

**TITLE**

**An Inquisitorial Examination of National Intelligence and its Connection to Social Development within the Framework of Pre- and Post-Apartheid Constitutionalism in South Africa.**

By

**Wilbur Winter**

Submitted in accordance with the requirements for the degree of

**DOCTOR of PHILOSOPHY**

In the Department of

**DEVELOPMENT STUDIES**

at the

**UNIVERSITY of SOUTH AFRICA (UNISA)**

**SUPERVISOR: PROFESSOR J LEBAKENG**

October 2025

## DECLARATION

Name: Wilbur Winter

Student Number: 33582416

Degree: Doctor of Philosophy: Development Studies

Title: An Inquisitorial Examination of National Intelligence and its Connection to Social Development within the Framework of Pre-and Post-Apartheid Constitutionalism in South Africa.

I declare that the above thesis is my own work and that all the sources that I have used or quoted have been indicated and acknowledged using complete referencing.

I further declare that I submitted the thesis to originality-checking software and that it falls within the accepted requirements for originality. During the examination process the title has changed and thus the certificate from the Professional Editor indicates the title at the time of editing.

Lastly, I declare that I have not previously submitted this work, or part thereof, for examination at UNISA for another qualification or to any other Higher Education Institution.



W Winter

Date:  
*October 2025*

**Certificate from Professional Editor (PEG Mem No KRA002)**

**Jacqueline Kraamwinkel**

---

Johannesburg | +27 72 709 4463 | jackykraamwinkel@gmail.com

03/06/2023

**To whom it may concern**

This is to certify that the thesis titled **THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA (1996) AND INTELLIGENCE – AN INQUISITORIAL STUDY OF INTELLIGENCE CONTAINED IN CHAPTER 11, SECTIONS 209 AND 210 OF THE CONSTITUTION (1996) AND ITS RELATION TO SOCIAL DEVELOPMENT AND HUMAN RIGHTS GUARANTEED IN THE CONSTITUTION (1996) AND THE BILL OF RIGHTS** by **WILBUR WINTER** has been copy-edited and proofread by a professional language editor in accordance with the requirements of the partial fulfilment of the degree **DOCTOR OF PHILOSOPHY** at the **DEPARTMENT OF DEVELOPMENTAL STUDIES** at the **UNIVERSITY OF SOUTH AFRICA (UNISA)**. The onus is on the author to attend to the suggested changes. Furthermore, I do not take responsibility for any changes in the document after the fact.

Sincerely,



---

**Jacky Kraamwinkel**

BA (English and Psychology) – UJ  
BA (Hons) English Literature – UJ  
PEG membership no: KRA002

## DEDICATION

In the face of adversity, “hope springs eternal” among all people (Pope, 1732, “An Essay on Man”). This study is dedicated to all South Africans and their resilience and belief in a better tomorrow. To the defenders and upholders of the Constitution (1996), may you inexhaustibly continue with your unflagging enthusiasm in defence of the Constitution. History has confirmed that the very foundations of our cherished democracy will be perpetually under attack by demagogues and opportunists who seek only to undermine the rule of law and our constitutional principles to wrest away power from citizens. The sobering reality is that our constitutional guard must never be let down as this will make the march to authoritarianism such light work.

To every civil and civic activist, academic, constitutionalist and citizen, the fight must continue and may it flow into all generations to come. This study is dedicated to every South African who confronts each day with a sense of purpose, armed with integrity, an unwavering moral compass, resourcefulness and indestructible dignity. NEVER give up!

To those who remain indelible in my heart and mind, my family and my friends, fight on with steadfast resilience no matter the odds ... *“the fight is our friend”*.

## **ACKNOWLEDGEMENT**

My sincere gratitude and thanks to everyone who has traversed this journey with me. Not only have you been an inspiration, a source of strength but also a maintenance plan for my sanity.

I extend my heartfelt gratitude to Professor Andreas Velthuisen who started this study with me and to Professor Josiah Lebakeng, who took over from Prof Velthuisen as my Supervisor and saw the study through to the end. To both of you, whose unwavering support and guidance have been invaluable throughout this journey. Thank you both for your encouragement and commitment.

My heartfelt gratitude goes to Dr Musitha, whose gentle reminders, “that many have travelled this path before me”, have always brought me comfort and reassurance that I will never walk alone on this journey or any other.

To Jacky, who remains ever steadfast and never loses her remarkable capacity to weather the turbulence and storms that often accompany me, I offer my sincere gratitude.

To ‘CDN’, thank you for reminding me that being ‘battle-weary’ is no excuse to give up or stop believing.

To ‘NJ’ and ‘TC’, my debt of gratitude will never be settled. I have yet to encounter stronger pillars of support and unwavering compassion.

Thank you to everyone who has been evident throughout my tribulations, may you all continue to grow and be present to make a difference to our country, its people and each other.

## **ABSTRACT**

This study examines Sections 209-210 of the Constitution of South Africa (1996) through an inquisitorial and comparative framework. Positioned within development studies, it interrogates the relationship between constitutionalism, national intelligence and social development. The research contrasts apartheid-era intelligence practices - characterised by systemic repression and racialised state control - with the constitutional regulation of intelligence under the 1996 democratic dispensation.

It argues that while intelligence structures historically functioned to entrench political domination and socioeconomic exclusion, the 1996 Constitution establishes a normative framework capable of aligning national security with democratic accountability, human rights and inclusive development. The study demonstrates the interdependence between constitutional governance, intelligence oversight and socioeconomic transformation, emphasising the role of human agency in either undermining or advancing constitutional principles. Ultimately, it contends that the constitutional structuring of intelligence under Sections 209–210 holds transformative potential for strengthening the rule of law, promoting socioeconomic development and consolidating South Africa’s democratic order.

## **MANWELEDZO**

Tshidzidzo itshi tshi tōdisisa Zwiteṅwa 209–210 zwa Mulayotewa wa Riphabuliki ya Afurika Tshipembe (1996) nga ṅdila ya u sedzulusa na u vhambedza. Tsho vhewa ngomu ha zwa pfunzo ya mveledziso, tshi tōlisisa vhushaka vhukati ha vhuṭuṭuwedzi ha mulayotewa, vhuṭanzi ha tsireledzo ya lushaka, na mveledziso ya zwa ikonomi na matshilisano. Tḥoḥisiso i vhambedza maitele a vhuṭanzi ha tshifhinga tsha muvhuso wa khethululo ya tshikhaladzi (apartheid) - a a vhoneleho nga u kandedza ha sisteme na u langwa ha muvhuso ho thewaho kha muvhala - na ndangulo ya vhuṭanzi yo vhekanywaho nga Mulayotewa wa 1996 wa demokirasi.

Tshidzidzo itshi tshi hanedzana na uri naho zwivhumbeo zwa vhuṭanzi zwo shumiswa kale u khwaṭhisa vhupulitika ha u laula na u tsireledza u sa lingana ha zwa ikonomi na matshilisano, Mulayotewa wa 1996 u vhea mutheo wa milayo une wa kona u ṭanganya tsireledzo ya lushaka na vhuḍifhinduleli ha demokirasi, pfanelo dza vhathu, na mveledziso i katelaho vhoṭhe. Tshi dovha tshi sumbedza u ṭumanywa ha ndangulo ya mulayotewa, u sedzulusa na u langa vhuṭanzi, na tshanduko ya zwa ikonomi na matshilisano, tshi tshi ombedzela mushumo wa muthu sa ane a nga thivhela kana a alusa milayo na milayo-misini ya mulayotewa. Mafheloni, tshi khou khwaṭhisa uri ndangulo ya vhuṭanzi i thewaho kha Zwiteṅwa 209-210 i na maanda a tshanduko a u khwaṭhisa mulayo na ndeme ya u langwa ha shango, u ṭuṭuwedza mveledziso ya zwa ikonomi na matshilisano, na u khwaṭhisa demokirasi ya Afurika Tshipembe.

