affect the actions of intelligence agencies, their personnel, and oversight systems. Employing this framework allows for a deeper understanding of how well-designed oversight institutions align with their goals, such as ensuring legal compliance and safeguarding human rights and civil liberties.

Moreover, the framework facilitates the examination of constraints imposed by oversight mechanisms and their impact on intelligence sector performance. By assessing the regulation, design, and effectiveness of civilian intelligence oversight mechanisms, the framework allows for informed recommendations aimed at enhancing functionality and efficacy (Lester, 2012). This is crucial in aligning constitutional, institutional, and regulatory arrangements with societal values, fostering accountability and transparency within the intelligence sector (Kleinig et al., 2011).

In this research, the framework intersects policies, institutions, legislation, and actors in the intelligence agencies and oversight process, highlighting their collective impact on society (Ostrom, 2007). Through an analysis of the regulatory framework and oversight arrangements, the research evaluates the degree to which these mechanisms hold intelligence services and officials accountable (Dube, 2013).

### 2.7 Theory, Framework and Model

Ostrom (2011) argues that studying institutions requires theoretical work at three levels: frameworks, theories, and models. Each level provides different degrees of specificity related to a particular problem (Ostrom, 2011). Ostrom (2007) describes this as multiple levels of institutional analysis. Resolving analytical problems within institutions is challenging when rules are linked and presented as a single unit. To enhance the accuracy of implementing public policy, it's crucial to differentiate between theory, framework, and models, as highlighted by Koontz (2003) and Ostrom (2007).

Firstly, Koontz (2003) explains that a theory is more specific than a framework. A theory consists of propositions that explain why events occur as they do, interpreting data and causally linking observed phenomena. This provides a detailed explanation of how key concepts and ideas identified in the framework relate and help explain the problem. In this research, Institutional Rational Choice theory was used to understand the dynamics within institutions, including intelligence agencies and oversight mechanisms, and how their behaviour is influenced by constitutional, institutional, and regulatory arrangements. A theoretical framework organises key concepts, ideas, and relationships relevant to the research question, defining the parameters of the study. Theories from various fields may be compatible with a given framework, and selecting

the most appropriate theory depends on the phenomena (Koontz, 2003; Ostrom, 2007).

Secondly, Ostrom (1999a) categorises a framework by specifying general sets of variables used to study all types of institutional arrangements and their relationships. A framework provides a broad overview of key concepts and ideas relevant to the study of the civilian intelligence oversight model (Gill, 2010, 2017). It offers a general structure for thinking about intelligence oversight without specific hypotheses or predictions (Ostrom, 1999a).

Lastly, according to Koontz (2003), a model is the most specific of the three conceptual levels. It has a rational, internal logic for testing hypotheses, explaining processes, and predicting outcomes. A well-structured model is linked to a particular theory (Koontz, 2003). Analysis at each level provides varying degrees of specificity related to a phenomenon. A model is a simplified representation of a system or process, often expressed quantitatively, to evaluate hypotheses and predict outcomes (Koontz, 2003). In the context of the intelligence oversight system, a model was developed based on theory to make specific predictions about the effectiveness of the oversight mechanism and identify areas for improvement (Koontz, 2003; Ostrom, 1999; Ostrom, 2007).

The distinction between frameworks, theories, and models helps in studying institutions and highlights the importance of building a clear understanding of the problem at each level to conduct a thorough analysis.

### 2.7.1 Central Theoretical Orientation

The theoretical foundation of any research study is crucial for framing its questions, guiding its methodology, and interpreting its findings. This section outlines the key theoretical perspectives that underpin the analysis of intelligence governance in South Africa. It provides a comprehensive framework for understanding how civilian intelligence oversight system works.

Through the theoretical lens of Institutional Rational Choice theory, the research aims to offer nuanced insights into the complex dynamics that shape intelligence

governance. It seeks to identify the strengths and weaknesses of existing models and contribute to the development of more effective and democratic oversight practices.

#### 2.7.1.1 Identify and state the theoretical framework

Gill and Phythian (2018) advise that the theoretical and interpretive lens through which a research project is analysed should be identified and unambiguously stated. Gill (2010 & 2017) also expresses this view when he urges researchers to be explicit about a theory and why we use it because we cannot select an area of research without a clear expression of the theoretical framework. The theoretical framework assists us in explaining why intelligence governance works (or not) the way it does and enables generalisation beyond the particular for future policy and practice (Gill, 2010, 2017). A theoretical approach is a lens through which the referent object to security, such as state security or human security, is studied, using security professions, for instance, intelligence, risk management, safety, and security, to express the security perspective (Gill, 2010; Prinsloo, 2017; Williams, 2008).

#### 2.7.1.2 The Institutional Rational Choice Framework

Ostrom's (2005) framework for institutional analysis provides a comprehensive structure for examining how institutions function and how their rules influence outcomes. The basic tenets of this framework relevant to the study are threefold: operational level (decisions at the agency level), collective choice (legislation governing the agency), and the Constitution that requires enabling legislation (Ostrom, 2007; Sabatier, 1991, 2007). According to Ostrom (2007), the framework is based on distinct levels of action: decisions at one level set institutional rules for the next lowest level. The Constitution sets basic rules for enabling legislation, which in turn sets basic rules that govern the agency at an operational level and its decision-making processes. Decisions made at an operational level, such as those by intelligence officers, have a direct impact on society but are guided by higher-level decisions made by policymakers and decision-makers within the intelligence service. These higher-level actors are influenced by political considerations, resource constraints, legal frameworks, and societal values and norms (Ostrom, 2007).

Effective decision-making at higher levels is critical to ensure positive outcomes at the operational level. Understanding the relationships between these various levels and

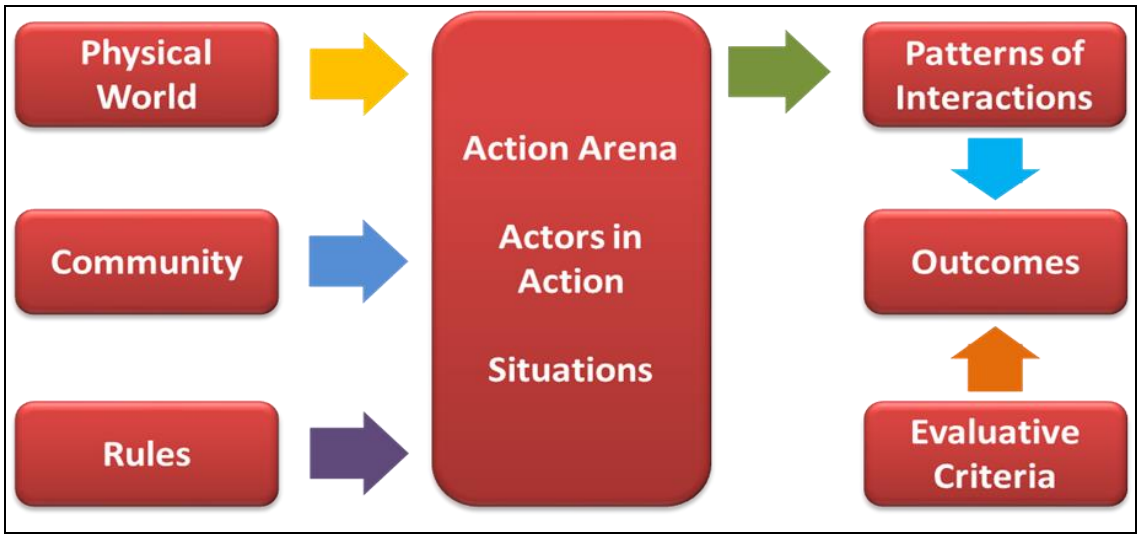
how they interact can provide valuable insights into the effectiveness of the civilian intelligence oversight model and its mechanisms (Lester, 2013). This framework clarifies the fundamental elements used to evaluate outcomes at any of the three tiers of decision-making (Ostrom, 1999, 2007). Actors can move between distinct levels to seek the best outcomes within a given set of rules or attempt to change collective or constitutional choice rules to their advantage (Ostrom, 2007).

The framework recognises that actors within institutions make decisions based on legal mandates and policies (Peters, 2000). While institutional arrangements may remain intact, actors affect institutions and communities through the meaning they attribute to policy options that influence outcomes (Peters, 2000; 2012). Policy changes influence decision-making, which affects institutional arrangements (Sabatier, 1991; Ostrom, 2007).

Furthermore, Sabatier (1991, 2007) and Ostrom (2007) explain that the actions of individuals are a function of both individual values and resources, and decision-making attributes within the scope of institutional rules and policies, the nature of the relevant good, and community attributes. This principle allows the same individual to behave differently in different decision situations (Sabatier, 1991; Ostrom, 2007). Decision-making influences policy processes and outcomes to a certain extent by four external variables: attributes of the physical world, attributes of the community within which actors are embedded, rules that create incentives and constraints for certain actions, and interactions with other individuals (Ostrom, 2007; Koontz, 2003).

The figure below explains Ostrom's framework for institutional analysis. It is a powerful tool for understanding the complex interplay of factors that shape institutional performance. By examining physical conditions, community attributes, rules-in-use, interactions, outcomes, evaluative criteria, external variables, and action situations, researchers and policymakers can gain insights into how institutions function and how they can be improved to achieve desired goals.

**Figure 4: Institutional Rational Choice Framework for Institutional Analysis**




Source: Adapted from Ostrom, et al. (1994)

#### 2.7.1.3 Critiques and responses

Critics of this framework argue that it portrays actors as being unaffected by institutional constraints and oversimplifies the complexities of decision-making within institutional environments. They state that relying solely on this framework is insufficient and suggest that it should be supplemented with other theories and perspectives (Peters, 2012). The critique emphasises the shortcomings and errors of rational individuals within different institutional contexts. Peters (2012) cautions supporters of the framework to consider the influence of institutions and the constraints they impose on individuals' behaviour. Moreover, the framework lacks evolution and struggles to adapt to the evolving political dynamics it seeks to explain (Peters, 2000).

In addressing the issue of failures and mistakes, Ostrom (2007) notes that institutional arrangements provide individuals with opportunities to gain experience and adapt to improve outcomes in the face of repeated failures. However, in his earlier writing, Sabatier (1991) also pointed to limitations of the framework, such as overlooking substantive policy information and a range of factors that intervene between policy decisions and their societal effects.

Despite its limitations, Ostrom's (2007) proposition that analyses institutions and portrays actors as rational, self-interested individuals remains highly relevant to this study. This relevance is underscored by the observed repeated failures in decision-making by actors involved in intelligence oversight. Specifically, the study highlights

the lack of policy implementation and the inadequacies in organisational design within civilian intelligence oversight mechanisms in the South African context. These persistent issues demonstrate the importance of understanding the motivations and behaviours of key actors, to improve the effectiveness and accountability of intelligence oversight in South Africa.

#### 2.7.1.4 Alternative theoretical perspectives

This research acknowledges alternative theories, such as Critical Realists suggested by Gill and Phythian (2018). This approach studies the links and interconnection between actors and institutions within security and international relations (Gill & Phythian 2018). The intelligence studies are embedded in theory, and the definition is based on the intelligence cycle, which shows most intelligence processes and objectives (Wirtz, 2018). The explanatory tool and theory would be useful for the intelligence service mandate, practice, and discipline. It would not be a valuable interpretative theory for intelligence oversight and accountability. This theoretical framework focuses on intelligence practice, processes, and discipline. Instead, the study aims to analyse the regulatory framework that supports the operation of intelligence oversight mechanisms and good governance in various state institutions, and as such, a different theoretical approach may be more appropriate.

## 2.8 Civilian Oversight and Accountability Model

The civilian oversight and accountability model is a fundamental component of democratic governance, particularly in the context of intelligence operations. This model ensures that intelligence agencies operate within the legal and ethical boundaries set by democratic societies, safeguarding against abuse of power and protecting citizens' rights. This section discusses the structure and function of civilian oversight in the intelligence sector, examining how it promotes transparency, accountability, and adherence to democratic norms. By exploring the various mechanisms and institutional arrangements that constitute the oversight model, the section highlights both the strengths and areas for improvement in the current system.

### 2.8.1 Historical Background of Intelligence Governance

The oversight and accountability model for the intelligence agencies in South Africa is a combination of internal and external intelligence oversight mechanisms (Dube, 2013; Hutton, 2007). According to Leigh (2005), the main objective of intelligence oversight arrangements is to ensure transparency and accountability for the decisions and actions of intelligence agencies that are consistent with the law and uphold citizens' civil liberties. Historically, intelligence governance in South Africa evolved from apartheid-era structures to the current organisational arrangements. The retention of internal arrangements from apartheid-era intelligence structures, such as the NIS, was part of the agreements reached in the 1990s (Africa, 2009b). This retention has had significant implications for the development of the intelligence sector and the civilian intelligence oversight mechanisms established post-apartheid.

### 2.8.2 Layered Oversight Model and Regulatory Framework

In this model, the oversight institutions include a parliamentary committee, (the JSCI), the judiciary, outside experts, media, civil society organisations, and Chapter 9 institutions such as the Public Protector, the South African Human Rights Commission, and the Auditor-General of South Africa (Masiapato, 2017; Dube, 2013). These oversight institutions operate independently from internal executive control, which comprises a political head and administrative heads of departments related to internal supervision and management within the intelligence agency and the OIGI (Caparini, 2007; Dube, 2013; Gill & Phythian, 2018). However, the independence of the OIGI has been a contentious issue for a long time. The internal mechanisms include rules and regulations, administrative policies, and procedures within the intelligence structures (Born & Leigh, 2007). Each mechanism plays a specific role within the control, accountability, supervision, and oversight system to ensure legality, proportionality, and propriety in activities conducted by intelligence agencies (Caparini, 2007; Geneva Centre for the Democratic Control of Armed Forces, 2003; Musila, 2018).

The foundation and functioning of the civilian intelligence model are embedded in the principle of separation of powers. This principle refers to the three branches of the state (executive, parliament, and judiciary) that are separate but equal partners in governance (Parliament of the RSA, 2009). This separation of powers and the independence of the three branches of government strengthen the scrutiny and

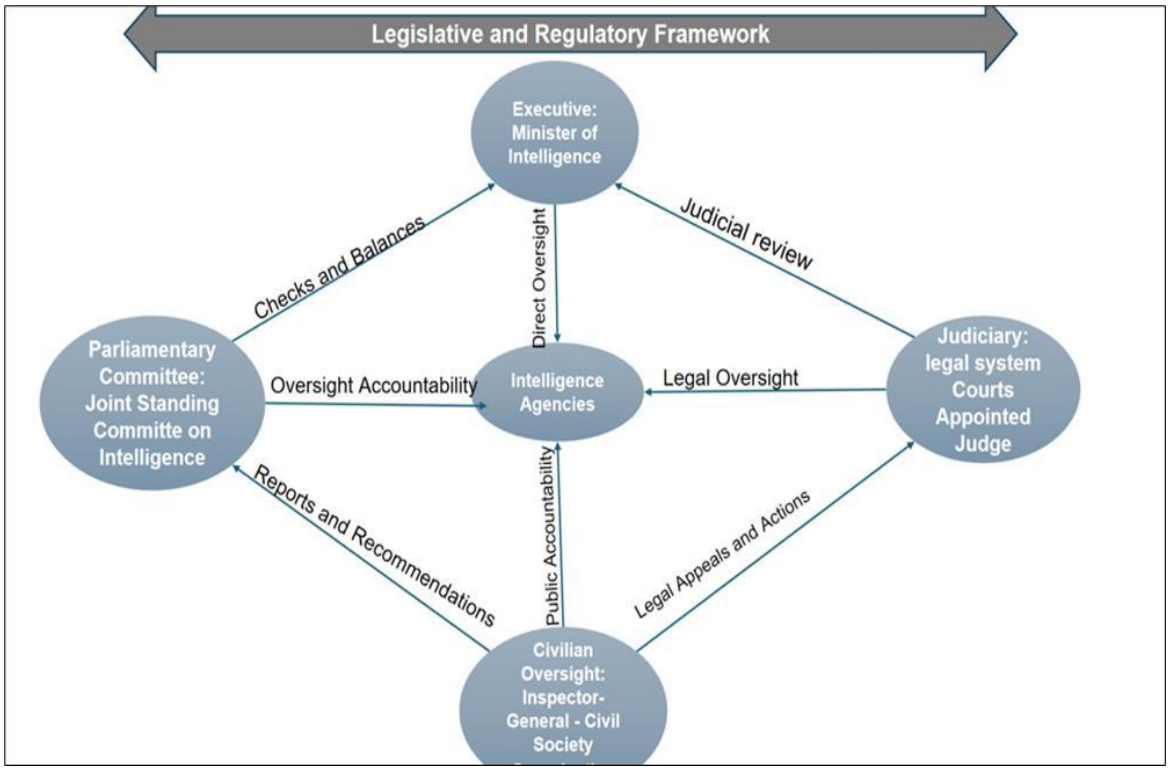
functioning of the supervisory role within the state (Geneva Centre for the Democratic Control of Armed Forces, 2003). Oversight mechanisms should be based on "mandates and powers that are publicly available law" (United Nations, 2010, p. 8). This principle is crucial to ensure that intelligence agencies operate within the law, use resources effectively and efficiently, and follow good financial and administrative practices (Africa, 2019).

The Geneva Centre for the Democratic Control of Armed Forces (2006) describes internal and external intelligence scrutiny as five layers of intelligence oversight. Farson (2012) observes that this type of oversight mechanism is a blended system comprising multiple oversight bodies focusing on various objectives. Parliamentary oversight committees should coordinate oversight activities where expert oversight bodies exist (Farson, 2012). Writers such as Schedler (1999) and Caparini (2007) endorse the multiplicity of intelligence scrutiny through a three-way framework, emphasising the need for diverse oversight measures for public institutions at various levels.

In a democratic society like South Africa, a multi-layered oversight system provides a comprehensive approach to scrutinising intelligence services (Musila, 2018). Oversight objectives include assessing the efficacy of intelligence services and ensuring their adherence to legal and governance principles (Musila, 2018). A multi-institutional oversight system with multiple layers of accountability promotes transparency and accountability, enhancing public trust in intelligence operations (Masiapato et al., 2020).

The figure below is a graphic representation of the oversight and accountability model for the intelligence agencies in South Africa. This figure demonstrates the combination of internal and external intelligence oversight mechanisms. It aims to create a balanced and accountable system where intelligence agencies operate under strict oversight from multiple independent mechanisms. This is to ensure that they remain within legal and ethical obligations. Underpinned by the legislative and regulatory framework, the model is a multi-institutional oversight mechanism.

**Figure 5: Layered Civilian Intelligence Oversight and Accountability Model**




Source: Own construct

### 2.8.2.1 Functioning of the civilian intelligence oversight and accountability model

The model, as illustrated above, is the oversight and accountability framework for intelligence agencies within a legislative and regulatory context. At the core are the intelligence agencies, whose operations are scrutinised and regulated by various bodies to ensure adherence to legal and ethical standards. The executive branch, through the Minister of Intelligence, provides direct oversight, establishing checks and balances to guide agency actions within set policies. The Parliamentary Committee, specifically the Joint Standing Committee on Intelligence (JSCI), further enhances accountability by reviewing agency activities, issuing reports, and making recommendations aimed at ensuring transparency and proper conduct.

Additionally, the judiciary plays a crucial role in this framework. Courts and appointed judges conduct judicial reviews to ensure that intelligence agencies comply with the law. They provide legal oversight by hearing appeals and legal actions related to agency conduct, thereby maintaining a legal check on intelligence operations. Civilian oversight, represented by the Inspector-General of Intelligence (IGI) and civil society,

adds another layer of accountability. This body ensures that intelligence agencies are held accountable to the public, issuing reports and recommendations, and pursuing legal actions when necessary to address grievances or misconduct.

The framework's interactions ensure a comprehensive oversight mechanism. The executive, judiciary, parliamentary committee, and civilian oversight bodies collaborate to maintain a balance of power, ensuring intelligence agencies operate within their mandate and uphold societal values. This multi-tiered approach to oversight fosters a robust system where intelligence activities are transparent, legally compliant, and aligned with public interests.

### 2.8.3 Horizontal and Vertical Accountability

Schedler (1999) introduced a framework distinguishing between horizontal and vertical accountability. Horizontal accountability involves state institutions monitoring and holding each other accountable, reflecting a system of checks and balances among the executive, legislative, and judiciary branches (O'Donnell, 1994). Vertical accountability, in contrast, involves hierarchical relationships where senior officials oversee subordinates, and non-state actors such as citizens, media, and civil society organisations exert influence on state institutions through lobbying and advocacy (Caparini, 2007; Schedler, 1999).

### 2.8.4 The Third Dimension of Accountability

Caparini (2007) and Schedler (1999) also highlight the "third dimension" of accountability, which includes the role of international actors such as foreign governments, inter-governmental organisations, and international non-governmental organisations in holding state institutions accountable. This dimension has been increasingly recognized in mechanisms such as the European Court of Human Rights for member states in the European Union.

### 2.8.5 Preventing Political Abuse

Leigh (2005) identifies three fundamental concerns in designing an oversight system: ensuring proportional use of exceptional powers, upholding the rule of law, and preventing political abuse through effective governance. Establishing a system of checks and balances, transparency, and protection of human rights is essential to prevent political abuse and build trust in government institutions (Leigh, 2005).

This chapter argues that a robust intelligence oversight system is essential for building and maintaining public trust. Effective oversight mechanisms, transparency, and accountability ensure that intelligence activities respect individual rights and freedoms while protecting national security. By addressing the challenges and implementing comprehensive oversight measures, South Africa can enhance the effectiveness and integrity of its intelligence services.

## 2.9 Conceptual Framework

### 2.9.1. Analysis of Literature

The conceptual framework in this research serves as a roadmap that guides the collection and analysis of data and helps to ensure that the study addresses the research proposition and questions to determine the effectiveness of civilian intelligence oversight in South Africa.

The literature analysis also explored the concept security sector in the context of security studies. This research views the security sector as a cluster of institutions, bodies, structures, and actors responsible for ensuring the security and defence of a state. The cluster typically includes security entities such as military forces, law enforcement agencies, intelligence services, and border management agencies. The sector operates under legal frameworks; these entities safeguard the sovereignty of the state, ensure the protection of the citizens, and maintain internal stability (Ball et al., 2004).

Furthermore, this section defines and discusses processes in civilian intelligence, intelligence functions and civilian intelligence oversight. Thus, in this research, civilian intelligence means intelligence functions and activities that are conducted by civilian services or agencies. This contrasts with military or police and law enforcement agencies.

In South Africa, like in various countries, intelligence functions are conducted by a range of different agencies and institutions, including both civilian and military agencies (Africa & Mlombile, 2001). The former is responsible for a variety of tasks, including collecting, analysing, and disseminating intelligence on a wide range of issues, such as national security, foreign policy, and economic and social trends (Van

den Berg, 2018). The latter is primarily the collection, analysis, and dissemination of intelligence within the Department of Defence conducted by military staff. The intelligence relates to the defence force and tactical and strategic military intelligence (Africa & Mlombile, 2001; Van den Berg, 2018). These agencies may also be responsible for providing intelligence support to other government agencies or organisations, as well as to policymakers and other decision-makers.

Civilian intelligence oversight is the oversight and regulation of intelligence mandates and activities by civilian authorities (Dube, 2013). This can include the oversight of intelligence services by government institutions such as the Ombudsman or Inspector-General (Netshitenzhe, 2005; Fazel 2009). The purpose of civilian intelligence oversight is to ensure that intelligence activities are conducted in a legal, ethical, and responsible manner and that they are in line with the constitutional and democratic values of the society in which they are being conducted (Netshitenzhe, 2005; Fazel 2009).

Additionally, mechanisms can be used to provide civilian intelligence oversight. Firstly, legislative oversight involves the review and oversight of intelligence activities by legislative bodies such as Parliament (Dlomo, 2004). Secondly, executive control includes the oversight of intelligence activities by the President or member of the cabinet or Minister through the creation of a structure or committee (Nathan, 2009). Thirdly, judicial oversight consists of the review of intelligence activities by the judiciary using courts and legal proceedings (Dube, 2013). Fourth, Internal oversight can include the review and oversight of intelligence activities by the intelligence agencies themselves, often by internal audit and review mechanisms (Africa, 2012). Lastly, external oversight can involve the review and oversight of intelligence activities by external organisations or individuals, such as independent commissions or civil society groups (Netshitenzhe, 2005).

Furthermore, the oversight and accountability model in South Africa as expressed in the Parliament of the Republic of South Africa (2009) document views oversight as a constitutionally mandated function of the legislative organs of the state that scrutinise and oversee actions of the executive branch within the state. Thus, it entails an informal and formal structured process of scrutiny exercised by legislatures concerning

the implementation of laws, the application of the budget, and the strict adherence to legislation and the Constitution (Hutton, 2007). Importantly, the process of overseeing the management of government departments by individual members of the Cabinet is based on the objectives set by the governing party and the goal is to improve service delivery and achieve a better quality of life for citizens (Parliament of the RSA, 2009). This can involve reviewing the performance of individual departments and their progress towards meeting specific goals and objectives, as well as ensuring that they are operating efficiently and effectively.

### 2.9.2 Intelligence Oversight

In democratic countries, intelligence oversight is a key component that scrutinises intelligence services (Born & Johnson, 2005). Intelligence oversight is a catchall term that encompasses examining the work of intelligence services (Born and Mesevage, 2012). It refers to all the measures and mechanisms used to scrutinise intelligence structures' decisions and actions to ensure compliance with legal frameworks and international law (Bolto, 2019). The unique control of the intelligence agencies by Parliament, civilian appointees or the Executive ensures compliance with the law (Treverton & Agrell, 2009). State institutions, such as the judiciary, interpret and administer the law to curtail the Executive's exercise of power (Musila, 2018). The judiciary is a state mechanism that can also find intelligence failures, which may force the Executive to make changes (Treverton & Agrell, 2009). Born and Mesevage (2012) and Bolto (2019) observe that intelligence oversight can either take place at the beginning of an intelligence activity (ex-ante), when it is ongoing or after the conclusion of the activity (ex-post). According to Bolto (2019), in practice, the ex-post process references the intelligence review. It is a measure to assure the public that there is accountability for the decisions and actions of intelligence structures (Johnson, 2010).

In practice, those who exercise oversight do not oversee the day-to-day operations of intelligence agencies (Born & Johnson, 2005; Gill & Pythian, 2018). This is the function of control within the institution (Caparini, 2007). The exercise of intelligence oversight does not consider the extent or degree of scrutiny of the intelligence structures (Born & Mesevage, 2012). The principle of separation of powers is crucial for democratic values such as openness, transparency, and accountability in a democratic state (Treverton & Agrell, 2009). All three branches of the state can oversee actions or

decisions taken by intelligence agencies; oversight and accountability are critical functions within the three branches of the state for democratic governance (Treverton & Agrell, 2009). According to Gill & Pythian (2018), oversight within intelligence structures is described as having four levels of control. The first two, internal control and oversight, are exercised by the Minister and Director-General (Executive). The last two are external factors such as parliamentarians, judges or civil society organisations who only exercise indirect oversight of an agency (Gill & Pythian, 2018). Although there is a distinction between control and oversight, the two concepts are interlinked and connected (Gill & Pythian, 2018).

According to Musila (2018), Goldman (2016) and Dube (2013), the process of intelligence oversight aims to achieve transparency, accountability and compliance with the rule of law; protect citizens' rights and civil liberties; ensure accountable use of public resources, and enhancement of public participation in security sector governance, particularly in the intelligence governance and; improving service delivery of the intelligence, professionalism and enhancing public trust in the security services thereby fostering the legitimacy of security actors (Musila, 2018; Goldman, 2016; Dube. 2013).

### 2.9.3 Control

The literature distinguishes between intelligence control and oversight; however, this distinction is not contested (Gill & Phythian, 2018). The tensions that exist are debates on the terminology used to describe the functions of overseers are not semantic debates but reflect the current contestation for access to information and influence over intelligence agencies (Gill & Phythian, 2018). According to Bruneau and Boraz (2007), control within an institution consists of providing direction or civilian guidance to a country's intelligence community to fulfil its overall mission, typically embodied in a national security strategy. Caparini (2007) describes control as having two key variants: political or executive control and administrative control. The former refers to the direction provided by a Minister through monitoring the activities of an agency and the issuance of guidelines; the latter refers to the internal supervision and management of the intelligence agency as a bureaucratic institution (Caparini, 2007). Thus, when the head of the agency exercises control within the intelligence, they possess adequate power to manage and direct operations in the agency (Gill &

Pythian, 2018). Accordingly, control is the day-to-day management of operations within the intelligence agency (Born & Leigh, 2005; Gill & Phythian, 2018). The executive authority directs internal activities, ensuring fulfilment of the mandate, policy imperatives, enforcement, and compliance with the rules (Geneva Centre for the Democratic Control of Armed Forces, 2003). The executive branch directs, and tasks intelligence based on a national security concept through directives and policies (Hannah et al., 2005; Van den Berg, 2018).

In the South African context, this definition suggests that a Minister would exercise political or executive control in the agency, including policy formulation (through Parliament). The Director-General would have administrative control of the agency. In the current research, the executive authority exercises control and oversight functions on the operations and mandate of the intelligence agency. The executive authority is the first line of defence in the multi-institutional mechanism scrutinising intelligence activities and functions.

### 2.9.4 Governance

There are several definitions of the governance concept; as a result, different people and institutions define it to suit their purpose. These definitions overlap and contain similar characteristics or principles from various writers and institutions such as academics, experts, multilateral institutions, and governments (De La Harpe, Rijken & Roos, 2008). According to the World Bank (1994), governance refers to the exercise of power to manage a country's economy and social resources for development. However, it is more than the government: it involves how the government interacts with the citizenry and how internal government processes allocate resources to derive positive outputs and outcomes. Consequently, it affects every facet of the life of an individual citizen (Cloete & Auriacombe, 2007). Burger (2014) defines this concept within the context of public economic management: a process of exercising power and authority between and within state institutions and civil society regarding the allocation of resources. According to Burger (2014), specific actions promote a culture of good governance, namely partnering and engaging stakeholders, accountability in policy interventions, predictability, participation, and transparency. Agere's (2000) definition encapsulates core governance principles. It refers to transparency, accountability, and participation, amongst other things, of government to ensure political, social, and

economic priorities receive broad consensus in society. Agere (2000) further emphasises that a lack of a robust intelligence oversight mechanism can enable corruption, leading to deteriorating governance standards. This situation significantly hampers economic progress and national security efforts. The sustenance of democratic governance hinges on striking a balance between secrecy, a fundamental aspect of intelligence operations, and the imperatives of transparency and accountability, which are essential pillars of good governance (Africa, 2009).

This concept is fundamental to the investigation because the current study focuses on intelligence governance. It requires clarity since it is essential in institutional arrangements. Authors view this concept as in line with democratic practices and institutions (Bolto, 2019). Banerjee (2009) narrows governance to processes and structures where the social organisation steers itself, which varies from centralised control to self-regulated control. The quality of these processes and practices within democratic institutions is infused with good governance (Cheema, 2005). Cheema (2005) believes these factors influence development processes and human conditions. It is the joining together and straddling of democracy, development, and security for the betterment of society.

The quality of institutional arrangements determines what is termed good governance (Bryden & Chappuis, 2015). Hutton (2007) observes that governance presents unique challenges to the management and control of intelligence structures due to the covert nature of intelligence operations and the inherent need for secrecy. It is seen as a process rather than an ideal; it will thus take place within a context of how structures evolve, regulatory framework setting and practices that reflect political culture (Cawthra, 2005). According to Cawthra (2005), South Africa had success in applying democratic security governance practices. Similarly, governance involves policy formulation and implementation, decision-making, and implementation within state institutions (Hutton, 2007).

The current research supports a governance conceptualisation that includes critical elements such as accountability, responsibility, effectiveness, efficiency, transparency, the rule of law, participatory democracy, etc. (Agere, 2000; Banerjee, 2009; Burger, 2014; Cheema, 2005; De La Harpe, Rijken and Roos, 2008; Hutton, 2007; Masiapato,

2017; Masiapato et al., 2020). Thus, these core governance principles strengthen the democratisation of intelligence (Cole, 2015).

### 2.9.5 Openness, transparency, and accountability

As discussed above, these concepts are relevant and essential to the current research. They are also fundamental in a democratic state (Gill, 2010). Several authors argue that accountability is abstract, vague, and difficult to define (Alom, 2017). For instance, Bolto (2019) claims that accountability studies lean towards a strong conceptual focus, while other writers focus more on good or bad accountability. This is also evident when authors such as Bovens (2010) note how commentators define this concept for their specific purpose with a loose characterisation of good governance, which makes the definition disconnected in academic literature. However, Bovens (2007) himself in his earlier work, characterised this concept as an icon for good governance. Even though it is an elusive term, it describes mechanisms to make powerful institutions responsive to the public. These are instruments that improve the efficacy of governance within institutions (Bovens, 2007). Alom (2017) agree that this concept is vague, complex, and not easy to understand, transparency can be a solution to this complexity. Although Bolto (2019) accepts transparency as an essential element of accountability, he agrees that it is the first step toward holding officials or agencies accountable. Therefore, a measure of openness and transparency to overseers is necessary, particularly for secretive agencies.

According to Agere (2000), accountability is the responsibility of elected or appointed individuals and organisations with public mandates to answer specific actions, activities, or decisions to the public from whom they derive their authority. This accountability concept can be understood in either a narrow or broad sense. In its narrow sense, Agere (2000) praises it for its ability to elucidate the allocation, utilisation, and management of resources within the framework of budgeting, accounting, and auditing. It also underscores the importance of good corporate governance at an institutional level (Agere, 2000). However, Ball et al. (2004) maintains that openness and transparency are fundamental ingredients to accountability. It would be difficult to hold public officials accountable without access to information. It would also prove challenging to formulate and implement legislation, government policies, plans, and budgets (Ball et al., 2004). Similarly, Bovens (2010)

observes that transparency does not equate to accountability but is a virtue and mechanism. Bovens (2010) provides a narrow explanation of accountability, which includes institutional arrangements that hold public officials accountable by a forum. Schedler (1999), on the other hand, argues that this concept can be comprehensive. According to Schedler (1999), it is important to look at the breadth of this concept and not just the controlling power. There are three ways of preventing and redressing political power: exposing power to the threat of sanction transparently and justifying actions taken by those in power (Schedler, 1999). Authors like Bolto (2019), see exercising power as a three-stage social interaction that requires exchanging information, debate, and judgement. For instance, an official can be held accountable by another public servant or an institution (Bolto, 2019). This is a social relation or mechanism, which Bovens (2010) and Agere broadened to include personal or organisational virtue. This normative notion evaluates the behaviour or actions of public officials against a set of standards. Thus, being accountable must be seen as an organisation's or public official's positive quality (Agere, 2000; Bovens, 2010).

The current research prefers Agere's (2000), Bolto's (2019), and Bovens' (2007 & 2010) perspectives on openness, transparency, and accountability within civilian intelligence oversight. These approaches align with the study's emphasis on the vital role of institutions and their internal processes, procedures, and systems in ensuring accountability. Specifically, Agere's framework highlights the importance of clear and open communication channels within institutions, Bolto's work underscores the necessity of transparency in institutional operations to foster trust and integrity, and Bovens' theories focus on the mechanisms through which institutions can systematically hold individuals and departments accountable for their actions. By integrating these perspectives, the research underscores the complex interplay between institutional structures and accountability, demonstrating how effective oversight can be achieved through a combination of openness, transparency, and organisational procedures.

In this research, the framework is depicted in Figure 5 above, which reinforces this perspective by demonstrating how various state institutions interact to ensure compliance with the law and promote transparency and accountability within intelligence agencies. The figure illustrates how the oversight framework functions

through multiple layers of checks and balances involving the executive branch, parliamentary committees, the judiciary, and civilian oversight bodies. Each of these entities plays a specific role in scrutinising and guiding the actions of intelligence agencies. The executive, through the Minister of Intelligence, provides direct oversight and establishes rules for agency operations. The Parliament, particularly the JSCI, reviews agency activities, issues reports, and makes recommendations, thereby enhancing transparency and accountability. Moreover, the judiciary ensures legal compliance through judicial reviews and handles legal appeals and actions, maintaining a legal check on intelligence operations. Civilian oversight, represented by the Inspector-General and civil society, ensures that intelligence agencies are accountable to the public by issuing reports, making recommendations, and pursuing legal actions when necessary.

### 2.10 Research Variables

This research has identified essential variables in the literature that inform and seek to answer the research question. These variables can be dependent or independent, and they represent the key concepts or factors that are being studied. The elements of these variables are critical not only for theoretical foundation but also for conceptual framework. The analysis, discussion, and presentation of these variables aid in assessing the effectiveness of the civilian intelligence oversight model and identify areas for improvement.

#### 2.10.1 Security Sector Reform

Security Sector Reform (SSR) is a critical process to enhance the effectiveness, accountability, and integrity of a nation's security institutions. In democratic governance, SSR is essential for ensuring that security agencies operate within the law, respect human rights, and serve the interests of the public (Hutton, 2007). This section introduces the concept of SSR, outlining its importance, objectives, and the various challenges associated with its implementation.

This section will explore the various dimensions of SSR, including the legal frameworks, institutional arrangements, and governance. It will also discuss the specific challenges In South Africa, such as the need to eradicate entrenched authoritarian practices within the SSA and build a culture of democratic governance

within the intelligence community. Through this analysis, the section aims to provide a comprehensive understanding of the importance of SSR.

#### 2.10.1.1 Overview

A critical variable that has been identified in the review of literature is the SSR process. The SSR concept was developed in the 1990s by the Department for International Development (2002) in the United Kingdom. According to the author, the utilisation of this concept varies in its definition, classification, and analysis (Jean, 2005; Moller, 2009). The intelligence sector can both support the SSR process and be the target of reform activities (Hannah et al., 2005). However, Hannah et al. (2005) believe it is important that countries undertaking SSR processes build a nationally owned and led vision of the security reform. These countries can achieve this through a national security review aimed at an overarching policy on national security. The review enables a government to decide between legitimate and illegitimate security activity and choose between competing claims for resources (Hannah et al., 2005). For this study, the security sector reform is the means through which the security sector can be transformed to meet the requirements for the stability of the state and the protection of its citizens. Therefore, it uses governmental institutions tasked with safeguarding the state and its citizens from fear of violence (Ball et al., 2004; Department for International Development, 2002). It involves a comprehensive transformation of a country's security apparatus, including military, police, intelligence services, and judicial institutions. The goal is to create a security sector capable of addressing internal and external threats while being accountable to civilian authorities and transparent in its operations (Ball et al., 2004). This definition of SSR, explains the transformation of the security sector process that culminates in the safety and security of the state as well as its citizens. For nations emerging from conflict or transitioning to democracy, SSR is particularly vital in preventing abuses of power, fostering public trust, and promoting sustainable peace and development (Felber-Charbonneau, 2012). In this research, the definition is preferred because SSR has been crucial for the reform process post-apartheid security transformation. The legacy of apartheid-era security practices necessitated significant reforms to align the security sector with the values of the Constitution. This process involved not only legal and institutional changes but also robust oversight of security institutions to embrace principles of transparency, accountability, and respect for human rights (Hutton, 2007).

#### 2.10.1.2 SSR and security sector transformation

According to Ball et al. (2004), the SSR process involves changing the security sector to improve its governance. Security sector governance is influenced by the following categories of actors: (i) organisations legally mandated to use force (such as armed forces), (ii) judicial and public safety bodies, (iii) civil management and oversight bodies (for instance, the legislature, the executive), (iv) non-state security organisations (private security companies) and (v) non-statutory civil society such as the media. The authors highlight the importance of aligning the security sector transformation with core values and principles of democratic governance, such as civil oversight, transparency, and accountability. This can be achieved, through cooperation based on mutual trust, understanding and acceptance of responsibilities (Ball et al., 2004).

#### 2.10.1.3 Governance and democratic principles

Ball et al., (2004) and Moller (2009) observe that in the late 1990s, the importance of democratic governance in the security sector was emphasised. It was also linked to promoting human development and human security in the African continent. Democratic governance is seen as essential for promoting stability and security because it provides a framework for ensuring accountability and protecting the rights of citizens. In this context, it is important to have effective oversight mechanisms in place to ensure that intelligence organisations are functioning in a manner that is consistent with democratic values and principles (Masiapato, 2017). According to Masiapato (2017) and Masiapato et al., (2020), the concept of governance has received increased attention in recent years as a more comprehensive approach to addressing societal issues has emerged. This shift recognises the importance of not only government actions but also the roles of various stakeholders, including civil society, and international organisations, in creating effective and inclusive policies. Enhanced governance frameworks emphasise transparency, accountability, and participation, aiming to foster better decision-making processes and more sustainable outcomes. This broader perspective seeks to address complex challenges by integrating diverse viewpoints and ensuring that all relevant parties are involved in the development and implementation of solutions (Masiapato, 2017; Masiapato et al., 2020).

Previously, the focus was on the economic, legislative, and public administration domains, but governance encompasses a broader range of issues and domains, including security, human rights, and the protection of the environment (Moller, 2009). The development of democratic systems was a critical step in ensuring that communities have a say in decisions that affect their lives. This was part of a broader focus on governance, which encompasses economic, legislative, and public administration domains, in addition to democratic systems (Ball et al., 2004; Moller, 2009). Governance also involves the political process within democratic structures. Political governance encompasses civil society monitoring the actions and decisions of public officials through governmental structures (Masiapato et al., 2020). This process incorporates different spheres or disciplines, such as the economy and social aspects, and institutional arrangements. The goal of political governance is to ensure that decisions made by public officials are accountable and transparent and that they align with the values and interests of the community (Masiapato et al., 2020).

The transformation of institutions is a critical aspect of SSR, and it is important to exercise caution when undergoing this process (Ball et al., 2004). SSR can affect the foundation of political power, and it is important to ensure that any changes are carefully considered and implemented in a way that promotes stability and respect for human rights (Ball et al., 2004; Jean, 2005; Musila, 2018).

#### 2.10.1.4 SSR linkages to civilian intelligence oversight

In the context of civilian intelligence oversight and accountability, strengthening civilian control and oversight is a key aspect of SSR (Hannah, et al., 2005). This can involve improving the independence and effectiveness of oversight mechanisms, as well as enhancing transparency and accountability within the intelligence service. The goal is to ensure that the intelligence service operates in a manner that is consistent with democratic values and human rights and that its activities are subject to effective oversight and scrutiny (Hannah, et al., 2005).

#### 2.10.1.5 SSR in Africa and South Africa

The weaknesses and gaps must be viewed within the context of the SSR process undertaken in the 1990s in South Africa (Hannah et al., 2005). It is through the SSR process that current regulatory and institutional arrangements are in place. Thus, in

determining the effectiveness of the civilian intelligence oversight model the research considered the SSR process (Hannah et al., 2005). Scholars have argued that South Africa went through the SSR process with relative success and without lasting violence as a country that emerged from repressive authoritarian rule (Hutton, 2009; Moller, 2009; Nathan, 2010; O'Brien, 2005). It is however important to highlight that the SSR process in the developed world and African states are different due to the development of state formation. African state formation has been characterised by conflicts between the state and its citizens, a legacy of colonialism, dictatorships, and one-party states. These issues can harm democracy and good governance in African states, particularly in the security sector (Bryden & Chappuis; 2015; Cheema, 2005; Moller, 2009).

This is a significant consideration when studying the civilian intelligence oversight model in the South African context due to the SSR process in the 1990s. Therefore, its effectiveness is affected by complex political history, culture, and institutional arrangements. It is for these reasons; that the current research considers the unique challenges of African state-building as well as SSR processes to provide relevant and useful context (Bryden & Chappuis; 2015; Cheema, 2005). This research focuses on the SSR processes, which aim to improve the governance of the security sector, including the intelligence sector. A key aspect of this improvement is to assess the effectiveness of intelligence oversight systems, as they play a critical role in ensuring that intelligence agencies are held accountable for their actions and operate in a manner that is consistent with democratic values and human rights (Hannah, et al., 2005).

#### 2.10.1.6 SSR: Governance and public trust

Studying the civilian intelligence oversight model from a South African perspective requires a particular focus on the governance of oversight mechanisms needed to build public trust (Masiapato, 2017). Governance in this context refers to the mechanisms and processes through which intelligence services are controlled and held accountable. This includes the mandate, powers, and composition of the oversight mechanisms, as well as the processes and procedures for ensuring transparency and accountability. By focusing on the governance of the intelligence services, it is possible to assess the extent to which they are aligned with democratic values, and whether they are effective in ensuring transparency and accountability

(Masiapato, 2017). This is important for building public trust in the intelligence services, as it helps to ensure that they are accountable to the public and their operations are legal (Goldman, 2016; Masiapato, 2017). It is for these reasons that the conceptualisation focuses on the governance of these institutions that are needed to build public trust in the intelligence service rather than narrow legal compliance (Goldman, 2016). Building public trust in the intelligence sector is important because it enables effective collaboration and cooperation between intelligence agencies and the public (Masiapato, 2017). Trust ensures that intelligence agencies can gather information and prevent threats without violating the rights and privacy of citizens. Additionally, public trust can also help to maintain support for the intelligence sector, as well as enhance transparency and accountability. Ultimately, building public trust in the intelligence sector is crucial for protecting national security and safeguarding civil liberties (Masiapato, 2017).

