

## Briefing note: The General Intelligence Laws Amendment Bill (GILAB)<sup>1</sup>

### Introduction

The [General Intelligence Laws Amendment Bill](#) (GILAB) is a new bill amending the powers and mandate of South Africa's state intelligence services.

The Bill was approved by Cabinet in May this year. At the time of this writing (21 August 2023), the GILAB had yet to be tabled in Parliament. Once tabled, the National Assembly will create an *ad hoc* committee to consider the Bill and issue a call for public comments.

While there is an urgent need to reform the laws governing South Africa's intelligence services, the Bill has sparked serious concerns about its potential impact on civic participation, lack of protections from mass surveillance, and lack of provisions for improved oversight and accountability of the intelligence services. This briefing note unpacks some of these themes.

### What the Bill is meant to do

The GILAB's stated purpose is to implement recommended reforms to South Africa's intelligence agencies flowing from the Judicial Commission of Inquiry into Allegations of State Capture (the Zondo Commission) and the 2018 High Level Review Panel on the State Security Agency. The Bill is also meant to address the findings of the Constitutional Court in the *amaBhungane* judgment, which struck down parts of the RICA surveillance law.

The Bill's provisions would amend three existing laws relating to intelligence structures: the National Strategic Intelligence Act, the Intelligence Services Act, and the Intelligence Oversight Act.

One of the Bill's key features is its provision for the reversal of a controversial Zuma-era proclamation that merged South Africa's two national intelligence agencies (one domestic, the other foreign) to form the SSA. That centralisation of power was put into law in a previous GILAB, which Parliament passed in 2012. Following recommendations by the Review Panel and the Zondo Commission, the new GILAB splits the SSA into two intelligence agencies once more: the South African Intelligence Service (focused on foreign intelligence) and the South African Intelligence Agency (focused on domestic intelligence).

The idea is that it will be harder to centralise power or abuse intelligence resources if there are two directors-general heading two separate intelligence departments (as opposed to having power over the entire agency concentrated in the hands of one person who only needs to report to a minister).

### What's wrong with the GILAB?

#### 1. EXPANSION OF THE SSA'S VETTING POWERS

**Summary:** The Bill would expand the agencies' security vetting powers to include vetting of people seeking to establish and operate non-profit organisations, religious organisations, and private security companies. This raises concerns about freedom of association and the risk of surveillance of civil society organisations, especially given the government's historical allegations of critical civic groups being national security risks or the proxies of foreign governments.

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<sup>1</sup> This briefing note was prepared by Intelwatch on 28 August 2023.

## Background

- Historically, the SSA has been mandated to conduct security vetting of civil servants and potential service providers to government in order to identify persons posing security risks to the state. Risks range from the potential to commit fraud to being vulnerable to recruitment by a foreign spy service (through, for instance, blackmail or bribery).
- Vetting procedures can range from a simple background check (such as a criminal record check) to seriously invasive inquiries, which may include access to records of mental health treatment, financial records, interviews with associates, polygraph tests, and the interception of the private communications of those being vetted.
- However, the SSA has consistently faced vetting backlogs, thus delaying key appointments. There have also been failures to identify *actual* security risks within government (such as corrupt officials). The SSA's security vetting powers have also been employed to marginalise its critics, such as when a former SSA director-general revoked the security clearance of the Inspector-General (IG) of Intelligence who was investigating his conduct.

## 2. EXPANSION OF MASS SURVEILLANCE CAPABILITIES

**Summary:** The Bill attempts to establish in law the SSA's mass surveillance capabilities through the National Communications Centre (NCC). This was necessitated by the Constitutional Court's declaration, in the *amaBhungane* judgment, that the NCC's bulk surveillance operations were unlawful. However, although the GILAB is an attempt to legalise the NCC's operations, it does not provide for the requisite protections for privacy and freedom of expression, nor for meaningful oversight of the NCC. It also creates a messy parallel policy process at a time when state surveillance legislation is undergoing crucial reforms.