## **OPSOMMING**

Hierdie studie ondersoek Artikels 209-210 van die Grondwet van die Republiek van Suid-Afrika (1996) deur middel van 'n indringende en vergelykende benadering. Geplaas binne ontwikkelingsstudies, ontleed dit die verhouding tussen grondwetlikheid, nasionale veiligheidsintelligensie en sosio-ekonomiese ontwikkeling. Die navorsing kontrasteer intelligensiepraktyke tydens die apartheidsbewind - gekenmerk deur sistemiese onderdrukking en gerassialiseerde staatsbeheer - met die grondwetlike regulering van intelligensie binne die demokratiese bestel wat in 1996 tot stand gekom het.

Daar word aangevoer dat, hoewel intelligensiestrukture histories aangewend is om politieke oorheersing en sosio-ekonomiese uitsluiting te verstewig, die Grondwet van 1996 'n normatiewe raamwerk daarstel wat nasionale veiligheid met demokratiese aanspreeklikheid, menseregte en inklusiewe ontwikkeling kan versoen. Die studie toon die onderlinge verweefdheid tussen grondwetlike bestuur, intelligensietoesig en sosio-ekonomiese transformasie aan, en beklemtoon die rol van menslike optrede as 'n faktor wat grondwetlike beginsels óf kan ondermyn óf kan bevorder. Uiteindelik word betoog dat die grondwetlike ordening van intelligensie ingevolge Artikels 209-210 'n transformerende

potensiaal inhou om die oppergesag van die reg te versterk, sosio-ekonomiese ontwikkeling te bevorder en Suid-Afrika se demokratiese bestel te konsolideer.

---

#### **Declaration of language and translation assistance**

The abstract of this study was translated into Tshivenda and Afrikaans with the assistance of the Department of Tuition Support and Facilitation of Learning (DTSFL) at the University of South Africa (UNISA). The translation support was provided by designated Language Practitioners under the supervision of the relevant Manager within the Department.

This declaration is made in the interest of transparency and to confirm that appropriate institutional assistance was utilised in the preparation of the translated abstracts. All other aspects of the work remain the responsibility of the author, and academic integrity standards have been duly observed (20 March 2025).

**KEYWORDS**

Bill of Rights, Constitution, Constitutionalism, Counterintelligence, Intelligence, National Security, Social Development

## TABLE OF CONTENTS (ToC)

|                                                                       |              |
|-----------------------------------------------------------------------|--------------|
| <b>TITLE .....</b>                                                    | <b>i</b>     |
| <b>DECLARATION .....</b>                                              | <b>ii</b>    |
| <b>Certificate from Professional Editor (PEG Mem No KRA002) .....</b> | <b>iii</b>   |
| <b>DEDICATION .....</b>                                               | <b>iv</b>    |
| <b>ACKNOWLEDGEMENT .....</b>                                          | <b>v</b>     |
| <b>ABSTRACT .....</b>                                                 | <b>vi</b>    |
| <b>MANWELEDZO .....</b>                                               | <b>vi</b>    |
| <b>OPSOMMING .....</b>                                                | <b>vii</b>   |
| <b>KEYWORDS .....</b>                                                 | <b>ix</b>    |
| <b>ABBREVIATIONS AND ACRONYMS .....</b>                               | <b>xviii</b> |
| <b>CHAPTER 1: INTRODUCTION TO THE STUDY .....</b>                     | <b>1</b>     |
| <b>1.1 Introduction.....</b>                                          | <b>1</b>     |
| <b>1.2 Background to the study .....</b>                              | <b>1</b>     |
| <b>1.2.1 The research setting .....</b>                               | <b>4</b>     |
| <b>1.3 Statement of the problem .....</b>                             | <b>5</b>     |
| <b>1.4 Significance of the study .....</b>                            | <b>6</b>     |
| <b>1.4.1 Study contribution to existing knowledge .....</b>           | <b>7</b>     |
| <b>1.5 The aim (objectives) and research questions .....</b>          | <b>10</b>    |
| <b>1.5.1 Objectives .....</b>                                         | <b>10</b>    |
| <b>1.5.2 Research questions .....</b>                                 | <b>10</b>    |
| <b>1.6 Literature review .....</b>                                    | <b>11</b>    |
| <b>1.7 Research methodology .....</b>                                 | <b>12</b>    |
| <b>1.7.1 Primary and secondary sources used in this study .....</b>   | <b>14</b>    |
| <b>1.7.2 Interpretation of collected information .....</b>            | <b>15</b>    |

|                                    |                                                                         |    |
|------------------------------------|-------------------------------------------------------------------------|----|
| 1.7.3                              | Qualitative analysis .....                                              | 16 |
| 1.7.4                              | Ensuring scientific rigour: Validity and reliability .....              | 17 |
| 1.7.5                              | Ethical considerations .....                                            | 18 |
| 1.8                                | Theoretical and conceptual framework .....                              | 18 |
| 1.8.1                              | Constitutionalism .....                                                 | 19 |
| 1.8.2                              | Intelligence.....                                                       | 20 |
| 1.8.3                              | Social development.....                                                 | 20 |
| 1.9                                | Delimitation and limitations of the study.....                          | 21 |
| 1.10                               | Definition of key concepts .....                                        | 22 |
| 1.11                               | Structure of the study – flow of chapters .....                         | 25 |
| 1.12                               | Summary .....                                                           | 27 |
| CHAPTER 2: LITERATURE REVIEW ..... |                                                                         | 28 |
| 2.1                                | Introduction.....                                                       | 28 |
| 2.2                                | Path and sources that inform the study’s literature review .....        | 28 |
| 2.3                                | Constitutionalism .....                                                 | 29 |
| 2.3.1                              | Reflecting on the Union and Republic of South Africa (1910–1983) .....  | 31 |
| 2.3.2                              | Formation of the Union of South Africa (the constitution of 1910) ..... | 32 |
| 2.3.3                              | The Republic of South Africa (Constitution of 1961).....                | 33 |
| 2.3.4                              | Constitution of 1983 – Act 110 of 1983 .....                            | 34 |
| 2.3.5                              | A historical perspective of constitutionalism .....                     | 35 |
| 2.3.6                              | Constitutional law.....                                                 | 36 |
| 2.3.7                              | Principles and theory of constitutionalism .....                        | 37 |
| 2.3.8                              | Civil society and constitutionalism.....                                | 37 |