#### 2.10.1.7 Institutional design and legal compliance

Institutional design to ensure legal compliance is essential for effective governance, but it should not be the only mechanism in place. Goldman (2016) argues that institutions designed for legal compliance should co-exist with governance institutions to ensure that the system is balanced and effective. Governance institutions provide a mechanism for ensuring that the Intelligence community acts in the public's interest and makes decisions that promote societal values (Cole, 2015; Kleinig et al., 2011). By having both legal compliance institutions and governance institutions in place, the system can ensure that the intelligence sector acts following the rule of law, while also promoting the public interest and protecting civil liberties (Masiapato, 2017).

#### 2.10.1.8 Relevance of SSR and intelligence oversight study

This research asserts that SSR is relevant to the evaluation of the civilian intelligence service oversight model. SSR process encompasses the overall governance and management of the security sector, including intelligence services. Its processes aim to enhance the effectiveness, accountability, and transparency of security sector institutions, aligning them with democratic principles and the rule of law.

By analysing the civilian intelligence oversight model within the framework of SSR, it becomes reasonable to evaluate the alignment of the oversight mechanism with

democratic principles and the rule of law. It also allows for an assessment of its effectiveness in ensuring transparency and accountability within intelligence services. Moreover, examining SSR in the South African context provides valuable insights into the challenges and opportunities associated with aligning intelligence services with democratic ideals, particularly given the country's intricate political history.

The linkage between SSR and intelligence oversight research is highly significant and relevant. SSR not only emphasises the enhancement of security sector institutions but also underscores the importance of democratic governance, transparency, and accountability. Integrating SSR principles into intelligence oversight frameworks can lead to more effective and responsible intelligence practices, thereby contributing to overall national security and democratic stability. Analysing SSR in the context of South Africa offers valuable lessons and insights that can inform policymaking and reform efforts in South Africa.

### 2.10.2 Security Sector Accountability

Another variable that emerged from the literature review is security sector accountability. This is a key concept within the security sector governance space. In the current research security sector governance is not the central theme of the investigation; however, its process addresses critical Intelligence governance issues in this research. Thus, intelligence governance forms part of the security sector governance process. Through these processes, democratic states establish internal and external accountability mechanisms that oversee the functions, mandates, and activities of the intelligence service (Masiapato, 2017).

The objective of distinguishing between internal and external accountability allows for a comprehensive understanding and assessment of the strengths and weaknesses of the oversight mechanism (Caparini, 2007). The overall effect of the mechanism is to ensure openness, transparency and accountability; protection of citizens' rights; ensure accountable use of public resources, improve service delivery, and professionalism and enhance public trust in the security services (particularly the intelligence structures) thereby fostering the legitimacy of security actors (Born & Leigh, 2005; Cole, 2015; Conci, n.d.; Geneva Centre for the Democratic Control of Armed Forces, 2003, Musila, 2018).

Accountability is a process that ensures public officials who have authority given to them by the Constitution or any other law are held accountable (Nathan, 2010). In the security sector, these public officials are scrutinised by legally mandated organisations such as the Executive branch of the state, which is overseen by the legislature. This means that the legislator oversees the work of the executive as the intelligence service conducts operations (Nathan, 2010). The legislator ensures that legislation is implemented through the utilisation of tools to enforce illegal and unethical behaviour (Ball et al., 2004; Caparini, 2007). This is indirect and direct accountability. The latter means that members of security structures are directly answerable to the population. Whereas the former ensures that public representatives and officeholders are held accountable for the security organisations' actions based on democratic governance criteria. Security sector accountability measures are regarded as indirect (Ball et al., 2004; Caparini, 2007). As Ball et al., (2004) note, a functioning democracy is evidenced by security sector governance that ensures the rule of law, and an effective system of checks and balances. For security sector governance to be considered good it requires functional democratic governance institutions such as the executive, parliament, parliamentary committees, and other oversight bodies such as the Auditor-General (Masiapato, 2017). The essence of good security sector governance involves the alignment of the security sector with the core values, principles, and practices of democratic governance (Cole, 2015). The most important values and principles include transparency, accountability, a legal basis for security services, and civil oversight (Ball et al., 2004).

Security sector governance in a democratic state demands that governmental institutions apply the law and encourage social coherence (Ball et al., 2004; Geneva Centre for the Democratic Control of Armed Forces, 2003). Gill (2010) highlights internal and external oversight systems backed by legal instruments to ensure effective intelligence practice in most liberal democracies. Lester (2012) agrees that accountability includes internal control mechanisms consisting of institutional culture and organisational standard operating procedures. External accountability is conducted through external mechanisms of the supervising agency (Lester, 2012).

### 2.10.3 Intelligence Governance in South Africa

Another crucial variable that has been identified in the review of literature is intelligence governance. This is essential because literature focussed on governance systems, processes, and procedures in the intelligence sector in South Africa.

#### 2.10.3.1 Democratic control of the intelligence

In the 1990s, the South African government established a regulatory framework that would regulate intelligence governance (Masiapato, 2017). These policy initiatives and institutional arrangements were initiated to ensure that the intelligence mandate and functions follow constitutional and democratic requirements (Cawthra, 2005). Together with the White Paper on Intelligence, 1995 the legislative framework set out to protect democracy and engender the rule of law. This policy document established the philosophical intelligence position and principles permeating institutions and their work (Dube, 2013). Parliament oversees intelligence operations through the JSCI, the OIGI and the Executive control (Dlomo, 2004). These oversight mechanisms ensure the balance between secrecy and transparency.

However, the White Paper on Intelligence did not go as far as translating these principles into meaningful policy directives that guide the operation within the intelligence sector (Dube, 2013). Even though the White Paper acknowledges the significance of oversight in intelligence structures, it is scant on information regarding relevant oversight bodies (Nathan, 2010). This is evidenced by the lack of regulations and policies that regulate as well as guide intelligence oversight mechanisms such as the executive control, OIGI or the JSCI (Dube, 2013; Nathan, 2010).

#### 2.10.3.2 Legislative framework, policy initiatives and oversight mechanisms

The development of the White Paper on Intelligence was a worthwhile intervention in 1995, and later the 1996 Constitution included democratic values and principles that break with the past that was cloaked in secrecy and authoritarianism (Cawthra, 2005; Africa, 2012; High-Level Review Panel on State Security Agency, 2018). The White Paper set in motion the process to transform and democratisation of the intelligence community. This entails, amongst other things, an intelligence oversight and accountability model that ensures the intelligence service adheres to the rule of law and does not violate the civil liberties of the citizenry (Cawthra, 2005; Nathan, 2010;

High-Level Review Panel on State Security Agency, 2018). The White Paper on Intelligence provided democratic principles with overarching values that paved the way for a new democratic society at the time (High-Level Review Panel on State Security Agency, 2018). The principles, vision, and values of the founders of a constitutional democracy may include respect for the rule of law, protection of individual rights and freedoms, transparency and accountability, and the promotion of the public interest (Cawthra, 2005; Nathan, 2010). These values and principles should be reflected in the design and operations of the intelligence system, and the agencies and individuals within the system should be held accountable for upholding these values (Nathan, 2010; High-Level Review Panel on State Security Agency, 2018).

#### 2.10.3.3 Implementation challenges and oversight gaps

This research argues that it is necessary for officials and political principals within the intelligence sector to further develop regulations that guide the operations of institutions and appropriate organisational design of civilian intelligence oversight mechanisms. Thus, the research concurs with the High-Level Review Panel (2018) report that made comprehensive and wide-ranging recommendations, including oversight. On the latter, the Panel recommended urgent processing and implementation of the regulations governing the functioning of the IGI. This finding and recommendation is consistent with the 2006 Task Team Report and the 2008 Ministerial Commission Report. The Ministerial Commission (2008) agreed with the 2006 Task Team recommendations, amongst others, issuance of ministerial regulations governing the conduct of investigations and inspections by the Inspector-General. However, this matter has been delayed for many years by delays in the appointment of inspector generals over the years. In the absence of an approved regulatory framework, the current operations of the OIGI are still guided by section 7(7) of the Intelligence Oversight Act of 1994 (Masiapato, 2023).

On the other hand, in the Intelligence sphere, since the advent of democracy in 1994, the Minister of Intelligence has issued two sets of regulations: the Intelligence Services Regulations of 2003, most of which are secret, and the Regulations on Liaison with Foreign Intelligence Services of 2007, which are entirely secretive. While this secrecy is allowed under intelligence legislation, it contradicts the 1996 Constitution that

mandates regulations and other subordinate legislation must be accessible to the public.

The intelligence oversight regulations, processes and procedures would create a culture of openness, transparency and accountability envisaged in the Constitution and White Paper (Cawthra, 2005; High-Level Review Panel on State Security Agency, 2018). With appropriate institutional arrangements, implementation of the processes and procedures could encourage democratic values. This culture could have permeated throughout the intelligence community and oversight mechanisms (Cawthra, 2005; High-Level Review Panel on State Security Agency, 2018). At an operational level, intelligence service and oversight mechanisms are not entrenched in these principles, which have resulted in secrecy within the intelligence trumping democratic principles as espoused in the Constitution (Cawthra, 2005; White Paper High-Level Review Panel on State Security Agency, 2018). Organisationally, the design and structural arrangements of the intelligence oversight were not improved to address the evolving security threats (High-Level Review Panel on State Security Agency, 2018).

#### 2.10.3.4 Democratic values in intelligence governance

The principles, vision, and values of the founders of a constitutional democracy play a critical role in shaping the intelligence system within that democracy (Nathan, 2010; Africa, 2012). These principles, vision, and values reflect the values and aspirations of South African society and the principles that guide the government's actions. In a constitutional democracy, the intelligence system is expected to operate within the framework of the Constitution, which outlines the rights and freedoms of individuals and the limitations on government power (Africa, 2012; Nathan, 2010). The High-Level Review Panel on State Security Agency (2018) report notes the White Paper on Intelligence is a national policy document meant to clarify and provide guidance on governance, formulation of laws, departmental strategies, and policies but is not detailed enough on crucial civilian intelligence issues, particularly the policy regarding multi-institutional oversight mechanisms. Importantly, it reflects the principles, vision, and values of the founders of our constitutional democracy within intelligence (Cawthra, 2005; Nathan, 2010; Africa, 2012; High-Level Review Panel on State Security Agency, 2018).

The 1996 Constitution includes a commendable intention of the framers such as stipulations that the intelligence services operate within the confines of the law, which is a significant departure from the pre-1994 era (Africa, 2012; Hutton, 2007; Masiapato, 2017). Intelligence governance is vital in ensuring the demands and requirements of democracy are met by intelligence services. The literature is replete with guidelines on the legislative framework. An example of this guidance includes a regular legislative review that will effect changes in the operation of the oversight model (Africa, 2012; Geneva Centre for the Democratic Control of Armed Forces, 2003; Dube, 2013; Nathan, 2010; Born & Leigh, 2005).

This research argues that in a constitutional democracy, the intelligence system must also respect the principles of civilian control and civil liberties, impartiality, and political neutrality, and should not be used to further the interests of any political party or group. The intelligence system must also respect the principle of judicial oversight and independent review to ensure that it operates within the ambit of the law and that individuals are protected from abuses of power.

#### 2.10.3.5 Implications for security sector governance

Over the years, various commentators and authors have argued that governance of the security sector is crucial in maintaining democracy, poverty reduction, economic growth, and social progress (Cawthra, 2005). This observation is also expressed in the NDP, which linked the safety of communities to economic development and people's well-being (National Development Plan 2030, 2012). Ball et al, (2004) highlight the importance of democratic governance in the security sector. The critical component that is required to promote human development and human security is a stable and secure environment (Cawthra, 2005). Thus, development is impossible in the absence of true democracy, respect for human rights, peace, and good governance (Cawthra, 2005). Also, the concept of governance in the security sector was not prioritised until the 1990s even though it was recognised as critical for human development (Ball et al., 2004). Nevertheless, sound governance is essential for the quality of security because it provides safety and security for the state and its population. Intelligence governance is essential to maintain the intersection of democracy, economic growth, development, and security (Ball et al., 2004). Shifting the referent object of security from the state to individuals and communities, as

proposed by the 1996 Constitution, is crucial for development (Buzan, 1991; National Development Plan 2030, 2012).

The current study argues that good governance of the security sector has far-reaching implications for a variety of key social, development, and conflict-related issues for governments. When the security sector operates in a manner that is transparent, accountable, and responsive to the needs of the public, it can have a positive impact on a wide range of critical issues. In addition, good governance of the security sector can also promote human rights, equality, and justice, by ensuring that individuals and communities are protected from abuses of power and that security institutions are held accountable for their actions.

### 2.10.4 Intelligence Structures in a Democratic State

Another important variable that emerged from the literature review is the functioning of intelligence services in a democratic state. A democratic state in this research is premised on the idea that the state relies on a robust legislative framework and oversight institutions to entrench democracy (Dlomo, 2004; Dube, 2013; Fazel, 2009; Hutton, 2009; Nathan, 2010; Cole, 2015). These institutions play a crucial role in ensuring that the state operates in a manner that is transparent, accountable, and responsive to the needs of its citizens. In a democratic state, the legislative framework outlines the rights and freedoms of individuals and sets out the limitations on government power. The institutions of the executive, parliament, and judiciary are responsible for implementing and enforcing this framework, and they play a critical role in ensuring that the state operates in a manner that is consistent with the principles of democracy (Dlomo, 2004; Dube, 2013; Fazel, 2009; Hutton, 2009; Nathan, 2010). For example, the executive is responsible for conducting the policies and decisions of the government, while the parliament provides a mechanism for citizens to participate in the legislative process and hold the government accountable. The judiciary is responsible for interpreting the law and ensuring that individuals are protected from abuses of power (Cole, 2015).

Furthermore, in a democratic system of governance, the state delivers services that fulfil the needs and demands of its electorate. It puts the needs of its citizenry front and centre of government activities and protects human rights, civil liberties, and

freedom through state institutions (Caprini, 2003; Geneva Centre for the Democratic Control of Armed Forces, 2003). The composition of the modern state consists of a security sector apparatus that plays a vital role in protecting citizens, supporting government policies, and entrenching democracy (Cole, 2015). The security apparatus consists of the defence, police, and intelligence services. The intelligence agencies collect, analyse, disseminate, and action information obtained through clandestine operations for policymakers, which reveal threats to the state and ways to counter the threats (Geneva Centre for the Democratic Control of Armed Forces, 2003; Johnson, 2010; Leigh, 2005; Van den Berg, 2018; Williams, 2008). This is the work conducted by the intelligence services in any society, whether in a democratic state or not. The activities of the intelligence community have serious implications for national security because they encompass tactical and strategic intelligence (Geneva Centre for the Democratic Control of Armed Forces, 2003; Johnson, 2010; Leigh, 2005; Van den Berg, 2018; Williams, 2008). Similarly, security institutions and intelligence are closely related to political power. Thus, state intelligence activities are part and parcel of politics because governments collect information that informs their policies and further their interests at home and abroad, thereby cementing their rule (Geneva Centre for the Democratic Control of Armed Forces, 2003; Johnson, 2010; Leigh, 2005; Van den Berg, 2018; Williams, 2008).

The existence of intelligence structures in democratic states brings about contradictions and dilemmas (Geneva Centre for the Democratic Control of Armed Forces, 2003; Johnson, 2010; Leigh, 2005; Van den Berg, 2018; Williams, 2008). On the one hand, it is agreed that secrecy in intelligence services is an essential and accepted norm. Their legislated mandate protects the democratic order, the state, and its citizens through covert operations, methods, and practices. Covert methods such as surveillance, monitoring, and interception of communication infringe on citizens' civil liberties to counter national security threats. However, they are necessary and ensure the state's sovereignty, but they must be conducted through the rule of law. On the other hand, elevated levels of secrecy can lead to the abuse of power by the Executive to gain an advantage over opponents for narrow political interests and violate the rule of law and civil liberties of the citizenry. As a result, the democratic principles of openness, transparency and accountability should be applied to balance these competing variables within the state machinery (Bolto, 2019; Caparini, 2007;

Geneva Centre for the Democratic Control of Armed Forces, 2003; Judicial Commission of Inquiry into State Capture, n.d.; Musila, 2018; Nathan, 2012; Van den Berg, 2018).

This balance between the secretive agencies and adherence to good governance methodologies is essential in preserving the democratic state (Masiapato et al., 2020). However, Winkler and Mevik (2005) admit that finding the right balance between the need for secrecy and upholding the rule of law, is a formidable challenge facing all countries irrespective of their constitutional arrangements. Even though countries have different constitutional and political arrangements, this challenge must be addressed to ensure intelligence activities do not violate civil liberties and apply the rule of law (Masiapato et al., 2020). To achieve this balance, intelligence oversight and accountability must be given priority by the government (Caparini, 2007; Geneva Centre for the Democratic Control of Armed Forces, 2003; Judicial Commission of Inquiry into State Capture, n.d.). This will build trust and legitimacy for the intelligence mandate (Masiapato, 2017).

The Tshwane Principles on National Security and the Right to Information is a civil society initiative intended to provide guidance when addressing this tension by developing standards to encourage the governing elite to achieve a balance between secrecy and transparency (Van Nieuwkerk, 2014). According to Van Nieuwkerk (2014), legislation should create a framework for developing regulations, policies, and standards to manage the public's right to access government information. However, the regulations, policies and standards should help balance the right of access to information and the information that must be genuinely kept secret by the intelligence service. Legislation and policy must provide guidance and regulate types of information, and the relevant authority and institution bear the responsibility to decide on the information that can be made public and kept secret. The Tshwane Principles on National Security and the Right to Information also addressed a significant issue determining classified access to government information and declassification of information (Van Nieuwkerk, 2014). Although such initiatives are vital for this balancing act, Cawthra (2014), the High-Level Review Panel on State Security Agency (2018), and the Judicial Commission of Inquiry into State Capture reports found that the scale has been tilting towards secrecy in South Africa.

The research acknowledges concerns raised in these reports regarding the state of intelligence oversight in South Africa. The fact that the scale has been tilting towards secrecy suggests that there has been an increased emphasis on maintaining secrecy in the intelligence sector, at the expense of transparency and accountability. Secrecy in the intelligence sector has negative implications for democratic governance, as it reduces transparency and accountability, making it more difficult for citizens to understand how intelligence agencies operate and to hold them accountable for their actions. Moreover, a lack of transparency in the intelligence service undermines public trust in government institutions, as citizens question the motives and actions of intelligence agencies when they operate in secrecy (Masiapato, 2017).

Additionally, Africa (2006) researched policy options for the public's right to access information. The researcher found that the democratic government continued with old intelligence statutes such as the Protect of Information Act 1982, which encouraged secrecy. Africa (2006) discovered weaknesses due to the absence of a clear policy on implementing the Promotion of Access to Information Act for the intelligence structures and information in their possession (Africa, 2006). The Judicial Commission of Inquiry into State Capture in 2023 also found weak features of the regulatory framework that led to state capture and the susceptibility of the intelligence services to politicisation. The report notes secrecy within the intelligence used to hide criminal activities and thus encourages a balance of secrecy and transparency.

Striving for this balance must be an important first step because secrecy should be an exception rather than a rule. The extent of secrecy should be justified in every case because, in democratic states, openness and transparency should be the norm rather than an exception. Secrecy, according to Hutton (2007), should be used sparingly. When covert methods of investigations are employed, the processes and procedures based on the criteria in the legislation should be applied. Other intervening variables such as accountability, policy, internal control, processes, and procedures, institutional or structural arrangements and organisational culture determine effectiveness (Bolto, 2019; Hutton, 2007; Musila, 2018; Nathan, 2012).

### 2.10.5 Civilian Intelligence Accountability

Another important variable that emerged from the literature review and analysis is the key concept of accountability within the civilian intelligence community.

#### 2.10.5.1 Ensuring transparency and accountability

In this research, civilian intelligence accountability refers to the processes, mechanisms, and structures in place to ensure that the actions and decisions of a civilian intelligence agency are subject to public scrutiny and oversight. The mechanisms for civilian intelligence accountability typically include formal legal frameworks, independent review and oversight mechanisms, and systems for reporting and transparency (Dube, 2013). This study highlights the weaknesses in the existing intelligence oversight regulatory and institutional arrangements and suggests areas for improvement.

By examining the operation of the oversight mechanisms, the study reveals the institutional and regulatory arrangements in place and identifies inherent weaknesses that need to be addressed. This study provides valuable insights into the intelligence oversight landscape in South Africa, and highlights areas where reforms are necessary to ensure that the intelligence service operates within the law, respects human rights, and is held accountable and transparent. By identifying these weaknesses and suggesting areas of improvement, this study contributes to the ongoing efforts to enhance the intelligence oversight framework and to promote transparency, accountability, and the rule of law in the intelligence service (Masiapato, 2017).

In terms of the 1996 Constitution and legislation civilian Intelligence accountability is part of the democratic governance of the security sector. It prescribes that the intelligence service must be accountable to civilian control and the public. This is realised through the OIGI, and civilian oversight conducted by civil society organisations (CSOs) (Cole, 2015; Dube, 2013). Oversight and accountability are significant components of intelligence governance in any democratic state (Johnson, 2005). This perspective was emphasised during the Judicial Commission of Inquiry into State Capture (n.d.), which underscored the value of checks and balances of the three independent but equal branches of the state. Johnson (2005) and Cole (2015) believe oversight is an accountability and transparency tool that can hold officials

accountable for their decisions and actions. The authors make an even more pertinent argument that accountability is an essential element of governance designed to scrutinise government programs (Cole, 2015; Johnson, 2005). This scrutiny ensures that the mandate of the intelligence structures is fulfilled according to the law as well as efficiently spending public funds through executive control, and parliamentary and civilian oversight (Dlomo, 2004). The scrutiny of the intelligence structures, through legislative and regulatory frameworks, institutional arrangements, and organisational measures, helps to ensure that the intelligence service operates within the law and fulfils its mandate. Executive control helps to ensure that the intelligence service is accountable to the government and that its actions align with government policies (Nathan, 2009). Parliamentary oversight helps to ensure that the intelligence service is accountable to the citizens and operates within the law. Civilian oversight helps to ensure that the intelligence service respects human rights and operates in a manner that is consistent with the values of society (Kleinig et al., 2011).

In addition, this scrutiny also helps to ensure that public funds are spent efficiently and effectively. Holding the intelligence service accountable, helps to ensure that resources are used effectively, and that the intelligence service operates in a manner that is consistent with the expectations of society (Geneva Centre for the Democratic Control of Armed Forces, 2003; Conci, n.d.; Musila, 2018). The media and legislative investigators expose these intelligence abuses (Gill, 2010; Hutton, 2007; Johnson, 2005, 2010; Nathan, 2010, 2017). Civil society organisations, such as the Right to Know Campaign, are some of the non-governmental organisations (NGOs) that have seriously attempted to hold intelligence services and officials accountable (Gill, 2010; Gumede, 2018; Hutton, 2007; Johnson, 2005, 2010; Nathan, 2010, 2017).

#### 2.10.5.2 Theories of civilian intelligence oversight: Police-patrol and fire-alarm

Johnson (2005) describes two broad theories of civilian intelligence oversight that dominate academic literature: the police-patrol and fire-alarm models. Established rules, procedures and practices enable citizens to assess administrative decisions, charge those who violate rules and seek remedies from the courts, government institutions or parliament. In contrast, the role of legislatures includes putting in place systems to scrutinise the activities of the executive or members of the cabinet to implement programmes, and policies, as well as detect and remedy any violations.

This surveillance system is meant to discourage violations of the rules. The police-patrolling method of oversight is preferred over the fire alarm (Johnson, 2005).

According to Johnson (2005), the police patrol and fire alarm models are two distinct approaches to oversight in the intelligence sector. The police-patrol model is proactive, with oversight mechanisms like the OIGI or JSCI actively monitoring intelligence agencies' activities to ensure compliance with the law, respect for human rights, and transparency. This continuous monitoring aims to prevent wrongdoing before it occurs.

In contrast, the fire-alarm model is reactive, acting only when evidence of wrongdoing or a crisis emerges. It functions like a "fire alarm," sounding an alert when something goes wrong and then intervening to address the issue (Johnson, 2005). The current research maintains that the police-patrol model is more effective in promoting transparency, accountability, and the rule of law in the intelligence sector, as it involves initiative-taking monitoring of the activities of the intelligence agencies. However, it is also more resource-intensive and requires significant investments in oversight institutions and personnel. Conversely, the fire alarm model is less effective in promoting transparency, accountability, and the rule of law. It relies on the detection of wrongdoing after it has occurred. It is also less resource-intensive and requires fewer investments in oversight institutions and personnel. In conclusion, both the police-patrol and fire alarm models have their advantages and disadvantages, and the choice of which model to use depends on the specific context, available resources, and the goals of the oversight institution and the overall aims of the government.

### 2.10.6 Conducting Intelligence Oversight

An additional important variable that emerged from the literature review and analysis is the act of conducting intelligence oversight.

#### 2.10.6.1 Ideal elements of intelligence oversight

The research focused on identifying the specific shortcomings of the oversight model and the reasons why it has failed to achieve its intended objectives and providing recommendations for improvements. According to Dlomo (2004), Bochel, et al., (2017), and Masiapato, et al., (2020), ideally a civilian intelligence oversight model must have key characteristics to be successful in conducting oversight. (1) Independence: the oversight mechanism should be independent of the intelligence

agencies that it oversees. This independence is essential for ensuring impartiality and preventing conflicts of interest. (2) Transparency: the oversight mechanism must be transparent in its operations, with public reporting and accountability. This will increase public trust and confidence in the intelligence community. (3) Comprehensive coverage: the oversight mechanism should cover all aspects of intelligence activities and functions, including collection, analysis, dissemination, and use of intelligence information. (4) Expertise: the oversight mechanism should have the necessary expertise to review and assess the activities of intelligence agencies. This may include expertise in law, intelligence practices, and human rights. (5) Adequate resources: the oversight mechanism should have adequate resources, including staffing, funding, and access to information, to effectively carry out its responsibilities. (6) Compliance with the rule of law: the oversight mechanism must ensure that intelligence agencies operate following the rule of law and respect human rights. (7) Effective remedies: the oversight mechanism should have the ability to investigate and address abuses of power or violations of human rights by intelligence agencies, and to provide effective remedies for any victims (Dlomo, 2004; Bochel et al.,2017; Masiapato et al., 2020).

However, according to Born and Leigh (2005), there is no ideal intelligence oversight model that is universally applied in every democratic country across the world. The differences that exist are related to the history of the country, and established constitutional and political systems that affect the design of intelligence oversight (Conci, n.d.). Typical institutions and actors are common in most oversight processes performing contrasting functions (Conci, n.d.). First, the executive oversees the functioning of the intelligence service, directs, tasks, and provides the required resources for intelligence agencies. Second, the legislatures oversee the work and activities of the intelligence service by ensuring adherence to the rule of law and approving their budgets. Third, the judiciary monitors legislated special powers of intelligence service and litigates misconduct. Fourth, CSOs including the media and the public indirectly oversee intelligence services through reporting scandals or by complaining to relevant bodies such as ombudsmen, inspectors-general etc. (Conci, n.d.; Musila, 2018).

This research argues that an ideal civilian intelligence oversight model requires the independence, expertise, and resources to effectively monitor and evaluate

intelligence community activities, ensuring they align with democratic values and the rule of law. Such a model would implement a robust system of checks and balances to prevent abuse of power and guarantee that intelligence operations protect citizens' human rights and freedoms.

#### 2.10.6.1 Legal prescripts for intelligence

In South Africa, the 1996 Constitution and the White Paper on Intelligence provide a broad framework for the intelligence oversight mechanism (Dube, 2013; Judicial Commission of Inquiry into State Capture, n.d.). This mechanism is like those in most liberal democracies (Nathan, 2010). Intelligence oversight involves a multi-layered process that includes internal and external mechanisms (Cole, 2015; Dube, 2013). The degree and extent of scrutiny vary according to Constitutions, legislative frameworks, and political culture (Cole, 2015; Van den Berg, 2018).

According to Born & Mesevage (2012), the scrutiny of intelligence operations can occur at various stages, including before initiation, during the activity, and after its completion. This multi-stage approach ensures that intelligence activities are lawful, ethical, and effective. In the pre-initiation stage, oversight can review proposals for new intelligence activities to ensure they are lawful and consistent with the intelligence mandate. During the ongoing stage, oversight can monitor activities to ensure compliance with the rule of law and respect for human rights. After an activity concludes, oversight can review results, assess effectiveness, and investigate any allegations of abuse of power or human rights violations (Born & Mesevage, 2012).

Born & Leigh (2005), Cole (2015), Conci (n.d.), the Geneva Centre for the Democratic Control of Armed Forces (2003), and Musila (2018) advocate for a comprehensive approach to intelligence oversight. This approach ensures intelligence operations are subject to ongoing review, and issues are addressed timely and effectively. The goal is to ensure that intelligence agencies operate in a manner consistent with democratic values and the rule of law, fostering public and elected officials' confidence in the intelligence community. A well-designed civilian intelligence oversight model should provide multiple layers of oversight and review at various stages of intelligence activities, promoting openness, transparency, and accountability within security services. This mechanism aims to safeguard citizens' rights, ensure the responsible

use of public resources, enhance professionalism, improve service delivery, and boost public trust in security actors. Scholars emphasise such mechanisms' importance in fostering security services' legitimacy and contributing to a more effective and trustworthy security environment.

This study highlights the weaknesses in existing intelligence oversight regulatory and institutional arrangements, such as the lack of organisational independence of the OIGI, the absence of regulations for the OIGI and the JSCI, and limited expertise and personnel for oversight bodies. As a result, this study provides valuable insights into South Africa's intelligence oversight landscape and highlights areas where reforms are necessary to ensure the intelligence service operates within the law. The research strongly argues for aligning democratic and constitutional values with regulatory and institutional arrangements.

### 2.10.7 Personal Accountability

Another significant variable that developed from the literature review and analysis is personal accountability. The introductory chapter highlights an ideal situation expressed by Kleinig et al., (2011) that oversight arrangements in liberal democracies ought to reflect societal values. This means that oversight structures, their composition and operations should mirror society's values. Kleinig et al., (2011) reference liberal writers and thinkers such as John Locke, who believes that society requires social order through formal structures. This is because society cannot merely rely on individual goodwill or judgement but must rely on the development of formal structures and institutions such as the legislature, judiciary, and enforcement to support good social order. These formalised structures regulate society based on the doctrine of the separation of powers providing an interrelated mechanism for accountability (Cole, 2015; Kleinig et al., 2011).

Personal accountability should be entrenched by measures within state institutions that organise social order and social arrangements (Kleinig et al., 2011). Such arrangements are based on connections between individual, societal and institutional values (Hutton, 2007). Similarly, Dewey and Hook (1981) employed Bentham's theory that laws and administrative actions are political actions that ought to affect individuals' well-being positively. Based on Bentham's theory, all organised action will be judged

by its consequences on the lives of individuals (Dewey & Hook, 1981). Aspects of this theory that are relevant to the study are based on the idea that customs, institutions, laws, and social arrangements will be judged on how they affect individuals within society (Dewey & Hook,1981). The rules and institutions that enforce them should be able to effect value-laden behavioural change consistent with the law and customs (Kleinig et al., 2011). This behavioural change must have a positive influence on society and its institutions (Kleinig et al., 2011).

A lack of personal accountability and consequence management has come into sharp focus in South Africa. There have been widespread reports of corruption, lack of service delivery, cronyism, maladministration, and irregular expenditure in government institutions (Judicial Commission of Inquiry into State Capture, n.d.). This includes non-compliance with financial controls and accountability mechanisms in internal SSA controls and controls external to the Agency (Judicial Commission of Inquiry into State Capture, n.d.). As a Chapter 9 institution, the Auditor-General of South Africa (AGSA) has demonstrated an example of how relevant state institutions should enforce rules to effect behavioural change and personal accountability through legislative amendments. The AGSA has initiated amendments to the Public Audit Act 25, 2004, that empower it to enforce consequence management and dereliction of duty by public officials (Auditor-General South Africa, 2018). This report states that the oversight committee of the AGSA developed amendments to the Public Audit Act that enabled the AGSA to initiate consequences for maladministration, mismanagement, and dereliction of duties. The amendments came into law in 2018, which empowered the AGSA to hold individuals accountable for mismanagement and negligence when managing public funds. This is a significant development for (personal) accountability within the public service. It was also highlighted in the High-Level Review Panel on State Security Agency (2018) report that there is a lack of consequence management measures and holding individuals accountable.

#### 2.10.7.1 Individual and Community

An individual is an independent human being who is a meaningful entity that possesses an identity based on personal choices. The individual is not only distinct but also unique which signifies individuality (Heywood, 2004, p. 32). The writer also highlights that political thinkers do not perceive the individual as completely self-reliant

but is influenced to a certain extent by social factors. Merkl (1967) traces a fully developed independent individual who interacts with their community based on their values, thoughts, and outlook. The author provides an individual life story from the day they are born without being self-sufficient through to their teenage years still dependent on their family. As the individual grows, they become part and influenced by several groups or small communities: family, friends, school, neighbourhood, local community, district region and country. These communities or groups mould, sway and shape the individual's way of life. As the individual becomes economically self-sufficient, the author points to additional groups: professional associations, trade unions, clubs, political groups, etc. These groups engage the individual on a deeper emotional level and adjust to group values without thinking about it. Therefore, to associate and interact with these diverse groups provides a platform for life within smaller circles to the bigger community and society at large (Merkl, 1967).

There are philosophical debates around the relationship between the individual and the community (Heywood, 2004, p. 32). On the one hand, there is a school of thought (Anglo-American) that believes in individualism which sees an individual as almost separate from the community. They discount or downgrade the importance of the community because an individual is self-reliant; their effort is a source of moral and personal development. On the other hand, a shift from the individual towards the community highlights community importance. They believe that self-help and individual responsibility threaten social solidarity. Community refers to a social group, a neighbourhood, town, region etc. within which strong ties and collective identity exist. It is the social roots of individual identity (Heywood, 2004, p. 32). The individual, according to the author is constituted through the community. At the same time, the concept of community is viewed favourably by those who reject individualism. This research views individual and community values as intertwined to the values within state institutions.

### 2.10.8 Strategic Culture

Another significant variable that developed from the review and analysis of the literature is strategic culture. Snyder (1977) first advocated this theory in 1977 to explain national security policy emanating from the theory of political culture. Lantis (2002) and Van Nieuwkerk, (2012) describe the theory of strategic culture as how a

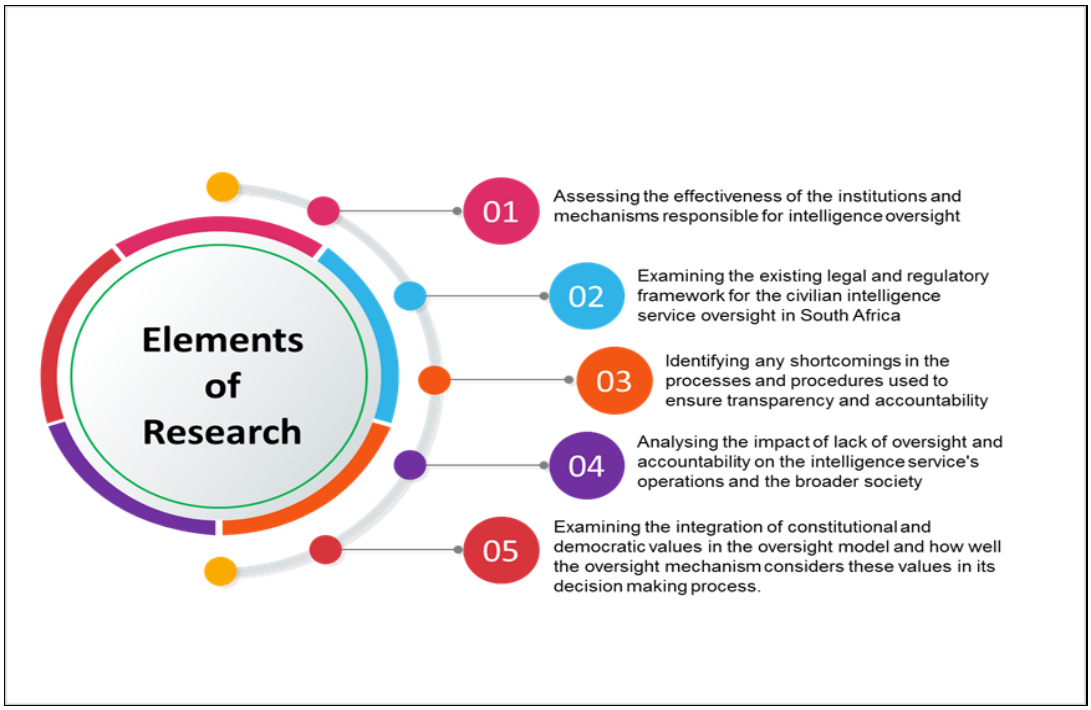
society's beliefs, attitudes, and patterns of behaviour shape its approach to security and military affairs. This approach is based on the idea that a society's strategic culture is shaped by a variety of factors, including historical experience, political ideology, and public opinion. The theory suggests that a society's strategic culture can be understood as a set of shared beliefs, attitudes, and patterns of behaviour that inform its approach to security and military affairs. These beliefs, attitudes, and patterns of behaviour may be shaped by a variety of factors, such as historical experience, political ideology, and public opinion. The tenets of the theory indicate that a society's strategic culture can have a significant impact on its strategic direction and decision-making. For example, a society with a strong tradition of lack of transparency and accountability is likely to have a different strategic culture than one with a history of democracy and constitutionalism. Strategic culture theory also suggests that a society's strategic culture may be stable over time and that it can be difficult to change. This is because the beliefs, attitudes, and patterns of behaviour that shape a society's strategic culture are deeply ingrained and may be resistant to change.

Strategic culture theory posits that a society's beliefs, attitudes, and patterns of behaviour shape its approach to security and military affairs and that this approach can be understood as a shared strategic culture. It also claims that this culture is stable over time and can be difficult to change. This theory also highlights that culture is a product of numerous factors like historical experience, political ideology, and public opinion (Lantis, 2002; Snyder, 1977; Van Nieuwkerk, 2012).

In this research, the study examined how the beliefs, attitudes, and patterns of behaviour of key actors within the South African government and society shape the approach to intelligence oversight. For example, an examination of the historical experience of South Africa, including its experience with apartheid and the transition to democracy, may shed light on how these experiences have been influenced by the country's strategic culture and approach to intelligence oversight. This can provide insight into the beliefs, attitudes, and patterns of behaviour that shape the approach of the government and society towards intelligence oversight, and how they may have influenced the development and implementation of the oversight model.

The figure below summarises the main elements of the research as set out in the research questions. The figure is a representation of key elements of research and subjects that informed the review of literature. These elements were essential in the emergence and development of the above variables.

**Figure 6: Elements of the Research**




Source: Own Construct

## 2.11 Chapter Summary

This study seeks to assess the civilian intelligence oversight and accountability model in South Africa since 1994, focusing on its effectiveness, challenges, and adherence to constitutional values of transparency, accountability, and governance. The goal is to provide insights for enhancing democratic oversight mechanisms within the intelligence sector.

This research underscores the essential role of effective civilian intelligence oversight and accountability in upholding democratic principles in South Africa since the end of apartheid in 1994. It evaluates the post-1994 civilian intelligence oversight model, emphasising the need for mechanisms that align with constitutional values of transparency, accountability, and good governance. The study assessed the effectiveness of current oversight mechanisms, identified challenges such as resource constraints and political interference, and examined their adherence to constitutional principles. The insights gained inform recommendations to enhance democratic oversight, ensuring intelligence agencies operate lawfully, protect human rights, and maintain public trust.

This chapter focused on developing a theoretical and conceptual framework for the study of civilian intelligence oversight and accountability. Based on existing literature, the research aims to build a framework that informs the study and provides a basis for evaluating the effectiveness of the current civilian intelligence oversight mechanisms.

The chapter first reviewed the relevant literature and theories related to security and intelligence governance, including theories related to civilian intelligence oversight and accountability. It then assessed these theories and evaluated their relevance to the study. The process allowed the researcher to identify gaps in the existing literature and to determine which theories and concepts were most appropriate for the study. Once the relevant theories have been assessed, the chapter developed a conceptual framework that incorporates the most important variables and clarifies concepts from the literature. The framework was used to guide the research, provide a basis for data collection and analysis, and help to ensure that the study is well-grounded in existing knowledge and theory. The chapter develops a conceptual framework that adds to the existing body of knowledge through its assessment of relevant literature and key research variables. The analysis of the interconnections and relationships between the variables helped to determine the efficacy of the adopted mechanism or model.

The chapter concludes that a civilian intelligence oversight model often comprises multiple mechanisms and institutions, each with a distinct role in providing oversight at various stages of intelligence activities. This layered approach helps to ensure that intelligence activities are subject to a variety of checks and balances, which can help to prevent abuses of power and ensure that intelligence agencies operate in a manner that is consistent with democratic values and the rule of law.

# Chapter Three: Research Methodology: Research Approaches, Procedures and Methods

## 3.1 Introduction

This research investigates the effectiveness of South Africa's civilian intelligence oversight model and recommends areas for improvement. The study focuses on how the model's regulatory and institutional arrangements hold the intelligence service and officials accountable and explores the impact of aligning these arrangements with societal values.

This chapter addresses the research approach, procedures, and methods. A qualitative research approach was adopted to facilitate several research objectives. Firstly, it aimed to understand the subjective experiences and perspectives of those involved in the intelligence sector and oversight process, including intelligence agency staff and oversight officials. This involved conducting interviews to gather in-depth insights. Secondly, it aimed to provide a rich, detailed description of the intelligence oversight process, highlighting various challenges and weaknesses. Data was thoroughly analysed, with results and findings presented and discussed clearly in Chapters Five and Six. Thirdly, the study analysed documentary data on the oversight process through a literature review in the previous chapter to uncover underlying meanings, patterns, and themes. Lastly, it aimed to understand the broader political and legal context influencing the effectiveness of the intelligence oversight process.

The research approach is exploratory, analytical, and sometimes descriptive. Once data collection concluded, data interpretation and analysis began. This section describes the data processing and analysis process, addressing the research's strengths and weaknesses, including technical and administrative flaws, and measures of reliability and validity.

The chapter outlines the research strategy, procedures, and methods, followed by the data collection, analysis, and interpretation processes. It concludes with a discussion of the research's reliability and validity, fieldwork issues, and the role of the researcher.

### 3.2 Research Objectives and Questions

The objective of this research is to investigate the effectiveness of the South African civilian intelligence oversight model and recommend areas for improvement. It focuses on how the oversight model's regulatory and institutional arrangements hold the intelligence service and its officials accountable. The study also explores the alignment of the existing intelligence oversight mechanisms with the values and expectations of South African society.

To address the research objectives, the study aimed to answer the primary research question: How does the South African intelligence oversight model ensure good governance through oversight, transparency, and accountability? The secondary research questions stem from this primary question and are designed to further explore or clarify it, providing a more comprehensive understanding of the research objective. These secondary research questions were further broken down into smaller questions that addressed the aims and objectives of the study. For the purposes structured approach to the interviews, organised flow of the interviews and more importantly analysis of data the questions were segmented. The researcher divided questions into three categories, namely regulatory framework, oversight mechanism and institutional accountability on individuals.

The research design was developed based on the primary and secondary research questions, outlining specific methods and techniques for data collection and analysis. This included the use of qualitative methods to gather and interpret data. The study employed interviews and document analysis as primary and secondary data collection techniques. For data analysis, thematic analysis was used to identify patterns and insights related to the effectiveness of the South African intelligence oversight model in ensuring good governance through oversight, transparency, and accountability.

Consequently, this research evaluated the effectiveness, challenges, and alignment with constitutional values of transparency, accountability, and governance of the civilian intelligence oversight and accountability model in South Africa post-1994, providing insights for improving democratic oversight mechanisms in the intelligence sector.

### 3.3 Research Strategy

The research approach adopted in this inquiry is qualitative. The evolving definition of qualitative research by Denzin and Lincoln (1994, 2000; 2005) demonstrates how the description progressed from social construction to interpretivism and social justice. Qualitative research begins with assumptions and the use of interpretive/theoretical frameworks that inform the study of research problems addressing the meaning that individuals or groups ascribe to a social or human problem. Qualitative researchers use an emerging qualitative approach to study this problem, collecting data in a natural setting sensitive to the people and places under study. Data analysis is both inductive and deductive and establishes a pattern or theme. The final report includes the voices of participants, a complex description and interpretation of the problem, and its contribution to the literature or a call for change (Creswell & Poth, 2018).

This study adopted the above-mentioned definition because it incorporates key research elements: design, methods, and approach relevant to the study. Philosophical assumptions in this study are embedded within the interpretive framework discussed in Chapter Two. Central to these assumptions (explained through Institutional Rational Choice theory) is that knowledge is a social construct (Creswell & Poth, 2018).

This study is exploratory, flexible, investigative, and adapted to changing circumstances during data collection (Neuman, 2014; Babbie et al., 2011). This flexibility allowed the researcher to answer the research questions and address the research purpose in a non-linear process (Kumar, 2014).