## Background

- The NCC previously operated as a mass surveillance facility, scanning millions of communication signals in order to identify people or groups to be targeted for further surveillance. Thus, many innocent persons would have been caught in a surveillance dragnet (without their knowledge or permission). This occurred without transparency, and with no clear safeguards and legal regulations.
- The Constitutional Court previously declared (as part of its judgment on RICA in *amaBhungane*) that these activities were unlawful since there is no law enabling mass surveillance. The RICA surveillance law allows for *targeted* surveillance (the interception of a specific person's communications, under specific circumstances) but does not allow for the NCC's capabilities, which include the mass interception of many people's communications.
- The Department of Justice is drafting a separate Bill to amend RICA (in line with the Constitutional Court's judgment) by introducing new safeguards and transparency for surveillance operations. However, the GILAB would set up a parallel surveillance framework with none of these safeguards.
- Under the GILAB, the NCC's mass surveillance system would have nominal oversight from a judge; the judge would be appointed by the President and advised by two 'interception experts'. This falls far short of the new standards for surveillance oversight set by the Constitutional Court in *amaBhungane*, which demands sufficient independence of judges authorising surveillance, and the post-surveillance notification of any people whose communications had been intercepted. The Bill does not attempt to meet these standards: rather, it just seeks the shortest path to re-granting the SSA's mass surveillance powers.

## 3. FAILURE TO DELIVER ON OVERSIGHT AND ACCOUNTABILITY

**Summary:** There is an urgent need for reforms to boost oversight and accountability in the State Security Agency to prevent further abuses of power and corruption. Yet the GILAB fails to deliver these reforms.

## Background

- Multiple commissions and inquiries have identified the lack of proper oversight and accountability of the SSA as enabling abuses of power, politicisation, and corruption within the agency. The Bill fails to address these issues.
- For example, the GILAB does nothing to boost the power and institutional independence of the Inspector General of Intelligence, the watchdog of the intelligence agencies. Under current law, the IG's decisions appear not to be binding. There is no provision for an acting or deputy IG in legislation, which has resulted in the institution being leaderless, sometimes for years, between IG appointments.
- The GILAB also fails to provide for better external oversight of and safeguards for the SSA's expenditure and management of secret funds. (This lack of oversight and safeguards was a key dimension of state capture within the agency.) For example, the Auditor-General needs full access to the SSA's internal financial documents. Because the classification of documents (by the SSA) prohibits the AG from conducting a full audit of the agency's accounts, the SSA has never had an unqualified audit. (See Intelwatch's research on boosting financial oversight of the SSA [here](#).)

## 4. EXPANDING THE DEFINITIONS OF NATIONAL SECURITY

**Summary:** The Bill expands the definitions of national security and intelligence, which would effectively expand the reach of South Africa's intelligence agencies into all aspects of public life. This flies in the face of recommendations and best practice that national security powers should be limited and narrowly defined.

## Background

- The Bill expands the legal definitions of key terms, including "domestic intelligence", "foreign intelligence", "intelligence gathering", "national security", "national security intelligence", and "threats to national security". These changes significantly broaden the mandate and powers of South Africa's intelligence structures, including to proactively seek any "opportunity or potential opportunity" to advance South Africa's national security interests.
- These broad and vague parameters would invite South Africa's intelligence agencies to involve themselves in potentially any aspect of public life.
- This policy shift would be especially dangerous given the history of the SSA and its predecessors in meddling in politics and civic life.
- It also flies in the face of clear findings from the High Level Review Panel on the SSA, which made strong recommendations for a clearer and more focused mandate for South Africa's intelligence agencies.

## Conclusion

There is a genuine need for the reform of the state intelligence structures in South Africa, but the GILAB raises serious concerns about freedom of association, mass surveillance capabilities, and inadequate oversight and accountability of intelligence services. The Bill is also generally poorly drafted and includes various typos and errors. Some of the problems identified here may be unintentional rather than actual policy decisions. However, given the evidence that poor policy and lack of effective oversight of the SSA (and its predecessors) helped to enable state capture and abuse of power, it is vital for civil society organisations to engage with the implications of the GILAB and advocate for meaningful reforms that safeguard democratic rights and accountability.

## Resources

- Access the GILAB 2023 [here](#)