|         |                                                                                      |    |
|---------|--------------------------------------------------------------------------------------|----|
| 2.3.9   | The Enlightenment Era’s contribution to constitutionalism.....                       | 38 |
| 2.3.10  | Regulating the power of monarchs – insights into the power of<br>constitutions ..... | 39 |
| 2.3.11  | South African constitutional democracy .....                                         | 39 |
| 2.3.12  | Developing a social and democratic posture.....                                      | 41 |
| 2.3.13  | Crafting a people’s constitution .....                                               | 41 |
| 2.4     | Social development.....                                                              | 42 |
| 2.4.1   | Social development contexts – African and European .....                             | 42 |
| 2.4.2   | Social development and the human component .....                                     | 43 |
| 2.4.3   | Socioeconomic rights .....                                                           | 43 |
| 2.4.4   | Separate development – longevity of apartheid poverty .....                          | 44 |
| 2.4.5   | A cursory overview of social development and intelligence .....                      | 45 |
| 2.5     | Intelligence – conduct, methodologies, processing.....                               | 46 |
| 2.5.1   | Apartheid intelligence from 1948 .....                                               | 47 |
| 2.5.1.1 | Bureau of State Security .....                                                       | 48 |
| 2.5.2   | South Africa’s divisions within intelligence structures .....                        | 48 |
| 2.5.3   | Statutory intelligence and South African liberation .....                            | 50 |
| 2.5.4   | Formulating a new approach to South African intelligence in a<br>democracy .....     | 52 |
| 2.5.4.1 | National security and intelligence enshrined in a constitution.....                  | 53 |
| 2.5.5   | South African intelligence: conduct, structure and regulatory frameworks<br>.....    | 54 |

|                                                                                                                                         |                                                                                                          |           |
|-----------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|-----------|
| 2.5.5.1                                                                                                                                 | The processing of information and the intelligence cycle .....                                           | 56        |
| 2.5.6                                                                                                                                   | Truth and reconciliation – human rights abuses .....                                                     | 57        |
| 2.6                                                                                                                                     | Summary .....                                                                                            | 59        |
| <b>CHAPTER 3: COMPARATIVE CONSTITUTIONAL FRAMEWORKS IN SOUTH AFRICA (1910, 1961 AND 1983): CONSTITUTIONALISM AND INTELLIGENCE .....</b> |                                                                                                          | <b>60</b> |
| 3.1                                                                                                                                     | Introduction.....                                                                                        | 60        |
| 3.2                                                                                                                                     | Conceptual and contextual foundations: The social complexity of constitutionalism and intelligence ..... | 61        |
| 3.3                                                                                                                                     | Constitutions, European settlement and social dis-ease .....                                             | 63        |
| 3.3.1                                                                                                                                   | The Treaty of Vereeniging – 31 May 1902 .....                                                            | 64        |
| 3.4                                                                                                                                     | A test in constitutionality for the South Africa Act of 1909.....                                        | 65        |
| 3.4.1                                                                                                                                   | Powers and qualifications – executive government.....                                                    | 65        |
| 3.4.2                                                                                                                                   | The unconstitutional 1913 Natives Land Act .....                                                         | 66        |
| 3.4.3                                                                                                                                   | The South African Native National Congress (SANNC) .....                                                 | 67        |
| 3.5                                                                                                                                     | South African Republic 1961 – leaving the Commonwealth .....                                             | 69        |
| 3.5.1                                                                                                                                   | Vorster’s rise and apartheid’s militarised intelligence capacity .....                                   | 71        |
| 3.5.2                                                                                                                                   | Apartheid intelligence – a political tool to maintain power .....                                        | 72        |
| 3.5.3                                                                                                                                   | The ANC’s military wing and intelligence capacity .....                                                  | 74        |
| 3.5.4                                                                                                                                   | Intelligence, murder and human rights abuses – blurred lines.....                                        | 75        |
| 3.5.5                                                                                                                                   | Recognising unconstitutionality – correcting atrocities .....                                            | 76        |
| 3.5.6                                                                                                                                   | Intelligence tactics and counter-tactics – liberation versus apartheid....                               | 77        |
| 3.5.6.1                                                                                                                                 | Differences between apartheid and liberation movement intelligence.....                                  | 78        |
| 3.5.7                                                                                                                                   | Developing the ANC’s NAT counter-offensive .....                                                         | 79        |

|                                                                         |                                                                                                               |            |
|-------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|------------|
| 3.6                                                                     | The development of intelligence capabilities – ANC and NP.....                                                | 80         |
| 3.6.1                                                                   | The construct of a people's war .....                                                                         | 82         |
| 3.6.2                                                                   | Apartheid intelligence and human rights atrocities .....                                                      | 84         |
| 3.6.3                                                                   | The creation of a professional intelligence service.....                                                      | 85         |
| 3.7                                                                     | Summary .....                                                                                                 | 87         |
| <b>CHAPTER 4: CONTEXTUALISING SOUTH AFRICAN CONSTITUTIONALISM .....</b> |                                                                                                               | <b>89</b>  |
| 4.1                                                                     | Introduction.....                                                                                             | 89         |
| 4.2                                                                     | Constitutional design, influences and broad-based social inclusivity.....                                     | 89         |
| 4.3                                                                     | South African constitutionalism.....                                                                          | 94         |
| 4.4                                                                     | Constitutionalism and society.....                                                                            | 96         |
| 4.4.1                                                                   | Constitutional rights, social responsibility and activism .....                                               | 99         |
| 4.4.2                                                                   | Constitutional principles, guidelines and the regulation of state power.....                                  |            |
|                                                                         | .....                                                                                                         | 102        |
| 4.5                                                                     | Negotiation, adoption and certification of the Constitution (1996) ...                                        | 105        |
| 4.5.1                                                                   | A Bill of Rights augmented by a democratic constitution .....                                                 | 108        |
| 4.5.2                                                                   | Socioeconomic rights .....                                                                                    | 109        |
| 4.5.3                                                                   | Chapter 11, Intelligence (sections 209 & 210) .....                                                           | 110        |
| 4.6                                                                     | Summary .....                                                                                                 | 112        |
| <b>CHAPTER 5: SOCIAL DEVELOPMENT IN DEMOCRATIC SOUTH AFRICA.....</b>    |                                                                                                               | <b>114</b> |
| 5.1                                                                     | Introduction.....                                                                                             | 114        |
| 5.2                                                                     | Objective of social development.....                                                                          | 114        |
| 5.3                                                                     | Historical colonial influences on economic and social development in African and South African contexts ..... | 116        |
| 5.3.1                                                                   | Underdevelopment in South Africa – the effect of European development .....                                   | 118        |

|                                                                                                                               |                                                                                  |            |
|-------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|------------|
| 5.3.1.1                                                                                                                       | Apartheid's contribution to underdevelopment .....                               | 119        |
| 5.4                                                                                                                           | Separate development and the apartheid economy .....                             | 121        |
| 5.5                                                                                                                           | Social development – contextualisation of the study definition .....             | 123        |
| 5.5.1                                                                                                                         | The human component – human-scale development .....                              | 125        |
| 5.5.2                                                                                                                         | Social development and national security .....                                   | 126        |
| 5.6                                                                                                                           | The Bill of Rights – a guarantee for social development .....                    | 128        |
| 5.6.1                                                                                                                         | Socioeconomic rights and South African constitutionalism .....                   | 130        |
| 5.6.2                                                                                                                         | Basic human needs .....                                                          | 132        |
| 5.6.2.1                                                                                                                       | Growing human needs – a social development constraint .....                      | 133        |
| 5.6.3                                                                                                                         | Reconstruction and Development Programme 1994 .....                              | 134        |
| 5.6.4                                                                                                                         | Vision 2030 – National Development Plan .....                                    | 136        |
| 5.7                                                                                                                           | A cursory overview of social development and intelligence .....                  | 136        |
| 5.7.1                                                                                                                         | Safety and security – Chapter 11 .....                                           | 137        |
| 5.7.2                                                                                                                         | Amendments to the General Intelligence Laws Amendment Bill (GILAB)<br>2023 ..... | 137        |
| 5.7.3                                                                                                                         | Politicisation of social development .....                                       | 138        |
| 5.8                                                                                                                           | Summary .....                                                                    | 139        |
| <b>CHAPTER 6: INTELLIGENCE – CONDUCT, POLICY AND IMPLEMENTATION OF A<br/>STRATEGY GEARED TOWARDS SOCIAL DEVELOPMENT .....</b> |                                                                                  | <b>141</b> |
| 6.1                                                                                                                           | Introduction .....                                                               | 141        |
| 6.2                                                                                                                           | Reflective overview of intelligence in South Africa .....                        | 142        |
| 6.2.1                                                                                                                         | Biblical and early recollections of intelligence and espionage .....             | 145        |
| 6.2.2                                                                                                                         | Defining intelligence .....                                                      | 146        |
| 6.2.3                                                                                                                         | Developing intelligence in South Africa – a contextual overview .....            | 149        |