This research is significant for several reasons: to ensure intelligence services operate within the ambit of the law and are accountable for their decisions and actions; to protect citizens' human rights and civil liberties by ensuring the intelligence service does not violate these rights; to determine and improve the overall effectiveness of intelligence services by identifying areas where they can enhance their processes or procedures; to increase public trust and confidence in the intelligence community by demonstrating that there are effective oversight mechanisms in place to ensure that intelligence agencies are transparent and accountable; and to determine the impact of infusing and integrating societal values into intelligence oversight mechanisms.

The research conceptualisation pillars were addressed even when circumstances changed or were not initially envisioned (Creswell & Poth, 2018). This allowed the researcher to explore the social world without controlled elements (Neuman, 2011; Silverman, 2010). The qualitative research approach enabled the researcher to assess the significance that individuals or groups attach to a particular social problem or phenomenon (Creswell & Poth, 2018; Babbie et al., 2011). Thus, the researcher sought the participants' experiences and views to answer research questions and address the research problem, purpose, and proposition (Wotela, 2017).

The conceptual elements (problem statement, research questions, purpose statement, and research propositions) were addressed through primary and secondary collection methods (Creswell, 2007). Documentary analysis was first conducted to address the research questions, followed by targeted in-depth interviews with participants (Creswell, 2007; Kumar, 2014; Neuman, 2011; Patton, 2002). The eligibility criteria required individuals to have intricate knowledge and understanding of the research problem (Neuman, 2011). The research aimed to ensure that the adopted research approach complemented data collection methods, processing, and analysis, and provided a detailed description by the participants (Creswell, 2007; Kumar, 2014; Neuman, 2011; Patton, 2002).

The research approach in this study allows for the assessment of the complexity that the phenomenon presents (Babbie et al., 2011; Strydom, 2011). It also adds an inductive research style that allows an individual's meaning or interpretation of the phenomenon to take precedence (Patton, 2002).

### 3.4 Research Design

The study's design outlined a framework for conducting the research (Mouton, 1996). The researcher collected data to address and answer the research questions (Wotela, 2017). This research acknowledges the importance of intelligence agencies within the context of national security, corruption, and criminality in government departments. However, there is a need to ensure intelligence agencies adhere to the rule of law and are accountable for their actions. Intelligence oversight mechanisms, such as OIGI and JSCI, play a crucial role in this regard. However, there is limited research to

determine the effectiveness of these mechanisms in ensuring that intelligence agencies are transparent and accountable (Masiapato, 2017).

### 3.5 Research Procedure and Methods

The study employed primary and secondary data collection techniques: interviews and documentary analysis (Patton, 2002). Data collected through a qualitative approach included extracts and quotations from interviews and information from the literature study (Patton, 2002). The research analysed the regulatory framework, including policy statements or regulations relevant to civilian intelligence oversight bodies, such as the 1996 Constitution, legislation, White Paper on Intelligence, NDP, publications, and policy documents (Bardoel & van Cuilenburg, 2008). The policy analysis provided information on the roles, functions, and activities of civilian intelligence oversight bodies and gave context for the interviews and interviewing process (Patton, 2002).

#### 3.5.1 Literature Study

The study examined the literature as a foundation for data collection. A thorough literature study was conducted throughout the study, perusing, and analysing documentary data (Creswell & Poth, 2018). This provided valuable background, foundation, and context crucial for grounding the investigation (Silverman, 2010). The conceptual framework derived from the literature provides a theoretical model that guides the research and defines key concepts and embedded relationships. It helped identify key themes and ideas previously explored in the field and build a comprehensive understanding of intelligence oversight mechanisms. The conceptual framework informed other components of the study and served as the basis for primary data collection through interviews. It also shaped the research questions and informed the development of interview questions, ensuring that the data collected from participants aligned with the research purpose and problem.

Silverman (2010) highlights the significance of documentary sources in social settings and the context of a study. The literature study is meant to contextualise, highlight, and provide insights into people's experiences that form their social world and setting (Silverman, 2010). Neuman (2011) emphasises the importance of the literature review in providing previous paths researchers had undertaken. Literature provides

accumulated knowledge, highlights the work of prior researchers, and integrates it into the current study (Silverman, 2010).

In this research, literature helped the researcher find deeper meaning during the investigation and develop an understanding of relevant information addressing the research problem. This ensured the research was rooted in existing knowledge and identified areas for further investigation (Merriam, 2009). Using secondary data is common in qualitative research, especially for complex and multifaceted topics like evaluating intelligence oversight mechanisms. Secondary data provided valuable insights and information that informed the research and developed a comprehensive understanding of the study. The qualitative approach used multiple sources of data to ensure representative and comprehensive research findings.

### 3.5.2 Interviews

The study used a purposive sampling method to select participants. Participants were selected based on their expertise and experience in intelligence governance, including research, academia, legal/policy specialists, oversight experts, and intelligence governance professionals. This ensured that participants had the necessary knowledge and experience to provide meaningful insights and opinions about the study. The in-depth interviews aimed to collect qualitative data, which was then analysed using thematic analysis to identify patterns and themes in their responses. This approach increased the reliability and validity of the results, as participants were well-versed in intelligence governance and provided detailed responses. The in-depth interviews also allowed for follow-up questions, further clarifying, and expanding on participants' responses.

The initial sample consisted of thirty individuals from various backgrounds within the intelligence community, oversight structures, academia, and experts. Out of these, twelve participants actively engaged in interactive interviews. The researcher ensured that interviews delved into crucial research areas, compiling a comprehensive database enriched by the quality of responses and insights provided to address the research questions effectively.

The primary aim was to uphold the integrity of the collected data by prioritising its quality, and enhancing the accuracy, credibility, and reliability of the research findings.

Despite the reduced sample size, particular emphasis was placed on the expertise and experience of the respondents. These respondents possess experience in intelligence governance and civilian intelligence oversight systems within regulatory settings or have deep institutional knowledge. They also bring expertise in security and intelligence research, along with a thorough understanding of oversight structures and regulatory frameworks. Consequently, the high quality of information contributed by these respondents significantly strengthened the accuracy and validity of the research outcomes and conclusions.

The researcher interviewed five respondents based in the oversight environment, three respondents who are researchers/experts in intelligence governance, two policy/legal specialists within intelligence governance, and two intelligence officials knowledgeable about oversight mechanisms. The table below represents the distribution of respondents.

**Table 1: Distribution of Respondents**

| **Respondents** | **Number of Respondents** | **Percentage** |
|---|---|---|
| Oversight mechanism: JSCI, Office of the Inspector-General | 5 | 45% |
| Researchers/experts/academic | 3 | 35% |
| Policy/legal specialists | 2 | 10% |
| Intelligence governance professionals | 2 | 10% |
| **Total** | **12** | **100%** |

### 3.5.3 Sampling and Target Population

In this study, the researcher selected participants with specific knowledge and information relevant to the research, as stated by Strydom (2011). The criteria for selecting participants for primary data collection included knowledgeable officials in

the field, experts, researchers, writers, and those with pertinent information about the study. This is supported by purposive sampling, which selected individuals who could provide thoughtful insights into the research problem and central research issues (Creswell & Poth, 2018).

The researcher used prior knowledge and understanding of the targeted population and sample size to address conceptual issues (Babbie et al., 2011; Strydom, 2011). Despite the reduced sample size, the quality of responses and answers to research questions was maintained throughout the interviewing stage. This was achieved by paying particular attention to the chosen sampling method and ensuring participants had intricate knowledge relevant to the research questions. The respondents' expertise and skills in intelligence oversight were also crucial. The researcher focused on clear and concise language when wording questions. Responses were triangulated with literature (Neuman, 2011; Patton, 2002).

Sampling involves selecting a subset or smaller set of cases of a predetermined size from an identified population of interest (Leedy & Ormrod, 2016; Neuman, 2014). It is part of the data collection process. The views expressed by a smaller set of cases should represent the entire population (Strydom, 2011). Data gathered from this subset should, as accurately as possible, reflect the views of the entire population (Leedy & Ormrod, 2016; Neuman, 2014). Qualitative research does not aim to generalise information but to reveal specific and detailed information (Creswell & Poth, 2018).

When respondents were interviewed, their diversity was evident in their responses to the research questions. They covered a broad range of intelligence governance issues, providing specific, precise information relevant to the research. However, authors such as Leedy and Ormrod (2016), Strydom (2011), and Neuman (2014) argue that a researcher may never know whether the cases they have selected represent the entire population.

#### 3.5.3.1 Experience and Expertise of the Respondents

The twelve respondents interviewed in this study have a range of expertise and experience in intelligence governance, including intelligence practice, research in the intelligence field, academia, legal and policy specialisation, oversight, and intelligence

governance. This diverse group provided valuable insights and perspectives on intelligence governance issues, ensuring the research is informed by various viewpoints and experiences. By including this diverse group, the study gathered a more complete and comprehensive understanding of the research purpose, questions, problem, and issues surrounding intelligence governance.

In this research, perceptions of the effectiveness of the civilian intelligence oversight mechanism among participants were influenced by their occupation, knowledge, expertise, and worldview. Respondents had diverse levels of familiarity, exposure, and experience with the oversight mechanism and the intelligence community more broadly. For example, respondents in the intelligence governance and oversight environment were intelligence agency officials with more first-hand experience with the mechanism and its strengths and weaknesses. In contrast, legal or policy specialists had a more theoretical understanding of the oversight mechanism, focusing on its alignment with legal concepts and ethical principles. Additionally, academic researchers demonstrated a more theoretical and analytical perspective, exploring the effectiveness of the mechanism from a scholarly point of view. Understanding the specific knowledge, expertise, and occupation of respondents provided a better understanding of their perceptions and how they formed them. The table below illustrates the respondents' fields of experience and expertise within the intelligence governance space.

**Table 2: Respondents' Areas of Expertise**

| Respondents | Occupation and Expertise |
|---|---|
| 1, 6, 9, 8 | Oversight Mechanisms Professionals |
| 3,5,10,12 | Researchers/Academic |
| 2, 11 | Policy/Legal specialists |
| 4, 7 | Intelligence Professionals |

### 3.5.4 Ethical Considerations During Data Collection

As discussed in the delimitation of the study section, the research was limited to information in the public domain. This ensured that the research results and findings were relevant and dependable while avoiding sensitive and classified information. By focusing on publicly available information, the study-maintained validity and reliability and complied with legal restrictions on publishing sensitive data. This approach

allowed the researcher to gather quality data from participants with expertise and experience in intelligence governance and draw meaningful conclusions about civilian intelligence oversight mechanisms.

The researcher ensured that participants' consent forms were signed before the interviews (Creswell, 2007; Neuman, 2011). However, not all respondents were comfortable signing the form. The researcher respected the reluctance of certain officials to be interviewed and assured them of their rights and privacy. Participants were reminded that this investigation is an academic exercise focused on the constitutional mandate of oversight, legislation, and relevant policies, not on the mandate, functions, and activities of the SSA. Classified information was neither sought nor discussed. The interview requests were made through emails and telephone calls, including a letter of approval from responsible officials and a university consent letter. It is also important to emphasise that this investigation will not disclose information from classified documents, policies, or official intelligence material. The researcher is mindful of related ethical and legal issues, such as the potential compromise of national security and the protection of sensitive information. This is to ensure that the study adheres to ethical guidelines and legal constraints. Participants' requests for anonymity were honoured, and their identifying details do not appear in this final report. The researcher handled the information provided by the participants with care and maintained their anonymity unless prior consent was given.

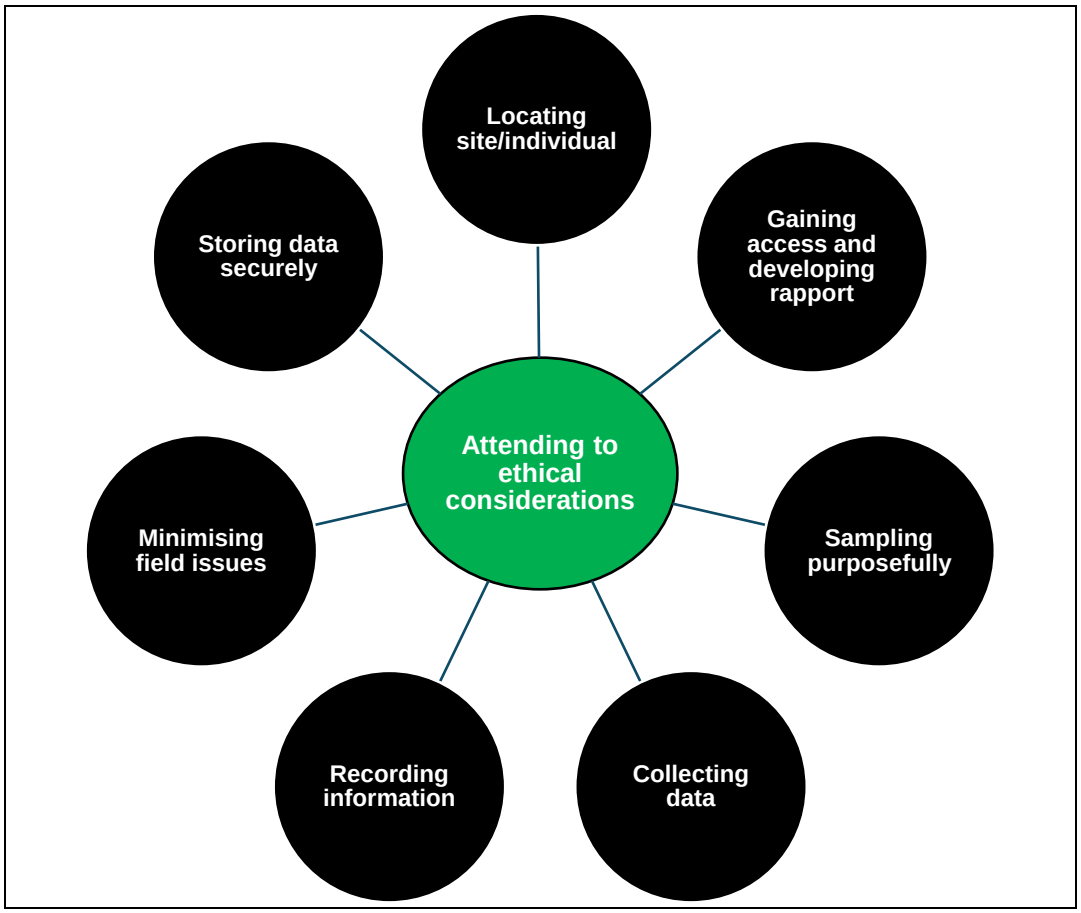
### 3.5.5 The Data Collection Circle

The study followed the data collection circle formulated by Creswell and Poth (2018), which involves a series of activities aimed at collecting data. The primary question this research seeks to answer is how the regulatory and institutional arrangements address the governance imperative to hold the Intelligence Service and its officials accountable. The research evaluates the effectiveness of intelligence oversight mechanisms using primary and secondary data collection methods. The data collection circle and its activities were relevant to the primary data method of interviewing participants. The researcher located participants, confirmed the interview site and time, and ensured that the interview's purpose and reasons were clear to establish understanding and rapport. This stage was critical as it could determine the extent of information provided and alleviate fears about secrecy in intelligence.

The data collection circle involves activities that allow for purposive sampling, which was used in this research. Participants were asked questions about the legal framework related to intelligence oversight, such as the connection between constitutional values and principles and legislation (e.g., the Intelligence Oversight Act, White Paper on Intelligence, Regulation of Interception of Communications and Provision of Communication-Related Information Act). Notes and recordings were kept safe during the data collection process. The researcher minimised research field issues such as difficulty in locating participants, unwillingness to participate, and misunderstanding of the research's purpose.

The figure below is a graphic representation of the process for collecting primary data through interviews from beginning to end. Central to these activities was attention to ethical considerations essential in research. The activities in the circle include locating the site/individual, gaining access, and developing rapport, sampling purposefully, collecting data, recording information, minimising field issues, and storing data securely. The figure demonstrates the cyclic nature of this process, with flexibility at the entry point for data collection at any stage, as noted by Creswell and Poth (2018). The flexible nature of the data collection stage and the qualitative research approach allowed the researcher to rearrange planning and determine the next respondent to interview. The researcher arranged appointments based on the participants' availability and convenience.

**Figure 7: Data Collection Circle**




Source: Adapted from Creswell and Poth (2018, p. 149)

#### 3.5.5.1 Customising data collection circle

The researcher employed the investigative skills of selecting suitable participants, locating respondents, and interviewing skills as well as setting up appointments. The appointment must be at a suitable venue, with convenient dates and times for participants. During this period, the researcher established rapport, removed mistrust, and limited the participants' withholding of information. The researcher thoroughly explained the purpose of the research to assure the participants of the academic nature of the investigation to facilitate an open discussion that encourages providing rich information.

The researcher prepared a letter requesting an interview that includes the approval to conduct research from Wits University for distribution to all the participants. Participants were contacted telephonically before receiving the letters sent to them before the interviews. The researcher endeavoured to ensure all planning, arrangements, and agreements in preparation for the interviews. Based on purposive

sampling, the researcher used prior knowledge of the population and unit of analysis to select the participants (Neuman, 2011). Therefore, the researcher used professional relationships, contacts and a network of people who could assist in accessing the participants.

The researcher's prior experience in taking notes while asking questions and facilitating discussions based on research questions was helpful during interviews. Where the participants did not consent to electronic voice recording, the conversations were not recorded for ethical reasons. Voluntary written consent from the participants was obtained for voice recordings (Neuman, 2011). Each participant's interview notes, written consent and voice recording, were separated, marked, and safely stored in a secured place.

Furthermore, the researcher was mindful of any field issues that may arise during data collection, such as locating respondents and securing interviews. These include senior officials such as the Inspector-General, the Chairperson of the JSCI and some experts. The JSCI members of parliament declined requests for interviews. Although the researcher sent a request for an interview to all ten members of JSCI, only two members responded. Unfortunately, the two that responded did not grant interview requests. It is important to note that rejected interview invitations did not result in the researcher conducting interviews with anyone who did not add value to the research questions. The researcher cast a wide web, within given time constraints, to cover this eventuality and was flexible enough to address any field issues. However, officials who were initially earmarked were not available or unwilling to be interviewed for a variety of reasons. The researcher interviewed relevant officials with knowledge of the sector.

### 3.6 Data Coding

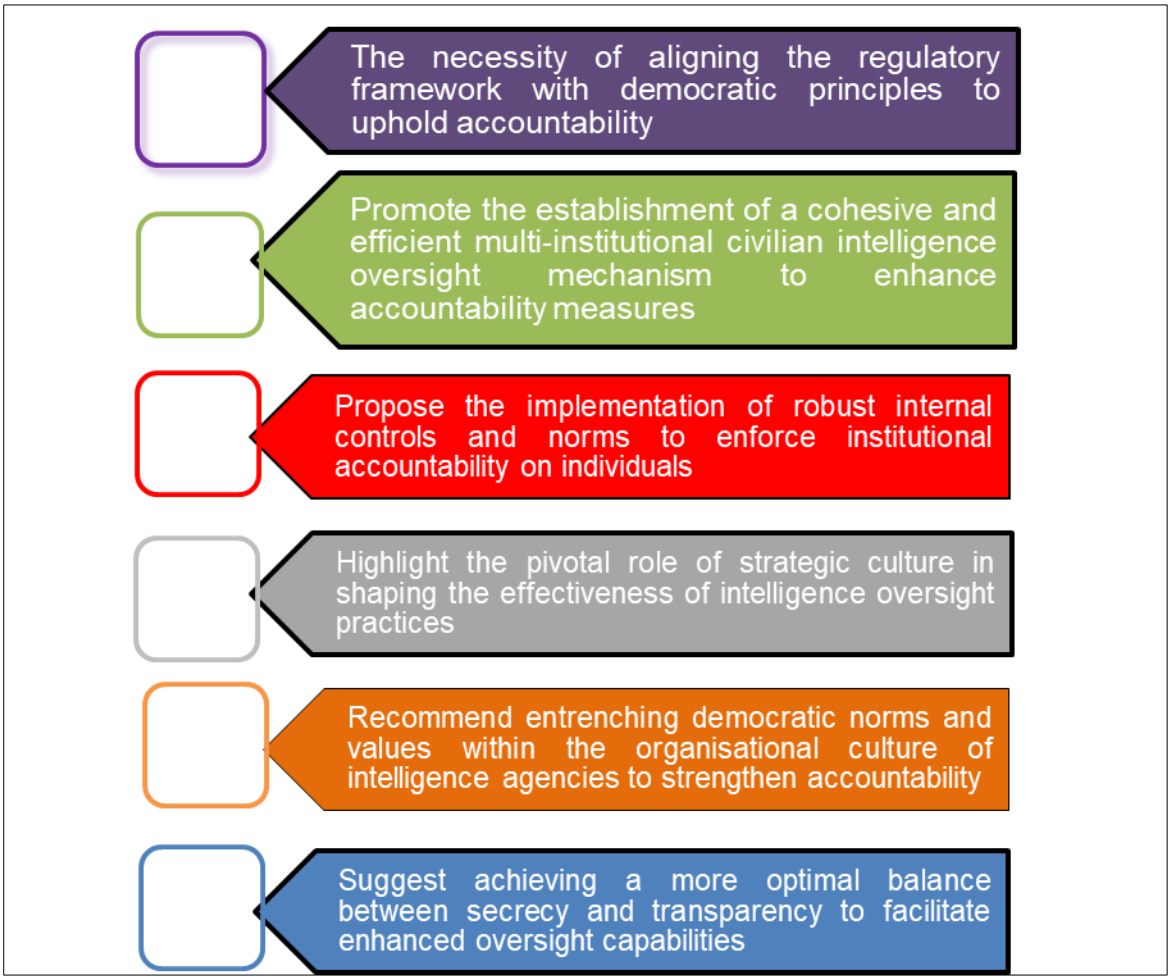
Data coding was an exemplary process for the current study after collecting primary and secondary data because it enabled the identification and labelling of data (Bryman et al., 2014). Also, during the conceptualisation stages, the researcher divided the interview questions into categories of data, such as regulatory framework, individual accountability, and institutional arrangements. This was done to condense chunks of data, including sifting, selecting, streamlining, and converting data found in interview

transcripts, field notes other research material, and documentary data (Bryman et al., 2014).

In the current research, the researcher labelled data from the information that has been collected through the research methods used in the study, namely interviews and document analysis, which have been assigned categories or labels based on the themes that have emerged from the data. For example, the data collected through interviews was reduced to a set of key statements that captured the most important themes or issues that emerged from the data. Similarly, the data collected through document analysis was reduced to a summary of the key laws, regulations, and reports that are relevant to the oversight model. The researcher labelled data to reduce it to a manageable size. Coding also enabled the researcher to identify applicable concepts that provide definitions and necessary research context. Neuman (2011) suggests the following procedure when coding data. Firstly, open coding is when categories are formulated. Secondly, axial coding entails the beginning of core systematic categories. Lastly, selective coding involves examining previous codes to identify and select data that will support the developed conceptual coding categories (Neuman, 2011). This coding process was followed during the analysis of the data phase and throughout the research process. This systematic process enabled an organised development of themes.

Consequently, the resultant themes were colour-coded for easy categorisation. Firstly, all the answers from participants directly addressed the questions posed to them. The figure below illustrates colour-coded themes representing statements and categories of data during the analysis process. The colour-coded themes made it easier to identify, select and categorise statements that fall within a theme. The statements and discussions were labelled and categorised according to the below colour-coded scheme.

**Figure 8: Colour-Coded Themes**




Source: Own Construct

Furthermore, the researcher compiled four different coding sheets using an Excel spreadsheet to ensure that the thematic analysis was systematic and organised. The spreadsheet contained four different colour-coded themes. The spreadsheets were populated with participants' statements with supporting literature statements. This enabled the integration and synthesis of both primary and secondary data. A different spreadsheet was also developed to compare selected views to determine underlying meaning. Ultimately coding raw data in a qualitative research approach is a critical stage that aids data synthesis, conceptual development, identification of patterns, and research conclusions. During this process, the researcher explored interconnections and underlying relationships between themes and patterns that determine the effectiveness of the civilian intelligence oversight model.

### 3.7 Qualitative Data Analysis Process

The study employed a qualitative research approach with its related data analysis techniques. The data analysis procedures apply irrespective of the research paradigm (Strydom, 2011). Qualitative research methods, such as in-depth interviews allow for the collection of rich and nuanced data that can provide a deeper understanding of the subjective experiences and perspectives of individuals involved in intelligence governance (Strydom, 2011). By conducting a thorough and systematic analysis of this data, the research gained a detailed understanding of the context in which intelligence oversight and accountability measures take place, as well as the factors that influence their effectiveness. Additionally, involving key participants in the research process, through feedback and validation of the responses, ensured the relevance and applicability of the findings to the real-world context (Neuman, 2014). This approach is a non-numeric research approach with embedded analysis techniques that enable data gathering to reveal the underlying meaning and pattern of connections (Babbie, 2013). This study used these patterns to connect the primary data with a conceptual and theoretical framework to determine the civilian intelligence oversight model's efficacy and capacity to hold intelligence structures and individuals accountable. Related to these relationships and interlinkages in the meaning of the data was the alignment and integration of societal values into the regulatory framework, organisational designs, norms, and standards to ensure transparency and accountability (Cole, 2015; Hutton, 2007; Kleinig et al., 2011).

It is essential to note that the research was mindful of the data analysis process commencing after collecting the data. It was an ongoing practice throughout the research process (Strydom, 2011). Accordingly, the first data analysis step was during the conceptualisation phase, where concepts were developed based on the literature and the initially collected data (Neuman, 2011; Strydom, 2011). As a result, the process of concept formation is an integral part of data analysis, enabling the researcher to organise and make sense of a high volume of data (Strydom, 2011). Therefore, this research's definition and discussion of concepts contribute to existing knowledge. The volume of data was thus broken down into smaller, more manageable pieces of information (Neuman, 2011; Strydom, 2011).

### 3.8 Data Analysis

The researcher analysed the collected data by developing patterns and themes in the data (Strydom, 2011). Data analysis is a process after data collection to identify emerging patterns in the recurrent data behaviour, objects, or a body of knowledge (Neuman, 2014). Data were categorised from general statements that emerged from information provided by participants (Strydom, 2011). The researcher attached meaning to the information provided by participants into themes which describe their experiences (Patton, 2002; Creswell, 2007; Neuman, 2011). Information was interpreted according to patterns or similar statements that emerged and categorised into themes. This integration and assimilation of information are designed to contextualise data, its analysis and the presentation of findings and recommendations (Creswell, 2007; Kumar, 2014).

A much more apt description is that of Creswell and Poth (2018). They refer to data analysis in qualitative research as preparing and organising collected data for analysis by reducing the data into themes by identifying and labelling data through coding and sorting the data. The research uses the process of coding to identify and categorise data into themes. The purpose of coding is to identify patterns, relationships, and themes within the data that can provide insight into the research problem and answer the research questions (Patton, 2002; Creswell, 2007; Neuman, 2011). Thus, coding and sorting data is the process of organising and systematically categorising data (Patton, 2002; Creswell, 2007; Neuman, 2011). Coding involves assigning a unique label or code to each piece of data while sorting involves organising the data into categories based on the codes. This process helped to organise and structure the data in a way that is easy to understand and analyse. It improved efficiency because by systematically organising data, it was easier to locate specific pieces of information and perform analyses on the data (Patton, 2002; Creswell, 2007; Neuman, 2011). It also increased credibility by using a consistent and transparent coding and sorting system, enhanced the credibility of the research and made it more trustworthy. Overall, the process of coding and sorting data is a crucial step in the analysis of primary data and can help to ensure the accuracy and reliability of research findings (Patton, 2002; Creswell, 2007; Neuman, 2011).

The outcome of this process enabled an efficient presentation of the study in the research report (Creswell & Poth, 2018). It is worth mentioning that ethical considerations are part of the data analysis process (Strydom, 2011). As stated in the ethical consideration section, the researcher protected the rights and privacy of the participants. Their details would not be revealed without their consent. The researcher is mindful of the possibility of participants being identified by discussing the findings. Where consent to publish names is not received, the researcher masked their identity in the research report, but with due regard for data validation (Creswell & Poth, 2018).

Data analysis is not a linear process. It did not commence after data was collected; instead, it was an interrelated process during data collection and even when drafting the research report (Patton, 2002; Creswell, 2007; Neuman, 2011). During the entire data analysis process, the researcher ensured that the analysis process was systematic and comprehensive and addressed the research issues (Creswell & Poth, 2018). The researcher made notes as the data collection process was going on and drafted summaries of field notes that included developing relationships among categories of data (Creswell & Poth, 2018).

The data analysis process is structured and comprehensive while compiling the collected data (Silverman, 2010). It provides meaning to substantial amounts of collected data through an inductive process. It enables the data to move from the description of lived experiences to the interpretation of the meaning of the research (Patton, 2002).

### 3.8.1 Thematic Analysis

The study adopted a thematic analysis strategy, which was considered suitable and appropriate because it aligns with the theoretical orientation and framework of Institutional Rational Theory. This theory informs the research methodology and has significant implications for data analysis and interpretation (Bryman et al., 2014). This theory interwoven the thematic analysis process used to organize raw data and the conceptual framework (Neuman, 2011a). It explains the connections, interdependence, and relationships between regulatory frameworks, the influence of actors within institutions, the configuration of these institutions, and their impact on holding individuals and structures accountable (Ostrom, 2007; Sabatier, 1991, 2007).

Based on this theory, the analysis process exposes gaps and weaknesses in the regulatory and institutional arrangements (Ostrom, 2007; Sabatier, 1991, 2007). Through this interpretive framework, the data analysis for this research project was conducted, ensuring the collected data was analysed according to the major tenets of the theoretical framework. Furthermore, this theoretical framework influenced the initial decisions on data collection strategy and methods, which in turn informed the data analysis process. A detailed discussion of the emerging themes is presented in Chapter Five.

### 3.9 Research Strength: Reliability and Validity

A thorough literature study continued for the duration of the investigation to ensure that all relevant documentary data with pertinent information to the study were analysed and verified (Creswell & Poth, 2018). Added to secondary data collection methods is an in-depth policy analysis relevant to the purpose of the research, such that semi-structured and structured interviews formed part of the primary data source. Multiple data collection methods are proposed to ensure increased reliability of information (Patton, 2002). Consequently, to achieve consistency, varied and multiple sources increase the reliability of the research (Creswell, 2007; Neuman, 2011). The researcher was always mindful of the flexibility that qualitative research offers, such as the ability to cater for another data collection technique during the data collection stage, not part of the initial methods.

Moreover, the researcher treated the information provided by participants with the utmost fairness, and honesty and valued the balanced nature of expressing their opinions. These views and professional experiences of the participants were represented truthfully and candidly. The research incorporated the participants' views that were expressed and discussed in response to research questions (Creswell & Poth, 2018). The research considered the responses and information provided by participants against internal and external criticism to ensure that these views were further validated to withstand scrutiny (Creswell & Poth, 2018). The research is mindful and aware that the inquiry must be dependable and valid, also that these variables complement each other but can also contradict each other. For instance, when reliability increases, validity decreases and vice versa (Neuman, 2011).

### 3.10 Research Limitations

As noted in the ethical considerations section, this research does not address intelligence and counter-intelligence activities, methods, or functions. The research addresses oversight mechanisms that oversee the intelligence service. The secrecy surrounding the intelligence affected the research process at crucial stages such as data collection. It was expected that the possibility of revealing classified information could hinder the interviews and negatively affect the collection of data. To mitigate this risk, a disclaimer during the establishment of rapport was highlighted and clarified that no question sought sensitive information and any information regarded as classified would not be discussed or reported. The research would request informed consent from all participants, explaining the potential risks and any measures that were taken to protect their confidentiality. In all instances, it is important for the researcher to carefully consider the potential risks and respond appropriately to protect the confidentiality of sensitive information.

#### 3.10.1 Impact of the Covid-19 Pandemic

The primary data collection process coincided with the COVID-19 pandemic in South Africa and the rest of the world. To decrease the spread of the disease, scientists and experts in this field advocated for social and physical distancing. The pandemic necessitated a lengthy period of lockdown in South Africa. During this period, individual movements were severely curtailed (Matli, 2020). These restrictions impacted the research plan, scheduling interviews with participants and conducting face-to-face interviews during this time. The researcher was forced to rethink and restructure interview arrangements. While some interviews were conducted telephonically, technological tools such as Zoom Video Communications and Microsoft Teams facilitated virtual Interviews with some respondents.

#### 3.10.2 Oath of Secrecy: Members of the JSCI

The researcher sent a request for an interview to all ten members of JSCI. It was surprising that only two members responded. However, the two that responded did not grant interview requests. Upon further enquiring through parliament staff, the researcher learnt that members of the Committee took an oath of secrecy. Therefore, they are prohibited from revealing classified information. It is commendable that the oath of secrecy is respected; however, the research questions were not about the work

and mandate of the intelligence agency, but rather the work they do as an oversight body. At that point, the researcher sent research questions to demonstrate that the interview would be based on their work and experience as members of parliament who oversee and scrutinise the intelligence community. The questions did not seek to reveal any information on the activities, agents, or methods of the intelligence agencies because such information would not benefit this study in any way.

JSCI members did not accept a request for an interview even after research questions were sent to them. However, the Committee Chairperson granted the interview request and gave the researcher permission to interview MPs and Committee support staff. It is concerning that elected officials would not use an opportunity to make a valuable contribution to academic research on the oversight role of parliament in intelligence governance. The researcher believes this study allowed MPs to inform and educate the public within the academic space on the oversight role of parliament.

### 3.10.3 The Role of the Researcher

The researcher is familiar with the intelligence structures' overall functioning, role and mandate, and civilian oversight, thus assisting the researcher in choosing participants, making appointments, and confirming the venue. The qualitative research approach is preferred due to its first phase in the research process, which allows the researcher to acknowledge the value they brought to the study (Creswell & Poth, 2018). The researcher's personal history, their views and ethical conduct and those of others, as well as a political standpoint, play a role in the research (Creswell & Poth, 2018). The qualitative research study uses a variety of methods to gather in-depth insights and understanding of the effectiveness of intelligence oversight mechanisms. These methods allow the researcher to explore subjective experiences and perspectives, as well as to examine how those experiences and perspectives are shaped by social, cultural, and other contextual factors. The researcher's own experiences, values and observations can also influence the interpretation of the data, however, through this awareness, the researcher's subjectivity or bias was kept minimal. Through reflection by discussing the research with peers or seeking feedback from colleagues, and ethical conduct, throughout the research process by obtaining informed consent from participants, and protecting participants' privacy and confidentiality, the researcher ensures the credibility and validity of the findings.

It is important to ensure that the voices of the participants are prominent and influential in the final discussion and presentation of findings in a research study. This means that the researcher prioritised the perspectives and experiences of the participants, and ensured their voices were represented in the final report. The researcher objectively presented these views and their meaning, minimising the researcher's subjective views. This is based on subjective views or biases that can mislead the results of the study, which can lead to inaccurate or misleading conclusions. For example, the researcher is aware that strong preconceived notions about the performance of the mechanisms may unintentionally influence the wording of research questions, data collection methods, or data analysis techniques in a way that confirms their preconceptions. This can cause the study to be biased and its results not accurately reflect the true nature of the oversight model. Being aware of preconceptions and taking steps to minimise their influence, the research ensured that the study was objective and unbiased. This increases the credibility and reliability of the results. However, the researcher used their experience, viewpoints, and perspectives to enhance questioning during the conversational interviews, analysis process and presentation of the research results and findings to address the research conceptual elements.

The researcher used the investigative experience and limited access to officials within the intelligence community, OIGI, JSCI and AGSA. The interviews were semi-structured or unstructured in nature depending on the participant's expertise, knowledge, and experience.

### 3.11 Chapter Summary

Central to the current research is to determine how the regulatory and institutional arrangements hold the intelligence service and officials accountable. The study evaluated the effectiveness of intelligence oversight mechanisms using primary and secondary data collection methods. To determine the effectiveness of the intelligence oversight and accountability mechanism, the study adopted a qualitative research approach. This is an overarching research strategy that influenced data collection techniques used in this research to answer research questions, address the purpose of the study, and assess the research proposition. This approach allowed the

researcher to explore and understand the complexities of the civilian intelligence oversight mechanism in South Africa and its effectiveness.

By using interviews, and document analysis, qualitative research provided rich, in-depth insights into the subjective experiences and perspectives of professionals in intelligence governance. The research collected and analysed data thoroughly and systematically, this was to gain a detailed understanding of the context in which intelligence oversight and accountability take place and the several factors that influence these measures. Thematic analysis is a common approach used in qualitative research and involves the identification, analysis, and interpretation of patterns or themes that emerge from the data. This approach enabled the researcher to identify the key themes and patterns that emerged from the data and to categorise and interpret the data in a systematic and structured manner. This study provides deeper, valuable insights and understanding about the intelligence oversight process and informs efforts to improve the effectiveness of oversight systems.

The chapter also focused on the strengths and weaknesses of the study, including both technical and administrative flaws as well as measures of reliability and validity. Technical and administrative flaws include research field issues or problems that arose during the study that impacted the results or the quality of the research.

# Chapter Four: Regulatory Framework and Intelligence Oversight Model in South Africa

## 4.1 Introduction

This chapter aims to evaluate the civilian intelligence oversight model and its legal and regulatory framework. The analysis focuses on establishing the model and identifying shortcomings in the processes and procedures used to ensure transparency and accountability. The study also examines the integration of constitutional values into the oversight model and the extent to which these values are considered impactful. Additionally, it analyses the impact of any shortcomings on the intelligence service's operations and broader society and makes recommendations for potential improvements to the oversight model.

The central aim of this research is to investigate the efficacy of the civilian intelligence oversight model adopted in South Africa. The investigation focuses on how regulatory and institutional arrangements hold intelligence structures and officials accountable. The study evaluates these arrangements to determine the impact of mechanisms for democratic control of intelligence. The democratisation of intelligence is framed within the context of democratic values or principles such as openness, transparency, accountability, intelligence governance, oversight practices, and institutional norms and standards. These democratic values are encapsulated in the 1996 Constitution as founding provisions to direct the conduct of government institutions, citizens, and society. The research further establishes the effect of infusing and integrating societal values in regulatory and oversight institutional arrangements. The research explores these interlinked and connected variables to determine the effectiveness of the civilian intelligence oversight model.

In Chapter One, the background and context section briefly introduced the current civilian intelligence oversight model in South Africa. The chapter revealed that the model's foundation is a regulatory framework based on the 1996 Constitution, subsequent laws, and related policies on civilian intelligence oversight. These laws and policies include the Intelligence Services Oversight Act 40 (1994), the Regulation

of Interception and Provision of Communication-Related Information Act 70 (2002), and the White Paper on Intelligence (1995).

In Chapter Two, the research conducted a review of relevant literature. The review provided the study with appropriate background and context to address the purpose of the study. The conceptual and theoretical framework derived from the literature review contributed to answering research questions and addressing the problem statement.

This chapter provides a detailed evaluation of the civilian intelligence model adopted in South Africa post-1994. It contributes to understanding intelligence governance. The examination of the civilian intelligence oversight model encompasses state institutions such as the executive, legislative, judiciary, and civil society organisations, as well as Chapter 9 institutions. By focusing on the operation of the model in areas such as policies and legislative frameworks that establish, manage, and guide the model and its mechanisms, the chapter provides a comprehensive analysis of the civilian intelligence oversight model.

This analysis provides valuable insights into the strengths and weaknesses of the model and identifies areas where improvements could ensure effective and accountable intelligence services aligned with democratic values and the rule of law. Furthermore, it demonstrates how the democratic dispensation's civilian intelligence oversight mechanism has not effectively held intelligence structures and officials accountable.

The chapter argues that this failure stems from apartheid-era authoritarian behaviour that allowed institutional non-accountability. This culture was not adequately addressed within institutional operations, resulting in glaring intelligence failures between 2009 and 2019. This period demonstrated the ineffectiveness of intelligence oversight.

The chapter is divided into three sections. The first section provides a brief overview of the historical background of intelligence governance, tracing its development from the apartheid era to current organisational arrangements. The second section examines the regulatory framework related to the civilian intelligence oversight model,

highlighting the laws and regulations that govern intelligence oversight. The third section discusses a layered model comprising multi-institutional oversight mechanisms, including executive control, parliamentary committees, the judiciary, and civilian oversight. It focuses on the composition, functions, mandates, and structures of oversight mechanisms. The chapter also evaluates their effectiveness both individually and as an integrated system.

### 4.1.1 Chapter Preview

This study aims to evaluate the civilian intelligence oversight and accountability model in South Africa post-1994, focusing on its effectiveness, challenges, and alignment with constitutional values of transparency, accountability, and governance. This research seeks to provide insights for enhancing democratic oversight mechanisms in the intelligence sector.

The chapter delves into the structure and functioning of oversight institutions, including the JSCI, the judiciary, external experts, media, civil society organisations, and Chapter 9 institutions like the Public Protector, the South African Human Rights Commission, and the Auditor-General. By examining legislative frameworks, regulatory practices, and institutional configurations, this research identifies gaps and weaknesses in the current oversight mechanisms.

It also explores the historical context and legacy of apartheid-era intelligence structures and their impact on contemporary governance. The study assesses how well these mechanisms adhere to democratic principles and the rule of law, addressing issues such as transparency, public access to information, and accountability in intelligence operations.

Furthermore, the research analyses the integration of intelligence services and the implications for governance, highlighting areas where legislative amendments are necessary to align with constitutional mandates. It considers the role of secrecy and the need for a balance between national security and democratic oversight.

Overall, this study seeks to provide comprehensive insights and practical recommendations for enhancing the effectiveness and accountability of civilian intelligence oversight in South Africa. It aims to contribute to the development of robust

democratic oversight mechanisms that ensure intelligence agencies operate within the framework of constitutional values and democratic principles.

### 4.2 A Brief Historical Background

The literature reviewed in Chapter Two revealed that the oversight mechanism adopted in South Africa after 1994 is comparable to most liberal democracies worldwide (Hutton, 2007, Nathan, 2009). This accountability model intended to move away from a militarised intelligence outfit that was an instrument of repressive internal control, non-accountability, and alignment to democratic systems and oversight authority (Dombroski, 2006).

The authors of the 1996 Constitution were deliberate in breaking with the authoritarian past (Africa, 2012). They wanted to ensure that the intelligence sector applied the democratic values stated in the Constitution and adhered to the rule of law when executing their mandate (Masiapato, 2017). This was a departure from the previous regime's utilisation of intelligence power and methods which were intrusive, oppressive as well and non-democratic in nature (Masiapato, 2017). This departure is underscored by the codification of the intelligence oversight system, moving away from an intelligence apparatus that was deployed by an authoritarian regime without meaningful democratic checks and balances on their activities (Africa, 2009b). This research emphasises that while there was a change in the legislative framework, as well as organisational arrangements to align with democratic reform, the study argues that there was no fundamental transformation of the cultural fabric within the intelligence service and governance. This organisational culture that was inherited from the apartheid system was allowed to fester and permeate the intelligence practices. The intelligence oversight mechanisms did not adequately address these institutional practices.

Furthermore, most literature in South Africa discusses and distinguishes the intelligence governance sector by highlighting the period before and after 1994 (Africa, 2009a, 2009b; Dombroski, 2006; Fazel, 2009; Liebenberg, Schutte & Minnaar, 1999; O'Brien, 2005; Masiapato, 2017). The intention is to highlight the two distinct eras and dispensations and to emphasise the differing intelligence governance approaches and their utilisation by different administrations. These differences are civilian intelligence

oversight and accountability systems (Africa, 2009b). Authors such as Africa (2009b) and Dombroski (2006) discuss the current state of intelligence architecture within the broader context of the SSR process. As discussed in the conceptual framework component in Chapter Two, the present-day intelligence architecture is a product of a negotiated settlement that resulted in the amalgamation of the old and new structures (Masiapato, 2017). According to Africa (2009b), Bond (2000), Dombroski (2006), and Van Vuuren (2019), this was a union of political enemies who retained institutional arrangements that facilitated economic crimes and grand corruption.

The current intelligence architecture in South Africa has its roots in the apartheid-era intelligence apparatus, the National Intelligence Service (NIS), combined with the intelligence of liberation movements and the services of several homeland administrations, specifically Transkei, Ciskei, and Bophuthatswana (Africa, 2009b). This integration process involved the integration of officials and members of apartheid intelligence structures with non-statutory forces of the liberation movement, creating a complex and diverse intelligence landscape (O'Brien, 2005; Masiapato, 2017). The integration of these different intelligence structures has significant implications for the development of the intelligence sector in South Africa, and for the civilian intelligence oversight model that was established post-apartheid (Africa, 2009b; Masiapato, 2017). This history highlights the need for a comprehensive and effective civilian intelligence oversight mechanism that can ensure transparency, accountability, and alignment with democratic values and the rule of law, despite the complex and diverse nature of the intelligence sector (Africa, 2009b; Masiapato et al., 2020).

The officials and members of apartheid intelligence structures were integrated with non-statutory forces of the liberation movement (2009b). The non-statutory forces included the intelligence arm of the liberation movements of the African National Congress, the Pan African Congress, and the Azanian People's Liberation Army (2009b). This was part of the arrangement of the SSR process. Dombroski (2006) observed how the consequences of this amalgamation affect operations and functioning; it also influenced the retention of organisational culture, institutional architecture, and some legislative frameworks and administrative practices. Nathan (2017) is more blatant when he argues that since 1994 intelligence services have not been adequately transformed into a democratic organisation. The services, claims

Nathan (2017), have more in common with their apartheid-era predecessors than with the principles of a democratic constitution.