|                                                                                                                |                                                                                                                |            |
|----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|------------|
| 6.2.3.1                                                                                                        | Reflective overview of apartheid and liberation intelligence .....                                             | 152        |
| 6.2.3.2                                                                                                        | Intelligence, negotiation and democratic transition: From CODESA to constitutional governance .....            | 155        |
| 6.2.4                                                                                                          | The Constitution (1996) and intelligence.....                                                                  | 158        |
| 6.2.4.1                                                                                                        | Chapter 11 and the establishment of a civilian intelligence agency. ....                                       | 159        |
| 6.2.5                                                                                                          | Intelligence governance and conduct .....                                                                      | 163        |
| 6.2.5.1                                                                                                        | The implications of human vulnerability for intelligence .....                                                 | 168        |
| 6.3                                                                                                            | Contextualisation of intelligence and social development .....                                                 | 169        |
| 6.3.1                                                                                                          | The intelligence process.....                                                                                  | 171        |
| 6.3.1.1                                                                                                        | Intelligence cycle .....                                                                                       | 172        |
| 6.4                                                                                                            | Summary .....                                                                                                  | 175        |
| <b>CHAPTER 7: CONCLUSION, BRIEF OVERVIEW, FINDINGS, RECOMMENDATIONS AND THE LIMITATIONS OF THE STUDY .....</b> |                                                                                                                | <b>176</b> |
| 7.1                                                                                                            | Introduction.....                                                                                              | 176        |
| 7.2                                                                                                            | Analytical discussion of the study.....                                                                        | 176        |
| 7.3                                                                                                            | Findings.....                                                                                                  | 179        |
| 7.3.1                                                                                                          | Comparing intelligence conduct in relation to social development before and after the Constitution (1996)..... | 181        |
| 7.3.2                                                                                                          | Intelligence conduct and the impact on social development .....                                                | 182        |
| 7.3.3                                                                                                          | Comparing the apartheid and democratic constitutions and intelligence .. ..                                    | 183        |
| 7.3.4                                                                                                          | The effect of the Constitution (1996) on the conduct of intelligence towards social development .....          | 185        |
| 7.3.5                                                                                                          | Democratic intelligence processes and practices.....                                                           | 188        |
| 7.3.6                                                                                                          | Summation of the most pertinent findings .....                                                                 | 189        |

|                                 |                                                 |            |
|---------------------------------|-------------------------------------------------|------------|
| <b>7.4</b>                      | <b>Recommendations .....</b>                    | <b>192</b> |
| <b>7.4.1</b>                    | <b>Constitutionalism .....</b>                  | <b>194</b> |
| <b>7.4.2</b>                    | <b>Social development.....</b>                  | <b>196</b> |
| <b>7.4.3</b>                    | <b>Intelligence.....</b>                        | <b>198</b> |
| <b>7.4.4</b>                    | <b>Consolidated recommendations .....</b>       | <b>202</b> |
| <b>7.5</b>                      | <b>Limitations of the study .....</b>           | <b>203</b> |
| <b>7.6</b>                      | <b>Areas identified for further study .....</b> | <b>205</b> |
| <b>7.7</b>                      | <b>Overall conclusion .....</b>                 | <b>207</b> |
| <b>LIST OF REFERENCES .....</b> |                                                 | <b>208</b> |

## **ABBREVIATIONS AND ACRONYMS**

|                |                                                                                   |
|----------------|-----------------------------------------------------------------------------------|
| <b>ANC</b>     | <b>African National Congress</b>                                                  |
| <b>ANC-NAT</b> | <b>African National Congress Department of National Intelligence and Security</b> |
| <b>APLA</b>    | <b>Azanian People's Liberation Army</b>                                           |
| <b>BOSS</b>    | <b>Bureau of State Security</b>                                                   |
| <b>CCB</b>     | <b>Civil Cooperation Bureau</b>                                                   |
| <b>CODESA</b>  | <b>Convention for a Democratic South Africa</b>                                   |
| <b>DFA</b>     | <b>Department of Foreign Affairs</b>                                              |
| <b>DIS</b>     | <b>Department of Intelligence and Security</b>                                    |
| <b>DIRCO</b>   | <b>Department of International Relations and Cooperation</b>                      |
| <b>DMI</b>     | <b>Directorate of Military Intelligence</b>                                       |
| <b>GILAB</b>   | <b>General Intelligence Laws Amendment Bill</b>                                   |
| <b>HUMINT</b>  | <b>Human Intelligence</b>                                                         |
| <b>ICRC</b>    | <b>International Committee of the Red Cross</b>                                   |
| <b>MK</b>      | <b>uMkhonto we Sizwe</b>                                                          |
| <b>MOM</b>     | <b>Marginalised and Oppressed Majority</b>                                        |
| <b>NA</b>      | <b>National Assembly</b>                                                          |
| <b>NIA</b>     | <b>National Intelligence Agency</b>                                               |
| <b>NIE</b>     | <b>National Intelligence Estimate</b>                                             |
| <b>NP</b>      | <b>National Party</b>                                                             |
| <b>PAC</b>     | <b>Pan Africanist Congress</b>                                                    |
| <b>RDP</b>     | <b>Reconstruction and Development Programme</b>                                   |
| <b>RSA</b>     | <b>Republic of South Africa</b>                                                   |
| <b>SACP</b>    | <b>South African Communist Party</b>                                              |
| <b>SADF</b>    | <b>South African Defence Force</b>                                                |
| <b>SANDF</b>   | <b>South African National Defence Force</b>                                       |
| <b>SAHO</b>    | <b>South African History Online</b>                                               |
| <b>SANNC</b>   | <b>South African Native National Congress</b>                                     |
| <b>SAP</b>     | <b>South African Police</b>                                                       |

|               |                                              |
|---------------|----------------------------------------------|
| <b>SAPS</b>   | <b>South African Police Service</b>          |
| <b>SIGINT</b> | <b>Signals Intelligence</b>                  |
| <b>SSA</b>    | <b>State Security Agency</b>                 |
| <b>SSC</b>    | <b>State Security Council</b>                |
| <b>TRC</b>    | <b>Truth and Reconciliation Commission</b>   |
| <b>UDF</b>    | <b>United Democratic Front</b>               |
| <b>UDHR</b>   | <b>Universal Declaration of Human Rights</b> |
| <b>USA</b>    | <b>United States of America</b>              |

## **CHAPTER 1: INTRODUCTION TO THE STUDY**

### **1.1 Introduction**

This chapter outlines the study's background, problem statement and significance. It also details the objectives and research questions, as well as the literature review and research methodology. Additionally, it presents the theoretical framework, delimitations and limitations of the study, along with the key concepts and the organisation of the subsequent chapters.

### **1.2 Background to the study**

South Africa's history of racial segregation and oppression has significantly affected citizens across all dimensions of social and human development. The constitutions of 1910, 1961 and 1983 facilitated unconstitutionality and human rights violations by providing legal backing for parliamentary supremacy and legitimising the apartheid regime's enforcement of racial segregation. This resulted in stark disparities in social development, as the regime directed security and intelligence forces against those opposing apartheid, using the constitution of the day to incite racial tension (Africa & Kwadjo 2009; O'Brien 2011; Elsdon 2009; De Vos & Freedman 2021). Concurrently, the marginalised and oppressed majority (MOM)<sup>1</sup>, were kept impoverished within the apartheid economy (Wolpe 1988; Callinicos 1992; Sachs 1973).

This study examines the historical context of the apartheid regime and the role of intelligence operations within the framework of the 1910, 1961 and 1983 constitutions, referred to as the apartheid-era constitutions, contrasting them with the Constitution of 1996, which represents the country's constitutional democracy. It explores comparatively whether intelligence promotes social development within the parameters of the 1996

---

<sup>1</sup>The marginalised and oppressed majority (MOM) encompasses a variety of groups with diverse ethnic backgrounds, in particular Black, Indian and Coloured communities, while also recognising that other groups, such as Chinese and Portuguese, etc., faced discrimination. In South Africa, Black South Africans represented the majority of this group. It is essential to acknowledge that various ethnic groups experienced discrimination under apartheid, highlighting the broader context of systemic oppression.

Constitution, highlighting three key concepts: constitutionalism, social development and intelligence (Labaree 2009; Leedy & Ormond 2019).

Apartheid-era intelligence structures functioned to suppress opposition and entrench systemic social and economic inequality through state security mechanisms. In contrast, the constitutional order established in 1996, underpinned by the Bill of Rights, obliges intelligence agencies to align their operations with democratic values and the promotion of social development. Using both primary and secondary sources<sup>2</sup>, the research examines these dynamics (Labaree 2009; Leedy & Ormond 2019; Garbers 1996; Neuman 2011; Denzin & Lincoln 1994[2018]).

A shared understanding within the social science framework is crucial for addressing the issue (Kuhn 1970; Aliyu, Adamu, Singhry & Abubakar 2015; Kawulich 2004; Berger 2018; Bryman 2007; Ulum 2016; Garbers 1996). The study identifies three core concepts rooted in established disciplinary knowledge, exploring whether intelligence can positively impact social development within South Africa's transition from an autocratic apartheid regime to a constitutional democracy.

Conceptual frameworks, as Levering (2002:38) posits, provide a "soft interpretation of intentions", offering rationality and direction for centering key concepts such as constitutionalism, social development, and intelligence. Deleuze and Guattari (1991:15, 19) emphasize that concepts are "distinct, heterogeneous and yet not separable", reflecting their interrelated and evolving nature. However, as Kuhn (1970) argues in *The Structure of Scientific Revolutions*, such frameworks could also impose constraints by favouring established paradigms and discouraging alternative perspectives. For students, this rigidity can hinder creative engagement and interdisciplinary exploration, as they may feel confined to the framework's boundaries rather than empowered to challenge or

---

<sup>2</sup> In this study the student acknowledges the use of primary and secondary sources as there are texts that have been compiled by persons who have recounted their lived first hand experiences, (Barnard 2015, Asmal, Hadland & Levy 2011; Suttner 2008; 2017; Ellmann 2019; Sachs 1990; 2016; 2017; Nkrumah 1963) and other works which contain the details of court cases. This list is not a complete list as the List of References details all the used references. It would be an injustice to deny any authors their first-hand accounts as well as the records derived from their texts or cited court cases.

expand them. While frameworks are valuable tools for structuring research, they must remain adaptable to ensure that developing ideas and critical insights are not overlooked. Balancing the interpretive use of frameworks with a willingness to question their limitations can encourage more innovative and nuanced contributions to both academic and practical discourse.

Following the National Party's accession to power in 1948, South Africa's intelligence and security structures operated as instruments of the apartheid regime, engaging in what Agee and Wolf (1978) describe as "dirty work" to consolidate state control. Intelligence mechanisms were embedded within and sustained an oppressive political order, while the policy of separate development entrenched structural inequality and eroded conditions necessary for inclusive social development. In contrast, the constitutional dispensation established in 1996 requires intelligence services to operate under the discipline of the Bill of Rights, aligning national security with democratic stability and the advancement of social development. This study proceeds from the premise that the relationship between intelligence, constitutionalism and social development cannot be confined to a single disciplinary lens. Thornhill, Saunders and Lewis (2007) emphasise that research philosophy is discipline based, while Wagh (2021), Case (2013) and Garbers (1996) demonstrate that conceptual integration strengthens analytical construction.

Scholarship further indicates that human factors have posed enduring challenges to intelligence operations both before and after the democratic transition (Coleman 1998; Africa & Mlombile 2001; Putter 2022). The post-1996 constitutional framework recalibrates the mandate of civilian intelligence agencies within a rights-based order, and South Africa's intelligence architecture has evolved in dialogue with global developments in intelligence governance, shaped by domestic realities and comparative international practice (Africa & Kwadjo 2009; Lowenthal 2022; Goldman 2010; Blake & Walters 1987; Blum 1993; Born, Leigh & Wills 2011). Within this framework, integrity, accountability and adherence to the rule of law are binding imperatives, with the Constitution providing the normative foundation from which intelligence legislation and policy derive coherence and

legitimacy. Accordingly, this study posits that the Constitution (1996) operates as a centripetal force in relation to the three core concepts, serving as the normative centre that binds intelligence governance and social development, anchors oversight, constrains power and enables equitable development.

### **1.2.1 The research setting**

This study is situated within the South African geographical, socioeconomic and political environment, examining the Constitution (1996) across the pre- and post-democratic eras. It juxtaposes the historical context of apartheid with the constitutional democracy framework, offering a comparative reflection (Neuman 2011; Kawulich 2004) on the two periods, particularly regarding their respective constitutional orders and their relationship to the three core concepts.

Given the central role of the African National Congress (ANC) in the liberation struggle, the study focuses primarily on the two principal protagonists that shaped the intelligence environment: the ANC and the apartheid intelligence services of the National Party (NP). The research remains cognisant of contributions made by other structures, including the Pan Africanist Congress of Azania (PAC) and other liberation movements. The study argues that within a democratic dispensation, social development can benefit from an ethically grounded and functional intelligence service. The Constitution (1996) reflects a deliberate intention to redress past injustices and enable all South Africans to pursue a secure and dignified life. It stipulates the safety and security of citizens and the requirement for national security (Grizold 1994), while the Bill of Rights addresses the inequities and insecurity of the apartheid era. Citizenship thus implies security and belonging, now constitutionally guaranteed through the governing principles of national security articulated in Chapter 11 of the Constitution (1996).