It is imperative to understand the institutional arrangements of intelligence services during the apartheid era as this is crucial for appreciating the current institutional and regulatory design of the intelligence sector in South Africa (Africa, 2009b; Dombroski, 2006). The legacy of apartheid has had a significant impact on the development of the intelligence sector, and the institutional arrangements and regulatory frameworks established during this period have continued to shape the sector post-apartheid (Africa, 2009b; Dombroski, 2006). By examining the institutional arrangements and regulatory frameworks of the intelligence sector during the apartheid era, it is possible to gain a deeper understanding of the challenges and opportunities that exist for improving the effectiveness and accountability of intelligence services in South Africa (Masiapato, 2017). This understanding would inform the design of the civilian intelligence oversight mechanism and help to ensure that it is aligned with democratic values and the rule of law (Africa, 2009b; Dombroski, 2006). It is also capable of addressing the complex and diverse challenges faced by the intelligence sector in the country. After the SSR process, institutional arrangements, including legislation, rules, processes, and internal organisational ways of doing things were retained. The process also incorporated officials with different viewpoints, ideologies, and cultural mindsets (Africa, 2009b; Dombroski, 2006). Crucially, governance processes and practices did not fully penetrate and embed themselves in the new intelligence sector functions and activities because secrecy trumped transparency and accountability (Cawthra, 2009).

The study of the civilian intelligence oversight model in South Africa, considering the history of the intelligence sector, would provide valuable insights into the challenges and opportunities for improving the effectiveness and accountability of the intelligence services in the country. This research argues that while the SSR established renewed structural and legislative arrangements, organisational culture was not renewed to match the democratic environment. This culture enabled corruption and state capture seen between 2009 and 2019. The intelligence oversight mechanisms failed in their mandate to hold the intelligence service and its officials accountable. This highlights the ineffectiveness of the intelligence oversight model.

### 4.2.1 The Apartheid Era

This section of the chapter will focus on intelligence governance during the apartheid era, precisely from 1970 leading up to 1994. This discussion should be understood against the backdrop of an authoritarian culture of non-accountability, state misbehaviour, economic crimes and all these actions aided by the intelligence structures (Van Vuuren, 2019). As stated in the preceding section, this period provides a necessary contextual value to understand the current organisational structure and culture, as well as legislative and legal arrangements. The socio-political environment was characterised by political violence, unrest and protests due to the oppressive white minority rule (O'Brien, 2005; Hannah et al., 2005; Dombroski, 2006; Africa, 2009b).

This oppression was exerted on the Black majority that demanded freedom resulting in daily internal conflict and strife. The white government used state machinery and institutions to further subjugate Black people. The security apparatus of the state, including the intelligence structures (civilian and military intelligence), were the main tools used to maintain white-minority rule (O'Brien, 2005; Hannah et al., 2005; Dombroski, 2006; Africa, 2009b). However, the security sector, the military and its culture gained prominence due to its perceived understanding of the conflict. This resulted in institutions adopting non-democratic methods that were more authoritarian. Organisational arrangements did not cater for democratic values such as openness, transparency, and accountability (O'Brien, 2005; Hannah et al., 2005; Dombroski, 2006; Africa, 2009b).

Africa (2009b) observes that the retention of internal arrangements from apartheid-era intelligence structures, such as the NIS, was part of the agreements reached in the 1990s. This research believes that the retention of these structures has had significant implications for the development of the intelligence sector in South Africa and the civilian intelligence oversight mechanisms established post-apartheid. It is these institutional arrangements that were retained and not improved over the years that created a fertile ground for undemocratic, unconstitutional, and criminal behaviour in government institutions. As a result, democratic values of openness, transparency and accountability were ignored by internal institutional arrangements within the intelligence community rendering the institutions responsible for oversight and

accountability ineffective. The hollowing out of state institutions contributed to, enabled state capture, and facilitated grand corruption to thrive as intelligence was used not only to aid these crimes but also to help hide them.

Nevertheless, the security cluster's role requires a brief analysis, particularly the intelligence community's role during the 1970s and 1980s. The security sector, as a cluster was introduced in Chapter Two as institutions, structures, and actors such as military, police and intelligence services responsible for the security of the state and citizens. During the apartheid era, the security cluster, which consisted of various intelligence and security agencies, played a crucial role in maintaining the apartheid regime and suppressing dissent. The intelligence community was central to this effort, collecting and analysing information to identify and neutralise perceived threats to the state. These activities were often conducted outside the rule of law and with little accountability and had a significant impact on human rights and civil liberties. An analysis of the security cluster and intelligence community's role during the 1970s and 1980s would provide valuable insights into the current challenges that exist for improving the effectiveness and accountability of the intelligence sector post-apartheid and for ensuring the effectiveness of intelligence oversight mechanisms.

Additionally, the literature on the apartheid era points to the in-fighting power struggles and contradictions within the state that impacted the intelligence products and reports on security threats and potential threats (Seegers, 1991; Swilling & Phillips, 1990). Added to the power struggles was the perception that the military way of doing things and its officials were superior and preferred to the civilian intelligence methods. This perception was prevalent from the 1960s to 1979 when the Minister of Defence, PW Botha, came into power and implemented military-style intelligence and security apparatus (Seegers, 1991). As a Prime Minister, it became clear that he would perpetuate the thinking that the military better understood the threats and internal uprising by the Black majority, loss of minority power and how to counter them. This was evidenced by their effective and professional training in management and leadership as well as appointments of military officials in key positions (Van den Berg, 2018). For that reason, civilian intelligence was considered inadequate to address security threats (Seegers, 1991). Civilian intelligence included intelligence structures such as the NIS that were managed by civil society and intelligence professionals

charged with the responsibility for internal security. Military intelligence was driven by the defence force and the army intelligence structure such as Defence Military Intelligence. This was the beginning of the Total Strategy era, which had three main goals: to maintain state security, reform the political environment and coordinate all state action (Swilling & Phillips, 1990).

Additionally, as Seegers (1991) points out, intelligence failures and lack of coordination led to the promulgation of the Security Intelligence and Act of 1972, which created the State Security Council (SSC). Although political authority and power were bestowed on the elected cabinet ministers, the SSC was the true centre of power (Hannah et al., 2005). The SSC was meant to be an advisory body, a coordination structure and a cabinet committee that guided on internal security issues that have escalated because of increased political violence, amongst other things (Seegers, 1991). The SSC governed the executive or cabinet and had responsibility for intelligence and its three main agencies: the South African Police Security Branch, the Directorate of Military Intelligence (DMI) and the Bureau of State Security (BOSS), which was later, called the NIS (Hannah et al., 2005). Even though the SSC advised based on several pieces of legislation, most significantly, the 1972 Security Intelligence and State Security Council Act, the DMI dominated the governance system (Hannah et al., 2005). However, the SSC became inadequate to address these security concerns because it did not deal with daily internal conflicts and emergency security issues; this led to the operationalisation of the National Security Management System (NSMS) in 1979 (Seegers, 1991).

Furthermore, the structural and policy reorganisation culminated in the 1983 Constitution, which centralised power and authorised the authoritarianism of the executive presidency (Swilling & Phillips, 1990). It also broadly defined and reorganised six state institutions, including replacing the BOSS with the NIS. The reorganisation made the SSC a powerful policymaking body at the apex of the NSMS that was running the country. Below it was the NSMS that permeated all levels of society through a complex national, regional, and local system of committees (Swilling & Phillips, 1990). However, Swilling and Phillips (1990) observe that by 1988 the state was in crisis management mode due to civil unrest and mass resistance to oppressive government policies.

In the process, state power and executive decision-making were based in the Office of the State President, which was dependent on the NSMS for management and running the state institutions (Swilling & Phillips, 1990). President PW Botha suffered a stroke in 1989 and was succeeded by FW de Klerk after he was elected new State President that year (Van den Berg, 2018). When De Klerk came into power, he replaced the NSMS. He relocated the administration of the intelligence portfolio from the executive control in the Office of the State President to the Minister of Justice under a deputy minister (Van den Berg, 2018). It is noteworthy for this research to underscore that this period was characterised by the lack of intelligence oversight and accountability in institutions and systems. The regulatory and institutional arrangements were not geared toward ensuring democratic control of the intelligence structures (Africa, 2009a; Van Vuuren, 2019). The prevalent organisational culture and institutional designs centralised and consolidated white minority power without accountability (Van Vuuren, 2019). These systems within the intelligence institutions have been retained after amalgamation in 1995 and in the democratic dispensation.

However, in the 1990s, the outcomes of the political transition led to the adoption of legislation that created the National Intelligence Agency (NIA) and the South African Secret Service (SASS) after 1994 (Africa, 2012). The democratic dispensation brought about the restructuring of the intelligence community that coincided with the establishment of civilian intelligence oversight structures and accountability mechanisms, such as the JSCI, OIGI, and Chapter Nine institutions, such as the Auditor-General and the judiciary (Africa, 2012). In the period between 2009 and 2019, the restructuring process culminated from national intelligence to state security, which brought a perception in the public that this centralisation process in the civilian intelligence community is a precursor to greater authoritarianism and a departure from the democratic founding principles of the new intelligence dispensation (Van den Berg, 2018).

### 4.2.2 Economic Crimes, Grand Corruption, and State Capture

The study illustrates the problem of economic crimes; corruption and state capture during the apartheid era and continued in the democratic dispensation. The extent of the corruption varied from one administration to another. As Bond (2014) and Van Vuuren (2019, p.8) write, the apartheid-era corruption patterns took root in the early

1990s as corrupt actors "rapidly ingratiate themselves into the new order" and that "created a new elite pact that transferred political power from white people to black people with the culture of accumulating wealth through corruption". “The "old and the new were rapidly intertwined and found in each other partners and protectors". While the arms deal in the Mbeki government is an example of the beginning of what is to come, this behaviour continued and accelerated under the Zuma administration (Van Vuuren, 2019, p.8).

The Judicial Commission of Inquiry into State Capture report released in 2022 records economic crimes, grand corruption, and state capture in government institutions. In the intelligence sector, the report cites the use of secrecy that led to a lack of oversight and accountability. The report also highlights weak regulatory and institutional arrangements that were not improved over the years even though several restructuring task teams and committees made such recommendations (Judicial Commission of Inquiry into State Capture, n.d.).

However, as Dintwe (2013) notes, corruption and economic crimes existed for years before the advent of democracy. According to Dintwe (2013), the phenomenon of corruption has been a persistent challenge for South Africa, both during the apartheid era and in the democratic dispensation. Corruption undermines public trust in the state, erodes the rule of law, and hampers economic growth and development (Dintwe, 2013). In the intelligence sector, corruption can have particularly damaging effects, as it can undermine the effectiveness and credibility of the intelligence services and compromise their ability to fulfil their mandate (Dintwe, 2013). The study argues that the civilian intelligence oversight mechanism is responsible for ensuring that the intelligence sector operates transparently, is accountable, and is free from corruption. A thorough analysis of the challenges posed by corruption to the intelligence sector and the civilian intelligence oversight mechanism is necessary to ensure that the latter can effectively address corruption and maintain the integrity of the intelligence sector in South Africa. Thus, the idea of the state being entangled with the private sector that becomes involved and, influences key government institutions, including the security sector, is not new. Through Van Vuuren (2019), we learn how some in the apartheid government sustained white power through economic crimes, corrupt politicians who enabled money laundering, illegal firearms deal and violated international sanctions.

The ruling elites colluded with local and overseas criminal networks, politicians, and the business sector to derive personal benefits through the state (Van Vuuren, 2019). Bond (2000) describes the financial scamming worth billions involving banks and corporate financiers as 'financial shenanigans' to enrich the connected. Investigations in the late 1980s by the Witwatersrand Attorney-General revealed fraud in every major transaction approved by the banks and the Reserve Bank. During the transition period, large-scale fraud, money laundering, and other economic crimes occurred (Bond, 2000, p.26).

According to Van Vuuren (2019), central to this criminality in the state was the weakening and control of key government institutions, such as the security sector and the intelligence agencies, to hide and enable this behaviour. It is vital to understand the nature of state power and elite criminality and how corruption ingrains itself in politics and business. The current state of misbehaviour has its roots in the 20 years from the 1970s to the 1990s. This has had a lasting impact on South African society, which is dominated by incomparable abuse of power and large-scale economic crimes that taint state policy (Van Vuuren, 2019).

The centralisation of decision-making processes and structures under the apartheid regime, and the lack of effective oversight and accountability mechanisms, led to widespread human rights violations and other abuses by the security sector. The need for improved oversight and accountability mechanisms in the post-apartheid era is clear. This makes the role of the oversight systems to ensure effectiveness, efficiency, legality, propriety, transparency, and accountability critical in a democratic state. Thus, civilian intelligence oversight regulatory and institutional arrangements must be effective in their role to scrutinise the activities of the intelligence service.

### 4.2.3 Lack of Intelligence Oversight

The apparent fact about the apartheid era is the lack of oversight of executive activities, especially in the security and intelligence sector. Swilling and Phillips (1990) describe this as an authoritarian power structure with the State President as the epicentre that binds a complex security hierarchy, the state departments, and the facade of a separate parliamentary governance system. During this period, successive white minority governments utilised security and intelligence structures to entrench

their political dominance, over the Black majority (Africa, 2009a; O'Brien, 2005). Achieving the objective of repression and white domination led to crucial elements of intelligence governance, such as control and oversight, being non-existent. Intelligence governance was characterised by a lack of clearly defined functions, mandates and a legislative framework regulating the use of intrusive powers (Fazel, 2009). For instance, the executive was selective in controlling the intelligence structures, while the judiciary was lenient to the executive. There was also a lack of proper coordination measures and fierce competition for political influence and material resources (Fazel, 2009; Seegers, 1991; Swilling & Phillips, 1990).

Moreover, the lack of application of regulatory frameworks resulted in minimal control systems within the intelligence community and was only based on practice and an individual's prerogative. This prerogative was primarily established on administrative ideology, which involves the idea of deeply entrenched traditional habits and practices such as societal manipulation (Seegers, 1991). Documented regulations were vague and instructive, designed to secure performance effectiveness rather than the responsible use of the invasive and coercive powers of the intelligence structures (Swilling & Phillips, 1990). The negligible management, control, oversight, and rule of law meant that the executive and functionaries at an operational level would act with impunity (Wills, 2012). The apartheid system used organs of state such as intelligence used against the Black majority, spied indiscriminately on individuals who spoke against the government; adopted undemocratic practices, and operated in secret to cover up its crimes. The repressive measures, for instance, the intrusive methods and strong-arm tactics to support the minority government and its oppressive policies would go unchecked and without any transparency and accountability (Fazel, 2009). This is state behaviour that uses government institutions for narrow political interests, individual financial gain and protecting or preserving the privileges of the elites (Bond, 2000; Judicial Commission of Inquiry into State Capture, n.d.; Mufamadi, 2021).

Furthermore, Felber-Charbonneau's (2012) research found familiar challenges in the transition from authoritarianism to democracy. The transformation of intelligence services in countries such as Georgia and Serbia are often marked by a lack of political will among political elites to undertake meaningful reforms and the persistence of pre-revolutionary institutional arrangements. This institutional continuity can be a barrier

to effective reform and can undermine the credibility and legitimacy of the intelligence services in the eyes of the public. Felber-Charbonneau's (2012) research reveals this by examining the political-level analysis that exposes the main challenges to the security and intelligence reform process. The deficiency represents a lack of strong political will to reform the security sector by the political elites, both in and out of government.

Felber-Charbonneau's (2012) study observes that in countries where there has been a transition from an authoritarian regime to a democratic one like South Africa, institutional continuity within the intelligence community can result in the persistence of authoritarian tendencies. These include undefined intelligence mandates, a lack of legislative frameworks for the use of intrusive powers, selective executive control, lenient judicial control, and a lack of proper coordination mechanisms (Felber-Charbonneau, 2012). These issues can undermine the effectiveness and credibility of the intelligence services and compromise their ability to fulfil their mandate in a manner that is consistent with democratic norms and values. Civilian intelligence oversight mechanisms play a critical role in addressing these challenges by providing a check on the power of the intelligence sector and ensuring that it operates in a transparent, accountable, and lawful manner. The civilian intelligence oversight mechanism in South Africa is designed to perform this role and to promote good governance and accountability within the intelligence sector (Fazel, 2009).

On the one hand, the continuity was meant to maintain a delicate balance between the democratic control of the security and intelligence services and, on the other hand, preserve the need for professional distance and avoid the politicisation of the intelligence services (Felber-Charbonneau, 2012). Consequently, the institutional legacies from the previous, more repressive regime remained firmly entrenched (Felber-Charbonneau, 2012). As a result, this study maintains that a long-term process within state institutions created after 1994 did not ensure that governance systems hold elected and appointed leaders accountable.

### 4.3 Post-1994 Democratic Reform

A dominant and accepted narrative of a negotiated settlement in South Africa speaks of a post-1994 era democratic country founded on the Constitution that entrenches the

rule of law, a Bill of Rights, and democratic values (Levy, 2004; Steytler, 2004). The democratic reform signalled significant and commendable institutional arrangements based on well-defined intelligence mandates, powers and functions, mechanisms for coordination, oversight, and accountability measures (Fazel, 2009). The rights guaranteed by the 1996 Constitution include the freedom of speech, the right to association, and privacy. This laid the basis for laudable and worthy regulatory and institutional arrangements for the civilian intelligence oversight system (Africa, 2009b).

However, to achieve democracy at a political level, it is crucial to establish a legal framework for the operations of the intelligence services, executive control, legislative review, judicial review, and civil society's engagement and participation (Felber-Charbonneau, 2012). Africa (2009b) highlights democratic changes that show the powers of the intelligence structures are no longer unrestricted in their operations but subject to parliamentary scrutiny, monitoring by civilian oversight and the public's right to complain to the OIGI. The founders of our constitutional democracy intended these changes to obligate the intelligence service to comply with the rule of law (Levy, 2004). Nathan (2009) describes adherence to the law as the intelligence agencies pursuing a legal mandate legitimately. The democratic governance of civilian intelligence is about putting internal procedures, systems, and structures in place to oversee the intelligence agencies (Nathan, 2009). It also allows external mechanisms to ensure transparency (Manget, 2006). These processes, procedures, structures, and ministerial supervision are grounded by legislation (Born, 2004; Geneva Centre for the Democratic Control of Armed Forces, 2003; Born & Leigh, 2005).

The current regulatory framework is a critical component underpinning the civilian intelligence oversight model, as highlighted in several key studies (Africa, 2012; Hutton, 2007; Nathan, 2009). This framework represents a significant advancement in the governance of intelligence agencies, ensuring that they operate within the bounds of legality and accountability to civilian authorities (Africa, 2012). It establishes democratic control and governance within civilian intelligence (Hutton, 2007). The oversight and accountability mechanisms are crucial in a democratic society (Geneva Centre for the Democratic Control of Armed Forces, 2003). From a security sector point of view, this signifies a fundamental departure from the past intelligence governance in South Africa (Africa, 2012). This, as noted above, is a significant

improvement from the previous regime's organisation of intelligence governance (Africa, 2009b).

Despite credible intelligence governance regulatory and institutional arrangements, this research argues that oversight and accountability, internal procedures and systems require review and strengthening. The study further observes that there have been signs of authoritarian practices, especially between 2009 and 2019. During this period, there was a concerted effort to weaken state institutions and appoint incompetent elected and unelected officials, corruption, and state capture were prevalent (Van Vuuren, 2019). There was a significant shortage of oversight and accountability measures. The findings of the High-Level Review Panel on State Security Agency (2018) raise questions on whether the capture and repurposing of the SSA were designed to facilitate and protect state capture (Judicial Commission of Inquiry into State Capture, n.d.; Mufamadi, 2021). These activities nullified the framers of the Constitution's good intentions to install a constitutional democracy. Nathan (2012), Dube (2013) and Africa (2019) agree that reform of the intelligence governance regulatory and institutional arrangements is necessary. The Judicial Commission of Inquiry into State Capture (n.d.), Dintwe (2021), The High-Level Review Panel on State Security Agency (2018) and Mufamadi (2021) identified these weaknesses and issues, such as the politicisation of the intelligence, ineffective oversight, violation of regulatory framework and financial directives. The financial oversight system was also insufficient, uneven, and ignored (Africa, 2019; Judicial Commission of Inquiry into State Capture, n.d.).

Similarly, the revelations in the Judicial Commission of Inquiry into State Capture (n.d.) and the High-Level Review Panel on State Security Agency (2018) report about the ineffective oversight, violation of the law, maladministration and mismanagement of intelligence resources may have resulted in a trust deficit with the public. This erosion of the public's trust in intelligence agencies can be rebuilt by governance institutions (Goldman, 2016). It is not enough to evaluate the adequacy of the current intelligence oversight architecture. Instead, the assessment should determine whether the institutions' purposes were designed to continue to be consistent with the roles that the public expects those government agencies to play. Thus, oversight institutions should function as public representatives. In other words, governance institutions

provide a trusting bridge between secrecy in the intelligence community (and all other government institutions) and society (Goldman, 2016).

### 4.4 Case for Oversight: Breaking from the Past

The discussions above illustrate attempts by the founders of our constitutional democracy to break from a past lacking accountability and transparency in intelligence governance, creating the current systems. Despite these efforts, intelligence institutions have continued to display old authoritarian habits and practices. This chapter advances four main reasons for reforming, redesigning, and improving intelligence oversight systems.

#### 4.4.1 The Importance of Secrecy and Oversight

It is an open secret and accepted norm that intelligence practice uses secrecy as an invaluable resource for effective functioning and executing its constitutional and legislated mandate (Bolto, 2019; Geneva Centre for the Democratic Control of Armed Forces, 2003; Matei & Bruneau, 2011). With secrecy as an essential tool, there has always been a fear and likelihood of intelligence structures being abused for political purposes or narrow political interests and violating civil liberties and human rights (Africa, 2009a; Caparini, 2007; Hutton, 2009; Levy, 2004; Nathan, 2010). Consequently, appropriate measures and mechanisms should be instituted to avoid such abuses and force those who use special powers to comply with the law and account for their actions (Dube, 2013; Wills, 2010). Other authors recommend that the balance regarding secrecy should be based on structural, legal, institutional, and professional forms of oversight (Bolto, 2019; Caparini, 2007; Goldman, 2016; Nathan, 2010; Weller, 1999). Bolto (2019) suggested that a perceived absence of democratic legitimacy is a source of political and public concern, but strong oversight systems negate these concerns. Bolto (2019) added that where typical forms of scrutiny constrain secrecy, constitutional forms of control and assurance become even more critical in restraining the powers of secretive agencies. These powers are often coercive, concentrated, and opaque, but constitutional mechanisms serve as institutional checks and balances (Bolto, 2019). The performance of oversight mechanisms contributes to the legitimacy of the intelligence community, and their role

will also be accepted within the government and society at large (Dube, 2013). This will further enhance the efficient functioning of the intelligence structures.

### 4.4.2 Principles of Good Governance

Good governance must first be established based on the fundamental principles of transparency, equity, accountability, the rule of law, and respect for human rights to ensure the effective control and review of security and intelligence agencies (Born & Leigh, 2005; Felber-Charbonneau, 2012; Masiapato et al., 2020). An effective intelligence oversight system can enhance the governance and accountability of intelligence agencies. This leads to improved performance and fulfilment of intelligence mandates and functions, as well as increased public trust and satisfaction with the administration and use of resources by executive decisions (Bolto, 2019; Born, 2004; Born & Mesevage, 2012). The obligation of intelligence structures to be scrutinised as public institutions is important to ensure that the public's trust in these structures is built. Effective intelligence oversight can promote intelligence governance and accountability, leading to improved mandates and functions of the intelligence community (Masiapato et al., 2020). Through adequate governance mechanisms, the public can be assured that their tax money is being used appropriately, legally, and efficiently (Africa, 2019). This can increase the public's confidence in the intelligence community and structures. Effective intelligence oversight mechanisms enhance the transparency and accountability of intelligence operations, improving public trust in intelligence agencies (Goldman, 2016). When the intelligence community is held accountable by independent oversight bodies, it ensures that the use of public resources is legal, efficient, and consistent with democratic values, enhancing the legitimacy and trustworthiness of these institutions (Africa, 2019). When accountability institutions execute their mandate and hold the executive to account, trust increases in those institutions (Bolto, 2019). When the executive is accountable, this provides a degree of democratic legitimacy and fosters public trust in institutions (Bolto, 2019). In addition, the checks and balances should ensure that intelligence services support national security and not the security of the incumbent government (Born, 2004; Born & Mesevage, 2012). The intelligence structures should support all citizens, not just the narrow political interest of the executive. Democratic governance and accountability in the state, especially intelligence, are crucial for allaying society's fears and improving trust in the relationship with the government (Masiapato et al., 2020).

### 4.4.3 Upholding the Rule of Law

The intelligence service is obligated to maintain the rule of law. Like any other government institution, these structures must uphold the legally promulgated laws of the country. Illegal actions result in violating the rule of law, bringing the government into disrepute domestically and internationally. Even a possible or actual threat to national security should not be a good enough reason for intelligence structures to violate the law, stressed Born and Mesevage (2012). The use of national security as a justification has a historical precedent in South Africa, during the apartheid era and in the democratic dispensation. In the past, this vague concept was used to bypass laws and encroach on civil liberties, causing distrust in the government and its institutions. As a result, the intelligence community and its activities must be held accountable through effective oversight mechanisms to ensure that the protection of national security does not undermine the country's democratic principles and citizens' rights (Hutton, 2009). The study maintains it is critical that South Africa clearly define national security to ensure it is not used for personal or political gain through secrecy in the intelligence and government broadly.

This research acknowledges that secrecy in the intelligence sector is an accepted norm and cannot be avoided to attain national security. It is for this reason that oversight systems and democratic control of intelligence must be effective. Born and Mesevage (2012) agree with earlier advice by Matei and Bruneau (2011) that countries previously associated with violations of the law and human rights abuses in authoritarian states require scrutiny of the intelligence service through oversight and accountability institutions to discourage repeated abuse of the intelligence structures and build public confidence and trust in the intelligence community and the government.

### 4.4.4 Ensuring Efficacy of Intelligence Functions

The intelligence oversight mechanism should ensure the efficacy of the functions and activities of the intelligence service (Born & Mesevage, 2012). The discussion in the conceptual framework component (definition of concepts section) describes intelligence oversight as a catch-all term that does not refer to specific standards or degrees of scrutiny (Caparini, 2007). Thus, oversight is a concept that encompasses ex-ante scrutiny, ongoing monitoring, and ex-post review, as well as evaluation and

investigation (Caparini, 2007). Oversight is performed by managers within the intelligence structures, the executive, judiciary, and parliament, independent ombudsman institutions, audit institutions, specialised oversight bodies, journalists, and members of civil society (Born & Mesevage, 2012). Due to the utilisation of public funds and the national security mandate, oversight mechanisms should efficiently execute their responsibilities. C

This study agrees with the view expressed by Wegge (2017) that the effectiveness of intelligence oversight mechanisms in South Africa is questionable. It is often the media and a scandal that leads to periodic review committees, rather than the official oversight structures, which uncover intelligence scandals. This research contends that the oversight mechanisms should be designed to detect and prevent any potential abuses of power while ensuring that the intelligence structures operate within the ambit of the law and consider the values of the broader society. Furthermore, the oversight mechanisms should be designed in a way that allows for effective and efficient decision-making processes, considering the constitutional values and principles critical to maintaining a democratic society.

### 4.5 Enhancing Accountability in Intelligence Governance

Enhancing accountability in intelligence governance is crucial for maintaining democratic principles, ensuring the protection of human rights, and fostering public trust (Born & Mesevage, 2012). Intelligence agencies operate in environments where secrecy is often necessary, but secrecy must be balanced with mechanisms that ensure transparency and accountability. Without effective oversight, intelligence agencies risk abuse of power and violations of civil liberties (Leigh, 2007).

#### 4.5.1 Introduction

The concept of accountability is central to this research, playing a pivotal role in ensuring transparency and responsible decision-making within the civilian intelligence service in South Africa. This section discusses the importance of accountability, examining its fundamental role in promoting transparency and ethical conduct. It also explores various interpretations of accountability within the context of intelligence governance, highlighting how different perspectives shape its implementation. Furthermore, this section addresses the challenges posed by the inherent secrecy in

intelligence operations, analysing how these obstacles impede effective oversight and proposing strategies to mitigate them. Through this comprehensive examination, the research aims to underscore the necessity of robust accountability mechanisms in upholding democratic principles and safeguarding civil liberties within the intelligence sector.

### 4.5.2 Improving Intelligence Accountability

It was defined and discussed in the definition of concepts in Chapter Two. This section aims to demonstrate how accountability plays a crucial role in ensuring that the civilian intelligence service in South Africa operates within a framework of transparency and responsible decision-making. The effectiveness of the institutions and bodies responsible for overseeing the intelligence service is assessed, and any shortcomings in the processes and procedures used to ensure accountability and transparency are identified. The analysis focuses on the impact of these shortcomings on the intelligence service's operations and the wider society. The research makes recommendations for potential improvements to the oversight model, including examining the integration of constitutional values in the oversight model and how well the oversight mechanism considers these values in its decision-making process. The goal of this research is to promote accountability and transparency within the civilian intelligence service, ensuring that the intelligence service operations are consistent with the democratic values and principles of South Africa.

### 4.5.3 Understanding Accountability: Different Perspectives

Born (2004) believes government employees, including intelligence officers, should account for their actions and responsibilities and how they use their power. This should be done through legislated channels of accountability (Leigh, 2007). Intelligence accountability is thus achieved through oversight of the decisions and actions of secretive agencies and their officials (Wegge, 2017). In broader and narrow applications, accountability debates relate to democratic governance (Bovens, 2010). Bolto (2019) agrees with Bovens (2010) that there must be a distinction between two central notions of accountability: accountability as a virtue and accountability as a mechanism. Concerning the latter, Bovens (2010) indicates that it is found and applied as a normative concept in American literature, particularly political science discourse. This is a set of standards that evaluates the behaviour of public actors. Thus, "being

accountable" is regarded as a virtue and a positive quality of an organisation or officials (Bovens, 2010, p. 946). Therefore, argues Bovens (2010), accountability studies often discuss normative issues that focus on the standards in assessing the behaviour of public officials. In contrast, Bolto (2019) sees accountability as a virtue primarily applied in British, Australian, Canadian, and European academia in a narrower, more descriptive sense. It is regarded as a social mechanism, an institutional relation or arrangement where a public official is held accountable by another public official or institution (Bolto, 2019). According to Bovens (2010), accountability studies do not focus on the behaviour of public officials but on how these institutional arrangements operate. The focus of these institutional arrangements in accountability studies is not whether the actions of public officials can be accountable but whether they are or can be held accountable *ex-post-facto* by accountability forums. However, they should be differentiated since they each address different issues and imply different standards, frameworks, and analytical dimensions (Bovens, 2010).

### 4.5.4 Defining Accountability in Intelligence Governance

As discussed in Chapter Two, accountability for this study refers to the responsibility of intelligence officials and agencies to be answerable to the public, the government, and the law for their actions and decisions. It is a system of checks and balances that ensures that intelligence services and officials are accountable (Masiapato, 2017). Also, they must be held responsible for any violations of the law or any abuse of power (Dube,2013). This research recognises the importance of both the broad and narrow interpretations of accountability, it is important to focus on the accountability of intelligence officials in their application of the law and policy that informs their decision-making. This includes both their responsibility to follow the law and policy, as well as their obligation to be transparent and responsive in their decision-making. Additionally, the study emphasises the importance of organisational arrangements that support accountability. This includes having systems, processes, and procedures in place to guide the implementation of decisions and ensuring that intelligence officials can account to another authorised official or institution. By having these arrangements in place, the civilian intelligence service oversight model can help to promote accountability and ensure that intelligence agencies and officials operate within the confines of the law and policy (Masiapato et al., 2020).

### 4.5.5 Challenges and Tensions: Secrecy vs. Accountability

This study acknowledges that applying the concept of accountability in the intelligence sector can be challenging due to the inherent tension between secrecy and transparency. Secrecy is often seen as a necessary component of intelligence work and is used to protect classified information, operations, personnel, and international relations. However, secrecy can also create barriers to accountability, as it can make it difficult for oversight mechanisms to effectively monitor the activities of intelligence agencies and officials. This tension between secrecy and accountability requires a delicate balance to ensure that intelligence agencies and officials are operating within the limits of the law and policy, while also fulfilling their mission of protecting classified information and operations (Bolto, 2019; Born, 2004).

To address this tension, the study suggests that it is important to find ways to increase transparency and accountability within the intelligence sector, while also maintaining the necessary level of secrecy to protect classified information and operations. This may involve developing new oversight mechanisms, creating new systems and procedures to guide decision-making, or finding ways to increase the flow of information between intelligence agencies and oversight bodies. The goal is to find a way to balance the need for secrecy with the need for accountability so that the intelligence sector can operate effectively and within the confines of the law (Bolto, 2019; Born, 2004; Matei & Bruneau, 2011).

Therefore, it is difficult for intelligence agencies to find a balance between the need for secrecy in executing their mandate whilst complying with the rule of law (Matei & Bruneau, 2011; Winkler & Mevik, 2005). Matei and Bruneau (2011) and Winkler and Mevik (2005) believe this is a challenge for most democracies worldwide, including established and matured democracies. However, Born (2004) advises that a degree of openness to oversight structures and bodies is crucial, but not necessarily to outsiders. It could, however, go a long way to satisfy accountability requirements. Intelligence agencies cannot solely demonstrate openness to oversight by merely subjecting themselves to scrutiny through annual reports or financial statements. (Bolto, 2019). These measures should be complemented and augmented by discussions that include the consequences of actions (Bolto, 2019). As democratic states, including established ones, grapple with secrecy and the democracy dilemma

brought about by the existence of intelligence agencies, there should be constant review processes (Matei & Bruneau, 2011). These review processes should produce appropriate institutional arrangements as liberal democracies, such as the United States and Britain, have established to deal with this contradiction (Matei & Bruneau, 2011). According to leading authors and researchers in this field (Born, 2004; Caparini, 2007; Hannah et al., 2005; Leigh, 2005; Nathan, 2010; Wills, 2010), these institutions should include executive control, parliamentary oversight, judicial review, internal control, and independent scrutiny.

### 4.6 Access to Information

Access to information held by the intelligence community is critical for effective oversight mechanisms. This academic overview will examine its importance, the legal framework governing access, the Access to Information Bill, the Bill's unconstitutionality, ethical issues, information classification, challenges, and recommendations.

#### 4.6.1 Importance of Access to Information in Oversight

According to Gill & Phythian (2018), access to information is fundamental for oversight bodies to ensure transparency, accountability, and legality within intelligence operations. It enables oversight mechanisms to scrutinise activities, prevent abuses of power, and uphold democratic principles. Without adequate access, oversight becomes superficial and ineffective, undermining public trust and governance integrity. Oversight bodies need access to classified government information to maintain integrity and legitimacy (Gill & Phythian, 2018). It plays a role in the decision-making process of oversight functions. Classified information helps in decision-making, prioritisation, and policy implementation (Bruneau, 2001). Reliable information is central to civilian intelligence oversight (Gill & Phythian, 2018). Without access to classified, civilian intelligence oversight and accountability mechanisms are deterred from executing their duties and this can lead to accountability. The possibility of future public disclosure also deters intelligence officials from misconduct, fostering adherence to regulations (Bruneau, 2001). Transparent intelligence practices create an environment of diligence within the intelligence community.

### 4.6.2 Legal Framework Governing Information Access

South Africa's 1996 Constitution guarantees the right to access information (sections 32 and 33). The Promotion of Access to Information Act (PAIA) and the Promotion of Administrative Justice Act (PAJA) operationalise these rights (Lucas, 2018). PAIA aims to foster transparency and accountability by granting individuals and oversight bodies the right to access information held by the state, including intelligence agencies. This framework is designed to balance national security concerns with the public's right to know, providing mechanisms for requesting and obtaining information (Lucas, 2018).

Recent amendments to PAIA require the recording, preservation, and disclosure of private funding for political parties, enhancing transparency (My Vote Counts NPC vs. Minister of Justice and Correctional Services and Democratic Alliance, 2018).

### 4.6.3 Protection of State Information Bill

The Access to Information Bill seeks to enhance and streamline the process of accessing information. It proposes amendments to existing laws to improve transparency and accountability. However, the bill has faced criticism regarding its constitutionality and potential to limit access to crucial information under the guise of protecting national security (Lucas, 2018).

The Protection of State Information Bill is a draft law that seeks to repeal the current apartheid law, the Protection of Information Act, 1982 (Act 84 of 1982) regulating state information and its classification. In 2020, Media Monitoring Africa, amaBhungane Centre for Investigative Journalism, Right2Know Campaign, South African National Editors' Forum (SANEF), and Ronnie Kasrils, issued a joint statement commenting on the Bill, colloquially also called the Secrecy Bill. The statement highlighted that there have been attempts in 2008 and 2010 in parliament to repeal the current law. As noted above, this Bill has been met with fierce opposition from the public and civil society organisations. The resistance was due to the unconstitutionality of clauses that enabled a high degree of secrecy in government. If passed, it would also violate the right to freedom of expression. The second Bill, which was reissued in 2013 for the eighth time, was returned to Parliament by President Ramaphosa after years on his desk for reconsideration due to constitutional concerns in June 2020. These include the significance of public interest and public domain protections.

This unprecedented move underscores the delicate balance between national security interests and protecting democratic principles, emphasising the importance of ensuring legislation aligns with constitutional rights while addressing security imperatives (Media Monitoring Africa, amaBhungane Centre for Investigative Journalism, Right2Know Campaign, SANEF, Ronnie Kasrils, 2020). This back-and-forth underscore the tension between apparent national security imperatives and the democratic principles enshrined in the Constitution. The involvement of civil society will be discussed later in the chapter.

### 4.6.4 Unconstitutionality of the Bill

Polity (2023) writes that certain provisions of the Access to Information Bill violate constitutional principles by imposing excessive restrictions on access to information. These restrictions may hinder the ability of oversight bodies and the public to obtain necessary information, thus undermining the democratic oversight of intelligence agencies. The bill's vague definitions and broad exceptions have raised concerns about its potential misuse to conceal wrongdoing (Giles, 2023).

According to Giles (2023), the POSIB seems to be unconstitutional on multiple fronts, posing a severe threat to fundamental rights enshrined in the Constitution. Giles (2023) and Polity (2023) have outlined reasons why they believe POSIB may be considered unconstitutional: Firstly, it violates the right to freedom of expression, including freedom of the press, guaranteed by Section 16 of the Constitution. This is through restricting access to information and obstructing the media's ability to disseminate critical government information; it undermines the cornerstone of democratic principles. Secondly, the Bill directly contradicts the right of access to information mandated by the Promotion of Access to Information Act (PAIA), as outlined in Section 32 of the Constitution. By limiting public access to state-held information and imposing prohibitions on information dissemination, it obstructs the exercise of constitutional rights. Thirdly, the overly broad definitions within the Bill fail to provide clear guidance to officials responsible for decision-making, leading to arbitrary classifications and potential abuse of power. Fourth, the inadequacy of the public interest defence leaves whistle-blowers vulnerable to criminal prosecution for exposing corruption or maladministration, perpetuating a culture of secrecy and impunity. Lastly, the absence of a robust public interest defence not only stifles

freedom of expression but also creates a chilling effect, deterring individuals from speaking out against wrongdoing. Such limitations are arbitrary and irrational, rendering the Bill susceptible to legal challenges and undermining the principles of justice and transparency upon which South Africa's democracy stands (Giles, 2023; Polity, 2023).

#### 4.6.5 Ethical Issues and Information Classification in Intelligence Governance

This research argue that ethical issues arise from the tension between the need for secrecy in intelligence operations and the imperative for transparency. To remedy this, amongst other things, proper information classification is essential to protect sensitive data, but over-classification obstructs oversight and accountability. Ethical governance requires a balanced approach that respects both security needs and democratic transparency.

The research found that the classification of information is a crucial matter requiring attention for effective intelligence governance. The laws governing this aspect of intelligence functions are outdated and in need of review. For instance, the POSIB is still not the law of the land, which means that an apartheid act, is the law. During apartheid, intelligence structures were not compelled by the Constitution and legislative imperatives to observe transparency, openness, and accountability.

The research has found that the current classification of information systems impedes effective oversight. Participants noted the necessity of legislative amendments to enhance oversight and allow the public access to information held by intelligence structures, as mandated by the Constitution. Some participants expressed amazement at the existence of archaic legislation that fails to address contemporary national security issues.

Given these findings, the researcher believes it is prudent to align the classification of government information with constitutional requirements, democratic demands, and a 21st-century approach to intelligence work. Addressing these ethical issues is essential for maintaining public trust, ensuring transparency, and upholding the principles of a democratic society. These concerns must be addressed to ensure that the study adheres to ethical guidelines and legal requirements.

### 4.6.6 Challenges and Recommendations

There are noticeable policy gaps that managing access to government information. There is no specific policy addressing information held by secretive agencies (Africa, 2006). Public entities must have information manuals to facilitate access requests efficiently (Manual for the Department of Public Service and Administration, 2015). there is therefore a need for a legal and constitutional framework for an effective intelligence oversight system. The processes and procedures should be grounded in a legal framework that outlines the scope and process for scrutiny (Farson, 2012).

In the South African context balancing secrecy and transparency is essential for the intelligence oversight process to be effective. Oversight mechanisms need access to relevant information to scrutinise intelligence operations effectively while respecting confidentiality (Steytler, 2004). Effective oversight must balance transparency with the need for secrecy in intelligence work (Africa, 2009a). South Africa's legislation on access to information needs updating, particularly the Protection of State Information Bill (POSIB). The Bill aims to replace outdated laws and protect state secrets while being constitutionally compliant (Africa, 2012; Ellinas, 2016). This research argues that defining national security and interest is imperative. Clear definitions of national security and national interests are needed to inform information protection (Ellinas, 2016; Lefebvre, 2017). The South African Cabinet approved a framework for national interests in June 2021 in line with the 1996 Constitution.

The current research further advocates for collaboration and cooperation for the declassification of classified information. The intelligence sector should collaborate with oversight mechanisms to establish clear rules for declassification, specifying access levels, extent, and procedures. Transparent procedures ensure the public interest is balanced with national security needs. By adhering to these principles and recommendations, South Africa can enhance and maintain the effectiveness of its intelligence oversight mechanisms, ensuring accountability, transparency, and national security. To address the issues, it is recommended to amend the Access to Information Bill for clear legal provisions that align with constitutional principles, enhancing oversight bodies with adequate powers, resources, and access to classified information. Promoting a culture of accountability within intelligence agencies is essential, as is conducting regular audits and reviews to ensure proper classification

and reduce over-classification. Increasing public awareness and engagement is also crucial for understanding the importance of access to information and the role of oversight in protecting democracy.

### 4.7 Laying the Foundation: Regulatory Framework

This study maintains that the 1996 Constitution laid a foundation for the civilian intelligence oversight regulatory framework. The mechanics of its operations are found in the Intelligence Services Oversight Act 40 (1994), the Regulation of Interception of Communications and Provision of Communication Related Information Act 70 (2002) and the White Paper on Intelligence (1995) (Africa, 2012).

This research acknowledges that the elite circle created the above regulatory framework to curb the apartheid-era culture of non-accountability within the intelligence structure (Van Vuuren, 2019). However, the organisational culture of non-accountability, some of the apartheid-era legislation was not repealed, and internal organisational processes that ensure effectiveness created opportunities for grand corruption and lack of accountability in the sector (Africa, 2019). While the overall legislative framework, regulating governance structures, financial controls, and financial oversight of the intelligence structures, is both comprehensive and sound (Ministerial Review Commission, 2008), the Commission warned against apartheid-era legislation such as the Security Services Special Account Act of 1969 and the Secret Services Act of 1978, recommending that they be abolished. These apartheid-era statutes create an uneven application of intelligence financial oversight systems and do not facilitate the establishment of accountability structures (Africa, 2019). For the new elites, these old and undemocratic statutes create necessary conditions for non-accountability. While the Constitution and legislation created conditions of democracy, these elites used these circumstances to benefit their criminal behaviour and lacked accountability (Van Vuuren, 2019). This means that operations and secrecy within intelligence are more beneficial for thieving elites because of the nature of the sector.

For this research to determine the efficacy of the oversight institutions, there must be an examination of the regulatory framework that is fundamental to their establishment

and management (Hutton, 2007). It is a common challenge in implementing regulations and laws. Even if they look good on paper, the practical implementation can be difficult and sometimes fall short of expectations (the High-Level Review Panel on State Security Agency, 2018). The issue of state capture and corruption in government is complex and requires strong governance, proper oversight, and accountability measures to ensure that regulations are adhered to, and any incidents of non-compliance are addressed (Judicial Commission of Inquiry into State Capture (n.d.). The lack of these measures can lead to widespread corruption and undermine the credibility of the intelligence community. It is imperative for the relevant authorities to continuously assess and improve the regulatory framework to address any shortcomings and ensure that it remains effective in practice (Van Vuuren, 2019). Numerous scandals paint a picture of corruption, maladministration, and mismanagement in the intelligence structures; the High-Level Review Panel on State Security Agency (2018), Judicial Commission of Inquiry into State Capture (n.d.) reports, and Africa (2019) agree on a prevalent lack of financial accountability.