### 1.3 Statement of the problem

Historically, intelligence<sup>3</sup> has been crucial in sustaining governments and their ideologies (Barnard 2015), necessitating structures that uphold political impartiality (Goldman 2010; Lowenthal 2022; Africa & Kwadjo 2009; Grizold 1994; Tsang 2008; Smith 2002; Singh 2021). Within a democratic framework prioritising social development, intelligence is regulated by Chapter 11, sections 209 and 210 of the South African Constitution (1996), which outlines civilian intelligence's functions. Tasked with protecting national security and the safety of the citizenry, intelligence is mandated to support the nation's political, social and economic stability, adhering to the ethical principles enshrined in the Constitution (1996) (Trobbiani 2013; Sukman 2018; Grizold 1994; Nathan 2010; Putter 2022). This study critically examines whether intelligence operates in alignment with the Constitution's "spirit" and effectively promotes social development for all South Africans.

The study posits that the apartheid-era constitutions fundamentally lacked adherence to constitutional principles (Currie & De Waal 2013; De Vos & Freedman 2021; Cilliers 2003), being marred by racial bias that served only a select segment of the population (De Vos & Freedman 2021; Sachs 2017). Under apartheid, racial superiority dictated social structures, dehumanising the MOM and justifying violence against them. Black lives were often viewed as expendable, valued only in servitude. This study will explore the inhumane actions perpetrated by apartheid-era security and intelligence forces.

Furthermore, this study asserts that the 1996 Constitution is rich in rights and freedoms for all South Africans, particularly in sections 209 and 210, which address intelligence. Using the apartheid era as a comparative framework, the study analyses whether the current intelligence service genuinely promotes social development or merely replicates the oppressive practices of its apartheid predecessor.

---

<sup>3</sup> The term *intelligence*, as used in this study, refers to the integrated system of information collection, analysis and dissemination undertaken for national security and public safety. It includes intelligence agencies, their functions, and the legislative and policy frameworks governing their operations.

Succinctly, the problem statement reads that this study seeks to determine whether the current South African intelligence apparatus, established under the Constitution (1996), effectively advances social development or merely replicates the oppressive practices of the apartheid-era intelligence system, which neglected human rights and dignity. By conducting a comparative analysis of these two periods, the study aims to elucidate the interconnections among constitutionalism, intelligence and social development, thereby assessing the potential for contemporary intelligence practices to align with constitutional principles and promote the development of a unified and equitable society (Fischler 2017; Fisher 2002).

#### **1.4 Significance of the study**

This study examines the impact of apartheid-era constitutions, which reinforced racial hierarchy and failed to promote social development. It considers the enduring effects of apartheid and the need to realise the transformative ideals of the Constitution (1996). Under apartheid, the MOM were positioned at the lowest end of the class system, resulting in stark developmental disparities between White South Africans and the broader population, while the intelligence apparatus suppressed efforts toward equality and freedom.

Contemporary governance has at times reflected troubling continuities, as noted in media reports and commission findings. Social and political stability remain closely linked, with democracy enabling citizens to participate in the political process. By situating South Africa's constitutions within their historical contexts, this study argues that constitutional order and societal development are deeply interconnected, and that dysfunction within this relationship impedes progress. The Constitution (1996), through its Preamble and Bill of Rights, affirms equality, dignity, unity and the rule of law as foundational to improving the quality of life for all South Africans.

A professional and ethics-laden intelligence agency is therefore integral to national security and sustainable social development. Chapter 11 of the Constitution (1996) affirms the prerogative of the elected President to establish intelligence services that

serve the people of South Africa rather than operate as political instruments shielding unethical or immoral conduct.

Social development is shaped by political and economic conditions influenced by governance and intelligence activity. Onyeani (2006; 2015) reflects on patterns of consumption and production among Africans globally, while acknowledging that colonialism and global economic politics disadvantaged African societies by limiting control over resources and participatory development (Mbeki 2011:39-68, 115-135). Within a historically White-dominated economy, Black initiatives are frequently marginalised by entrenched economic systems (Ngcukaitobi 2021; Mills 2021; Du Toit 2021). This study contends that intelligence agencies should identify opportunities that enhance economic growth and equitable development. Mpofu-Walsh (2021) highlights how economic discrimination fosters deprivation and heightens risks of social and political instability.

The title of the study reflects its central inquiry into the interconnections between intelligence, constitutionalism and social development within the South African context. It underscores that constitutionally aligned intelligence is vital to national security and to creating conditions conducive to social development, advancing a safe and just society for all South Africans.

#### **1.4.1 Study contribution to existing knowledge**

This study uses the term “conduct of intelligence” to encompass both the functions of intelligence agencies and the posture evident in the execution of their operations. The concept extends beyond technical processes to include institutional ethos, legal compliance and normative orientation within a democratic society during peacetime (Pitney 2001; Carmel 2004). As South Africa seeks security outside the context of war, intelligence must operate within a peacetime framework of gathering, analysis, dissemination and countermeasures to safeguard national security (Nathan 2010; Siegan 1994).

A central contribution of this study lies in its constitutional grounding of intelligence. Intelligence is treated not merely as a functional security instrument but as a constitutionally constituted institution in terms of sections 209 and 210 of the Constitution (1996). Section 209 provides for the establishment of intelligence services through national legislation, while section 210 requires regulation of their objects, powers, functions and oversight mechanisms. By situating intelligence within these provisions, the study advances a doctrinal understanding of intelligence as an institution whose authority, limits and accountability derive from constitutional design rather than executive discretion. The study further distinguishes between state security and national security. State security concerns the protection of governmental institutions and constitutional order, whereas national security encompasses the safety and well-being of the population. These concepts, though related, are not interchangeable. The conduct of intelligence mediates their relationship, and in a constitutional democracy the protection of state institutions must not supersede the broader imperative of safeguarding collective national interests. This clarification highlights how prioritising regime security may distort intelligence mandates.

Intelligence operations in South Africa have drawn sustained scrutiny across media platforms, commissions of inquiry and public documentation. This attention has fuelled perceptions that intelligence operates above the Constitution (1996), both during apartheid and within the democratic era, and is insulated from accountability (Africa & Kwadjo 2009; Putter 2024). By interrogating these perceptions through constitutional analysis, the study bridges the gap between public mistrust and normative constitutional expectations.

The research is anchored in three interdependent pillars: constitutionalism, intelligence and social development. Constitutionalism regulates the exercise of public power under the Constitution (1996); intelligence constitutes the institutional mechanism through which security is pursued; and social development represents the societal objective toward which security governance must contribute. The conduct of intelligence serves as the analytical bridge between these domains. Few studies directly connect intelligence with

social development, and none were identified that integrate these three concepts as mutually reinforcing. This integrative framework constitutes a primary contribution to existing scholarship.

The study argues that intelligence must serve all South Africans and contribute to national stability in economic, political and social terms. It advances the position that intelligence is not an autonomous security instrument, but a constitutionally bound public function whose legitimacy derives from its contribution to social development, thereby situating intelligence governance within a developmental constitutional state.

Past and present intelligence practices have generated a significant trust deficit between citizens and the state. Intelligence structures have at times operated as though beyond legal constraint, serving political agendas under the guise of “national security”. Olivier (2016) characterises such conduct as the “abuse of law under the rule of law”. By distinguishing legitimate secrecy from unlawful opacity that shields misconduct, the study contributes conceptual precision to debates on covert operations and clarifies the boundary between constitutionally sanctioned intelligence conduct and deviation from constitutional principles.

Drawing on literature and content analysis (Kawulich 2004; Berger 2018), the study offers an interdisciplinary synthesis grounded in sections 209 and 210 of the Constitution (1996), clarifies the relationship between state security and national security, and integrates intelligence with social development theory. While it acknowledges its limited scope, it interrogates the extent to which constitutional principles governing intelligence have been realised in practice. It demonstrates that accountability cannot be presumed from constitutional prescription alone but requires enforceable oversight, ethical leadership and institutional safeguards to ensure fidelity to the Constitution and to the South African nation.

## **1.5 The aim (objectives) and research questions**

This study has a clear aim, specific objectives and research questions centred on exploring the relationship between intelligence in a constitutional democracy and its capacity to promote social development (Bryman 2007). Specifically, it explores how effective intelligence can ensure national security and stability, both social and political, while adhering to constitutional principles, thereby highlighting the interconnectedness of the three concepts in advancing a secure and stable society.

### **1.5.1 Objectives**

This study was guided by the following objectives:

- i. To evaluate and contrast the constitutions of South Africa since 1910 in relation to the conduct of intelligence and social development.
- ii. To conceptualise and contextualise intelligence as a conduit for social development.
- iii. To evaluate the stipulations in the current Constitution (1996) and the relevant intelligence legislation (National Strategic Intelligence Act 39 of 1994, the Intelligence Services Act 65 of 2002 and the *White Paper on Intelligence* of 1994) on the conduct of intelligence in South Africa.
- iv. To evaluate and critically reflect on the relationship between the Bill of Rights and social development in a constitutional democracy – South Africa.
- v. To suggest guidelines/recommendations (for a framework) for the conduct of intelligence, as well as for the implementation of intelligence strategy and policy, aimed at promoting social development in South Africa while adhering to the Constitution (1996).

### **1.5.2 Research questions**

This study was guided by the following research questions:

- i. What are the notable differences in the conduct of intelligence regarding social development under the apartheid constitutions (1910, 1961 and 1983) compared to the current Constitution (1996)?

- ii. How is the conduct of intelligence understood and contrasted between oppressive authoritarian rule and constitutional democracy in terms of social development?
- iii. What is the effect of the Constitution (Bill of Rights, Chapter 11 and sections 209 and 210) on the conduct of intelligence towards social development in South Africa?
- iv. How effective and robust is the Bill of Rights as a conduit for social development?
- v. How can intelligence processes and practices be restructured and designed to promote social development in South Africa in accordance with the Constitution (1996) at policy and directive levels for the execution of operational activities?

## **1.6 Literature review**

Chapter 2 provides the scholarly foundation of this study by synthesising relevant literature and identifying critical gaps within existing scholarship (Labaree 2009; Lynch 2014). It situates the research within broader academic discourse by articulating a theoretical framework structured around three core concepts: constitutionalism, intelligence and social development.

Although each concept has generated substantial academic engagement, they have evolved largely in isolation. Constitutional scholarship has focused on institutional design, separation of powers, rights protection and the rule of law, with limited sustained analysis of the structural positioning and operational conduct of intelligence services within the constitutional order. Intelligence studies, by contrast, have prioritised operational effectiveness, strategy and oversight, often without embedding these analyses within a coherent constitutional and developmental framework.

Within the South African context, scholarship has tended to examine intelligence either historically in relation to apartheid or in terms of post-1994 governance challenges. However, there is limited doctrinal engagement with the constitutional reconstitution of intelligence envisaged in sections 209 and 210 of the Constitution (1996). The extent to which these provisions transform intelligence into a legally bounded and democratically accountable institution remains insufficiently interrogated.

A further lacuna lies in the conceptual conflation of state security and national security. These terms are frequently used interchangeably, obscuring the normative tension between safeguarding governmental institutions and protecting the broader well-being of the population. The absence of sustained analysis of how the conduct of intelligence mediates this relationship within a constitutional democracy represents a significant gap in the field.

Most notably, the relationship between intelligence governance and social development remains under-theorised. Intelligence is commonly treated as a reactive security mechanism rather than as a constitutionally regulated function that contributes to developmental stability. The interrelationship between constitutionalism, intelligence conduct and social development has not been systematically integrated within South African scholarship.

This study addresses these deficiencies by advancing an integrative framework that situates intelligence within its constitutional foundations, distinguishes analytically between state security and national security, and evaluates the conduct of intelligence in relation to social development. In doing so, it contributes to a more coherent, interdisciplinary and constitutionally grounded understanding of intelligence governance within a democratic order.

## **1.7 Research methodology**

This is a desktop research study that employs qualitative research, which is appropriate given its diverse categories<sup>4</sup> and reliance on primary and secondary sources (Strauss & Corbin 1990:19–21; Gaille 2018; Guba & Lincoln 1994; Weideman 2004; University of Southern California N/d; Leedy & Ormond 2019). The diverse (different) categories can be used together or as single entities in social science research. Due to the expanse<sup>5</sup> of secondary sources, this study reflects the use of qualitative research that complies with

---

<sup>4</sup> Diverse categories refer to grounded theory ethnography, the phenomenological approach, life histories and conversational analysis (Strauss & Corbin 1990:21).

<sup>5</sup> The expanse refers to literature, theory, journal publication and the gamut of written, tested and verified secondary sources required to comprehensively conduct this study.

the prerequisites of dependability, conformability and transferability. Miles and Huberman (1994) present a more scientific verification method using the descriptive terminology; reliability, objectivity, biases and validity. Denzin and Lincoln (1994:106, 114, 439) highlight the dependability of using secondary sources, while Miles and Huberman (1994:2, 38, 64, 278) assert that such research holds sufficient academic merit (Leedy & Ormond 2019; Fisher 2002; Deane 2010). Denzin and Lincoln (1994) maintain that the dependability of research that makes use of secondary sources is acceptable when interpreting such information, but such an interpretation must at the very least have a scientific basis (Bouma & Atkinson 1995; Deane 2010; Neuman 2011).

This mono-method literature study involves reading, interpreting and analysing reputable works. The research will categorise information based on the three concepts: constitutionalism, social development and intelligence. A systematic approach will be used to sift through data, ensuring a comprehensive analysis that presents both supporting and opposing views.

The literature review method used in this study comprised reading, dissecting and analysing existing writings, literature and information. Upon extracting the pertinent information, relevant findings and recommendations are provided by the student. The process involved identifying primary and secondary sources that align with the study's objectives, necessitating extensive reading and the careful selection of valuable study information (material). The information was diligently categorised according to the three concepts, ensuring a clear distinction between constitutionalism, intelligence and social development. The sources were evaluated for credibility, reliability and accuracy. This study embraces the use of secondary sources as a means of knowledge creation (Bwisa 2018). Denzin and Lincoln (1994:318-320) clarify that secondary sources derive from primary ones, such as scholarly articles and books. This study includes information and material from the past fifty years, as there is a need for historical contextualisation reflective of the study era and the delimited constitutions (1910, 1961 and 1983 as well as the democratic-era constitution of 1996). This study defines secondary sources as those not directly obtained from original documents or classified materials.

In this study, the student sought to create a straightforward design that meets academic standards, intending to convey distinctive insights into the three concepts that could promote and advance social development in South Africa. Due diligence was exercised to avoid unsupported claims by ensuring that information is sourced exclusively from credible, peer-reviewed literature. The student exercised due diligence to ensure the integrity of the study while recognising the importance of relying on credible sources to support the study's findings and contribute meaningfully to the academic debate on constitutionalism, social development and intelligence in South Africa, simultaneously aiming to contribute a new perspective to the existing knowledge.