According to Hutton (2007), the rule of law provides the most basic mechanism of control for the state security apparatus and the utilisation of state power in a democracy; thus, the Constitution and subsequent legislation set boundaries for the scope of the mandate and activities for the intelligence services. Consequently, the intelligence community derives their powers and legitimacy through adequate legislative provisions (European Commission for Democracy through Law, 2007). The rule of law is an indispensable and fundamental feature of a democratic state. Consequently, intelligence agencies are subject to legislative frameworks that provide mandate, control, oversight, and accountability guidelines (Hutton, 2007).

### 4.7.1 The 1996 Constitution

The Constitution and its principles brought about changes in control and management based on openness, transparency, and accountability within the intelligence structures. These are concepts that signal a functioning democratic state and an open society. The value-laden Constitution is an essential foundation for the civilian intelligence model. The centrality of a constitution is crucial for transforming society and intelligence governance and its structures (Nathan, 2010).

The current research maintains that the framers of the South African constitutional democracy intend that laws and state institutions should reflect these values. Consequently, the institutional arrangements that reflect societal values foster personal accountability (Cole, 2015; Kleinig et al., 2011). Section 199 (8) of the Constitution provides for multiparty parliamentary committees comprising all political parties to scrutinise the intelligence service's activities to affect the principles of accountability and transparency. The section further makes provisions for enacting legislation to realise these constitutional imperatives. Parliamentary oversight is the most significant development of all constitutional measures to scrutinise intelligence services. This committee was established by legislation in fulfilment of this constitutional provision. A detailed discussion of the Parliamentary Intelligence Committee will follow later in this chapter.

Moreover, the Constitution makes provisions for the executive oversight of intelligence agencies. Section 209 (2) stipulates that "The President as head of the national executive must appoint a woman or a man as head of each intelligence service established in terms of subsection (1) and must either assume political responsibility for the control and direction of any of those services or designate a member of the Cabinet to assume that responsibility." (Constitution of the Republic of South Africa, 1996, p. 126). This section obligates the President to either assume political responsibility for the control and direction of the intelligence structures or designate the responsibility to a Minister who is accountable to the President, the Cabinet and Parliament for exercising their functions (1996 Constitution). The intelligence structures account to the Minister, who in turn exercises control over the government, determines the budget and provides guidelines for the functioning and priorities of the structures (Hutton, 2007). In addition, section 5A (1) of the National Strategic Intelligence Act (39 of 1994, p. 10) stipulates that "The Minister shall, subject to subsection (2), do everything necessary for the efficient functioning, control, and supervision of the coordination of intelligence supplied by the National Intelligence". Also, as mentioned above, section 6 of the Act authorises the Minister to make regulations, in consultation with the JSCI, on intelligence production, coordination and dissemination of intelligence and counterintelligence (Hutton, 2007). As stated in the conceptual framework section (in Chapter Two), the intelligence services' control of actual management and supervision occurs at the executive and senior administrative

levels (Hutton, 2007). This means that the executive exercises the internal oversight role of the intelligence structures. Executive control is also an important constitutional development in intelligence governance and oversight (Africa, 2009b).

The Constitution makes provisions for civilian oversight. Section 210 provides national legislation to regulate civilian monitoring for the intelligence service activities by an Inspector-General appointed by the President as head of the national executive and approved by a two-thirds majority vote in the National Assembly. In terms of section 210 (b), an inspector general should be appointed to monitor compliance with the regulatory framework and review the intelligence and counterintelligence activities.

Furthermore, Chapter 9 of the 1996 Constitution provides for the establishment of state institutions supporting constitutional democracy. These institutions include the Human Rights Commission, the Commission for Gender Equality, the Public Protector and the Auditor-General. They play an essential role in supporting democracy by ensuring that human rights, the rule of law, and civil liberties are upheld and monitoring the management of public funds (Madue, 2016). They help to ensure that the government is accountable and transparent, which is essential for a healthy democracy.

The above constitutional provisions and subsequent legislation are well-intentioned and lauded by most. Despite all good intentions, the intelligence structures have failed to adhere to these constitutional provisions on numerous occasions (Nathan, 2009). For instance, there are incidents where a Minister would secretly issue regulations only known within the intelligence community without the involvement of Parliament. A country's Constitution lies at the heart of the transformation efforts and plays a vital role in shaping and constraining intelligence agencies. A constitution is "a powerful instrument whose relevance for the intelligence community is simultaneously high, complex and contested" (Nathan, 2010 p. 196). Yet, the intelligence sector or its officials have demonstrated that it can violate it without severe repercussions (Hutton, 2007). This violation is aptly described as "complete disregard for the Constitution, policy, legislation and other prescripts" (Mufamadi, 2021, p. 2). The High-Level Review Panel on State Security Agency (2018) highlights how SSA members obeyed

manifestly illegal orders and advanced the interests of a political party in a partisan manner in violation of the Constitution.

### 4.7.2 Intelligence Services Oversight Act 40, 1994

The 1996 Constitution enables national legislation that regulates civilian and parliamentary oversight. The main goal of the Intelligence Services Oversight Act 40 (1994) is to regulate the establishment of the JSCI and define its functions. It further makes provision for matters connected with it. These oversight bodies (JSCI and OIGI) are responsible for scrutinising the intelligence and counterintelligence functions and financial expenditure of intelligence services. It is an essential legal instrument in the civilian intelligence oversight regulatory and institutional arrangements. This legislation gives effect to high-level constitutional policy positions on civilian intelligence oversight (High-Level Review Panel on State Security Agency, 2018). According to section 8 (a), the OIGI shall have access to any intelligence, information, or premises under the control of any intelligence structures. The section further stipulates that the OIGI has the authority to request and access information, reports, and explanations from the intelligence services to perform their oversight functions. This provision ensures that the OIGI has the necessary resources and information to effectively monitor and evaluate the activities of the intelligence services and ensure that they comply with the law and do not infringe on citizens' civil liberties. Fazel (2009) recognises the broad nature of the OIGI's functions. Their objective is to provide assurance and security on the legality and efficiency of intelligence activities.

The degree or extent of OIGI's access to classified information differs from access provided to the JSCI. The latter's access to information is not as extensive as it is for the OIGI. According to section 2, the intelligence service is not obligated to disclose to the JSCI the identity of any person or body engaged in intelligence or counterintelligence activities. This non-disclosure extends to any information provided to service under-expressed or implied assurances of confidentiality. This means that the head of an intelligence structure is not obliged to provide the JSCI with the information they deem crucial to counterintelligence methods or expose the names of agents.

### 4.7.3 Regulation of Interception of Communications and Provision of Communication-Related Information Act (RICA) 70, 2002

The RICA provides the legal framework for the interception of communications by intelligence structures (Africa, 2009a). It regulates and sets out criteria, guidelines, and procedures for warrants to be authorised by a judge (Hutton, 2007). RICA protects the privacy rights of individuals and their electronic communications. There are exceptions provided by RICA, for instance, where there is a justifiable interception of people's communications in cases of suspicious activity, such as suspected espionage (Rabkin, 2019). This judicial authorisation is thus crucial legislative protection for citizens' civil liberties contained in the 1996 Constitution. The intelligence structures must prove to the judge that the interception of digital communication will assist in an investigation necessary for national security.

In recent times, sections of the RICA (Sections 16(5), 17(4), 19(4), 21(4) (a) and 22(4) (b)) have been declared unconstitutional and invalid by the Constitutional Court (AmaBhungane Centre for Investigative Journalism NPC and Another v Minister of Correctional Service and Others, 2019). The applicants in this case, AmaBhungane Centre for Investigative Journalism and journalist, Sam Sole, requested the Constitutional Court to confirm an order made by the Pretoria High Court in September 2019 (Rabkin, 2019). The Constitutional Court found in favour of the applicant and confirmed the verdict of the High Court. According to the High Court verdict, the RICA is unconstitutional to the extent that it does not contain adequate safeguards to protect the rights to privacy, access to courts, freedom of expression in the media, and legal privilege. The AmaBhungane Centre for Investigative Journalism sought relief from the courts after they realised that the intelligence structure spied on their journalist, Sam Sole (Rabkin, 2019). The High Court found that the RICA failed to prescribe a procedure for notifying the subject of the interception. The safeguards in the RICA were granted ex-parte or in the interests of one side only (in this case, the intelligence structure). Also, the RICA did not put proper procedures in place for state officials to inspect a duplicate, copy, share and store the data from interceptions. In addition, the court ordered that the declaration of invalidity be suspended for two years to allow Parliament to amend the law and fix the defect (AmaBhungane Centre for Investigative Journalism NPC and Another v Minister of Correctional Service and Others, 2019).

Moreover, the court provided a temporary measure pending the amendments; that is, RICA shall be deemed to include the following additional Sections 16 (11), (12) and (13) (AmaBhungane Centre for Investigative Journalism NPC and Another v Minister of Correctional Service and Others, 2019). Firstly, in section 16 (11), the subject of the investigation shall be notified within 90 days in writing and certify to the designated judge that the person has been notified. Secondly, section 16 (12) provides that the designated judge may, under exceptional circumstances, and in writing, direct that the obligation referred to in subsection (11) be postponed for a further appropriate period. This period shall not exceed 180 days at a time. Lastly, section 16 (13) stipulates that if a deferral order notification amounts to three years after surveillance has ended, the application for any further deferral shall be adjudicated by a panel of three designated judges to decide on whether annual deferrals from that moment forward should be ordered (AmaBhungane Centre for Investigative Journalism NPC and Another v Minister of Correctional Service and Others, 2019).

This case demonstrates how prudent reviews could highlight legislative and constitutional imperatives. This research contends that this case demonstrates why ongoing regulatory and institutional reviews are significant because they could identify gaps in the system, address the methods used by the intelligence community and enhance the regulatory and institutional arrangements. In fact, in the High Court, Judge Sutherland points out that the RICA was enacted in 2002 and drafted to address the character of the telecommunications environment of that time. However, the technological environment and criminality have evolved, and so have the habits of technology they use to their advantage. Therefore, oversight mechanisms and tools must evolve through constant and periodic reviews. This assertion (and literature) justifies the view in this current research that ongoing reviews address current threats and security conditions. Matei and Bruneau (2011) aptly captured this point and argued for constant reviews to produce appropriate institutional and regulatory arrangements.

#### 4.7.4 White Paper on Intelligence, 1995

The White Paper on Intelligence outlines the policy to protect democracy and engender the rule of law within the civilian intelligence community. A national policy document establishes a philosophical approach, principles, and practical security and

intelligence measures (Africa, 2012). This policy document aims to create an effective, integrated, and responsive intelligence organisation that complies with the Constitution and serves the government of the day by providing relevant, credible, and reliable information (White Paper on Intelligence, 1995). This policy framework outlines how intelligence structures should function and, together with the Constitution, sets out the security ideology, which aligns with significant government policy initiatives (Africa, 2012). The White Paper on Intelligence (1995) provides for a broadened conception of security that has played a key role in shaping the mandate and functions of intelligence agencies. This has also attracted criticism and raised concerns about the potential for abuse of power and violations of civil liberties (Hutton, 2007; Nathan, 2010). Intelligence oversight mechanisms must be put in place to ensure that the intelligence agencies' operations are transparent and accountable. Nevertheless, policymakers rejected this criticism claiming the threats and their source warrant the expanded interpretation of the security concept in South Africa (Africa, 2012).

Commentators criticised the policy document's lack of details and vagueness (Hutton, 2007; Nathan, 2010). Hutton (2007) acknowledges that it is a guiding policy document, so it is understandable that it would lack detailed information. Still, Hutton (2007) decries this vagueness as it fails to capture the crux of intelligence activities. Translating well-meaning principles into significant policy does not go far enough (Nathan, 2010). The study notes that even though the White Paper refers to the importance of intelligence oversight and accountability, it is scant on relevant information regarding oversight bodies (Nathan, 2010). The national policy document is meant to provide clarity and guide intelligence governance. It should also ensure the formulation of laws, departmental strategies, and policies (Hutton, 2007; Nathan, 2010). However, it is not detailed enough on critical civilian intelligence oversight issues, particularly the policy regarding multi-institutional oversight mechanisms (Hutton, 2007; Nathan, 2010).

Therefore, it creates a vacuum within the policy space on how civilian oversight should function at an operational level. It is for these reasons that Nathan (2010) cautions about existing policy gaps within a government institution; its activities and functions would lack focus and consistency. An even more critical point about policy gaps is that

there is a risk of major policy decisions being taken by government officials or the executive without the approval of Parliament. This happened within the intelligence sector, where significant policy matters were managed by issuing regulations and directives in secret (Nathan, 2010). It was a necessary policy intervention because South Africa transitioned from an authoritarian rule to a democratic state (Africa, 2012; O'Brien, 1996). It served as a vital mindset shift and philosophy for security and intelligence governance that supports the new vision with a human rights approach (Africa, 2012; O'Brien, 1996). It thus provided a sound basis for legislative control of the intelligence structures, its guidance, and posture as well as the oversight mechanisms such as parliamentary oversight or civilian oversight (Dube, 2013).

There is, however, the consensus in the literature that this policy document requires review and updating to address the advancement in intelligence issues and threats (Africa, 2012; Dlomo, 2004; Dube, 2013; Hutton, 2007; Nathan, 2010; Masiapato, 2017). While the human security philosophical approach promoted in the White Paper is still relevant, the current research agrees with these authors that a much-needed review will align it with current intelligence governance practices. The human security approach is a widened view of security that includes traditionally non-security issues such as economic and social security (Buzan, 1991). These practices address contemporary national security threats that the intelligence seeks to avert. The alignment of all legislative and policy frameworks is crucial. The High-Level Review Panel on State Security Agency (2018) report observed a doctrinal shift and philosophical approach in the last ten years. Africa (2012) cautions that there have been numerous major intelligence services restructuring, but they do not coincide with a review of policies or institutional reforms; the oversight mechanism has not experienced the same re-organisation.

#### 4.7.4.1 Current updates on the review of the White Paper on Intelligence

An internal discussion document that seeks to stimulate dialogue and input has been developed by the intelligence community, particularly focusing on the civilian intelligence sector post the adoption of the White Paper. Its purpose is to initiate debates and deliberations concerning challenges, aiming to provide recommendations to the Minister regarding the revision process of the White Paper.

Notably, there is currently not publicly available and known process in place for reviewing the White Paper.

The absence of a transparent process for reviewing a policy document raises concerns about accountability and inclusivity in the governance of intelligence affairs. Without public involvement, the review process may lack diverse perspectives crucial for addressing complex challenges effectively. Such a process must be open and participatory, ensuring that the voices of various stakeholders, including civil society and experts, are heard, and considered. This fosters legitimacy, transparency, and better policy outcomes aligned with democratic principles and societal needs. Therefore, establishing a clear and inclusive framework for reviewing the White Paper is essential for enhancing governance and accountability within the intelligence community.

### 4.8 Intelligence Oversight Mechanisms

The oversight and accountability model for intelligence agencies in South Africa combines internal and external mechanisms (Dube, 2013; Hutton, 2007). This model includes Executive control, a parliamentary committee (the JSCI), the judiciary, civil society organisations, and Chapter 9 institutions such as the Public Protector, the South African Human Rights Commission, and the Auditor-General of South Africa (Masiapato, 2017; Dube, 2013).

#### 4.8.1 Executive Control

Executive control is a critical component of the current oversight system that holds the Intelligence Service and its officials accountable (Masiapato et al., 2020). The research questions how intelligence services can be held accountable when the virus of corruption has infected democracy and its institutions. This means that the executive layer of intelligence failed dismally in its constitutional obligations. The study argues that executive control is a crucial layer in the model; if a competent individual is appointed, then this layer of oversight can positively impact the model. The executive team led by the Minister can introduce organisational systems and procedures that ensure accountability. These systems could provide early warning measures to identify corruption in government departments, violate the law, and ensure consequence management before widespread criminality. The executive must

focus on the organisational design and culture that instils and incorporates democratic controls to improve the effectiveness of the intelligence oversight system (Masiapato et al., 2020). An organisational design that is conducive to democratic controls and accountability can promote transparency and ensure that intelligence activities and operations respect individual rights and civil liberties (Masiapato et al., 2020). This can include internal controls for accountability, such as the establishment of clear policies and procedures for intelligence operations (Dube, 2013). Additionally, promoting a culture of accountability within the intelligence service can help ensure that the oversight model operates effectively. This can be achieved through training and a commitment to ethical and responsible conduct (Dlomo, 2004). Leigh (2005) agrees that this is the main objective of an intelligence oversight system. Within the system of accountability adopted in South Africa, executive control by the responsible Minister and the executive team that exercises administrative control by managing and supervising the intelligence structures plays a decisive role (Geneva Centre for the Democratic Control of Armed Forces, 2003; Masiapato et al., 2020). The assessment of the oversight model includes the performance of this role as an oversight mechanism (Caparini, 2007). Thus, the arrangements within the executive should contain elements of control and accountability to the legislature (Geneva Centre for the Democratic Control of Armed Forces, 2003).

The critical issue within executive control is the need for "competent political guidance of the intelligence services from the people they serve" (Geneva Centre for the Democratic Control of Armed Forces, 2003, p. 40). Importantly, when the higher echelon of executive control and supervision executes its responsibility with greater care and seriousness, there will less likely be problems accruing to the government from judicial supervision and legislative oversight (Masiapato et al., 2020). It is the responsibility of the executive to ensure proper controls and auditing of the intelligence services are in place, thus creating the necessary base for transparency and parliamentary oversight (Geneva Centre for the Democratic Control of Armed Forces, 2003).

It is an essential mechanism in the intelligence oversight system (Dube, 2013; Nathan, 2017). The policymakers' role in providing direction should indeed be both the foundational and a catalyst for intelligence work. Policymakers play a critical role in

setting the direction and priorities for intelligence activities, as well as in shaping the policies and regulations that govern those activities (Geneva Centre for the Democratic Control of Armed Forces, 2003). Thus, executive oversight concerns intelligence structures' efficacy or capacity to fulfil their functions and mandates successfully. Efficacy determines whether the intelligence service efficiently uses public funds (Caparini, 2007; Nathan, 2017).

In the South African context, the role of the Minister as the political head of intelligence services has been an issue that has attracted debate since the 1990s (High-Level Review Panel on State Security Agency, 2018). This debate is based on whether the intelligence services should fall under a political head, the Minister, or a director reporting directly to the President. The Panel report asks a pertinent question about whether a ministry of intelligence or state security does not further aggravate the over-centralisation of intelligence power in the executive. The report highlights that it was logical in the 1990s not to separate domestic and foreign services for transformation purposes (High-Level Review Panel on State Security Agency, 2018). Nevertheless, the Panel's report notes the presence of a Minister as an additional layer of oversight and control.

While this mechanism is solely responsible for oversight, it should also ensure that it does not become too involved in the day-to-day management of the agency, which would weaken its oversight role (Born & Leigh, 2005). However, ministerial abuse of the intelligence service is a potential concern that may result from a close relationship between the intelligence agency and the government (Caparini, 2007). The politicisation of the intelligence "directly serves the personal and political interests of the President, and, in some cases, the relevant Ministers" has been rendered ineffectual (High-Level Review Panel on State Security Agency, 2018, p. 98). Born and Leigh (2005) observe that as a widely accepted practice, this mechanism should give the responsible Minister the right to access relevant information in possession of the agency. As Born and Leigh (2005) further opine, the responsible Minister should approve the regulatory framework for all covert action. Hannah et al. (2005) also shares this view. They conducted a comparative analysis of different accountability and oversight mechanisms in various countries, the United Kingdom, Canada, South Africa, Argentina, Germany, and the Czech Republic. Their research found that due to

the inherent secrecy of intelligence, there is a need for effective control measures for intelligence agencies (Hannah et al., 2005). The relevant Minister should ensure these internal control measures are in place and emphasise their adherence (Africa, 2019). The executive requires sufficient powers to exercise control over intelligence services, including the right to demand information from those agencies (Hannah et al., 2005).

The executive will not be effective in the oversight function without the appropriate powers. Hannah et al. (2005) emphasise the importance of executive control and other internal measures authorised by the executive to scrutinise the actions of intelligence agencies. According to Wills (2010), this scrutiny ensures that intelligence structures perform their functions effectively and comply with the rule of law. Compliance with the law is also crucial in international cooperation. This is one of a minister's roles; they authorise international cooperation based on domestic and international law without infringing on human rights (Born & Leigh, 2005). This current research acknowledges that this is a crucial internal layer of intelligence oversight. This layer could be the first line of defence in the multi-institutional mechanism if adequately exercised.

#### 4.8.1.1 The executive and regulatory framework in South Africa

In Chapter One and the preceding section, the study argues for a review of relevant legal frameworks and the oversight mechanisms established to enforce them. This contextualised a comprehensive understanding of the legal prescripts surrounding the research. By outlining the relevant laws and regulations, the research demonstrated the regulatory environment and the implications of the research for these regulations. A detailed description of the regulatory framework relevant to intelligence governance provides a sound grounding in constitutional and legislative-executive control because it institutionalised essential functions to insulate the intelligence agencies from being abused by those in power (Geneva Centre for the Democratic Control of Armed Forces, 2003). Thus, the constitutional framework provides for executive control of intelligence services. As indicated, the 1996 Constitution mandates the Minister with oversight responsibilities. It determines the general principle that enjoins the national security institutions that fall under the control of the political heads (Steyler, 2004). The latter author reaffirms that the importance of the responsibility for intelligence structures rests with the President, who presides over the national executive and delegates this responsibility to a cabinet member. This responsibility is illustrated in

sections 209 (1) and (2); only the President may establish an intelligence service and can also appoint heads to each intelligence structure (Steyler, 2004). This constitutional provision gives powers of political control and direction to a Minister appointed by the President. It also requires enabling legislation to provide detailed provisions on the functions and role of the Minister as well as intelligence structures.

According to this constitutional requirement, the Intelligence Services Act 65, 2002, and the National Strategic Intelligence Act 39 (1994), were enacted to empower the Minister on appointments of members, the creation of positions and structures, and the formulation of regulations and directives. This legislation gives the Minister the necessary mandate of scrutiny and ensures good intelligence service governance (Masiapato et al., 2020). For instance, a regulatory framework and institutional arrangements are relevant to financial oversight and accountability within intelligence structures (Africa, 2019). These include the National Treasury, the Ministry for State Security, the JSCI and the constitutionally independent Auditor-General. Africa (2019) posits that the intelligence structures should be subject to constitutional and legislative frameworks of the state's overall public finance, management architecture and financial oversight framework. Legislative provisions regulate the intelligence services that exempt them from this control framework (Africa, 2019). According to Africa (2019), this has contributed to the uneven application of financial accountability over the years, creating systemic weaknesses that prevent the detection and correction of maladministration.

#### 4.8.1.2 The politicisation of the intelligence services

Politicisation occurs when intelligence services provide an intelligence product that supports decisions the current administration has already made, including intelligence against political opponents (Born, 2004). Born (2004) views politicisation as likely to occur if the following instances exist: when the intelligence is serving politics instead of policymaking, the government can change intelligence reports, intelligence units are set up for a specific political purpose, intelligence officers and their senior officials are political appointees or publicly affiliated to political parties, lack of a system for checks and balances, which might lead to one branch of government dominate the intelligence services (Born, 2004; Born & Leigh, 2005; Geneva Centre for the Democratic Control of Armed Forces, 2003). The politicisation of the intelligence service is widely

discouraged in the literature and by most commentators and writers (Born, 2004; Born & Leigh, 2005; Caparini, 2007; Geneva Centre for the Democratic Control of Armed Forces, 2003; Nathan, 2009). The intelligence services should report information to decision-makers objectively, balanced, timeously, and professionally; consequently, they ought to be insulated but not isolated from politics (Born, 2004).

Furthermore, legislation can provide necessary protection and safety measures to guard against ministerial abuse of intelligence services (Born & Leigh, 2005). Such legislative safeguards should ensure strict obligations against ministerial abuse and politicisation (Born & Leigh, 2005). There are viable solutions to avoid executive abuse. Firstly, all ministerial instructions must be written and disclosed to an external review body and the ministerial requirement to brief the opposition party leader. Secondly, to avoid politicisation, the intelligence structures should not take any action to further the interests of a political party; the agencies should not investigate acts of protest, advocacy, or dissent that are part of the democratic process and follow the law (Born & Leigh, 2005).

Caparini (2007) observes that the politicisation of intelligence services has created two schools of thought among scholars and practitioners concerning the relationship between intelligence and policy. On the one hand, experts and intelligence practitioners claim that intelligence should be produced according to policymakers' concerns. They believe that it should be helpful and can be acted upon. These scholars and intelligence professionals believe that intelligence will be ignored if perceived to be irrelevant to policymakers' concerns and policy imperatives. Caparini (2007) further notes that policymakers prefer intelligence supporting and confirming existing policies.

On the contrary, scholars and practitioners believe that intelligence should be policy-neutral; it should collect and analyse information to inform policymakers of what they need to know and disregard their preferences. This group believes that intelligence should not be part of the policymaking process within the government's machinery but must be independent, depoliticised and policy neutral. This independence and neutrality will highlight the importance of intelligence objectivity and avoid the intelligence agency's politicisation (Caparini 2007).

The former school of thought has been the dominant feature created by gaps in the legislation. Hutton (2007, p. 10) observes that the main challenge in confronting executive control of intelligence is the principle of "plausible denial", which is useful for the executive to deny knowledge and authorisation of sensitive or covert operations. This principle entails the executive's ability to pronounce with a level of plausibility that activities were conducted by their subordinates without their knowledge or approval (Hutton, 2007). This loophole in legislation has resulted in the lack of a clearly defined role of the Minister regarding politically sensitive intelligence operations or the authorisation of intrusive surveillance (Hutton, 2007). The High-Level Review Panel on State Security Agency (2018) report also highlighted the legislative gaps that agreed with the Ministerial Review Commission (2008), which raised concerns that operational heads of the intelligence services establish policies that the executive should decide. Therefore, policies and rules that the executive should determine have been established by the leaders of the services and appear only in confidential directives (Nathan, 2009). This was evidenced by the Project Avani scandal in 2005 (Nathan, 2009). This untenable situation does not inspire public trust and confidence (Dube, 2013). In this investigation, businessperson, Saki Macozoma complained to the former Minister for Intelligence that he was under surveillance measures in 2005. An investigation was conducted by the OIGI, according to the Intelligence Services Oversight Act (section 7(7) (c)). The investigation found that the then National Intelligence Agency (NIA) acted illegally by putting surveillance measures on the businessperson. The investigation was extended to include the interception of emails. The investigation concluded that the then NIA had also unlawfully intercepted the communication of members of the governing party and politicians from opposition parties (Nathan, 2010; Office of Inspector-General, 2006).

#### 4.8.1.3 The politicisation of intelligence in South Africa

In South Africa, the politicisation of the intelligence service has been a concern for several years. In his research report, Dube (2013) writes that this issue was a subject of immense public debate during the African National Congress (the governing party at the time) elective conference in 2007. It was further evidenced by the Project Avani saga, which showed the need for ministerial directives for the intelligence structures (Africa, 2012; Dube, 2013; Nathan, 2009). The subsequent IGI report stressed "the need for appropriate superintendence and oversight of the conceptualisation,

planning, and execution of political intelligence projects and establishing the defining parameters and a regulatory framework for its practice" (Office of the Inspector General, 2006, p. 19). Legislative clarity that eliminates weaknesses is a much-needed intervention that closes the existing gaps of sensitive intelligence operations not sanctioned by the executive and ideally approved by Parliament (Africa, 2012).

#### 4.8.1.4 Challenges and gaps in a legislative framework

The Ministerial Review Commission (2008) report highlights the issue of politicisation of intelligence agencies, which can have negative consequences on the independence, impartiality, and credibility of these organisations. When intelligence agencies become politically motivated and oriented, there is a risk of serving political interests over serving the national interest and protecting citizens. The concerns in the report regarding gaps in the legislation that regulates executive control also highlight the importance of having clear and robust legal frameworks in place. This is to ensure that intelligence agencies are held accountable and operate within the ambit of the law. Without adequate oversight, intelligence agencies can become susceptible to abuse of power, corruption, and misuse of information. Additionally, the report's conclusions about the negative effects of having operational heads making decisions that should be made by the executive are also important. This highlights the need for a clear division of roles and responsibilities as well as accountability within intelligence agencies to ensure that decisions and actions are transparent, impartial, and accountable. Nathan (2010) expressed similar views on legislative omissions in the National Strategic Intelligence Act that affect executive oversight.

Firstly, there is a need for legal obligation on the intelligence structures to provide intelligence to the Minister. This is a grave error because the Minister might not be aware of significant intelligence gathered by organisations under their control. This might lead to an unenviable situation of the Minister's inability to adequately fulfil their duty to assume responsibility for the intelligence service, appropriately account to Parliament, and advise the President and the cabinet on national strategic intelligence. If the Minister is unable to fulfil their duties due to a lack of executive control or politicisation of the intelligence service, it can lead to a breakdown in the proper functioning of the intelligence community and compromise national security. This is why it is important to have a clear and robust legal framework to regulate the

intelligence sector (Nathan, 2010). The study emphasises that when intelligence agencies' tasks and decision-making power are not clearly defined and regulated, it can lead to a situation in which the Minister is unable to adequately fulfil their responsibilities. This has major implications for the intelligence service's operations and national security.

Secondly, Nathan (2010) observes that the Act does not specify who is authorised to instruct the intelligence structures to gather and supply intelligence. There are valid questions regarding this anomaly: who has this authority, is it the Minister, or does it lie with the President or other Cabinet Ministers and civil servants? According to the Act, a national department, provincial administration, or provincial department can request the SSA to provide it with departmental intelligence. The intelligence structures are not obligated to seek ministerial approval or even inform the Minister when responding to such requests (Nathan, 2010).

Thirdly, the Act does not stipulate which official in a department is entitled to request intelligence (Nathan, 2010). Lastly, according to the Act, only the NIA must inform the President of any threat or potential threat to the security of the Republic and its people (Nathan, 2010). This includes a practice where heads of intelligence brief the President sometimes without the knowledge of the Minister (Nathan, 2010). This is due to a lack of ministerial regulations and directives compelling heads of structures to seek ministerial approval, especially in politically sensitive matters such as intrusive measures and operations. These legislative loopholes should be closed through an amendment of this Act or other applicable statutes to enable ministerial command and control of the intelligence services (Africa, 2012).

#### 4.8.1.5 Impact of politicisation on state institutions

The politicisation and factionalism of the intelligence structures, for more than ten years, were among the key findings of the High-Level Review Panel on State Security Agency (2018) and the Judicial Commission of Inquiry into State Capture (n.d.). In agreement with the Ministerial Review Commission (2008), the reports confirm the problem of factions in the governing party and the ripple effect it has on the civilian intelligence community. This means that the intelligence services (SSA and Crime Intelligence) became actively and extensively involved in the politics and factional

politics of the governing party (High-Level Review Panel on State Security Agency, 2018; Judicial Commission of Inquiry into State Capture, n.d.). This, according to the Panel, is the main answer to the question they asked, "What the hell happened" (High-Level Review Panel on State Security Agency, 2018, p. 63). Africa (2012) argues for implementing the Ministerial Review Commission (2008) recommendations when the overhaul of the national security strategy and the White Paper finally takes place.

Evidence provided by the Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector and all organs of state in 2022 demonstrates institutionalised corruption labelled as state capture in South Africa (Madonsela, 2019; Judicial Commission of Inquiry into State Capture, n.d.). The phenomenon of state capture is the repurposing of the country's institutions towards private individual interests and enrichment (Madonsela, 2019). The systematic repurposing of state institutions was intended to create mutually beneficial connections and centre power in a group of elites, companies, and individuals with links to the Gupta-Zuma family network (Swilling, 2019). The Guptas are a family that has many business interests in the media, mining, and computer sales. The family had strong ties with the former president of South Africa Jacob Zuma, and those close to him including members of his family. It is alleged that the Guptas influenced cabinet and critical state-owned entity appointments between 2009 and 2018. These appointments were made to favour the Guptas through government contracts and patronage. As the evidence from the Judicial Commission of Inquiry into State Capture illustrated, state institutions were weakened by appointing executive and senior administrative personnel loyal to the governing party and the President (Madonsela, 2019).

The intelligence services were not spared. Evidence from former Domestic Intelligence Director, Lizo Njenje, and Foreign Intelligence Director, Rieaz Shaik, alleged that the Guptas had an undue influence on former President Jacob Zuma, suggesting that they influenced decisions (and made decisions) on the functioning of the government institutions (Njenje, 2019; Shaik, 2019). Both former top two officials at the SSA made allegations against former Minister Cwele that he was instrumental in perpetuating this influence within the SSA. The Minister instructed them to stop investigations on the Guptas (Njenje, 2019; Shaik, 2019). Also, the organisational changes within the intelligence services, which led to the creation of the SSA under former President

Zuma, led to the breakdown and abuse of resources within the services (High-Level Panel Review on State Security Agency, 2018). This view was also expressed in the oral testimony of Shaik in the Judicial Commission of Inquiry into State Capture. It also emerged that the executive made operational decisions which affected national security investigations (Njenje, 2019).

The evidence at the Judicial Commission of Inquiry into State Capture illustrated profound implications for state institutions and destroyed public trust in the state (Swilling, 2019). It also highlighted the politicisation of intelligence services as part of the network of institutionalised corruption (Madonsela, 2019). In all these instances, the oversight systems and institutions failed. They were ineffectual and weak. Thus, the current research proposes that reform should focus on the organisational culture of non-accountability in the intelligence service, strategic culture, internal rules, processes, and procedures of scrutiny. These allegations demonstrate a failure to scrutinise intelligence structures and decisions by various mechanisms within the layered model and oversight system. The Ministerial Review Commission (2008) recommended that the most effective way to prevent this type of criminality and institutionalised corruption would be to address it from within the intelligence services. The Report states that organisational measures such as internal controls, rules, self-discipline, and personal integrity are critical qualities for an intelligence organisation (The Ministerial Review Commission, 2008).

#### 4.8.1.6 Recommendations for addressing politicisation

The democratic dispensation established internal and external intelligence oversight measures to ensure accountability. Failure to address weaknesses and gaps in the legislation and organisational measures creates a culture of non-accountability. The mechanism's operation, such as the executive control and JSCI, must improve its oversight processes, procedures, and systems to ensure that the intelligence service roots out corruption. When corruption is suspected, the established procedures should guarantee that appropriate measures are taken, including conducting investigations, imposing disciplinary consequences, launching criminal investigations, and pressing charges. However, the initiation of these actions depends on the determination of political leaders to pursue and punish those who have committed wrongdoing. The intelligence community is usually responsible for conducting complex operations and

overseeing classified information, which can make sufficient oversight and accountability challenging. The necessity to safeguard national security interests may sometimes lead to concealment and a lack of openness, making it difficult for elected leaders and the public to adequately monitor and keep the intelligence community accountable.

The research finds that the lack of political interference arises from a perception of the role of oversight and accountability in maintaining a functioning democracy. In a democratic government, it is crucial that the intelligence community adheres to the law and remains transparent to government officials and the public. Failure to do so without establishing adequate systems could have significant consequences for the legitimacy and effectiveness of intelligence agencies, as well as for national security and the rule of law. Therefore, it is important to create mechanisms for detecting and addressing instances of corruption within intelligence services. To tackle the issue, this research advocates for increased transparency and openness regarding the activities of the intelligence community in the JSCI, along with the establishment of independent oversight mechanisms. These measures can effectively serve as checks and balances on their operations, fostering public trust in the intelligence community and ensuring their alignment with democratic values and principles.

Therefore, the politicisation of intelligence in South Africa presents a serious threat to democratic governance and national security. Addressing this issue requires a multifaceted approach, including legal reforms, institutional changes, and a commitment to transparency and accountability. By strengthening oversight mechanisms and promoting a culture of integrity and professionalism within the SSA, South Africa can mitigate the risks associated with politicisation and ensure the effective functioning of its intelligence sector.

### 4.8.2 Parliamentary Oversight

The previous section discussed the role of the executive in political oversight of operational activities and functions of civilian intelligence. As elaborated, the main responsibilities of the executive include the formulation of policy, political control, and policy direction of the intelligence structures (Nathan, 2009). The executive, led by the President and the responsible Minister, is accountable to Parliament for these

responsibilities (Geneva Centre for the Democratic Control of Armed Forces, 2003). As a branch of the state, the legislature is central to democracy because it is mandated by legislation and the Constitution to conduct oversight by enacting laws, approving budgets, and examining actions and decisions of the intelligence service led by the executive. In democratic states, it is expected and crucial that Parliament exercise oversight on the activities of intelligence structures (Born, 2004). This means that the activities and functions of the intelligence services are subject to parliamentary oversight.

As noted above, parliamentary oversight in democratic states is rooted in the concept of separation of powers (Parliament of the RSA, 2009; Zegart, 2011). Parliament is, therefore, an essential body that plays a crucial role in counterbalancing the power of the executive through the system of checks and balances (Born & Fluri, 2003; Parliament of the RSA, 2009; Zegart, 2011). It ensures power-sharing at the level of the state and, if effective, sets limits on the power of the executive and the President (Born & Fluri, 2003; Zegart, 2011). Therefore, it checks the legislative power of intelligence operational tools and its executive and restricts potential abuse (Zegart, 2011).

Aning and Lartey (1995) introduced principles to conduct effective parliamentary oversight to review how it functions. To derive value in its analysis, the authors prescribe the utilisation of the AAA concept: authority, ability, and attitude (Aning & Lartey, 1995; Obuobi, 2018). Firstly, according to the AAA concept, legislative provisions should give parliamentary authority to conduct oversight. Secondly, Parliament's ability to hold the executive accountable is determined by available resources. These resources include human, financial and technical. Thirdly, attitude involves the political will of members of Parliament to scrutinise the intelligence structures and their functions (Aning & Lartey, 1995; Dube, 2013; Obuobi, 2018).

Although parliamentary oversight is empowered by legislation in South Africa, the current research argues that politicians demonstrated a lack of political will to hold intelligence structures accountable for their decisions and actions (Judicial Commission of Inquiry into State Capture, n.d.). This assertion is based on the findings of the High-Level Review Panel on State Security Agency (2018) report as well as

researchers such as Africa (2012, 2019). The results are like Dlomo's (2004) earlier research that found the JSCI's capacity and resources are inadequate. The High-Level Review Panel on State Security Agency (2018) report key recommendation is the creation of a dedicated capacity within the JSCI to oversee the activities of the SSA. The panel argued that the JSCI, which is responsible for overseeing the intelligence services in South Africa, needed to be strengthened to fulfil its mandate effectively.

#### 4.8.2.1 Regulatory powers of parliamentary oversight

For parliamentary oversight to be effective, a clear and specific mandate in legislation is a starting point (Born & Leigh, 2005; Dube, 2013; Geneva Centre for the Democratic Control of Armed Forces, 2003; Gill & Phythian, 2018). This is regarded in intelligence governance as the best practice for parliamentary oversight to give the legislative branch a clear mandate and scope (Born & Leigh, 2005). According to Section 42 (3) of the Constitution, the National Assembly is elected to represent the people and to ensure government by the people. It does this by choosing a president, providing a national forum for public consideration of issues, passing legislation, and scrutinising and overseeing executive action. The oversight function of the Parliament stated in section 55 (2) provides for mechanisms to ensure that all executive organs of the state in the national sphere of government are accountable to it and to maintain oversight of the national executive authority and any organ of state, including the implementation of legislation (Parliament of the RSA, 2009). In his analysis of the South African parliamentary oversight mechanism, Dlomo (2004) illustrates how the 1996 Constitution created a bi-cameral nature of the governance system of the National Assembly (NA) and the National Council of Provinces. These two democratic bodies represent the will of the electorate and citizenry. Dlomo (2004) observes that the two houses of Parliament operate through a committee system. These committees are the site for oversight work of the intelligence structures and other government departments. Government departments are grouped in clusters to ensure that Parliament systemically oversees interdependent government sectors (Parliament of the RSA, 2009). The cluster system encourages better alignment of departments with similar mandates (Africa, 2012).

Moreover, In Chapter Two of the Constitution, the government, and its institutions, including intelligence agencies, are subject to the Bill of Rights, which contains human

rights such as privacy, the right to association, and freedom of speech. According to Nathan (2010), the 1996 Constitution is the supreme law in South Africa and its Bill of Rights applies to all branches of the state, the legislature, executive, and judiciary. Despite this, Nathan (2010) observes that the authority of the Constitution has been weakened within the intelligence structures. This is due to the prevalence of "intelligence exceptionalism" and the notion that it is acceptable to "bend the rules" in these contexts (Nathan, 2010, p. 206). This undermines constitutionally guaranteed rights and importantly highlights the tension between the principles of constitutional supremacy and the practical realities of intelligence operations. To address this issue, it is important to establish clear regulations and guidelines for intelligence actions and implement oversight mechanisms to ensure that they are operating according to the law (Dube, 2013; Nathan, 2010). Furthermore, striking a balance between national security and human rights is crucial. This can be achieved through the development of a robust legal framework that provides guidelines for intelligence operations while ensuring accountability and transparency (Dube, 2013; Nathan, 2010). Intelligence exceptionalism is the belief or attitude held by some in the intelligence community that they should be excluded from the normal rules, regulations, and laws that apply to other government departments and institutions (Dube, 2013; Nathan, 2010). This belief is based on the argument that the unique nature of intelligence work, which often requires secrecy, covert operations, and the use of sensitive methods, necessitates a level of flexibility and operational autonomy that would not be possible if the intelligence agencies were subject to the same constraints as other government agencies (Dube, 2013; Nathan, 2010). While intelligence exceptionalism may be rooted in the realities of intelligence work, it is important to recognise that it can have negative consequences for democratic societies (Dube, 2013; Nathan, 2010). When intelligence agencies are seen as being above the law, it erodes public trust in the intelligence community, and it can undermine the values of transparency, accountability, and the rule of law (Cole, 2015).

The Constitution obligates the actions and decisions of all state institutions, including intelligence structures, to be subject to the rule of law (Dube, 2013; Nathan, 2010). Democratic accountability creates and apportions appropriate oversight powers to institutions (Parliament of the RSA, 2009). Some institutions are created in the Constitution and subsequent law of application, which regulates their powers (Nathan,

2009). The OIGI monitors the intelligence and its activities and accounts for a multiparty parliamentary committee (Africa, 2009a, 2012; Dlomo, 2004; Dube, 2013). Section 199 of the Constitution establishes a multi-party committee of all political parties to oversee civilian intelligence. This constitutional requirement is expressed in the Intelligence Services Oversight Act. The Act provides for the role and functions of the JSCI (Africa, 2009a; Dlomo, 2004; Dube, 2013).

#### 4.8.2.2 Joint Standing Committee on Intelligence

As discussed above, the JSCI is a parliamentary oversight committee mandated by the Intelligence Services Oversight Act to scrutinise the actions and decisions taken by civilian intelligence agencies (Africa, 2009a, 2012; Dlomo, 2004; Dube, 2013; Masiapato, 2017). The Act established this multi-party parliamentary committee to oversee the intelligence services. The JSCI is the only parliamentary committee established by an Act of Parliament (Africa, 2009a; Levy, 2004). It forms part of the South Africa intelligence oversight model and is a definitive feature of the democratic dispensation in the intelligence service (Dube, 2013; Hutton, 2007). It is regarded as spearheading the model due to its representative nature, which allays the fears of the electorate and South African society (Hutton, 2007; Nathan, 2017). In fact, according to Steytler (2004), the fact that it is a multi-party committee means that it is credible and legitimate.

Moreover, the work of the JSCI represents the actual activities for scrutiny of intelligence structures. It scrutinises the administration, monetary management, and expenditure of the services (section 2 (1) of the Intelligence Services Oversight Act 40, 1994). Section 3 further stipulates the functions of the JSCI (amongst others): obtain and consider audit reports on the appropriation of funds; order investigations into intelligence and counterintelligence matters; refer matters for investigations about human rights abuses to the Human Rights Commission; review and make recommendations regarding interdepartmental cooperation and rationalisation as well as the distinction of functions relating to intelligence and counterintelligence. As provided for by legislation, these functions give the JSCI an influential position on the conduct of civilian intelligence oversight (Hutton, 2007). Dube's (2013) research found them reactive and did not proactively pursue oversight. The reactionary functions are described by Zegart and Quinn (2010, p 748) as 'fire alarm oversight' and 'police-patrol

oversight' concepts (discussed in detail in Chapter Two). Zegart and Quinn (2010, p 748) describe fire alarm oversight as largely "reactive, relying on concerned citizens and interest groups to determine precisely when elected officials should enter the fray".

Also, Police-patrol oversight resembles the centralised, active, and direct approach of police officers patrolling streets, apprehending wrongdoers, and rectifying encountered problems (Zegart & Quinn, 2010). Africa (2019) echoes Dube's (2013) concerns about the systemic weaknesses of the JSCI. According to Africa (2019), the Committee primarily serves a review function rather than taking proactive steps to shape the budget of intelligence services. Africa (2019) also raises a pertinent question relevant to this research: whether parliamentary oversight is optimally designed. To address the systemic weaknesses in JSCI oversight functions, they must be refined to ensure effective supervision of the intelligence service (Judicial Commission of Inquiry into State Capture, n.d.).

Furthermore, the National Development Plan (2012) acknowledged the systemic gaps in accountability within the intelligence agencies in South Africa. The Plan expressed dissatisfaction with the effectiveness of parliamentary oversight and accountability in ensuring that the intelligence community is transparent and accountable. It highlighted the shortcomings in accountability within the intelligence sector, which it attributes, in part, to weak accountability systems within the South African Parliament and its limitations in holding the executive accountable. It called for reforms to address these accountability gaps, including strengthening parliamentary oversight mechanisms, improving the training and capacity of intelligence personnel, and increasing public access to information about the activities of the intelligence community. The criticism of the NDP underscores the importance of ensuring that the intelligence community is held accountable and that its activities are subject to effective oversight mechanisms. This is crucial for maintaining public trust in the intelligence community, preventing abuses of power, and ensuring that the intelligence agencies' operations integrate democratic values.

Authors such as Hannah et al. (2005) agree and suggest that the oversight mechanism is fragile and only looks good on paper, given all the scandals within the intelligence structures. Similarly, Africa (2009b) finds that there are promising signs of

accountability within the intelligence service, such as a unified and integrated approach to monitoring the intelligence service by the legislature. However, the author highlights that much more needs to be done to fully establish a culture of accountability within the intelligence community. Allocating personnel to the JSCI and implementing other measures can significantly enhance the committee's ability to monitor and oversee the intelligence service. Additionally, this includes improving the research capability of the JSCI and establishing clear regulations that govern the operations of the intelligence service. These recommendations by Africa (2009b) demonstrate the need for ongoing efforts to improve accountability and oversight within the intelligence community. By dedicating resources and establishing clear regulations, it is possible to enhance the effectiveness of the intelligence service and improve public trust in the intelligence community.

Also, Dlomo (2004), Dube (2013) Masiapato, (2017) and Masiapato, et al., (2020) research identified gaps in the oversight and accountability model. These weaknesses include fragmentation in the oversight, and the lack of coordination, cooperation, and collaboration. The authors further identified the capacity, and personnel, both in developing monitoring mechanisms to comply with international treaties and the need to institutionalise the role of civil society in oversight. The weaknesses in the system relating to the JSCI were described by Africa (2019) and the Judicial Commission of Inquiry into State Capture, (n.d.) as compromising the levels of public accountability. For instance, the failure and inability of the JSCI to publish its annual reports in the budget years 2011/2012 demonstrate such weaknesses (Africa, 2019). This resulted in the delay of the Auditor-General's reports, a constitutional requirement, due to incompetence in the JSCI (Africa, 2019). This incompetence compromised the independence and reputation of another oversight institution (Africa, 2019; Judicial Commission of Inquiry into State Capture, n.d.).

Conversely, Hutton (2007) points to research that reveals how the JSCI has been efficient in holding actions and decisions of the intelligence structures and officials accountable. This view is also shared by Dlomo's (2004) study. Its efficacy in the early years of democracy was credited, amongst other things, to the calibre and quality of members of Parliament appointed for the committee from different political parties. These sentiments were echoed by Africa (2012), who also observed that in the early

years, this committee was effective and had good relations with other arms of the state (Dlomo, 2004). However, Dlomo's (2004) research also revealed areas that require attention, such as a public affairs program that educates the public on the intelligence structures' work and the committee's role. Dlomo's (2004) research also found a need to change the culture of accountability in intelligence structures. This aims to expose more intelligence officials to the work of the JSCI and the OIGI to appreciate the value of oversight. Several studies revealed the processes and examined the challenges of building intelligence ethos and professionalism (Africa, 2012; Netshitenzhe, 2005).

The Constitution and the White Paper on Intelligence both outline the expectation that democratic values should be upheld within intelligence services. This vision must be reflected in the behaviour of intelligence officials, as noted by Africa (2012) and Netshitenzhe (2005). To ensure that these democratic values are effectively integrated into the operations of the intelligence community, it is necessary to incorporate legal and ethical standards into the training of intelligence agents. This training should focus on instilling a culture of accountability, transparency, and respect for the rule of law within the intelligence agency (Gill & Phythian, 2018). The former Minister, Kasrils, introduced measures that inculcated these values when he prioritised the Civic Education program for intelligence officers. The objectives of this program included professionalism, non-partisanship, and adherence to the rule of law and the Constitution within the intelligence structures (Africa, 2012).

The High-Level Review Panel on State Security Agency (2018) also recommended parliamentary oversight over the numerous services and departments within the intelligence community. This proposal is in line with best practices in other countries, which have established parliamentary committees to oversee their security apparatuses, including defence and crime intelligence. The Panel recognises that implementing a broadened parliamentary scrutiny mechanism would require the appointment of highly competent and senior Members of Parliament, as well as the provision of fully capacitated support staff and well-resourced and experienced research units. This proposal should be a key part of the national debate as the proposed review and overhaul of the intelligence community are implemented. The challenge will nevertheless be to ensure continuity in the functioning of the JSCI when new parliamentarians are elected to the committee. To ensure continuity in the

oversight and scrutiny of the intelligence community, it is important to maintain adequate support for the JSCI. This includes providing a dedicated and competent support staff, including investigation capacity as well as a well-resourced research team. Furthermore, greater involvement of civil society experts and academics in the intelligence oversight process would help to ensure that the oversight process is informed by a wider range of perspectives and that it is as effective and comprehensive as possible to build the capacity and expertise of new parliamentarians to understand the intelligence environment and the role of legislative oversight (Hutton, 2007). Incidentally, research by Dlomo (2004) and Dube (2013) found that the same applies to the JSCI in South Africa.

Gill and Phythian (2018) point to countries such as Belgium and the Netherlands that have full-time investigative staff to supplement and complement the work of parliamentary committees as a key feature in their oversight operation. This type of institutional operation has been implemented in other countries like Germany and the UK and the literature in the US is now advocating for adopting a similar structural change (Gill & Phythian, 2018). The current research agrees with Dlomo's (2004) and Dube's (2013) findings, and the Gill and Phythian (2018) recommendations should be considered as a blueprint at an operational level. It is, however, noteworthy that subsequent parliaments have not adopted best practices. This is evidenced by the opposing views of Hutton (2007), Nathan (2009), Africa (2012), Dube (2013) and a recent article by Africa (2019) and the Judicial Commission of Inquiry into State Capture (n.d.). The authors found the JSCI to be weak and not proactively scrutinising the budget of the intelligence structures. Together with the High-Level Review Panel on State Security Agency (2018) report findings, these conclusions paint a picture of an ineffective committee. It is on this basis that this study agrees with Africa's (2012) and Dube's (2013) suggestion for a comprehensive reform of the civilian intelligence oversight model.

As indicated in this research, the identified weaknesses in the intelligence community's oversight system demonstrate significant gaps, flaws, and limitations in the current oversight model. These limitations highlight the need for a comprehensive overhaul of the existing oversight model to ensure that the intelligence service is transparent and accountable; adheres to the rule of law. Without meaningful reforms to the current

oversight model, the intelligence community may continue with practices that result in the abuse of power, a loss of public trust, and an overall decline in the effectiveness of the intelligence service. It is therefore imperative that steps be taken to address these weaknesses and to establish a more robust and effective system of intelligence oversight in South Africa.

#### 4.8.2.3 Limitations of the JSCI

The resolution of this matter is deemed a priority as it affects the IGI's ability to conduct its mandate effectively and impartially, with the necessary resources and budget. To achieve this, amendments to relevant legislation and regulations will be necessary, to enhance the public's confidence and trust in the intelligence service.

#### 4.8.2.4 Current legislative review process

The JSCI received inputs from the OIGI on the General Intelligence Laws Amendment Bill (GILAB). The GILAB seeks to amend the Intelligence Services Oversight Act 40 of 1994 (Oversight Act), the National Strategic Intelligence Act 39 of 1994, and the Intelligence Services Act 65 of 2002 (Parliamentary Monitoring Group, 2023). The OIGI proposed amendments and clarification of definitions. This is to provide greater clarity in the execution of the civilian intelligence oversight mandate (Parliamentary Monitoring Group, 2023). Primarily, the OIGI aimed to enhance its independence and reduce reliance on the State Security Agency, which it oversees (Parliamentary Monitoring Group, 2023).

However, the OIGI has expressed disappointment with the SSA's failure to implement its recommendations and actions required to improve accountability within the organisation (Parliamentary Monitoring Group, 2023). Additionally, the proposed Bill has raised concerns as it would limit the OIGI's authority and power. The OIGI has insisted on being granted more powers and emphasised the need for its independence. They specifically recommended that the IGI’s reports and recommendations be binding (Parliamentary Monitoring Group, 2023). This persistent limitation on the OIGI's independence and authority significantly impacts its role in intelligence oversight, potentially undermining its ability and legislative requirement to ensure accountability and effective oversight within intelligence agencies.

### 4.8.5 Civil Society Oversight

Civil society oversight is conducted by civil society organisations such as non-governmental, lobbies, pressure and human rights groups, political parties, professionals, academia, cultural and other advocacy, or special interest associations, as well as the media (Geneva Centre for the Democratic Control of Armed Forces, 2003). These organisations and individuals can perform a useful supervisory function to help ensure that the intelligence community's objectives and mandate benefit society (Geneva Centre for the Democratic Control of Armed Forces, 2003). In the earlier description of categories of accountability by Schedler (1999), this type of intelligence oversight is described as vertical accountability because it is the citizens, civil society, and the media who scrutinise the intelligence structures' activities. This scrutiny is conducted through citizens' actions to hold intelligence agencies and their political masters accountable through lobbying, advocacy, and educational programs. Individual citizens, civil society groups, academics and experts may use the information to advocate and effect changes in the state's policies (and its institutions such as intelligence structures) to provide an informed analysis, thereby participating in policy debates (Caparini, 2007; Schedler (1999).

The involvement of civil society in intelligence debates and public engagement ensures that the public is informed and is part of the decision-making relating to critical issues that impact their lives (Kasrils, 2009). The former Minister adds that this is an opportunity for citizens to be educated on the intelligence services' mandates. In theory, Hutton (2007) agrees that when civil society participates in policy and decision-making processes, it adds to the legitimacy of the decisions. According to Hutton (2007), this would prevent destabilisation of the state to personal or group interest. Africa (2012) views the lack of timely regulatory reviews as denying debate and consensus on significant policy and structural issues. This debate would include appropriate and effective operational controls for collecting intelligence on domestic politics (Africa, 2012). Also, the supervision and oversight of covert and intrusive measures (both domestic and abroad) would insulate the intelligence service from political abuse (Africa, 2012).

Caparini (2007) admits that the secretive nature of intelligence makes it difficult to be scrutinised by civil society. But it can significantly affect the citizens' rights, civil

liberties, and freedom. States should view the influence of civil society in policymaking within intelligence structures as advantageous because it assists in building trust and confidence by fulfilling their mandate to ensure accountability (Caparini, 2007; Geneva Centre for the Security Sector Governance, 2017).

A critical finding in this research is that the adopted oversight model should provide institutionalised public opportunities to engage in policy debates (Dube, 2013). Although Parliament provides the avenue for this type of involvement, civil society organisations could partner with and strengthen Parliament's legislative efforts through inputs on statutory development or amendments. As Dube's (2013) study shows, for the oversight model to be effective, adequate constitutional and legislative provisions and institutional mechanisms should be facilitated by civil society participation. Equally, CSOs can play a vital role in demanding accountability from government institutions and drawing the attention of the public and political parties to infringements of civil liberties and human rights (Geneva Centre for the Democratic Control of Armed Forces, 2003).

The High-Level Review Panel on State Security Agency report (2018) proposed the establishment of a National Security Advisory Council composed of the public sector, private sector, and civil society representatives. This will enable the non-state actors to be involved in intelligence activities and broad security-related matters such as the national security strategy (High-Level Review Panel on State Security Agency, 2018). In 2020 the President issued a Proclamation in the Government Gazette to establish the NSC. This is a structure at the level of the National Executive responsible for ensuring the national security of South Africa. According to the Government Gazette (2020), the structure is responsible for, amongst other things, (i) approval of the National Security Strategy, (ii) the National Intelligence Estimate and National Intelligence Priorities; (iii) the coordination of the work of the security services, law enforcement agencies and relevant organs of state to ensure national security; (iv) receiving coordinated, integrated intelligence assessments from the national security structures; and (v) for mandating said structures to attend to matters of national security as required (Government Gazette, 2020). The establishment of the NSC would pave the way for the advisory council that includes non-state actors and civil society. It is essential to have a clearly defined composition for the NSC, and the

participation of non-state actors such as civil society organisations is important in rebuilding public trust and confidence in the intelligence service, which has been damaged.

The inclusion of non-state actors could be challenging due to the secrecy surrounding the intelligence community, illustrated by the parliamentary committee hearings on intelligence activities and overly sensitive security matters conducted in private behind closed doors. The current research finds that meaningful intelligence governance discussions could be open to the public. The hearings that could be open to the public's input are those that do not include methods used, names of the agents' criteria, or processes of the intelligence structures. As former Minister Kasrils (2009, p. 19) suggested when he said, "While secrecy is necessary for aspects of intelligence, it is certainly not essential for all of them." Such a gesture by the Intelligence oversight institutions (and significantly to the public) fosters much-needed public trust and confidence in the intelligence services by ensuring that they perform their statutory functions in compliance with the rule of law and human rights. (Born & Mesevage, 2012). This is also what the White Paper on Intelligence aspires to achieve when it recommends that developing a more open intelligence community will go a long way in clarifying intelligence work and building trust in the intelligence community.

The media, as a powerful civil society tool in a genuinely democratic state, would inform society about the mandate of the intelligence service (Caparini, 2007). This type of oversight is crucial because a well-informed community can play a meaningful role in policy debates (Hutton, 2007). Their role in providing information on the activities of the state is a crucial link between the government and its citizens (Caparini, 2007). As Caparini (2007) further observes, they can uncover illegal activities and abuses of power. As a result, oversight mechanisms do not expose the scandals (Dube, 2013). Different forms of media can shape public opinion and draw attention to formal oversight mechanisms. Therefore, the media and civil society organisations can create awareness of intelligence service abuses and ensure public pressure to demand more democratic accountability in the intelligence service (Geneva Centre for the Security Sector Governance, 2017).

#### 4.8.5.1 Civil society involvement in intelligence governance

In South Africa, the Constitution allows civil society to oversee democratic institutions, monitor human rights and give citizens, especially the poor, vulnerable and excluded, the tools to know and assert their rights. Civil society organisations have played a significant role in the fight against corruption, public service delivery failure and abuse of power by elected and public representatives within state institutions on behalf of ordinary citizens (Gumede, 2018). For example, when the POSIB was introduced, it was met with opposition from role players such as opposition parties, the media, CSOs and academia (Ellinas, 2016). Heywood (2017) has also reiterated how civil society organisations, public activism, and media outlets such as AmaBhungane, Scorpio and The Daily Maverick have highlighted the criminality in government institutions, widespread corruption, and state capture of state institutions.

Civil society organisations such as the Freedom of Expression Institute (FXI) and the Right2Know Campaign (R2K) have also been instrumental in fighting for the right to access government information because this right enables other human rights and socio-economic rights (Gumede, 2018; Nathan, 2017). For example, the R2K campaign has lodged multiple complaints with the OIGI regarding allegations of harassment by the intelligence service. The R2K has been at the forefront of the fight against the securitisation brought by the POSIB (Gumede, 2018). As discussed above, the AmaBhungane Centre for Journalism was successful in its case against the government to declare RICA unconstitutional (Rabkin, 2019). Similarly, organisations such as the National Union of Metal Workers National Union of Metalworkers of South Africa (NUMSA), the Association of Mineworkers and Construction Union (AMCU), the Treatment Action Campaign (TAC) and Abahlali Basemjondolo have claimed to be monitored by the intelligence structures. Additionally, the Council for the Advancement of the Constitution (CASAC) has also successfully protected constitutional rights against violation by elected and appointed officials in the courts (Gumede, 2018). Also, the Congress of South African Trade Unions (COSATU) established a Corruption Watch to fight public and private corruption in 2012 (Gumede, 2018). In 2020 civil society organisations and interested parties issued a joint statement, these include Media Monitoring Africa, amaBhungane Centre for Investigative Journalism, Right2Know Campaign, South African National Editors' Forum (SANEF), and Ronnie Kasrils on the constitutionality of POSIB (Giles, 2023; Polity, 2023).

In the last decade, civil society organisations' involvement in South Africa has been critical for general governance and intelligence oversight (Gumede, 2018; Judicial Commission of Inquiry into State Capture, (n.d.). These non-state actors have challenged the actions of the intelligence community through the legal system, holding them accountable for their actions and ensuring that they comply with the law. Despite the challenges posed by secrecy, these organisations have been successful in using the judiciary as a means of oversight, helping to ensure that the intelligence community operates within the law (Africa, 2012).

### 4.9 Chapter Nine Institutions

Chapter 9 of the 1996 Constitution establishes the institutions supporting democracy, such as the Human Rights Commission, the Public Protector and the Auditor-General. This Chapter is a significant development aimed at entrenching and strengthening democracy (Africa, 2009a; Madue, 2016; Murray, 2006; Tsoeu-Ntokoane, 2018; Wills, 2012). Even though intelligence governance is integral to overall good governance in government as well as constitutional democracy, these institutions do not only directly oversee the intelligence structures but all government institutions. Writers such as Murray (2006) and Madue (2016) view their responsibilities as two-fold: contribution to transformation through social justice and monitoring government actions to ensure accountability. The latter role is relevant to this research because of the accountability and transparency mandate. It should, however, be noted that even though these institutions are meant to strengthen the concept of separation of powers, they do not form part of the three branches of government. Still, they have investigative and administrative powers (Murray, 2006). Also, they do not exercise power like the three branches of government (executive, legislature, and judiciary). However, they have a role to play in general oversight functions; these institutions also advise and assist Parliament in its mandate to conduct oversight (Africa, 2009a; Madue, Tsolo & Ramoabi, 2014; Steytler, 2004; Wills, 2012). As a result, they play an essential oversight role in ensuring effective scrutiny of the executive, protecting the public and taking appropriate remedial action (Madue et al., 2014).

The Chapter 9 institutions model is comparable to mechanisms that support democracy in other countries worldwide (Murray, 2006). This constitutional chapter

intends to ensure support for democratic values, promote the Bill of Rights contained in Chapter 2 of the Constitution and strengthen constitutional democracy. They broadly play a role in promoting good governance (Madue, 2016). Steytler (2004) agrees and adds that they are secondary to parliamentary oversight. While Tsoeu-Ntokoane (2018) also concurs with their governance role, the writer placed them at the crossroads between government and civil society. Tsoeu-Ntokoane, (2018) agrees with Africa (2009a) that these institutions are constitutional instruments that fundamentally promote the development of openness, accountability, transparency, and democracy. They have a sound constitutional foundation and continue to entrench their legitimacy. The legitimacy acquired through constitutional protection is essential but insufficient (Tsoeu-Ntokoane, 2018). More needs to be done to earn the public's trust and be effective in their accountability mandate, argues Tsoeu-Ntokoane (2018). In assessing their capacity and effectiveness, the author concludes that these institutions' performance remains a work in progress despite their founding law's progressive intention (Tsoeu-Ntokoane, 2018).

The Constitution and subsequent legislation guarantee their independence. This is in terms of the 1996 Constitution, which provides that these institutions are independent and subject only to the Constitution and the rule of law. They must also report annually to Parliament on their activities and the performance of their functions. The reporting to Parliament includes how they implement their mandates and the expenditure of their budgets (Madue et al., 2014).

They must be impartial in exercising their powers and perform their functions without fear, favour, or prejudice (Section 181 (2) of the 1996 Constitution). It is noticeable that some commentators are critical of the effectiveness of these institutions (Madue, 2016; Madue et al., 2014; Murray, 2006). Their lack of independence has been highlighted as problematic (Murray, 2006). Nevertheless, balancing independence and accountability is still a work in progress, writes Tsoeu-Ntokoane (2018). Also, a lack of coordination mechanism has been identified as a weakness leading to oversight ineffectiveness (Madue, 2016). These institutions conduct limited scrutiny regarding intelligence oversight but have a broader mandate to support a democratic agenda. Chapter Two of the current research states that their mandates, functions, and activities do not directly include security services, particularly the intelligence

community. However, their overall obligations ensure that human rights are respected; therefore, good governance and respect for democratic values prevail. These issues bring the intelligence structures within their purview (Steytler, 2004). These institutions may occasionally interact with intelligence services on issues such as human rights adherence, public administration investigation, or state affairs (Steytler, 2004). The exception would be the Auditor-General, ensuring government institutions implement prudent fiscal management and accounting ethics throughout their yearly function (Africa: 2019; Wills, 2012). Therefore, the Auditor-General has a regular (albeit annual) oversight role on fiscal management and expenditure reporting (Africa, 2019; Wills, 2012).

The financial oversight framework for the budget of the civilian intelligence services has existed since 1995 and conducts an annual audit in terms of the Public Audit Act, 25 of 2004 (Africa, 2019; High-Level Review Panel on State Security Agency, 2018). However, the High-Level Review Panel on State Security Agency (2018, p. 53) report details how the AG is unable "to effectively audit all of the SSA's financial, procurement and performance activities". This has resulted in the Auditor-General providing automatically qualified audits to the SSA annually (High-Level Review Panel on State Security Agency, 2018; Parliament of RSA, 2021). The report highlights, for example, the lack of access to information that allows verification of information relating to the finances and assets of the SSA. The Auditor-General's annual reports show incomplete yearly assessments due to crucial information being withheld by the SSA, which may be interpreted as purposely concealing indications of weak management (Parliament of RSA, 2021; Judicial Commission of Inquiry into State Capture, n.d.). The situation has raised serious concerns about budgetary management, and adherence to the financial prescripts, and has impacted the release of the Auditor-General's reports on the SSA (High-Level Review Panel on State Security Agency in 2018; Parliament of RSA, 2021). The Auditor-General's persistent recommendations have pointed to the absence of proper executive oversight and internal regulations for controlling covert operations and monetary management as reported by Africa (2019).

### 4.10 Chapter Summary

This chapter discussed the regulatory and institutional arrangements of the civilian intelligence and accountability model adopted in South Africa after 1994. The chapter approached this overview and discussion to demonstrate the operation of the model but also illustrate how the civilian intelligence oversight mechanism in the democratic dispensation has not been effective in holding intelligence structures as well as officials accountable (High-Level Review Panel on State Security Agency, 2018: Judicial Commission of Inquiry into State Capture, n.d.). The chapter finds that this failure originates from the apartheid-era authoritarian behaviour and culture that allowed institutional non-accountability. This culture of non-accountability was not adequately addressed within institutional oversight operations and led to its culmination between 2009 and 2019.

The chapter provided a brief historical account of the apartheid oversight and accountability (or lack thereof) culture. This historical account demonstrates an elite pact that saw an exchange of power from white minority rule to Black majority rule. Secondly, it illustrated how a culture of non-accountability, criminality and grand corruption continued in the democratic dispensation despite democratic regulations and institutions. This resulted from a lack of meaningful internal institutional changes and operations to affect the culture of accountability. Lastly, like in the apartheid era, intelligence services enabled and helped hide these criminal acts using their veil of secrecy.

This chapter explored the examination and evaluation of the civilian intelligence oversight model to demonstrate the evolution of intelligence accountability and oversight. Among other things, it highlights the stark contrast between the former apartheid regime, which lacked transparency and accountability, and the need for reform and overhaul in the current system. This supports the argument put forward in the study that a reform of the system is necessary. The apartheid regime had limited legislative and institutional mechanisms to hold the executive and secretive agencies accountable. The apartheid regime was a totalitarian state that utilised intelligence to further its undemocratic objectives without legitimate checks and balances, making it easy to hide criminality. This is also the reason for the brief historical account of intelligence governance during that period to illustrate how the culture of lack of

accountability and transparency was prevalent within the security services, especially the intelligence agencies. When amalgamation took place, few organisational strategic culture changes took place. This means that old undemocratic systems and procedures were embedded in institutional operations within the intelligence service. The oversight systems are not adequately capacitated to help uproot this culture.

The chapter argues that the years between 2009 and 2019 marked the culmination of an entrenched historical culture of authoritarian practices, which facilitated the occurrence of economic crimes, corruption, and state capture (Judicial Commission of Inquiry into State Capture, n.d.). This state behaviour is demonstrated by the intelligence agencies not actively investigating these crimes and assisting in hiding them during the apartheid era (Van Vuuren, 2019). Even though the intelligence services came under democratic control and governance in the post-apartheid era, the study argues that criminality continued by those who quietly pursued state capture projects. This is evidenced by the failure of the entire intelligence oversight mechanism to ensure that the intelligence structures and officials are held accountable (High-Level Review Panel on State Security Agency, 2018; Judicial Commission of Inquiry into State Capture, n.d.).

The chapter further illustrates the heightened need for intelligence oversight and accountability arrangements due to unique requirements and legislated powers that could be manipulated for personal or political gain. For instance, secrecy in the operation of intelligence agencies has been accepted as a norm, which can be used to hide nefarious activities and advance political interests. When the new political elites took over from the old white establishment, the need to balance transparency and secrecy became greater. However, due to the activities that led to state capture, the internal and external intelligence mechanisms failed to hold intelligence services and officials accountable.

# Chapter Five: Presentation of the Research Results

## 5.1 Introduction

This research investigated the efficacy of the civilian intelligence oversight model in South Africa after 1994. It questions the effectiveness of the regulatory and institutional arrangements that hold civilian intelligence structures and individuals accountable. It also seeks to establish the role and effects of infusing societal values in regulatory and oversight institutional arrangements.

In this chapter, the study presents the results of the research. To understand the effectiveness of the civilian intelligence oversight mechanisms, the research integrates and combines data from a literature study and in-depth interviews with relevant participants. Through analysis of collected data, the research aimed to identify patterns, themes, and trends related to the effectiveness of civilian intelligence oversight mechanisms and systems. Through this process, the study provides insight into how civilian intelligence oversight systems can be improved to protect the rights and interests of citizens and support democracy and societal values.

The collected data assess the research proposition and answer the primary and secondary research questions introduced in the first chapter. The purpose of this chapter is to present the results logically and coherently to address the research problem and purpose. The study provides a comprehensive understanding of the research problem and contributes to the advancement of knowledge in the field.

The chapter will commence by outlining the qualitative data analysis process employed in the study. Subsequently, the chapter will present the research results by addressing the research proposition, addressing both primary and secondary research questions, and then discussing the theoretical implications of the results.

## 5.2 Thematic Analysis

Neuman (2011) and Strydom (2011) agree thematic analysis is a long-established practice in research protocols that provides predictability, consistency, and reliability. It is a widely used method for analysing qualitative data and is a reliable and valid method for identifying patterns and themes in the data (Neuman, 2011; Strydom,

2011). In this study, this analysis method was used because it is flexible and applied to a wide range of data types, including transcripts of interviews (Neuman, 2011; Strydom, 2011). The process is a six-phased method that starts with familiarising with the data, generating initial codes, searching for themes, reviewing themes, defining, and naming themes, and lastly producing the report (Neuman, 2011; Strydom, 2011).

For this research, themes develop through identifying emerging patterns in the data and its categorisation, recurring behaviour, and statements in the data, objects, or body of knowledge (Neuman, 2011; Strydom, 2011). Themes are established through a cluster of related information and data categorised based on similar meanings they convey. They typically emerge through an inductive analysis approach (Neuman, 2011; Patton, 2002; Strydom, 2011). Through this process, the current research identified the following themes: the necessity of aligning the regulatory framework with democratic principles to uphold accountability, promote the establishment of a cohesive and efficient multi-institutional civilian intelligence oversight mechanism to enhance accountability measures, propose the implementation of robust internal controls and norms to enforce institutional accountability on individuals, highlight the pivotal role of strategic culture in shaping the effectiveness of intelligence oversight practices, recommend embedding democratic norms and values within the organisational culture of intelligence agencies to foster accountability, suggest achieving a more optimal equilibrium between secrecy and transparency to facilitate enhanced oversight capabilities.

### 5.3 Research Focus: Research Proposition, Purpose, and Questions

The research questions helped to define the scope and focus of the research and guided the data collection and analysis process. Research questions were closely aligned with the research problem and proposition that the study sought to address.

#### 5.3.1 Research Proposition

Since the adoption of the civilian intelligence oversight and accountability model in 1994, has not been effective and promoted good governance. This view is supported by 80% of respondents who felt that this model and individual mechanisms such as OIGI and JSCI are ineffective and lack coherent institutional measures to oversee intelligence structures. The model has not improved good governance in the

intelligence sector. While all the respondents accept that the regulatory and institutional arrangements are best practices and like most measures around the world, however, 60% felt that these arrangements require restructuring. These are the same respondents (60%) who argued for legislative and policy change; the model needs to foster transparency and accountability within the intelligence community. Whilst 40% of the respondents believe that the intelligence agency does not have the institutional integrity to withstand unethical and illegal interference used for political reasons. Although this was not the focus of the research, 40% of those interviewed feel there is a need for civilian intelligence agencies to review institutional measures to hold their officials accountable. As an intelligence expert, respondent 8 noted this is a 'self-correction measure' required to ensure issues that arise are addressed at an institutional level 'even before scrutinisation by oversight structures'. For this reason, 60% of the respondents felt that oversight review should focus on the operation of institutions and structural measures of the mechanisms to enhance good governance principles. This requires close attention to the 'functioning of institutional arrangements with the understanding ensuring good governance', 'structures and business units operation adopt and implement policy imperatives that are aimed at accountability', noted oversight practitioner, respondent 1.

The research observes the non-implementation of institutional improvements and measures to improve organisational performance made by previous review teams commissioned in the past. These were made through recommendations on regulatory and institutional measures to close gaps. This view was also highlighted by the report of the High-Level Review Panel on State Security Agency (2018). However, this research points to a lack of political will to implement such changes because the instability suits elected and appointed officials. For these reasons, the study argues that weakened intelligence agencies make it easier for corruption and state capture to worsen in all government institutions. 80% of the respondents felt that the recommendations of previous review teams/panels should be implemented first to ensure the mechanisms keep abreast with the ever-changing security threats. As the intelligence expert respondent 8 remarked, 'build on previous panel and committee investigations’.

Furthermore, 70% of the respondents believe societal values are significant to regulatory and institutional arrangements that enhance good governance and ensure accountability. The respondents felt adherence to the Constitution and their aspirational values bind them and increase transparency. Respondent 8 added that the development of 'legislation and government policy should reflect South African and constitutional values' that create a cohesive society. The respondents observed that the constitutional principles should be reflected in the civilian intelligence oversight regulatory and institutional arrangements. As respondent 1 observes, this will ensure that 'aspirations and principles of the Constitutions will be realised through operations of institutions that implement legislation together with policy provisions as well as procedures'.

### 5.3.2 Answering Research Questions

For the study to address the objectives of the research, it sought to answer the primary research question: How does the South African intelligence oversight model ensure good governance through oversight, transparency, and accountability? With this primary research question in mind, the research sought to determine good governance through the regulatory framework that establishes and guides the oversight mechanism and its institutional or organisational design that oversees the intelligence service. All the questions aim to answer this primary research question and address the problem statement.

The secondary research questions are based on the primary research question and are derived from and related to the primary research question. They were formulated in a way that helps to further explore or clarify the primary research question.

The first secondary question: how should South Africa structure civilian intelligence service oversight arrangements to meet accountability requirements? This question explicitly addresses the institutional arrangements of the civilian intelligence oversight mechanism that ensure accountability.

The second secondary research question: what effect does the lack of implementation of a regulatory framework have on accountability? This question addresses the impact of the non-implementation of the regulatory framework on accountability. The lack of

legislation, regulations and policy implementation by oversight structures affects transparency and accountability.

The third secondary research question: what is the impact of societal values in intelligence oversight regulatory and institutional arrangements that ensure realisation accountability? This question intends to establish the influence of societal values and constitutional principles on regulatory and institutional arrangements for civilian intelligence accountability.

Chapter Three discussed the appropriate data collection strategy, design, and methods adopted in this research to answer these questions. The researcher subdivided the research question into smaller, targeted, specific, and more manageable questions. The participants' answers and works of literature offered rich qualitative data. To analyse this data, the methodology component of this dissertation outlines an analysis strategy. The thematic analysis strategy was preferred as suitable and appropriate for this research because it aligns with the research theory and methods. The following section provides the participants' answers to the questions integrated with the literature study.

### 5.3.3 Primary Research Question

#### 5.3.3.1 How does the South African intelligence oversight model ensure good governance through oversight, transparency, and accountability?

To understand the regulatory and institutional arrangements of the oversight mechanism that holds intelligence structures and officials accountable, the researcher asked specific questions to establish their effectiveness. Furthermore, the dissertation also explored broad concepts of democratic accountability, intelligence governance practices, and regulatory and institutional norms. As a result, the primary research question wants to establish the application of regulations, institutional designs, and theoretical concepts within the civilian intelligence oversight mechanism to ensure good governance.

All the respondents viewed good governance within state institutions as crucial in ensuring transparency and accountability, especially within the civilian intelligence community. This view was illustrated by the Academic Expert, Respondent 10 when noting that 'intelligence governance is key in achieving oversight mandate and

transparency as well as accountability.' Firstly, 60% of the respondents consider legislation, regulation, and policy essential elements and the foundation of intelligence governance infused in the daily operations within the institutions. Secondly, according to 70% of the respondents, regulatory and institutional arrangements that hold intelligence structures and officials accountable consist of state institutions (executive, parliament, and judiciary). Respondents 3 (Intelligence Researcher) and 5 (Intelligence Governance Professional) aptly described this when they stated that these institutions provide the necessary "checks and balances in which different state institutions have powers that limit, the powers of other branches of the state" and that "this system is aimed at preventing any one branch of the state from becoming too powerful or from abusing its authority". The interesting and significant outcome (30% of the respondents) is the suggestion by respondents to explore other governance institutions alongside oversight mechanisms to ensure accountability that will coexist with current institutions. Respondent 5 suggested that intelligence agencies would benefit if oversight mechanisms 'focus on good governance methodologies'. These governance methodologies ensure that operations adhere to the applicable regulatory framework executed through institutional operations. Respondent 2 (Policy Expert) agrees that 'infusing regulation with governance-oriented practices implemented by professionals within organisational setting could improve good governance' within the intelligence sector.

Furthermore, 60% of the respondents felt that a significant mixture of appropriate structural rules and internal institutional measures combined with a suitable organisational culture aimed at good governance could encourage accountability. As the Academic Expert, respondent 10 indicates, these measures include: 'effective internal controls, oversight regulatory structures, civil society organisations, the media as well as public interest' and should form part of democratic control of the intelligence. The 'multi-institutional, as well as an onion-like approach' to intelligence oversight; could yield desired transparency and accountability outcomes, noted respondent 8.
As all the respondents agree that the existing regulatory and institutional arrangements compare well with other democratic states, 60% believe there should be regulatory instruments and appropriate organisational measures or tools that operationalise accountability. The respondents further suggest that the oversight mechanism's legislative framework should be appropriately structured to hold the

intelligence agencies and officials accountable. Achieving this should focus on the organisational design of the civilian intelligence oversight mechanism. The respondents highlighted that internal institutional processes at an operational level should focus on the oversight of organisational functioning and individual mechanisms employ measures to ensure accountability.

60% of the respondents felt that if the foundation of the civilian intelligence oversight mechanism is legislative instruments that ensure the effective operation of the structure, operational imperatives may be addressed efficiently. The respondents believe these legislative instruments set a broad framework and policies for operating the oversight model and individual mechanism. Thus, these legislative instruments establish 'internal controls and procedures for operational purposes,' according to respondent 7. The respondents agree that the institutionalisation of accountability culture within the intelligence community requires the attention of the overseers. Respondent 6 aptly expresses this view and points to the regulation and institutional design of the oversight mechanism with appropriate internal controls as well as rules that facilitate 'institutional and individual accountability through internal organisational procedures' to encourage adherence to the intelligence agencies' rules and mandate. Respondent 3 felt the considerable focus should be on the executive control's organisational policy, processes, and procedures based on the appropriate legislative framework. While respondent 8 believes that the basis of the oversight system should be these 'institutional rules and regulations that aim to enforce accountability within the intelligence community'. These tools ought to gear themselves up to implement 'transparency and accountability measures' required by the Constitution, argues respondent 9.

Moreover, the research conducted as part of this study has shown that the existing regulatory and institutional arrangements for intelligence oversight require improvement to enhance their effectiveness. Specifically, the study found that internal controls within intelligence agencies need to be strengthened to improve their operational performance. This is because internal processes play a critical role in ensuring that intelligence agencies can conduct their functions in an open, transparent, accountable, and legal manner. Without strong internal rules, intelligence agencies may be prone to abuse of power, mismanagement, and other forms of misconduct or

criminal behaviour like corruption. By enhancing policies, intelligence agencies can improve their performance and better serve the public interest.

This study seeks to contribute to existing knowledge by exploring the oversight mechanisms that contribute to the accountability of the intelligence community, in this instance, with a particular focus on institutional development measures. This is an important contribution to the field, as understanding how oversight mechanisms work and can be improved is critical for ensuring the accountability of the intelligence community. By examining these mechanisms in the context of institutional development measures, the study provides valuable insights into how to strengthen oversight and improve accountability. This, in turn, can inform efforts to improve civilian intelligence oversight systems in South Africa.

### 5.3.4 Secondary Research Questions

#### 5.3.4.1 How should South African civilian intelligence service oversight arrangements be structured to meet accountability requirements effectively?

This question sought to address the institutional arrangements of the oversight mechanism that should ensure accountability within the intelligence. Although the previous chapter conducted a detailed literature study exposition of the current intelligence oversight model, this question sought to determine the understanding of primary data. In this chapter, the question seeks participants' understanding of the efficacy of the structural design of the model to ensure accountability.

70% of the respondents observe that if the model constitutes a multi-institutional oversight mechanism, the multi-layered measure creates a better governance system and outcomes. There are “various levels of accountability structures and mechanisms within the system, each point or mechanism should ensure accountability through their unique set of procedures,” argues respondent 9. However, 40% of the respondents felt that a coordination mechanism might improve the efficacy of the model. This coordination mechanism should operate at the highest level of government structures such as the “Presidency or National Security Council,” said respondent 1. To be effective, respondent 8 believes that the "multi-institutional model requires a management structure that ensures fulfilment of mandates regarding the individual mechanism and appropriate organisational measures". This management structure

could delineate parliamentary and IGI oversight responsibilities. As respondent 12 notes: "An overseeing structure like that would enable greater cooperation and understanding within the entire oversight mechanism." Respondent 2 felt that the required "structural changes are largely at the ministerial level, but also a mindset shift is needed to support the implementation of much-need regulations". This change, argues respondent 4, is the "role of a political head in overseeing the intelligence agency with appropriate rules of engagement". This oversight mechanism is crucial and should be viewed as the "first line of defence geared to ensure the rule of law is adhered to and importantly institutional measure to ensure accountability," according to respondent 5. The ministerial oversight should not result from individual awareness of the scrutiny necessary for the agency. However, 80% of the respondents felt that the Ministry's oversight responsibility should be regulated and governed through legislation. Respondent 3 argued for this oversight responsibility to be "elevated and given importance" for any incumbent level of independence and that “attitude towards oversight should not only be responsive but also expected”.

The study observes how respondents' views and experiences complement the stance of the literature on intelligence accountability. Overseers, such as the Minister, OIGI, and JSCI are responsible for scrutinising and examining the activities and intelligence structures to ensure that they are operating within their legislated mandate and are fulfilling their responsibilities in a legal, effective, and ethical manner. This includes reviewing the intelligence service's operations, policies, and procedures, as well as examining how the intelligence service is using its powers and resources, including its budgets. By conducting this oversight, overseers can help to ensure that the intelligence service is accountable and transparent and that it is operating in a way that is consistent with democratic values and the rule of law.

This view is also shared by 80% of the respondents, who believe the legal framework should support the practice of oversight for the model. It ensures the protection of democracy, constitutional order as well as integrity of the state. However, all the respondents highlighted the need for legislative and policy reviews. The JSCI annual report found that the intelligence policy document, White Paper on Intelligence, had not been reviewed since 1995; the report also advocates for the amendment of the Intelligence Oversight Act (Parliament of the Republic of South Africa, 2021).

Similarly, 60% of the respondents concur that this multi-institutional model is state institutions, but the media and civil society organisations are essential pillars in a democratic state. However, a significant finding is that all respondents believe public involvement is necessary and should be institutionalised. The central pillar of this model is the first three institutional mechanisms, whilst the media is the fourth pillar, and legislative oversight provides an anchor role for the entire model. 60% of the respondents felt that this multi-institutional system of intelligence scrutiny builds society's trust in the intelligence community.

Finally, all the respondents agree that this institutional arrangement adopted in South Africa post-apartheid has not effectively held the intelligence service and officials accountable. All the respondents were adamant that in the period between 2009 and 2019, the oversight mechanisms were weak, ineffective, and did not show willingness or political teeth to ensure transparency and accountability. Also, the respondents illustrated a strong correlation between the ineffectual intelligence oversight mechanisms to a political climate where the executive exercised power without accountability. According to respondent 3, this was a “period of political authority and the executives who care less about constitutional imperatives of responsibility, openness, transparency and accountability and more about executing executive power”.

#### 5.3.4.2 What Weaknesses in the structural mechanisms exists?

All the respondents agreed that there are weaknesses in the structural arrangements at an operational level. The need to address structural weaknesses is what most respondents felt. The identified weaknesses include a lack of effective systems and measures to hold appointed leaders accountable, a lack of coordination mechanisms or focal points of the organisation, and a lack of centrality or primary source of management. These are all serious issues that can impact the effectiveness and accountability of the intelligence oversight system and addressing them may be necessary to improve the system's performance. The study maintains that it is important to address these identified weaknesses to avoid these negative implications and to ensure that the intelligence oversight system can effectively hold the intelligence service and officials accountable. As respondent 8 notes, "Institutional weaknesses hinder efficiency in the operation of the intelligence oversight".

The study highlights the identified weaknesses in the current intelligence oversight system and the negative implications that result from these weaknesses. It is important to address these identified weaknesses to prevent further negative outcomes and to ensure that the intelligence oversight system can effectively hold the intelligence service and officials accountable. The study recommends several improvements in the oversight system. First, the SSA should table annual reports regularly. Implement consequence management for heads of intelligence who fail to perform, and link performance to set annual performance plans. Focus oversight on specific reporting periods and promote better communication and cooperation between different stakeholders involved in the oversight process. Additionally, the study emphasises the importance of considering the cultural and political context of South Africa and remaining sensitive to the country's historical and current dynamics.

#### 5.3.4.3 What effect does the lack of implementation of a regulatory framework have on accountability?

This question addresses the effects of not implementing an oversight regulatory framework relevant to accountability within the intelligence community. The lack of implementation of legislation by oversight structures and mechanisms impacts openness, transparency, and accountability.

60% of the respondents felt it is significant that the Constitution anchors, provides a foundation and regulates this accountability model, subsequent legislation regulations and institutional rules. This is the best practice around the world, noted most respondents. Therefore, the respondents believe that the lack of implementation of a regulatory framework could harm the overall transparency and accountability in the intelligence community. Respondent 8 stated that there must be "amendments and alignment of the legislative framework to ensure the model is sufficient in managing and guiding its mandate". Thus, to achieve the legislative mandate of the oversight structures, 60% of the respondents observe that the legislative and regulatory framework creates and provides a structure for the operation of the civilian intelligence oversight model. According to respondent 4, the Intelligence Oversight Act regulates the "mandate of oversight structures and mechanisms such as the OIGI and the JSCI". However, respondent 7 believes that the Constitution is "not clear on the operation of the model". Similarly, respondent 10 felt the Constitution should "regulate executive

control, approval of politically sensitive operations, financial scrutiny of the intelligence budget” to alleviate ambiguities. Equally, according to respondent 1, “the Intelligence Oversight Act is murky” and should be much more precise when guiding the operations of the JSCI. Respondent 3 agrees that “there are gaps in the laws that regulate the oversight model”. Conversely, most respondents argue that it is not the Constitution that should detail the mechanism's operation; this should find expression in subsequent legislation, regulations, and institutional rules.

Nevertheless, 70% of the respondents agree that while the lack of implementation of legislation is a problem, a more significant issue is not applying the existing law considering the mandate of intelligence oversight. Respondent 6 highlighted this when noting that "amendments and alignment of the legislative framework" ensure the mechanism is sufficient in "regulating its mandate and apportioning appropriate power to officials". Furthermore, all the respondents felt that the existing legislative arrangements of the civilian intelligence oversight mechanism reflect a democratic society. This means a key role of intelligence oversight in a democratic society is to ensure that the intelligence service is accountable and transparent and that it operates in a way that is consistent with democratic values and the rule of law. This includes protecting the human rights and civil liberties of the citizens and respecting the separation of powers. This, in turn, can help to build public trust and confidence in the intelligence service and the oversight system and contribute to the stability and integrity of the democratic system. Also, while the legislative arrangements compare satisfactorily with developed democratic countries worldwide, 60% of the respondents expressed concerns about the weakening and erosion of governance, including intelligence governance institutions between 2009 and 2019. There was a "blatant violation of the Constitution, the rule of law and ignoring oversight institutions" during this period, said respondent 9. Similarly, respondent 8 added that this resulted from a "lack of political will" to address these violations and take steps to ensure intelligence agencies adhere to the rule of law. Oversight officials point to a "lack of continuity due to change of administrations, capacity and experience of parliamentarians to do oversight work". Respondent 9 highlighted "inappropriate appointments of political authority" as central to these violations.

This research has found that the current state of the civilian intelligence oversight system is the result of a lack of ongoing review and assessment of the regulations governing oversight, as well as a lack of implementation of previous recommendations. This can be a significant issue, as the intelligence service is responsible for addressing a wide range of evolving security threats, and the oversight system must be able to adapt and respond to these changing threats to be effective. By failing to review and update the regulations governing oversight, or by failing to implement recommendations from previous review processes, the oversight system may be unable to keep pace with these changing threats and may not be able to fulfil its mandate effectively. This could have serious implications for the accountability and transparency of the intelligence service and the overall stability and integrity of the democratic system.

#### 5.3.4.4 What is the impact of societal values in intelligence oversight regulatory and/or institutional arrangements that ensure realisation accountability?

This question intends to determine the influence of societal values on regulatory and institutional arrangements to engender accountability within civilian intelligence. 70% of the respondents believe societal values are a significant consideration and an infusion in regulatory and oversight institutional arrangements. The respondents felt that when their reflected values (especially in the Constitution) are embedded in legislation and institutional organisation, it yields better societal outcomes. Respondent 8 appropriately described this view: "All of us, including and especially the government, must adhere to the Constitution and work towards achieving its aspirational values which bind us as a people". Accordingly, legislation, policy and governmental institutions and regulations should be "designed with the constitutional values and principles in mind," argued respondent 1. Respondent 10 also expressed this view, when noting the need for a "structural design of government institutions to reflect constitutional ideals that create a responsive government". Respondent 9 also emphasised that the infusion of values that South Africans view as necessary should be "reflected in these arrangements". Respondent 7 expressed similar views when stating that 'legislation and policy ought to reflect the values society holds dear to create a cohesive society. However, 60% of the respondents felt that the policies and institutional arrangements should reflect constitutional values. The respondents believe that when constitutional values permeate legislation, policies and government

institutions that implement these policies, there would be fewer judicial challenges to the regulatory framework and its implementation.

The current research has found that exploring the effects of incorporating societal values into these arrangements is an important research topic, as civilian intelligence oversight is a critical component of any democracy and plays a vital role in ensuring that the intelligence service operates in a transparent and accountable manner.

### 5.4 Chapter Summary

This chapter presented the research results by addressing the research proposition, and purpose and answering the primary and secondary research questions. The research found that the adopted oversight and accountability mechanism in the South African democratic dispensation is ineffective in holding intelligence services and officials accountable. The model and individual mechanisms, such as Minister, OIGI and JSCI, are ineffective and lack the operational impact that ensures scrutiny of the intelligence services.

The primary and secondary results show that the mechanisms lack coherent institutional measures, procedures, and processes to ensure accountability. As a result, the research found there is a need for a review and reform. Also, in answering the research questions, the study found that good governance is a significant requirement and central to intelligence governance. A vital component of good governance is legislative and policy grounding. To that end, the current research found that the legislative framework is foundational to the effective operation of the civilian intelligence oversight and accountability mechanism.

According to the study, legislative instruments set a broad framework for operating the oversight model and individual mechanisms. Thus, crucial to the mechanism's effectiveness is the foundation laid by the regulatory framework and multi-layered institutional arrangements that hold intelligence services and officials accountable. The state institutions provide the necessary checks and balances for effective governance within government structures. The research also found that the existing regulatory and institutional arrangements compare well with other democratic states

around the globe; internal institutional measures need improvement to encourage a culture of accountability.

Furthermore, the research also investigated the effects of infusing societal values in regulatory and oversight institutional arrangements. One of the key findings of this research is that societal values are an important consideration in the development and implementation of regulatory and institutional arrangements for intelligence oversight and accountability. Specifically, these arrangements must reflect the values and principles held by the broader society in which the intelligence agency operates. These values include transparency, accountability, the rule of law, and respect for human rights. By ensuring that these values are aligned with intelligence oversight and accountability measures, intelligence agencies can better serve the public interest and maintain the trust of the citizens they are meant to protect. This is particularly important in democratic societies where intelligence agencies are accountable to the people and must operate within the ambit of the law.

# Chapter Six: Discussion of the Research Findings

## 6.1 Introduction

The study investigated the regulatory and institutional arrangements that hold civilian intelligence services and officials accountable. This is an area where the study contributes new knowledge. In trying to address the purpose research and answer the research questions, the researcher collected primary and secondary data through in-depth interviews and a literature study. The data was examined, assessed, analysed, and converted into research results, which were presented in Chapter Five.

In Chapter Three, the study adopted a qualitative research approach to address the research conceptualisation elements that facilitated the alignment and integration of research strategy, design, procedures and methods, and the theoretical framework (Creswell, 2007; Creswell & Poth, 2018; Neuman, 2011; Wotela, 2016a). Based on the data collected, the study concluded in Chapter Five that the civilian intelligence oversight model adopted in South Africa is ineffective in ensuring transparency and accountability. Therefore, the intelligence oversight model has not effectively held intelligence structures and officials accountable. The study suggests reform of intelligence oversight systems and the implementation of existing recommendations by previous review committees or investigative initiatives.

In this chapter, the study discusses the research findings, which consist of three sections. The first component outlines the data analysis and interpretation process. The second section outlines the outcome of the analysis process and the emergent themes. Lastly, the chapter assessed the regulatory and institutional arrangements studied in this dissertation.

## 6.2 Research Strategy, Design, Methods, and Analysis Process

The research strategy, design, and methods were developed and decided upon during the conceptualisation phase of the study. During this stage of the thesis, the research defined the research problem, formulated the research questions, and developed the overall approach for the study. The research employed a qualitative research approach.

One of the advantages of adopting a qualitative research approach is the ability to analyse a conceptual framework that enables the integration of different social realities, knowledge, perceptions, and experiences of participants obtained through interviews (Strydom, 2011). This research approach also eased an integrated, cohesive, and narrative presentation of the results in addition to the discussion of the findings (Neuman, 2011; Wotela, 2016b).

By using a qualitative research approach, the researcher analysed the conceptual framework by collecting and analysing a wide range of data, such as interviews and documentary data, which provides a rich and in-depth understanding of the key concepts and connections. Through the process of coding, categorising, and interpreting the data, the research identified and analysed the key themes and patterns that emerged, providing a thorough understanding of the conceptual framework. This systematic research process helped to ensure that the research was focused, well-organised and there was alignment with the research purpose, proposition, and questions.

### 6.3 Summary of Research Results and Discussion

This study aims to assess the effectiveness of the South African intelligence oversight model in promoting good governance, transparency, and accountability. The research focused on regulatory and institutional arrangements within the oversight mechanism to evaluate their effectiveness. Additionally, the study examined democratic accountability, intelligence governance practices, and regulatory norms.

This research provides valuable insights into the strengths and weaknesses of the civilian intelligence oversight model in South Africa. The findings underscore the importance of robust legislative frameworks, effective internal controls, and alignment with societal values in promoting transparency and accountability. Addressing identified weaknesses and implementing recommended improvements can enhance the effectiveness of the oversight model. Critically, this contributes to the stability and integrity of the democratic system.

As discussed in Chapter Five, to address the abovementioned research areas primary and secondary research questions were developed. These research questions were further broken into smaller more manageable questions.

### 6.3.1 Primary Research Question

The primary research question aimed to explore how good governance is achieved through the regulatory framework that establishes and guides the oversight mechanism, as well as its institutional or organisational design that oversees the intelligence service.

#### 6.3.1.1 Good Governance as a Crucial Component

All respondents agreed that good governance is essential for transparency and accountability in the civilian intelligence community. This point was aptly described by Respondent 10 by highlighting that "intelligence governance is key in achieving oversight, transparency, and accountability."

30% of respondents suggested exploring other governance institutions alongside existing oversight mechanisms to ensure accountability. Respondent 5 advocated for a focus on good governance methodologies to ensure adherence to regulatory frameworks. This research posits exploring intelligence mechanisms working within a framework of the NSC and proposes a coordination structure. The latter is discussed in detail below.

#### 6.3.1.2 Legislation and Policy Framework

60% of respondents emphasised the importance of legislation, regulation, and policy as foundational elements of intelligence governance. The respondents emphasised the need for governance-oriented practices that should be integrated into daily operations within oversight institutions. Respondents agreed that legislative instruments should set a broad framework and policies for operating the oversight model and individual mechanisms. Respondent 7 mentioned that these “instruments establish internal controls and procedures for operational purposes”.

#### 6.3.1.3 Checks and Balances

70% of respondents stated that the regulatory and institutional arrangements involve state institutions (executive, parliament, judiciary), providing necessary checks and

balances. Respondents 3 and 5 described these state institutions as mechanisms to limit the powers of other branches and prevent abuse of authority.

#### 6.3.1.4 Regulatory and Institutional Arrangements

60% of respondents believed a mix of appropriate structural rules, internal institutional measures, and a suitable organisational culture could foster accountability. Respondent 10 noted the “importance of effective internal controls, oversight regulatory structures, civil society organisations, media, and public interest in democratic control of intelligence”. While existing arrangements compare well with other democratic states, 60% of respondents believed additional regulatory instruments and organisational measures are needed to operationalise accountability.

This study highlights a consensus among respondents on the importance of legislative frameworks and institutional measures in promoting good governance within the intelligence sector. The respondents emphasised the need for a robust legal framework to support oversight mechanisms and ensure accountability. The research findings concur with the literature on intelligence accountability. The research emphasises the role of oversight bodies in scrutinising intelligence activities to ensure they comply with legal and ethical standards. The study also identifies gaps in the current oversight model, such as the lack of effective organisational internal controls and coordination mechanisms, which hinder accountability.

### 6.3.2 Secondary Research Questions

The secondary research questions looked at the necessary organisational structures to ensure accountability within the intelligence community. They also examined the weaknesses in the oversight model at the operational level and the impact of not implementing a regulatory framework on accountability within the intelligence community. The research also explored the influence of societal values on regulatory and institutional arrangements in promoting accountability within civilian intelligence. The research sought participants' perspectives on the efficacy of the structural design of the oversight model.

#### 6.3.2.1 Multi-Institutional Oversight Mechanism

70% of respondents advocated for a multi-institutional oversight mechanism, which they believe creates a better governance system and outcomes. Respondent 9

emphasised the “importance of various accountability structures within the system such as Chapter Nine institutions”.

#### 6.3.2.2 Coordination Mechanism

40% of respondents felt that a coordination mechanism at the highest government level, such as the Presidency or National Security Council, could improve the model's efficacy. Respondent 1 noted that “this structure would enable greater cooperation and understanding within the oversight mechanism”. The study reveals a need for a multi-layered oversight model involving various state institutions and coordination mechanisms to enhance accountability. Strengthening internal controls and coordination mechanisms is essential to ensure accountability and prevent abuse of power within intelligence agencies. The study's recommendations aim to enhance the effectiveness of the oversight system and promote transparency and accountability.

#### 6.3.2.3 Ministerial Oversight

80% of respondents felt that ministerial oversight responsibility should be regulated and governed through legislation to ensure accountability. Respondent 2 argued for “structural changes at the ministerial level and a mindset shift to support implementing necessary regulations”. The findings suggest that the current model requires structural changes and stronger ministerial oversight to be more effective.

#### 6.3.2.4 Structural weaknesses at an operational level

Respondents identified weaknesses such as a lack of effective systems to hold appointed and elected leaders accountable and a lack of coordination mechanisms. Respondent 8 noted that institutional weaknesses hinder operational efficiency. M All the respondents stressed the importance of addressing structural weaknesses.

The study reiterates the need to address these weaknesses to improve the intelligence oversight system's performance. Recommendations include regular tabling of SSA annual reports, consequence management for non-performing heads of intelligence, and promoting better communication among stakeholders. Respondents highlighted the importance of a legal framework that supports oversight practices and promotes transparency.

#### 6.3.2.5 Significance of Legislative Framework

60% of respondents emphasised the importance of the Constitution and subsequent legislation in regulating the accountability model. Respondent 8 highlighted “the need for amendments to ensure the model's sufficiency in managing its mandate”.

70% of respondents believed that the lack of implementation of existing laws is a significant issue. However, Respondent 6 noted that “much-needed amendments and alignment of the legislative framework are necessary to regulate the oversight mechanism effectively”.

The study underscores the critical role of legislative frameworks in ensuring accountability within the intelligence community. The lack of implementation of existing laws undermines transparency and accountability, highlighting the need for periodic reviews and amendments of regulations to address evolving security threats effectively.

#### 6.3.2.6 Societal Values and Regulatory Framework

70% of respondents believed societal values are significant in regulatory and oversight institutional arrangements. Respondent 8 emphasised the need for “adherence to the Constitution and its aspirational values”. Similarly, 60% of respondents felt that policies and institutional arrangements should reflect constitutional values. Respondent 7 noted that “legislation and policy should align with the values of the society to create a cohesive society”.

The research highlights the importance of embedding societal and constitutional values within regulatory and institutional frameworks to promote accountability. Reflecting these values in legislation and policy enhances transparency and fosters public trust in the intelligence community.

### 6.3.3 The Meaning of Research Results

The meaning of the research results is clear: the current South African intelligence oversight model, while functional, requires significant enhancements to align fully with democratic values of transparency, accountability, and good governance. The targeted improvements suggested by the respondents and the research results can significantly bolster the oversight mechanisms, ensuring that intelligence operations are conducted

within the legal and ethical boundaries set by the democratic framework. Implementing these changes is not merely a bureaucratic adjustment but a fundamental step towards maintaining South Africa's constitutional democracy. By addressing the identified weaknesses and fostering a culture of accountability and transparency, the oversight model can better protect citizens' rights and uphold the principles of democracy.

### 6.4 Application of Institutional Rational Choice

The theory focuses on how institutions, defined as sets of rules and norms, shape the behaviour of rational, self-interested actors. The theory provides a useful framework for understanding how institutional arrangements impact decision-making processes within the context of intelligence oversight and accountability. Applying this theoretical lens to research methodology, results, and findings provided a comprehensive analysis of the research variables.

Firstly, the research findings highlight how the rational behaviour of actors is shaped by institutional rules. Through this theory, actors will act in their self-interest within the constraints of these rules. However, if actors are found to be circumventing oversight mechanisms, the theory suggests that the rules need to be strengthened or modified to align their incentives with the desired outcomes.

Secondly, institutional arrangements impact the effectiveness of intelligence oversight. The theory provided the research with a framework for understanding the operations and mechanics of the system from an organisational point of view. The research findings certain institutional rules and procedures need to be reformed to ensure transparency and accountability. The theory supports the argument for institutional reforms to create more effective oversight mechanisms.

Thirdly, research findings indicated a lack of coordination among oversight bodies. Thus, emphasis is placed on the importance of coordination and cooperation among oversight mechanisms. The application of the theory demonstrates that institutional rules can hinder cooperation. As a result, recommends establishing formal cooperation agreements and communication channels to enhance coordination and effectiveness.

Fourth, an effective intelligence oversight process requires robust institutional arrangements at an operational level. Through the theory, gaps, and weaknesses such as lack of resources and authority were identified in the oversight framework and suggested improvements. Thus, recommend enhancing the institutional capacity of oversight bodies to ensure they can fulfil their mandates effectively.

Fifth, the research agrees with the literature that the application of a theory provides valuable insights into the complex nature and dynamics that are prevailing. However, this research has found that the theory also provides a foundation for a perspective essential for effective oversight design and implementation. The research also found that its practical application may encounter challenges in navigating real-world intelligence oversight complexities and ensuring accountability. This is due to the fragmented nature of the intelligence oversight mechanisms and the systems employed to oversee intelligence service.

Sixth, this research further found application of this theory is essential to advocate for measures that ensure oversight actors and personnel are instrumental in putting in place measures that hold intelligence services accountable. This enhances governance and regulatory frameworks within intelligence institutions. Literature underscores the imperative for ongoing legislative and regulatory review to maintain alignment with evolving security landscapes and optimise oversight mechanisms. The research agrees with this notion as it found that reviews are crucial for appropriate legislative amendments and institutional redesigns as well as attracting the correct skills.

The table below provides a summary of how Institutional Rational Choice theory can be applied to research methodology, results, and discussion. The table also highlights a brief analysis of each variable.

**Table 3: Summary: Application of Institutional Rational Choice Theory**

| Research Variables | Application: Institutional Rational Choice | Analysis Outcome |
|---|---|---|
| Identification of Gaps | Understand how existing institutional rules and norms fail to address oversight issues. | Qualitative approach (document analysis, interviews) to identify gaps in regulatory and institutional arrangements. |
| Process | Examine the design and implementation of processes within the oversight framework. | Inefficient processes suggest the need for streamlined rules and procedures aligned with rational behaviour of actors. |
| Structure | Assess whether the current structures provide adequate checks and balances. | Lack of independence and conflicts of interest indicate the need for structural reforms. |
| Actors/Ethics | Analyse the behaviour and ethical considerations of actors within oversight mechanisms. | Ethical lapses or conflicts of interest suggest the need for institutionalizing ethical norms and accountability mechanisms. |
| Oversight | Identify gaps in the oversight framework and suggest improvements. | Enhancing institutional capacity is necessary to ensure oversight bodies can fulfil their mandates effectively. |
| Institutional Arrangements | Focus on how institutional arrangements impact the effectiveness of intelligence oversight. | Institutional reforms may be needed to better align rules with transparency and accountability goals. |
| Rational Behaviour of Actors | Highlight how rational behaviour of actors is shaped by institutional rules. | Strengthening or modifying rules to align actor incentives with desired outcomes is essential. |
| Coordination and Cooperation | Emphasis on the importance of coordination and cooperation among oversight bodies. | Establishing formal cooperation agreements and communication channels enhances coordination and effectiveness. |

### 6.5 Discussion of Themes

The following categories of data and recurring statements emerged as themes: the importance of aligning the regulatory framework with democratic principles to uphold

accountability; promoting the establishment of a cohesive and efficient multi-institutional civilian intelligence oversight mechanism to enhance accountability measures; proposing the implementation of robust internal controls and norms to enforce institutional accountability on individuals; highlight the pivotal role of strategic culture in shaping the effectiveness of intelligence oversight practices; recommend embedding democratic norms and values within the organisational culture of intelligence agencies to foster accountability; suggest achieving a more optimal balance between secrecy and transparency to facilitate enhanced oversight capabilities.

### 6.5.1 The importance of aligning the regulatory framework with democratic principles to uphold accountability

The research findings align with existing literature regarding the importance of aligning the regulatory framework with democratic principles (Africa, 2012; Geneva Centre for the Democratic Control of Armed Forces, 2003). This alignment is crucial for the effective functioning and grounding of the civilian intelligence oversight mechanism. For instance, literature views the 1996 Constitution as the cornerstone that underpins the legal framework, providing a broad foundation for establishing civilian oversight and outlining the principles of accountability and transparency (Dube, 2013; Nathan, 2010). This research concurs with the literature, highlighting the significance of legal structures in shaping intelligence oversight mechanisms and laying the foundation for improving good governance in the intelligence sector.

However, the study further identifies inadequacies in the implementation of legislation, such as gaps in developing and implementing regulations and standard operating procedures, and failures to address legislative requirements, particularly evident in ministerial control and parliamentary oversight. These gaps and inadequacies are prevalent in the literature. Despite the grounding of the legal framework for intelligence oversight and established systems, there are instances where the intelligence service violates constitutional and legislative provisions. This highlights the inadequacy of executive control and parliamentary oversight in addressing systemic gaps. The study found that legislative reforms, including clearer regulations and updated policy provisions, will enable the integration of constitutional values within the civilian intelligence oversight model. The study concurs with the literature, as the continuing

regulatory and legislative weaknesses entrench current challenges in translating legal frameworks into effective oversight practices. Legislative reforms are necessary to address these limitations and enhance the effectiveness of the intelligence oversight system at an operational level.

Moreover, the research underscores the role of state institutions in developing, implementing, and applying legislation. The study emphasises the need for coherent policy provisions to ensure accountability within the intelligence sector, which is crucial in addressing systemic deficiencies in intelligence oversight mechanisms and improving institutional performance.

### 6.5.2. Promotion of a cohesive and efficient multi-institutional civilian Intelligence oversight mechanism that maximises accountability

The research conducted a comprehensive analysis of the multi-institutional civilian intelligence oversight mechanism in Chapter Four, highlighting its complexities and effectiveness. Establishing a cohesive and efficient oversight mechanism proves crucial for enhancing accountability measures. The findings align with existing literature emphasising the significance of democratic control, transparency, and accountability in the intelligence sector.

The study examined the impact of oversight mechanisms on intelligence mandates and strategic objectives, resonating with observations by Musila (2018) and Conci (n.d.). These scholars discuss the delicate balance between executive control and the risk of politicisation. The research recognises the critical role of legislative and judicial oversight in holding the executive accountable and upholding legality within intelligence operations, aligning with perspectives from Gill & Phythian (2018) and Leigh (2007).

Investigating the South African context, the research unveils challenges in ensuring accountability within the intelligence service, echoing concerns from scholars like Netshitenzhe (2005), Duncan (2011), and Dube (2013). These scholars highlight issues regarding the independence and resources of oversight mechanisms such as the OIGI. The study acknowledges the necessity of integrating societal and constitutional values into the operations of oversight mechanisms to enhance democratic controls. This progressive approach promotes transparency, human rights,

and public trust, aligning with arguments by Cole (2015), Hutton (2007), and Kleinig et al. (2011). However, while underscoring the importance of civilian intelligence oversight mechanisms that uphold democratic principles and promote good governance, the research identifies potential limitations in the South African context. It suggests that the oversight mechanism would benefit from a more scholarly and deeper analysis of these proposed solutions.

For instance, the feasibility and practicality of integrating societal values into oversight mechanisms present significant challenges. Striving for transparency and accountability requires assessing the practicality of proposed solutions within South Africa's specific socio-political context. Recognising this paves the way for a more practical and effective approach to intelligence oversight, ensuring that mechanisms align with societal realities and contribute meaningfully to democratic governance.

### 6.5.3 Institutional accountability imposed on individuals through effective internal controls and norms

The development of this theme drew heavily from both primary and secondary data collected during the initial research phases. The intelligence community requires institutional measures to hold intelligence officials accountable. The study advocated for the necessity of robust institutional measures to enforce accountability, drawing on scholarly literature on intelligence governance (Bolto, 2019; Born, 2004; Dube, 2013; Hutton, 2007; Lester, 2012; Masiapato, 2017). By aligning with established academic research, the study established a solid foundation for investigating mechanisms necessary to ensure accountability within the intelligence service.

Chapter Four examined the application of the accountability concept within intelligence governance. The findings demonstrate that the literature views accountability as a cornerstone and key governance principle in a democracy. The study found a critical need for robust internal controls and norms to enforce institutional accountability on individuals. State employees, including intelligence officials, must justify their actions and decisions within legislated channels of accountability. By integrating these scholarly perspectives, the research highlighted the importance of scrutinising the decisions and actions of secretive intelligence agencies and their officials. The study highlighted the intersection between individual behaviour and institutional dynamics

within intelligence services, drawing from the works of Pierre, Peters & Stoker (2008) and Dube (2013). The research cited the testimony of the IGI, Dr Dintwe at the Judicial Commission of Inquiry into State Capture in 2022, providing real-world examples of how the lack of consequence management within the intelligence community undermines accountability and allows wrongdoing. Additionally, the research leveraged insights from Kleinig et al. (2011), suggesting that institutional arrangements and soft laws play a pivotal role in promoting accountability within organisations.

Furthermore, the research identified compelling reasons for cultivating a culture of accountability within intelligence agencies, aligning with contemporary scholarly debates. By promoting values such as transparency, integrity, and professionalism, the study reiterated the views of Gill (2016) on the importance of instilling a mindset that prioritises accountability. These discussions illustrate the bridge between theoretical orientations and practical realities within intelligence agencies. The research agrees with the literature on the critical role of civilian intelligence oversight mechanisms in supporting accountability within the intelligence service.

However, the analysis in Chapter Four further revealed that effective internal controls and norms are essential to impose institutional accountability on individuals. The research underscores that accountability mechanisms must be embedded within the institutional framework of intelligence services. This approach ensures that intelligence officials operate within a structure that demands justification for their actions and decisions, promoting a culture of accountability and transparency in line with democratic principles.

#### 6.5.4 Strategic Culture is critical to intelligence oversight

Strategic culture theory, as explained by scholars such as Snyder (1977), Lantis (2002), and Van Nieuwkerk (2012), offers a valuable framework for understanding how a society's beliefs, attitudes, and behavioural patterns influence its approach to security and military affairs. This theory posits that a society's strategic culture, shaped by its collective beliefs and attitudes, creates a semi-permanent state guiding its security and military activities. This cultural approach to security transcends mere policy prescriptions, profoundly influencing institutional arrangements, government decision-making, and elite behaviour. By drawing on seminal works like Snyder's

(1977) advocacy of this theory, the study establishes a solid theoretical foundation for its analysis.

About this research, applying strategic culture theory to evaluate the South African civilian intelligence oversight model yields crucial insights into the factors shaping the approaches of the government, society, and intelligence agencies to oversight. Van Nieuwkerk (2012) argues that common experiences, history, and shared identity within society inform state behaviour and influence the design and implementation of policies, including intelligence oversight.

The study found that understanding the strategic culture of key actors within the South African context is important for assessing the effectiveness of intelligence oversight mechanisms. By acknowledging the influence of beliefs, attitudes, and behavioural patterns on oversight practices, the research underscores the importance of cultural factors in shaping governance and accountability within the intelligence sector. Thus, incorporating strategic culture theory into its analysis enriches the study's examination of intelligence oversight models. It provides a nuanced understanding of the socio-cultural dynamics underpinning governance practices. By supporting established scholarly literature and theoretical frameworks, the research enhances its academic rigour and contributes valuable insights to the discourse on intelligence governance. However, the study also acknowledges the critics of strategic culture theory who argue that it oversimplifies decision-making processes within government institutions and neglects individual agency, potentially limiting its explanatory power (Johnston, 2023). This critique acknowledges the complexities of intelligence governance and the need for a comprehensive approach to understanding oversight mechanisms.

#### 6.5.5 Intelligence agencies' organisational culture should be grounded in democratic norms and values

This study underlines the urgent need for a cultural shift within the intelligence community towards embracing democratic norms and principles of transparency and accountability (Ehrhart, Schneider & Macey, 2014). The considerable influence of organisational culture on effectiveness, as widely researched, underscores the necessity of cultural change to achieve organisational goals (Macey & Schneider, 2008). Schein's (2010) definition of organisational culture highlights shared

assumptions and behavioural norms, aligning closely with strategic culture theory. According to this theory, organisational culture shapes decision-making processes and institutional behaviour, which profoundly impacts intelligence oversight (Macey & Schneider, 2008). However, Bozkus (2024) argues that implementing cultural change within the intelligence sector may prove challenging due to the deep-rooted nature of non-accountability. Despite legal reforms, remnants of an authoritarian culture persist, perpetuating corruption and non-accountability (Bozkus, 2024). The study highlights the necessity for institutional change to address this entrenched culture, particularly in the SSA, where apartheid-era practices still influence operations.

The research findings stress the critical need for systemic reforms and cultural shifts within the intelligence community to enhance accountability and transparency. While legal changes are essential, addressing entrenched cultural norms and historical legacies requires sustained effort and institutional restructuring. This effort demands collaborative initiatives between the public sector, civil society, and relevant partners to drive meaningful change and promote a culture of accountability within intelligence agencies. This theme underscores that simply enacting legal reforms is not enough; there must also be a concerted effort to shift the underlying cultural norms that guide behaviour within intelligence agencies. These cultural changes are necessary to overcome historical legacies of non-accountability and to foster an environment where transparency and democratic oversight are prioritised. By promoting these values, the intelligence community can move towards more effective and accountable governance.

### 6.5.6 A more effective balance between secrecy and transparency to enable better oversight

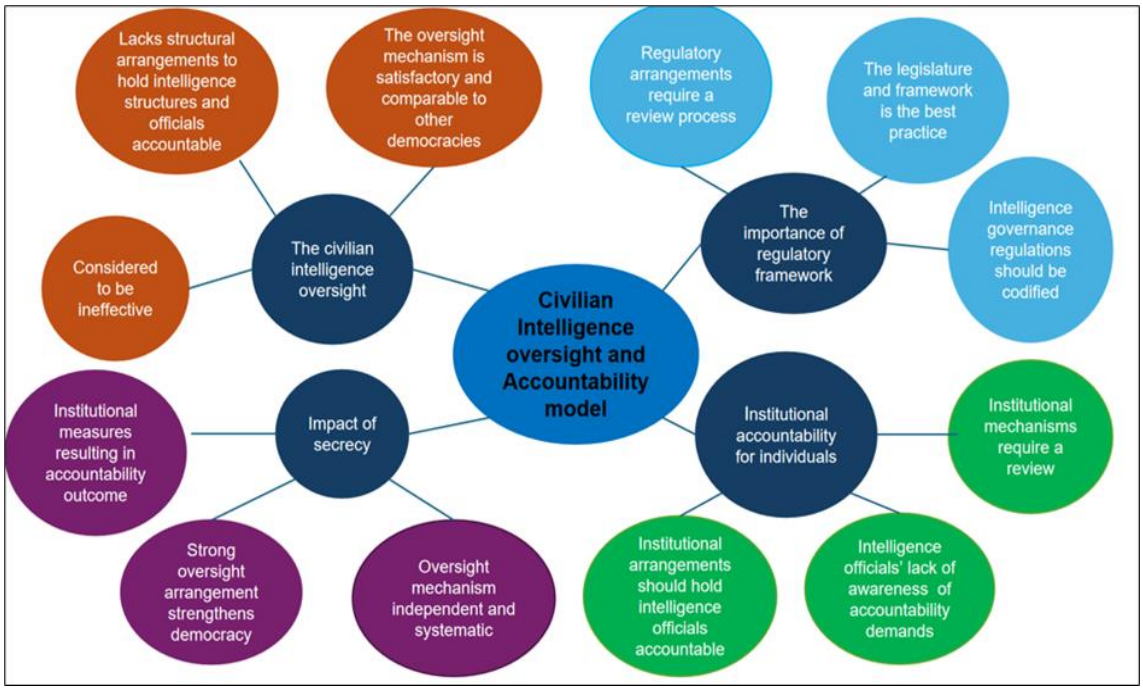
Secrecy is indispensable in intelligence functions and operations, shielding sensitive information and preserving operational effectiveness. Yet, its misuse can conceal corruption and human rights violations, undermining democratic norms and standards (Antonoglou, 2017). Achieving a balance between secrecy and transparency is crucial for effective intelligence oversight, ensuring accountability while safeguarding national security interests (Antonoglou, 2017).

Academic literature emphasises the need to reconcile secrecy with democratic principles. While secrecy is essential for intelligence operations, transparency and accountability are vital for upholding democratic values (Bolto, 2019; Leigh, 2005; Caparini, 2007; Nathan, 2012). This study finds differing views on the extent to which secrecy should be prioritised. Some argue for greater transparency to prevent abuse of power, while others stress the importance of secrecy for national security. The research, drawing from literature and participants' responses, highlights the need for the intelligence community to avoid leaning excessively towards secrecy by balancing it with transparency.

To achieve this balance, the study suggests an independent and systematic oversight process. This means that oversight mechanisms must demonstrate a significant level of independence and systematically address oversight matters (Bolto, 2019; Born & Leigh, 2007). Also, the study advocates for strengthening accountability. As discussed in the previous theme, institutional measures, processes, and procedures must reinforce accountability to discourage excessive secrecy in intelligence work. Bolto (2019, p. 6) describes these measures as "a series of institutional factors representing intervening variables." At an operational level, these mechanisms should result in accountability outcomes that mitigate secrecy (Bolto, 2019).

In South Africa, the research found that the post-apartheid era ushered in a democratic dispensation founded on constitutional principles of transparency and accountability. However, secrecy remains integral to intelligence operations, necessitating a delicate balance between security imperatives and democratic values. To enhance intelligence oversight, mechanisms must demonstrate independence and systematic approaches. Strengthening accountability through institutional measures and fostering cooperation among intelligence oversight structures is essential. Robust oversight arrangements mitigate public concerns about secrecy and ensure transparency. However, achieving this balance requires continuous efforts to entrench a culture of accountability within intelligence agencies.

**Figure 9: Network Diagram - Presentation of Analytical Findings**




Source: Adapted from Bryman, Bell, Hirschsohn, dos Santos, du Toit & Masenge (2014)

### 6.6 The Underlying Meaning of the Themes

The themes emerging from the literature review and interviews reveal a reflective connection between legislative and regulatory frameworks, institutional arrangements, organisational measures for accountability, and the impact of secrecy on intelligence oversight. Legislative and regulatory frameworks provide the legal foundation for the intelligence service, defining its powers, responsibilities, and limits. These frameworks must be robust and comprehensive to ensure that the intelligence service operates within the law and respects human rights.

Institutional arrangements, such as the roles of the IGI and the JSCI, play a critical role in the oversight of the intelligence service. These institutions ensure transparency and accountability, and their effectiveness is tied to their mandates, powers, and resources. Additionally, this research highlights the complex issue of secrecy in intelligence oversight. While secrecy is necessary to protect national security and sensitive information, excessive secrecy impedes oversight and accountability, making it difficult to ensure that intelligence operations comply with the law and do not violate human rights.

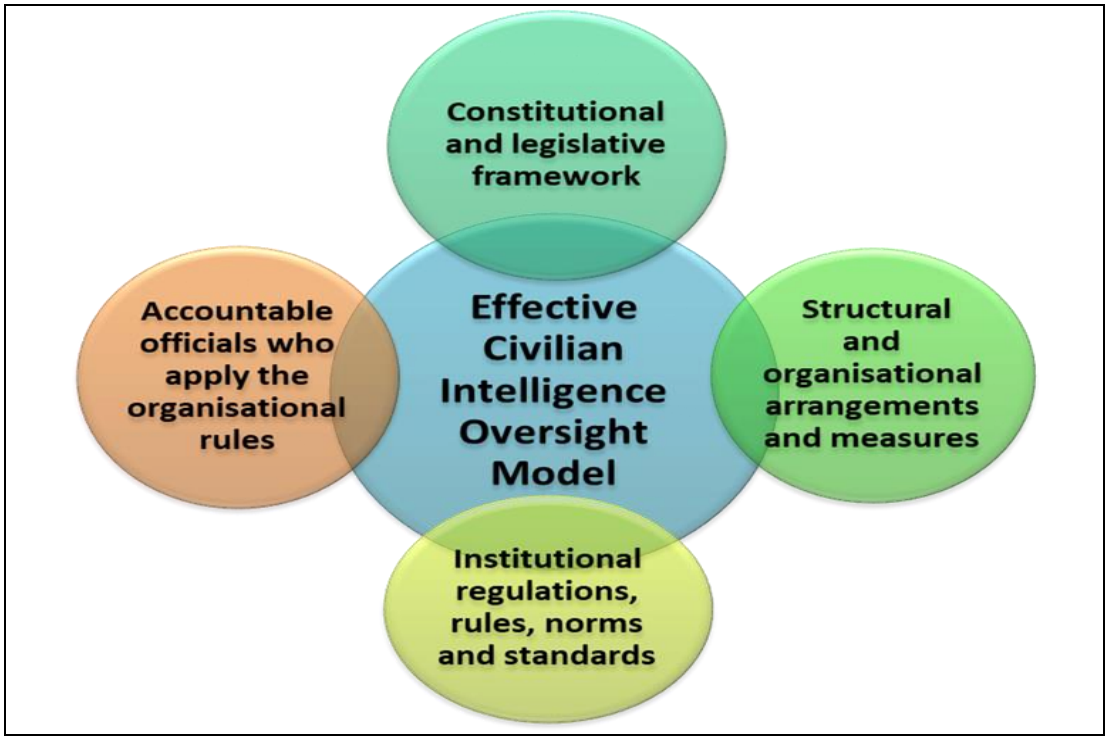
The themes in this study demonstrate the importance of a well-designed and implemented civilian intelligence oversight model for South Africa. They illustrate the need to balance national security with individual rights and freedoms and to provide for accountability and transparency.

Furthermore, the research underscores the idea of infusing societal values, such as respect for human rights, the rule of law, and transparency into the regulatory framework, organisational designs, norms, and standards of the intelligence service and its oversight institutions. This alignment ensures that the intelligence service remains accountable, and its actions align with societal expectations, promoting transparency and accountability. Embedding these values into the organisational culture of the intelligence service will encourage intelligence officials to act consistently with these values, thereby enhancing accountability.

These findings highlight the integrated approach needed to govern intelligence activities effectively, ensuring that national security imperatives do not compromise democratic principles and individual freedoms.

The figure below represents the relationship between legislative and regulatory framework, organisational arrangements, internal rules, processes, and procedures. It includes operational practices to uphold national security while safeguarding democratic principles and individual rights. This intersection is critical in this research because components reflect the integrated approach needed to govern intelligence activities.

**Figure 10: Interlinkage - Regulatory Framework, Organisational Arrangements and Internal Rules**




Source: Own Construct

### 6.7. Evaluation and Assessment of Regulatory and Institutional Arrangements of Intelligence Oversight

The oversight of intelligence agencies is a crucial feature in safeguarding democratic principles, protecting national security, and protecting the rights of citizens. Regulatory and institutional arrangements play a fundamental role in ensuring effective oversight of intelligence mandates and activities. It is for this reason that evaluating and assessing complex and multifaceted arrangements requires a comprehensive understanding of legal frameworks, organisational structures, and societal, and constitutional values.

This research aligns with existing literature and scholarly research to provide a comprehensive evaluation of regulatory and institutional arrangements of the intelligence oversight system in South Africa. By synthesising findings from various authors and studies, the research ensures a robust assessment grounded in academic scholarship and practical observations.

### 6.7.1 Ineffective Civilian Intelligence Oversight Model

The research found weaknesses in the adopted civilian intelligence oversight mechanism in South Africa after 1994. The evidence suggests a failure to effectively hold intelligence structures and officials accountable, and weaknesses in intelligence governance structures and policies. At an operational level, internal controls such as rules, policies, processes, and procedures are inadequate to ensure transparency and accountability. The operation of the mechanism is fragmented and lacks coordination. Authors such as Africa (2012, 2019), Dlomo (2004), Dube (2013), High-Level Review Panel on State Security Agency Report (2018), Masiapato (2017), Masiapato et al., (2020), Nathan (2009, 2010, 2012), and Netshitenzhe (2005) support these findings, this study highlights the period between 2009 and 2019 as particularly critical in exposing these legislative and institutional weaknesses.

The research findings concur with the abovementioned authors, who observed that during this period, the SSA experienced a significant departure from its initial legislative mandate, as outlined in the post-apartheid arrangements governing intelligence services. This deviation from its original mandate had profound implications, leading to the exploitation and politicisation of the intelligence apparatus for the advantage of specific groups and individuals, primarily driven by political and financial motives.

### 6.7.2 Lack of Implementation of Recommendations

Throughout the years, and at various points, there have been sensible recommendations for reform made by Task Teams, Commissions, Investigative Committees and Review Panels, but most have not been implemented due to political reluctance and expediency, lack of follow-through and the desire to allow chaos to reign supreme. This state of the intelligence community benefits those who have nefarious intentions. This study emphasises the importance of implementing these recommendations to enhance transparency and accountability systems. The study observes the lack of political will to implement these recommendations was demonstrated by the Executive and JSCI for not considering the Ministerial Review Commission and the High-Level Review Panel on State Security Agency in 2008 and 2018, respectively. This reluctance and behaviour coincided with the Zuma administration started in 2009 until 2019.

Africa (2012) identifies a crucial gap in the intelligence governance system, highlighting differing intelligence review processes that lack a specific mechanism within civilian intelligence oversight and accountability. This gap underscores a significant disconnect in intelligence governance, particularly in the oversight system. The research, in line with Africa (2012), concludes that this contributes to systemic weaknesses.

### 6.7.3 Constitutional Supremacy

The 1996 Constitution is the cornerstone of South Africa's democratic framework, including the oversight of civilian intelligence (Nathan, 2010). It is the supreme law of the country and outlines the framework for a democratic state based on key principles such as the rule of law, and all state actions, including intelligence operations, must comply with the law. These principles also include transparency, which requires intelligence services activities to be open to scrutiny to prevent abuses of power. The principle of accountability enjoins the intelligence agencies to be accountable to the public and oversight bodies (Masiapato, 2017).

The Constitution provides a solid foundation for civilian intelligence oversight, emphasising the principles of transparency, accountability, and the rule of law. The establishment of oversight institutions like the IGI and JSCI, supported by related legislation such as the Intelligence Services Oversight Act and RICA, aims to ensure intelligence services operate within constitutional bounds (Masiapato, 2017).

However, this research found that challenges persist, thus recommend strengthen legal frameworks and oversight bodies. The study further advocate promoting a culture of accountability to enhance the effectiveness of intelligence oversight in South Africa. The Constitution underscore the necessity for intelligence services to operate within the confines of the law, under strict parliamentary oversight, ensuring they respect human rights and democratic principles.

Gill and Phythian (2018) argue that while a sound legal framework is necessary, it alone is insufficient for efficient oversight. The study aligns with this view, emphasising the need for additional factors such as periodical review of internal controls, processes and procedures, institutional designs, organisational measures, and infusing constitutional values to ensure effective oversight. Also, the required standards for

oversight must be the broader issues of propriety involving considerations of ethics and human rights (Gill & Phythian, 2018).

Thus, beyond legal frameworks, this study emphasises the importance of institutional arrangements, organisational measures, and societal values in strengthening oversight effectiveness. These additional factors play crucial roles in shaping the culture of transparency and accountability within intelligence agencies. Therefore, while laws provide guidelines, it is the combination of various elements, such as organisational design that determines the efficacy of oversight systems. This perspective underscores the complexity of oversight and highlights the need for a comprehensive approach that addresses diverse aspects of intelligence governance and accountability.

### 6.7.4 Authoritarian Practices and Lack of Accountability Culture

The research found a troubling historical pattern of persistent authoritarian practices and a prevalent lack of accountability culture entrenched within SSA. This is due to unchanged structural and organisational arrangements that do not align with democratic dispensation. These entrenched practices have fostered an environment where violations of the law and undemocratic actions are not only tolerated but sometimes even condoned. Despite the presence of oversight mechanisms such as the OIGI, and JSCI, the research revealed a discouraging reality: infractions often evade appropriate scrutiny and consequences.

These observations raise serious concerns about the effectiveness of existing oversight mechanisms in holding intelligence agencies accountable for their actions. It suggests a systemic failure to address misconduct and breaches of regulations within the intelligence community. Furthermore, it implies a broader issue of institutional disinterest or resistance to change, where even well-established oversight bodies struggle to enact meaningful reforms or impose consequences for wrongdoing.

### 6.7.5 Need for Overhaul and Reform

The study advocates for a comprehensive overhaul and reform of oversight regulatory and institutional arrangements, in line with recommendations by the Ministerial Review Commission (2008) and the High-Level Review Panel on State Security Agency

(2018). Reforms should focus on implementing existing recommendations and strengthening oversight mechanisms.

Currently, the General Intelligence Laws Amendment Bill (GILAB) aims to amend several key intelligence-related statutes, including the Intelligence Services Oversight Act 40 of 1994 (Oversight Act), the National Strategic Intelligence Act 39 of 1994, and the Intelligence Services Act 65 of 2002, as reported by the Parliamentary Monitoring Group in 2023. Specifically, the OIGI proposed these amendments to clarify definitions and enhance clarity in executing civilian intelligence oversight responsibilities. However, the current IGI, Imtiaz Fazel, raised concerns regarding the proposed Bill's potential to limit the power and authority of the OIGI.

The research underscores the persistent challenges faced by the OIGI in ensuring accountability and transparency within intelligence agencies. While legislative amendments are a welcomed intervention, the failure to adequately implement recommendations points to broader systemic issues and an understanding of what needs to be done.

#### 6.7.6 Balancing Secrecy and Transparency

Scholars such as Caparini (2007), Matei and Bruneau (2011), Cole (2015), and Nathan (2012), emphasise the challenge of maintaining a delicate balance between secrecy and transparency in democratic states. The research found that the ongoing debate surrounding secrecy, transparency, and accountability underscores the complex nature of intelligence oversight in democratic societies. While some degree of secrecy is essential for effective intelligence operations, excessive secrecy can undermine public trust and raise suspicions.

Therefore, regular reviews and reforms are essential to adapt oversight mechanisms to evolving threats, technological advancements, and societal expectations. By encouraging transparency while safeguarding sensitive information, democratic controls can be strengthened, ensuring that intelligence agencies operate within legal and ethical boundaries while maintaining public confidence.

### 6.7.7 Restoring Public Trust and Aligning Societal Values

This research has found that the erosion of public trust in government institutions, including intelligence agencies, is a significant concern that underlines the critical importance of aligning regulatory and oversight mechanisms with societal values. When governance failures occur, such as instances of corruption, abuse of power, politicisation of intelligence or violations of civil liberties, public trust in these governance institutions diminishes. This erosion of trust can have far-reaching consequences, including decreased cooperation with other institutions, scepticism towards government policies, and even civil unrest.

This research confirms prior writings of authors such as Kleinig et al., (2011) and Cole (2015) who believe infusing societal values into regulatory and oversight institutional arrangements is not only essential but also imperative for restoring and maintaining public trust in intelligence oversight institutions. By aligning these mechanisms with societal values such as respect for human rights, governance institutions can better reflect the democratic principles upon which they are founded.

## 6.8 The Imperative of Coordination in Civilian Intelligence Oversight

The imperative for coordination of the civilian intelligence oversight multi-agency system, as underscored by Masiapato (2017) and Gill and Phythian (2018), is vital for optimising operational efficiency and effectiveness. A multi-institutional model, augmented by a comprehensive cooperation framework, is critical for mitigating fragmentation, enhancing collaboration, and fostering cohesive coordination across oversight mechanisms as observed by Masiapato et al. (2020).

The current research found there is a need for collaboration, due to the detrimental effects of fragmentation and lack of coordination on intelligence oversight. Fragmentation not only compromises operational efficacy but also hampers the ability to address emerging threats promptly. Moreover, the absence of a coordinated approach undermines the capacity to enforce regulations and uphold accountability standards within the intelligence community.

The research found that establishing robust cooperation mechanisms, as advocated by literature, is imperative for overcoming the challenges posed by fragmentation and

lack of coordination. By fostering information exchange and cooperation among intelligence oversight mechanisms, the intelligence community can enhance its responsiveness to dynamic security challenges while ensuring adherence to legal and ethical standards. A concerted effort to promote cooperation and collaboration can facilitate the sharing of resources and expertise, thereby enhancing the overall effectiveness of civilian intelligence oversight.

### 6.8.1 Proposed Coordination Structure

The research recommends the establishment of a coordination mechanism. This recommendation is in line with the finding of Masiapato's (2017) research that found the model to be fragmented, uncoordinated and uncooperative. The need for coordination within civilian intelligence oversight is a critical issue highlighted in the current study following literature and primary data. Establishing a multi-institutional model with an overarching cooperation framework is essential for enhancing efficiency, effectiveness, and coordination at both collective and specific oversight mechanism levels.

The current research found the proposed cooperation agreement and soft law approach to oversight are crucial steps towards improving the multi-institutional oversight approach. By establishing a coordinating structure like the NICOC within the broader NSC, the study aims to enhance operational efficiency and good governance within civilian intelligence oversight. Therefore, the establishment of a coordination structure within the NSC is a promising step towards improving intelligence governance and civilian intelligence oversight in South Africa.

#### 6.8.1.1 The need for coordination

The study highlights the importance of a multi-institutional model with an overarching cooperation framework to enhance efficiency, effectiveness, and coordination in intelligence oversight. This 'cooperation agreement' is crucial for a layered model. Cooperation and information exchange between overseers are vital, especially under pressure, as intelligence structures and officials might disregard formal policies or laws. It is for this reason that the research advocates for a softer more collaborative and cooperative approach.

#### 6.8.1.2 Soft law approach

Kleinig et al. (2011) advocate for a soft approach to oversight and accountability, proposing 'soft law' to improve flexible governmental regulation and oversight activities. These non-binding instruments boost efforts to standardise service delivery and facilitate information delivery, enhancing multi-institutional understanding and cooperation.

The study envisions a substructure within the NSC that develops policies and implements a soft policy approach to ensure better coordination of oversight and information sharing. This approach aims to avoid duplication and fragmentation, benefiting from sensitive operation details shared at its inception. Heads of individual oversight bodies would constitute an overall coordinating committee to ensure better legislative processes and cooperation. A coordination structure within the NSC would enhance cooperation, negotiation, and persuasion among governance structures involved in national security. This structure would ensure common goals, facilitate communication, and prevent confusion, duplication, and misunderstandings, thereby improving the overall effectiveness of national security efforts.

#### 6.8.1.3 International models

The study draws parallels with Canadian and EU models, which encourage information sharing with oversight bodies and comprehensive management of information exchange. These models use vertical and horizontal accountability mechanisms to ensure State entities monitor and potentially impose sanctions on each other and allow citizens to hold States and institutions accountable.

#### 6.8.1.4 Adaptation to South African context

The proposed structure, adapted to local conditions, would create pathways for a regulatory framework, encourage cooperation, and improve accountability. The structure aims to remove politics from oversight work and ensure efficacy through organisational redesign and good institutional management practices by appointing competent professionals rather than politically affiliated individuals.

#### 6.8.1.5 Collaboration and diplomacy

Civilian intelligence oversight should not rely solely on strict rules. Collaborative efforts, diplomacy, persuasion, and negotiations are necessary for managing sensitive

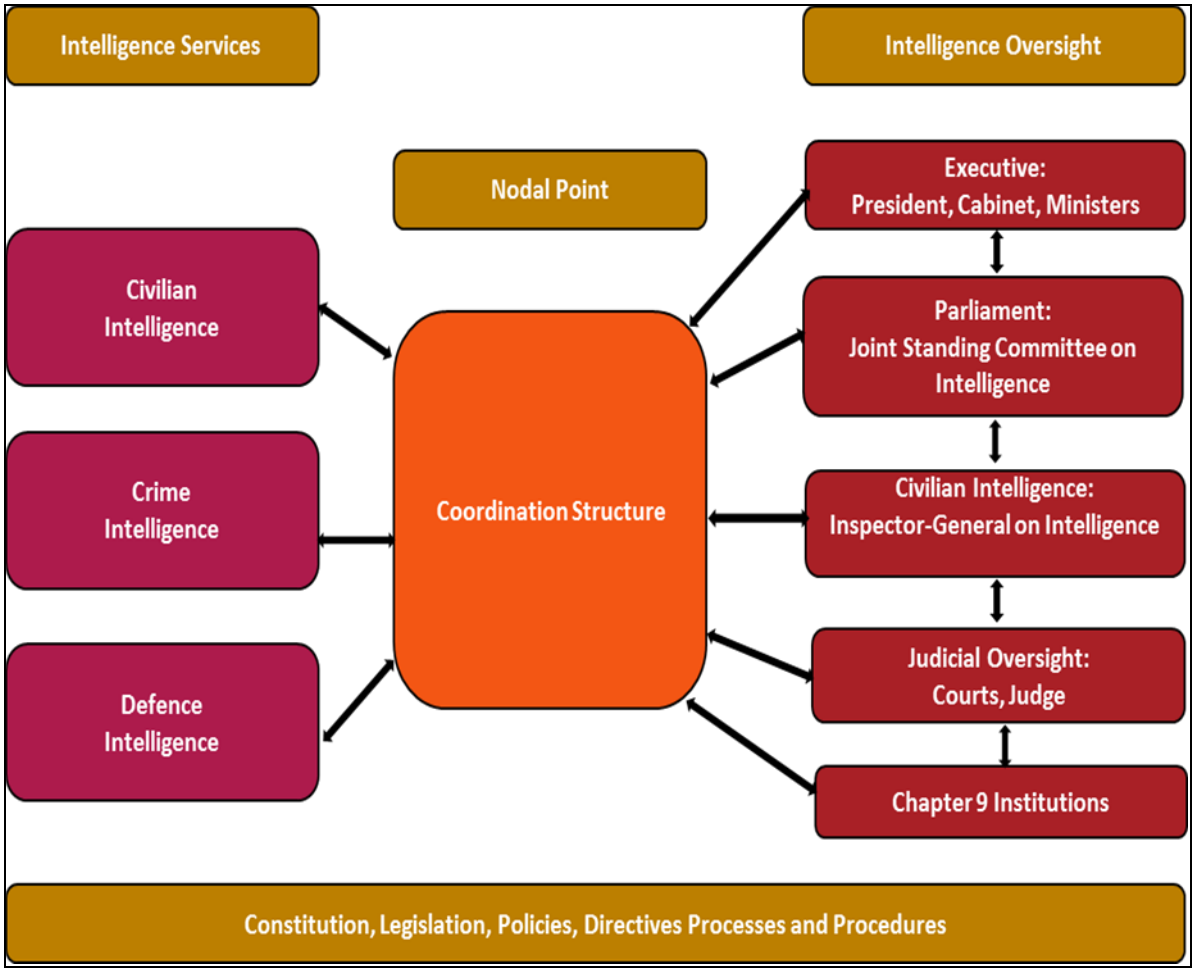
operations. Relationship building, credibility management, and maintaining trust are crucial for ensuring accountability within the intelligence community.

The figure below is a representation of the proposed coordination structure for the multi-institutional intelligence oversight and accountability mechanisms. The multi-institutional model with a coordinating structure and overarching cooperation framework is essential for enhancing efficiency, and effectiveness.

#### 6.8.1.6 Challenges and implementation

The research acknowledges challenges in making such a structure work efficiently due to weaknesses in South Africa's security sector, such as turf wars, lack of leadership, trust issues, and misinterpretation of mandates. Despite these challenges, the proposed structure is seen as essential for effective civilian intelligence oversight.

**Figure 11: Proposed Coordination Structure**




Source: Adapted from Gill (2016) and Gill and Phythian (2018)

### 6.9 Chapter Summary

The chapter critically discussed the findings of the current research on the existing regulatory and institutional arrangements regarding civilian intelligence oversight and accountability models. It confirms the research proposition that the South African civilian intelligence oversight model has been ineffective in promoting good governance and holding intelligence services and officials accountable. Consequently, it recommends a comprehensive review and reform of the current oversight model to align with constitutional values and ensure transparency, accountability, and adherence to human rights and the rule of law.

Qualitative research methods, in-depth interviews, and documentary analysis provided rich and contextual data for this study. These methods offered insights into the subjective experiences and perspectives of stakeholders involved in intelligence governance, enhancing the understanding and generalisability of the findings. The Institutional Rational Choice framework guided the research, focusing on the rational choices made by individuals and organisations within institutional constraints. It deepened the understanding of the motivations, constraints, and incentives shaping the behaviour of actors and institutions involved in civilian intelligence oversight.

The chapter also provided a thematic analysis revealing several crucial themes. These include emphasising the necessity of aligning the regulatory framework with democratic principles to uphold accountability, advocating for the establishment of a cohesive and efficient multi-institutional civilian intelligence oversight mechanism to enhance accountability measures, proposing the implementation of robust internal controls and norms to enforce institutional accountability on individuals, highlighting the central role of strategic culture in shaping the effectiveness of intelligence oversight practices, recommending embedding democratic norms and values within the organisational culture of intelligence agencies to foster accountability, and suggesting achieving a more optimal balance between secrecy and transparency to facilitate enhanced oversight capabilities.

Understanding the nuances of South Africa's context is crucial for designing effective oversight mechanisms tailored to its political, social, and economic conditions. The chapter underscores the need for reform and improvement in intelligence oversight

and accountability mechanisms, offering valuable insights for policymakers, practitioners, and scholars in this field.

# Chapter Seven: Summary, Conclusions and Recommendations

## 7.1 Introduction

The research aimed to determine the efficacy of the South African civilian intelligence oversight model. The investigation focused on the regulatory and institutional arrangements that ensure accountability of the intelligence service and its officials. The study explored democratic control of intelligence, the concept of democratic accountability, intelligence governance particularly accountability and oversight, practices, organisational design, legislative framework, institutional norms, and standards to address the purpose of the research. The study further investigated the alignment and integration of societal values into civilian intelligence oversight regulatory and institutional arrangements.

This chapter discusses the study's summary, conclusions, and recommendations. The chapter is divided into three sections: firstly, it summarises the entire research project and then discusses the implications, limitations, and conclusions of the investigation. Lastly, the study provides recommendations and highlights potential future research.

## 7.2 Research Objective

This study evaluated South Africa's civilian intelligence oversight and accountability model post-1994, focusing on its effectiveness, challenges, and alignment with constitutional values of transparency, accountability, and governance. The research provided a comprehensive analysis of how the current oversight mechanisms function in practice, identifying areas of weaknesses and offer recommendations for improvement. By examining both the legal frameworks and institutional arrangements, the study seeks to enhance democratic oversight within the intelligence sector. The goal is to ensure that intelligence operations are conducted in a manner that respects human rights and upholds the principles of good governance, thereby strengthening the overall accountability of the intelligence service.

## 7.3 Summary of the Research

This study evaluated the civilian intelligence oversight and accountability model in South Africa post-1994. The examination involved its effectiveness, challenges, and

alignment with constitutional values of transparency, accountability, and governance. It seeks to provide insights to enhance democratic oversight mechanisms within the intelligence sector.

### 7.3.1 Identifying Research Gaps

During the conceptualisation phase of this research, the study constructed an analysis of theory to investigate the effectiveness of intelligence governance. Although numerous studies have focused on intelligence activities, mandates, and functions, there is a noticeable scarcity of literature on civilian intelligence oversight and accountability models. Scholars such as Caparini (2007), Farson (2012), Gill (2010), and Wegge (2017) have emphasised the necessity for research in this area. Additionally, existing literature often lacks a longitudinal examination of oversight models, underscoring the need for comprehensive research in this field. While scholars recognise the importance of intelligence oversight and accountability within the intelligence sector, there remains a lack of empirical and normative understanding of these mechanisms. This lack of academic attention has resulted in inadequate conceptualisation of effective accountability frameworks and models. Also, there has been limited research conducted to investigate and evaluate the effectiveness of intelligence oversight theories and frameworks, exacerbating the challenge of ensuring transparency and accountability within the intelligence community.

### 7.3.2 Contextualising Accountability

Establishing a clear conceptual framework for accountability within the intelligence sector is vital to ensuring compliance with legal and constitutional requirements while upholding accountability to the public and democratic institutions. This is essential for preserving democratic principles, building public trust, and ensuring that intelligence agencies operate lawfully.

Clarity on transparency in the accountability framework of intelligence services are fundamental pillar of a healthy democratic society. Without a robust system in place to hold intelligence agencies accountable, there is a risk of abuse of power, erosion of democratic values, and a loss of public trust. Therefore, efforts to clarify and strengthen this framework are not only necessary but also crucial for maintaining the integrity and legitimacy of intelligence operations within a democratic framework.

### 7.3.3 Methodological Approach

This research approach was qualitative and exploratory, analytical, and sometimes descriptive in nature. It contained methods applicable to this investigation, which are primary and secondary data collection methods. The latter methods include an in-depth literature and document analysis that involves an assessment as well as a review of relevant data relating to civilian intelligence oversight and accountability. Thematic analysis was employed as the primary research strategy, aligning with the Institutional Rational Theory framework. This approach facilitated data collection, analysis, and interpretation, ensuring a comprehensive understanding of intelligence governance dynamics.

### 7.3.4 Legislative and Institutional Analysis

Chapter Four conducted a thorough analysis of the existing regulatory and legislative framework governing civilian intelligence oversight. While the intelligence oversight model exhibits international compatibility, inherent weaknesses and gaps were identified, necessitating amendments to enhance its effectiveness. Recommendations for institutional reforms and regulatory adjustments were proposed based on critical evaluations of existing mechanisms.

### 7.3.5 Addressing Intelligence Oversight Deficiencies

The investigation revealed shortcomings in the current civilian intelligence oversight model, attributing its inefficacy to historical authoritarian behaviour and insufficient organisational design for accountability. Specific outcomes, conclusions, and recommendations were derived from the research, offering insights for improving oversight practices and guiding future research endeavours.

The dysfunctional nature of the intelligence oversight mechanisms, such as Executive, OIGI, and JSCI was scrutinised, highlighting the urgent need for institutional reforms to address the model's ineffectiveness. Recommendations were made to support intelligence oversight model capacity and ensure robust scrutiny of intelligence activities, safeguarding against executive overreach and illegal instructions within intelligence agencies.

## 7.4 Research Results and Findings

The investigation produced the following key results and findings:

### 7.4.1 Internal and External Oversight Mechanisms

The South African civilian intelligence service is subject to internal and external control of oversight mechanisms. The democratisation of the intelligence sector involves legislative and institutional arrangements that hold the intelligence service and officials accountable, incorporating measures within state institutions (executive, parliament, judiciary, and chapter nine institutions) and civil society organisations. The study highlights gaps in policy imperatives that affect the oversight mechanism's operational effectiveness.

### 7.4.2 Lack of Civil Society Oversight Mechanism

A significant finding is the absence of a civilian oversight mechanism that institutionalises civil society involvement in intelligence governance. While Parliament is often seen as a substitute, it is insufficient, particularly as the JSCI holds its hearings and meetings behind closed doors, making effective civil society engagement challenging.

### 7.4.3 Constitutional and Legal Framework

The research underscores the necessity for the civilian intelligence oversight model to be grounded in a constitutional and legal framework. A sound legal basis enhances civilian intelligence functions, oversight mechanisms, and accountability, providing oversight bodies with the necessary authority and powers.

### 7.4.4 Good Governance in State Institutions

Good governance in state institutions, including the intelligence sector, is critical for transparency and accountability. The study highlights the importance of information sharing, adherence to legislative requirements, and cooperation within the oversight model to improve governance.

### 7.4.5 Comprehensive Review and Reform

The research demonstrates the need for a comprehensive review and reform of the organisational structure of the intelligence oversight model. This includes restructuring

institutions, enhancing internal control measures, and systems, fostering a conducive institutional culture, and refining rules, processes, and standard operating procedures.

### 7.4.6 Balance between Secrecy and Transparency

The study discusses the crucial balance between secrecy and transparency in intelligence governance. While the intelligence service must maintain secrecy to protect national security, it also needs to be transparent and accountable to the public and democratic institutions. The oversight mechanism plays a vital role in ensuring this balance, which is necessary to strengthen democracy and build trust within the intelligence sector.

### 7.4.7 Legislative Importance

Enhancing the balance between secrecy and transparency would improve intelligence governance and strengthen democracy. The Ministerial Review Commission (2008) emphasises the importance of legislation to address issues stemming from excessive secrecy, ensuring oversight mechanisms are firmly established through legislation to promote openness, transparency, and accountability in security sector governance.

### 7.4.8 Constitutional and Societal Values

The current research also investigated the role and effects of societal values in regulatory and institutional arrangements. The investigation sought to determine how their infusion could enhance the oversight and organisational systems through legislation, policy, rules, processes, and procedures. The research found, through primary and secondary data, that society's constitutional and societal values are essential in regulatory and structural arrangements. Therefore, these societal values are critical when developing legislation and formulating policy and organisational design. Consequently, civilian intelligence oversight arrangements should infuse them to enhance their effectiveness in holding intelligence services and officials accountable.

In the South African context, the national and societal values are found in the founding provisions in section 1 of the 1996 Constitution. The Constitution also reflects the fundamental values of our democratic order. These values include (i) human dignity, (ii) the achievement of equality, (iii) the advancement of human rights and freedoms, (iv) non-racialism and non-sexism, (v) the supremacy of the Constitution and the rule

of law, (vi) universal adult suffrage, (vii) a national common voters roll, (vii) regular elections, and (viii) a multi-party system of democratic government, to ensure accountability, responsiveness, and openness (1996 Constitution). From a legal and constitutional perspective, this provision is instructive in demanding that the Republic of South Africa be founded on these values. Authors such as Venter (2001) developed a hierarchical system of values. They are human dignity, which is the core, and understand equality and freedom as supporting values. Democracy and the rule of law are regarded as structural values. The constitutional values construct a framework of a legitimate form of government (Nishihara, 2001). The intelligence services must respect the constitutional rights of citizens and may not infringe on these rights other than as permitted by the Constitution and legislation.

The current study recognises the paramount importance of constitutional values and legal principles in shaping decision-making processes within the state. Officials operating within state institutions are bound by the Constitution and its underlying principles. This study advocates for the development and implementation of a legislative framework and the establishment of structural arrangements that align with societal values to execute governmental mandates effectively. The entrenchment of societal values within the civilian intelligence oversight mechanism can serve as a guiding force for stakeholders, aiding in policy formulation and operational enhancements. Consequently, this integration can encourage oversight measures and accountability, thereby stimulating governance and democracy.

### 7.5 Contribution to Knowledge

The current research has advanced the development of a theoretical framework aimed at enriching our knowledge of the efficacy of civilian intelligence oversight mechanisms. Furthermore, it has contributed theoretical knowledge and insights into research assessing the effectiveness of regulatory and institutional arrangements within the civilian intelligence oversight and accountability model. Additionally, this study has expanded theoretical understandings about civilian intelligence oversight and accountability across various branches of the state. Moreover, it has provided valuable contributions to our understanding of the organisational functioning of oversight mechanisms. Furthermore, this research has made significant strides in

enhancing our understanding of oversight mechanisms operating within broader governance institutions.

### 7.5.1 Theoretical Framework

The theoretical framework employed in this study uncovers the challenges of intelligence governance, particularly in civilian intelligence oversight and accountability. In the absence of a universally accepted theoretical framework for intelligence studies, the research selected Institutional Rational Choice theory as a lens through which to analyse the data. This choice was driven by its utilisation in addressing policy and institutional issues, as proposed by Kiser and Ostrom in 1982. The framework aims to provide a comprehensive understanding of the decisions made by key actors within institutions over time, especially in the context of policy development and enhancing institutional arrangements.

By applying the Institutional Rational Choice theory, this study exposed gaps and weaknesses within the civilian intelligence oversight model. It allowed for an examination of actors' perceptions of institutional rules, processes, and procedures that influence intergovernmental relations and policy decisions. The analysis revealed deficiencies such as a lack of expertise among overseers, budgetary constraints, and inadequate coordination mechanisms. These findings underscore the need for legislative and regulatory reforms to strengthen oversight mechanisms and improve accountability within the intelligence community.

However, and much more critically, while the Institutional Rational Choice theory proved valuable in analysing policy and institutional variables, it fell short of fully interpreting the complexities and nuances of the civilian intelligence oversight and accountability model. The study contends that existing theories and frameworks in this field are insufficient to address the multifaceted challenges faced in the South African context. There is a clear need for the development of new theoretical frameworks that are tailored to the specific nuances of civilian intelligence oversight and accountability, considering constitutional values, historical contexts, and cultural factors unique to South Africa.

Moreover, the study highlights the inadequacy of current theories and frameworks in capturing the rapidly evolving landscape of intelligence governance. With emerging

security threats and technological advancements, traditional frameworks may struggle to provide meaningful insights into contemporary intelligence practices. Therefore, there is a pressing need for a more dynamic and adaptable theoretical framework that can keep pace with the changing dynamics of the intelligence sector.

While the Institutional Rational Choice theory offers valuable insights into intelligence governance, its limitations underscore the necessity for the development of new, contextually relevant theoretical frameworks. These frameworks should not only address the specific challenges of civilian intelligence oversight and accountability but also be flexible enough to accommodate the evolving nature of the intelligence landscape.

### 7.5.2 Contribution to Intelligence Oversight Theory

This research assessed the effectiveness of the civilian intelligence oversight and accountability model implemented in South Africa post-1994. In pursuit of this objective, the study delves into the regulatory and institutional frameworks designed to hold the Civilian Intelligence Service and its officials accountable. This contribution to the existing body of knowledge is significant, as it offers fresh insights into the functioning of the civilian intelligence oversight model in South Africa, potentially informing future policy formulations and practices on oversight in the country. Given the lack of research on civilian intelligence oversight and accountability in the South African context, this study fills a crucial gap in the literature by presenting original empirical data and analyses on the subject matter.

Furthermore, this research adds to existing theoretical frameworks by providing nuanced perspectives on the specific challenges and intricacies involved in implementing oversight measures within this context. Offering recommendations for enhancing the oversight system, contributes to the practical development of solutions to address identified shortcomings. It is imperative, however, that such studies adhere to rigorous research protocols to ensure the credibility and validity of their findings. In this regard, the current investigation casts a wide net across various state institutions, including the executive, parliament, judiciary, civil society organisations, and the OIGI. The study also explored relevant statutory and regulatory frameworks, thereby

enriching a broader understanding of civilian intelligence oversight mechanisms and their efficacy.

Also, this research is multi-disciplinary in nature, encompassing multiple academic fields such as Social Science, International Relations, Political Science, and Security Studies. This multidisciplinary approach is particularly relevant given the emerging nature of intelligence governance as a distinct academic discipline. By engaging with diverse perspectives and methodologies, this study contributes to the ongoing discussion on intelligence oversight and accountability, promoting the theoretical underpinnings of this field.

A key aspect addressed by this research is the delicate balance between secrecy and transparency within the intelligence community in a democratic state. By advocating for legislative and policy interventions aimed at advancing transparency and accountability at an operational level, such as civil society involvement and public outreach strategies, the study contributes to the ongoing debate on this issue. In doing so, it underscores the importance of striking a balance between the imperatives of national security and democratic governance.

### 7.6 Research Conclusions

The research findings underscore significant weaknesses within the South African civilian intelligence oversight mechanism, highlighting the urgent need for reorganisation and reform at an operational level. Through a comprehensive analysis of primary and secondary data, several key conclusions have been drawn.

Firstly, while a robust legal and regulatory framework forms the cornerstone of effective oversight, there exists a noteworthy disconnection between regulatory mandates and operational implementation. This lack of consistency has resulted in intelligence activities that often contravene constitutional provisions and existing legal frameworks. Particularly concerning are instances where intelligence practices violate fundamental democratic principles, such as the rule of law and human rights without being held accountable by relevant oversight institutions.

Secondly, the ineffectiveness of oversight mechanisms, including the Executive, OIGI and JSCI, is evident in their failure to take appropriate action in response to intelligence failures and criminal activities. This inaction is exacerbated by a lack of political will to hold the intelligence community accountable, as evidenced by the failure to implement recommendations made by previous task teams and commissions.

Third, the intelligence sector witnessed the pervasive misuse and politicisation of the intelligence agencies under the Zuma administration for the benefit of certain political factions, leading to serious violations of constitutional and legal mandates. Factional battles within the ruling party further exacerbated these issues, resulting in the establishment of parallel intelligence structures serving narrow political interests. In addition, a doctrinal shift within the intelligence community towards a narrow state security orientation further undermined the principles of democratic governance and accountability. This shift facilitated covert operations and structures that contravened constitutional and legislative frameworks, perpetuating a culture of non-accountability and authoritarian practices.

Fourth, inadequate operational systems and procedural gaps within oversight mechanisms have rendered existing accountability measures ineffective. The inconsistent application of secrecy by intelligence agencies has further eroded transparency and facilitated serious non-compliance with internal controls, leading to instances of outright criminality and resource abuse.

This research underscores the pressing need for comprehensive reform of South Africa's civilian intelligence oversight mechanism. Addressing the identified deficiencies requires not only legislative and policy interventions but also a fundamental shift in organisational culture towards transparency, accountability, and adherence to constitutional values. Failure to enact meaningful reform risks undermining democratic governance and perpetuating systemic abuses within the intelligence community.

### 7.7 Significance and Implications of the Research

The study is significant in four respects. Firstly, the regulatory and institutional arrangements that hold intelligence structures and the officials accountable should be

designed for open, transparent, and accountable intelligence services. Addressing and adopting effective practices at the operational level may enhance the functioning of state institutions that support democracy. Organisational culture and measures such as internal controls, rules, processes, and procedures should ensure oversight and accountability. Secondly, the organisational arrangements should reflect the underlying societal values that underpin regulatory and oversight arrangements that foster and maximise personal accountability. Thirdly, an overarching policy framework is critical to address the gaps in the regulatory and legislative framework for the multi-institutional oversight model. This broad and all-encompassing policy framework would support the operation of the coordinating structure suggested in Chapter Six. Lastly, the findings contribute to understanding policy development and its implementation in oversight institutions, theory on intelligence oversight and accountability, and theoretical orientation.

### 7.8 Delimitations of the Study

The research was limited in the following ways. It did not comprehensively address the intelligence agencies, their structures, functions, mandates, operations, and activities in South Africa. These areas contain classified information that cannot be publicly discussed. The research did not fully explore governance institutions that further cement the democratisation of the intelligence sector. These institutions increase the effectiveness of oversight. The intelligence civilian control institutionalisation mechanisms are crucial in guiding and monitoring the intelligence service.

#### 7.8.1 Limited Intelligence Oversight Research

Research on intelligence governance, particularly in the South African context, is notably limited, as revealed by the current study. While scholars have investigated aspects of civilian intelligence oversight post-1994, such as executive control and parliamentary oversight, their contributions are narrow and lack a comprehensive analysis of the entire oversight mechanism and its regulatory framework. However, their work does provide valuable insights into theoretical and conceptual frameworks, offering comparisons with international best practices and mechanisms.

On the other hand, authors and experts in this field have extensively explored intelligence governance but have not approached oversight from an organisational culture perspective at the operational level. This study found that understanding the operational imperatives of the oversight mechanism is crucial for determining its efficacy. By highlighting this gap in research and theory, the study emphasises the need for a deeper examination of the effectiveness of the civilian intelligence oversight mechanism.

Moreover, the study's focus on evaluating the civilian intelligence service oversight model from a South African perspective offers valuable insights that could fill this knowledge gap. Given South Africa's complex political history, such insights are particularly relevant for understanding how oversight of intelligence services can be effectively implemented in a country with unique challenges and dynamics.

## 7.9 Recommendations of the Research

The study makes the following recommendations to improve oversight of institutional and regulatory arrangements to enhance accountability.

### 7.9.1 Address Organisational Weaknesses

The study has identified significant structural weaknesses within the Intelligence oversight mechanisms that require urgent attention. In democratic societies worldwide, executive control over intelligence agencies is a fundamental aspect of oversight. However, institutional, and systemic deficiencies have been observed regarding the executive's involvement in intelligence oversight. For instance, in South Africa, while intelligence services are mandated to provide strategic intelligence to the National Intelligence Coordinating Committee (NICOC), there is no requirement for them to directly furnish intelligence to the Minister. This accountability gap undermines the Minister's ability to effectively scrutinise and oversee intelligence activities, as evidenced by findings from investigations like Project Avani.

Moreover, there is ambiguity regarding which institutions should be responsible for providing intelligence, further exacerbating institutional weaknesses. The recommendations of investigations conducted by the OIGI have emphasised the need for better supervision and oversight of intelligence projects, along with the

establishment of clear regulatory frameworks. The research findings underscored how dysfunctional systems and weaknesses within this vital aspect of the oversight model have contributed to its overall ineffectiveness.

To address these institutional weaknesses, it is imperative to implement effective systems and measures within the oversight mechanism to hold appointed and elected leaders accountable. For instance, recommendations made by the IGI should carry legal weight comparable to those of the Public Protector, with enforcement measures in place to ensure compliance. This would help prevent the disregard of recommendations by IGI to the relevant Ministers and Directors-General, as has been observed in current practices.

### 7.9.2 Institutionalised Involvement of Civil Society

A significant finding arising from this study is the absence of a mechanism for civil society involvement in intelligence oversight. It has been observed that the current practice lacks institutionalised avenues through which civil society can contribute. This deficiency not only impedes public understanding of intelligence operations but also exacerbates concerns regarding trust and legitimacy. Instituting civil society involvement could prove instrumental in striking a balance between secrecy, openness, and transparency, thereby enhancing accountability.

To address this gap, the current research advocates for the establishment of a consultative and advisory framework comprising relevant government institutions, heads of intelligence oversight bodies, intelligence service leaders, a Judge designated under the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 (2002), pertinent Civil Society Organisations, representatives from the security sector, and think tanks. The proposed framework is like the Judicial Service Commission (JSC), which advises the President and national government on judicial matters. While the JSC lacks civil society participation, its structure and functions could be adapted to accommodate such involvement in intelligence oversight. This adaptation could be formalised through legislation and inclusion in policy documents like the White Paper on Intelligence, with the appointed Judge overseeing its proceedings.

Such a framework should encourage debate and discussion on broader policy issues, as highlighted by Dlomo (2004) in his research advocating for a public affairs program with an effective outreach strategy that ensures transparent communication without compromising national security. This underscores the need for an institutionalised framework to facilitate communication and engagement with civil society. The envisioned communication program should disseminate basic, non-sensitive information about intelligence services, while the outreach efforts should foster partnerships with academic and research institutions, thereby enhancing accountability, transparency, and public trust in intelligence operations.

The proposed framework for civil society involvement in intelligence oversight represents a crucial step towards enhancing accountability and transparency in intelligence operations. By leveraging existing institutional structures and drawing from academic research, the recommendation offers a practical and feasible solution to address the identified weakness. The incorporation of civil society voices in intelligence oversight not only promotes democratic values but also strengthens public trust in government institutions.

### 7.9.3 Sound Policy, Legal and Constitutional Framework

The current study proposes a thorough review of the legal framework to address legislative and policy gaps identified in the South African intelligence oversight model. Through an analysis of the legislative and regulatory framework governing intelligence oversight, the study identified foundational acts and policy documents such as the Intelligence Services Oversight Act 40 (1994), the Regulation of Interception of Communications and Provision of Communication Related Information Act 70 (2002), and the White Paper on Intelligence (1995). Also, the research scrutinised additional policy directives, rules, processes, and procedures pertinent to intelligence oversight. While recognising the robust legal foundation of civilian intelligence oversight in South Africa, as anchored in the 1996 Constitution, the study advocates for a review to ensure continued efficacy.

Despite the existing legal framework being informed by international best practices, the study underscores the need for periodic reviews to address evolving legislative and policy-related gaps. The discrepancy between policy evolutions within the

intelligence service and concurrent oversight framework adjustments necessitates a comprehensive review to ensure alignment. Additionally, fundamental concerns regarding preventing political abuse, upholding the rule of law, and ensuring proportionate use of exceptional powers underscore the imperative of legislative and policy review. The study recommends addressing these concerns through a combination of mechanisms across executive, legislative, judicial, and civil society spheres.

Furthermore, the research identifies gaps in the legislative and regulatory framework governing oversight bodies like the OIGI, JSCI, and Executive control. The absence of regulations for OIGI operations and structural independence issues within oversight bodies underscores the need for a comprehensive review. Addressing these deficiencies through legislative and policy revisions is essential to strengthen the integrity and effectiveness of intelligence governance.

The call for a review of the legal framework governing intelligence oversight in South Africa is both timely and necessary. By identifying legislative and policy gaps, the research highlights opportunities for enhancing accountability, transparency, and effectiveness within the intelligence sector.

#### 7.9.4 Good Governance

The current research found the imperative of infusing good governance principles within the intelligence sector, given the unique legislative powers granted to secretive agencies in their operations. While acknowledging that the concept of governance might seem foreign or impractical to ordinary intelligence officers, the study underscores its necessity. This is particularly crucial as existing mechanisms lack openness and transparency, making accountability an elusive goal within intelligence operations. Good governance, therefore, emerges as a fundamental requirement for promoting transparency and accountability in state institutions, aligning with principles essential for democratic societies.

To achieve this goal, civilian intelligence oversight mechanisms must adopt good governance practices in their organisational design and internal controls. These practices include fostering partnerships, engaging stakeholders, ensuring accountability in policy interventions, predictability of actions, promoting participation,

and enhancing transparency. By implementing operational systems, processes, and procedures that adhere to these principles, the intelligence oversight mechanism can effectively ensure accountability among intelligence structures and officials while enhancing transparency regarding the activities of the intelligence community.

Drawing from the theoretical framework, the study underscores the importance of ensuring that systems, measures, processes, and procedures within the oversight mechanism are robust enough to enforce accountability among intelligence services and officials. Strengthening the operation of executive control is identified as crucial for enhancing the effectiveness of the civilian intelligence oversight model. This includes mechanisms such as judicial oversight, where a judge appointed within the intelligence agency scrutinises operational policies and ensures the appropriate dissemination of information.

Furthermore, the research highlights the need for oversight mechanisms to operate within a broader governance structure, such as the NSC. Integrating oversight mechanisms within such structures enhances cooperation, coordination, and adherence to legislative requirements. For instance, better cooperation and coordination within intelligence structures could have potentially averted the unrest experienced in July 2021. The lack of information sharing, dissemination, and inconsistencies in reporting to senior ministers during the crisis underscored institutional weaknesses and operational deficiencies within intelligence gathering and dissemination structures.

The emphasis on integrating good governance principles within intelligence oversight mechanisms is commendable and aligns with global best practices for promoting accountability and transparency in governance. By advocating for the adoption of these principles, the research underscores the importance of upholding democratic values within the intelligence sector. However, translating these recommendations into actionable policies and practices will require strong political will and institutional commitment. Moreover, the proposed integration of oversight mechanisms within broader governance structures like the NSC holds promise for improving coordination and cooperation, thereby enhancing the effectiveness of intelligence oversight in addressing security challenges.

### 7.9.5 The Significance of Societal Values

The study found the importance of aligning societal values with regulatory and institutional arrangements to promote accountability within civilian intelligence and strengthen democratic imperatives. This research stresses that this alignment can positively impact democracy and governance within institutions, fostering trust in the operations of intelligence structures. This alignment can be achieved through decision-making and implementation processes within the intelligence apparatus, encompassing various aspects of intelligence governance such as policy formulation, authorisation levels for sensitive operations, use of intrusive investigation methods, and the functioning of implementing structures.

Crucially, oversight mechanisms like the judiciary and the legislature play pivotal roles within the intelligence governance framework, monitoring decision-making processes and ensuring compliance with legal frameworks. Also, these oversight mechanisms review performance and expenditure to ensure that public funds are allocated and used in alignment with national values.

The research found that incorporating societal values into regulatory frameworks and institutional arrangements enhances public trust in the intelligence sector, thereby strengthening legitimacy. Similarly, for democratic governance within security sector agencies to be effective, management and internal governance mechanisms must align with the values and laws of society, which serve to provide public security. Therefore, constitutional values should be embedded in legislation and reflected in the structure of public sector institutions.

Policymakers and stakeholders must prioritise the integration of societal values into regulatory and institutional frameworks governing the civilian intelligence sector. This can be achieved through comprehensive reviews of existing legislation and policies to ensure alignment with societal values and constitutional principles. Additionally, efforts should be made to enhance transparency and accountability mechanisms within intelligence governance, with particular attention to strengthening oversight by independent bodies like the judiciary and the legislature. Adopting alignment between societal values and institutional arrangements can enhance public trust in intelligence

operations, thus reinforcing democratic governance and legitimacy within the security sector.

### 7.10 Future Studies

Future research should concentrate on the recommendations in this chapter. These recommendations can be the basis for future research projects to understand and enhance civilian intelligence oversight mechanisms and accountability. More research is needed better to understand intelligence governance in South Africa for academic purposes. To this end, the study broadly argues that governance has become a critical component that should be added to the management of the security sector. Consequently, security sector governance is significant due to the legislated use of state power, the weaponry at its disposal, and state institutions capable of violating human rights. Hutton (2007, p. 154) observes that “improving the mechanisms of governance is seen as essential to controlling the exercise of state power”. Democratic control, including governance of the intelligence sector, is a significant measure that regulates the exercise of state power.

As a result, further research should investigate governance in the intelligence sector and contribute to areas such as policy formulation, generation of policy priorities and alternatives; implementation of a regulatory framework, and the mandates and functioning of the structures that implement the decisions. The research on intelligence governance would also enable particular attention and improve each mechanism’s areas of oversight operation.

### 7.11 Chapter Summary

This chapter provides a comprehensive overview and summary of the study, encompassing research questions, propositions, key findings, and conclusions. It also addresses the study's limitations, suggests future research directions, and offers policy recommendations based on the research outcomes.

The primary aim of this study was to evaluate the efficacy of the South African civilian intelligence oversight and accountability model. The research investigated the regulatory and institutional arrangements governing intelligence services to assess

their effectiveness in ensuring accountability. It explored various governance concepts such as oversight, transparency, accountability, democratic control, institutional norms, and standards. Additionally, the study examined the integration of societal values into regulatory and oversight institutional arrangements.

The fundamental finding of this study is the inadequacy of the established civilian intelligence oversight model and systems in holding intelligence services and officials accountable. Consequently, there is a pressing need for reform. The study highlights the presence of internal and external oversight mechanisms within the South African civilian intelligence sector, comprising multi-institutional structures involving the executive, parliament, judiciary, and civil society organisations. However, the research reveals that these mechanisms were particularly ineffective during the period between 2009 and 2019, coinciding with high levels of corruption and misuse of state resources facilitated by systems weakness in the intelligence service.

Furthermore, the research identifies the absence of mechanisms or organisational measures to institutionalise civil society involvement in intelligence governance issues. It emphasises the necessity of a solid legal foundation for the civilian intelligence oversight mechanism, underlining its significance in enhancing accountability requirements. Furthermore, good governance emerges as a crucial aspect of intelligence governance, with institutional arrangements, policy imperatives, and regulatory frameworks playing instrumental roles in ensuring accountability.

The study advocates for operational efficiency improvements through appropriate organisational design and systems, promoting both personal and structural accountability. It stresses the importance of striking a balance between secrecy and transparency to enhance intelligence governance, democracy, and public trust in the intelligence sector.

Moreover, the research underscores the importance of infusing societal values into regulatory and oversight institutional arrangements to foster accountability. It aligns with existing literature acknowledging the significance of research on intelligence oversight and accountability mechanisms, particularly in understanding their empirical and prescriptive dimensions. The study fills a critical gap in scholarly attention to intelligence governance, offering valuable insights into oversight mechanisms'

effectiveness and providing a foundation for the development of evaluative frameworks.

This research contributes significantly to the advancement of original knowledge on intelligence oversight and accountability mechanisms. By addressing theoretical gaps and proposing practical directive tools, rules, processes, and procedures to entrench accountability, the study lays the groundwork for enhancing intelligence governance practices in South Africa and beyond.

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## Appendix A

## Schedule of Interview questions

**Primary research question:**

*How do South African intelligence oversight model ensure good governance through oversight, transparency, and accountability?*

The question seeks to determine how South African regulatory and institutional arrangements hold intelligence structures and individuals accountable

Based on the above primary question the following questions have been divided into three categories, namely **regulatory framework, oversight mechanism and institutional accountability on individuals.**

**The following questions address regulatory framework:**

**Question 1**

Do you think South Africa has adequate and appropriate legislation, regulation, policies, or rules that guide civilian intelligence oversight and accountability model?

**Question 2**

How do you think the South African civilian intelligence regulatory arrangements reflect a democratic society?

**Question 3**

How does the existing regulatory framework that establishes and regulates the civilian intelligence oversight mechanism compared to other democratic countries?

**Question 4**

How does the existing regulatory framework compare to other democratic countries?

**Question 5**

What effect does the intelligence oversight mechanism and accountability legislative and regulatory framework have one of the intelligence services?

**Question 6**

What is the role of legislative and regulatory framework in the realisation of societal values?

**Question 7**

Do you think civilian intelligence oversight legislative and regulatory frameworks are consistent with the South African constitutional and democratic values?

**The following Questions address the Intelligence Oversight model and Mechanisms:**

**Question 1**

What effect does civilian intelligence oversight institutions and mechanisms have on the mandate of intelligence services?

**Question 2**

What are the key challenges facing the South African civilian intelligence oversight model and its mechanisms?

**Question 3**

How do current civilian intelligence oversight mechanisms influence transparency and accountability within civilian intelligence structures?

**Question 4**

How should the civilian intelligence oversight model and mechanisms be structured to hold civilian intelligence services?

**Question 5**

In your view, is the existing civilian intelligence oversight model and mechanisms aligned with the best practice in other democracies?

**Question 6**

How should civilian intelligence oversight institutional arrangements ensure the realisation of societal values?

**The following Questions address institutional accountability on individuals:**

**Question 1**

What is the role of regulatory and institutional arrangements in holding individuals accountable?

**Question 2**

How should the civilian intelligence oversight model and its mechanisms be structured to hold individuals accountable?

**Question 3**

What is the effect of the alignment of regulatory and institutional arrangements with South Africa's Constitutional and democratic values?

Thank you!

## Appendix B

## Participation Information Sheet

Dear Sir/Madam

My name is Osiel Bongani Radebe, and I am a PhD student in Wits School of Governance at Wits University in Johannesburg. As part of my studies, I must undertake a research project, and I am investigating Oversight of the South African Civilian Intelligence Services. The aim of this research project is to find out the efficacy of civilian intelligence oversight mechanism in South Africa. The investigation will focus on how regulatory and institutional arrangements ensure intelligence services and individuals comply with accountability requirements.

As part of this project, I would like to invite you take part in an interview. This request is completely voluntary. You are selected to participant due to your expertise on the subject. The interview will be based on the primary question: **How does the South African intelligence oversight model ensure good governance through oversight, transparency, and accountability?** The interview will take approximately 45 minutes. With your permission, I would also like to record the interview using a digital voice recorder device. The recording will be stored in a personal laptop device that is password and biometric protected.

You will not receive any direct benefits from participating in this study, and there are no disadvantages or penalties for not participating. You may withdraw at any time or not answer any question if you do not want to answer. The interview will be completely confidential and anonymous as I will not be asking for your name or any identifying information, and the information you give to me will be held securely and not disclosed to anyone else. I will be using a pseudonym (false name) to represent your participation in my final research report. If you experience any distress or discomfort, we will stop the interview or resume another time.

If you have any questions afterwards about this research, feel free to contact me on the details listed below. For further queries, concerns, or complaints regarding the ethical procedures of this study, you are welcome to contact the University Human Research Ethics Committee (non-medical), telephone + 27(0)11 717 1408,

email Shaun.Schoeman@wits.ac.za

Yours sincerely,
Osiel Bongani Radebe

Supervisor:
Professor: Antoni Van Nieuwkerk