#### **1.7.1 Primary and secondary sources used in this study**

This study adopts a qualitative desktop research design grounded in the systematic analysis of primary and secondary documentary sources. For the purposes of this research, primary sources refer to original materials directly related to the subject under investigation, including constitutional provisions, legislation, official policy documents, commission reports and selected memoirs or investigative accounts by participants and contemporaneous observers such as Asmal, Barnard and Pauw. These materials provide the foundational legal, institutional and historical record upon which the analysis is based.

Secondary sources consist of peer-reviewed scholarly books, journal articles and academic studies that contextualise, interpret and critically engage with these primary materials. They contribute theoretical insight, comparative perspective and critical evaluation, thereby situating the primary sources within broader scholarly and policy debates. Together, the integration of primary and secondary sources enables a layered analysis that is both empirically grounded and analytically informed.

A triangulation approach is employed, involving the collection, verification and interpretation of data. The analysis incorporates critical self-evaluation, aligning aspects of the study with an auto-ethnographic orientation. In this regard, the student engages South African history not as a detached observer but as a situated interpreter, recognising

how contextual experience informs the reading of constitutional development, intelligence governance and social transformation.

The research examines three interrelated concepts - constitutionalism, intelligence and social development - through systematic qualitative document analysis. Sources were selected on the basis of academic rigour, institutional authority and contextual relevance to ensure analytical balance and credibility. Comparative engagement with legislative texts, official reports, testimonial accounts and scholarly interpretations strengthens interpretive validity. Although the study did not generate original ethnographic survey data, the auto-ethnographic perspective provides contextual insight into the socio-political realities under examination, particularly the lived experiences of the majority of the population (MOM) during apartheid. The study remains grounded in documentary analysis of South Africa's socio-political development.

#### **1.7.2 Interpretation of collected information**

The information used in the study was analysed from various perspectives and then verified to see whether it was in alignment with the objectives of the study. The primary and secondary sources underwent a thorough examination to assess the relevance of the sources of information. The student placed particular emphasis on contrasting viewpoints to provide a comprehensive analysis. The study has systematically categorised texts related to constitutionalism, intelligence and social development, placing them within their appropriate contexts (Kawulich 2004; Garbers 1996). This approach aimed to enhance the accuracy of the findings and ensure that the conclusions drawn were both testable and robust.

The research involved a comprehensive collection of information from various sources, including libraries, archives and online publications authored by esteemed scholars and experts in the field (Case 2013; Jansen & Warren 2020; Naresh 2021; Neuman 2011). The student consistently upheld objectivity throughout the evaluation process, rigorously assessing the reliability of each source while acknowledging that secondary sources often reflect subjective interpretations of human experience. To ensure a thorough and ethical

approach, the study prioritised open-source materials, thereby minimising the risk of potential legal complications, particularly those related to sensitive disclosures.

### **1.7.3 Qualitative analysis**

This study predominantly uses and employs a qualitative research method, focusing on sources that have been identified and used in the study. The content analysis will demonstrate the student's capacity to interpret and contextualise all the information objectively. This process involves deconstructing and synthesising a range of diverse perspectives while maintaining a keen awareness of potential biases (Gaille 2018; Denzin & Lincoln 1994; Naresh 2021; Case 2013; Fisher 2002). By rigorously applying these analytical techniques, the study aims to provide a nuanced understanding of the subject matter.

The student adopted a practical approach to the analysis process while recognising the inherent complexities involved (Fischler 2017; Ellison 2010; Neuman 2011). By systematically categorising information pertinent to the study's concepts, the student aims to maintain a clear focus amidst the vast body of existing literature. This structured approach helps to mitigate distractions from emerging facts and opinions, allowing for a more objective presentation of the findings.

The collected and collated information was organised thematically. The student aimed to identify clear connections between the study's concepts (Lynch 2014; Lempriere 2019). The student's analysis adhered to Boyatzis' (1998) guidelines for effective coding and compartmentalisation. This provides a structured framework for interpretation. By linking the concepts, the student is able to present coherent arguments, interpretations and content analysis (Lederman & Lederman 2015; Garbers 1996; Ellison 2010). The student consistently references the study's theoretical framework, the three concepts and objectives and questions.

The student conducted a thorough critical evaluation of information from the identified and referenced sources, ensuring that all findings are closely aligned with the study's

objectives (Lempriere 2019; Libguides 2020; Neuman 2011; Kawulich 2004). By systematically identifying and interpreting relevant information, the study generated viable conclusions and recommendations (Naresh 2021; Lederman & Lederman 2015; Labaree 2009), which are dependent upon the steadfast commitment and support of the relevant authorities.

#### **1.7.4 Ensuring scientific rigour: Validity and reliability**

This study employed three fundamental elements to gather both primary and secondary sources. Relevant printed works were identified, carefully assessed and confirmed to have undergone a comprehensive peer review process, which involves critical evaluation by experts in the field to ensure quality and credibility (Lederman & Lederman 2015; Lempriere 2019; Kawulich 2004). The study includes a diverse array of information sources, contemporary information and seminal texts to fulfil its objectives comprehensively. A constant comparative analysis was conducted to assess the reliability of the information, with any essential original works being acquired if they were unavailable in the Unisa library or out of print. These original texts offered a deeper and more nuanced contextualisation of the material, thus accurately reflecting the ideas and perspectives of the authors during the specific periods they addressed (Neuman 2011; Naresh 2021; Lynch 2014; Jansen & Warren 2020). This engagement with primary sources enriched the analysis, allowing for a more comprehensive understanding of the historical and intellectual contexts that influenced the selected writers' thoughts.

The verification process was conducted alongside the study, requiring meticulous investigation and enhancing the overall integrity of the research. Since the study does not involve human participants, it is protected from biases that might allude to subjective interpretations. Validity is ensured through reliable methodologies that accurately represent the information, resulting in robust findings and actionable recommendations (Lederman & Lederman 2015; Labaree 2009; Guba & Lincoln 1994). The study's reliability is tied to the consistency of the analysis conducted by the student, maintaining rigorous methodological standards to accurately reflect the information (Garbers 1996; Ellison

2010; Case 2013). This approach has strengthened the findings and supports the development of credible recommendations.

#### **1.7.5 Ethical considerations**

Ethical considerations in this study centre on the responsible use and interpretation of information, in accordance with Unisa's ethical guidelines. This study and research exclude human participants; this is due to the structure and research methodology used and reduces any reputational risks for the institution and the study. The study makes use of publicly available information and sources, including such material derived from among others the Truth and Reconciliation Commission (TRC) and the State Capture Commission, which helps to reduce and negate any potential legal liabilities that may emanate as a result of being disclosed and included in this study. Given that this is a desktop qualitative study, no in-person interviews were conducted, eliminating the requirement for individual consent. The study aimed to be both clinical and unobtrusive, steering clear of any subjects currently involved in ongoing litigation. All information has been sourced from publicly accessible materials that are accordingly acknowledged in the list of references, ensuring that privacy and dignity were upheld.

Denzin and Lincoln (1994:20-22) underscore the importance of addressing ethical and political dimensions in empirical inquiry (Guba & Lincoln 1994; Neuman 2011). Although the ethical framework of this study is primarily rooted in analysis and interpretation, aspects of human development may inadvertently resonate with the ethical principles proposed by Denzin and Lincoln (1994). This study adopts a rigorous and ethically grounded approach, characterised by meticulous referencing and strict adherence to academic integrity and the ethical conventions of the University of South Africa (UNISA). Acknowledging that fabrication or misrepresentation can generate false credibility, all findings and arguments are presented accurately and transparently.

#### **1.8 Theoretical and conceptual framework**

This study distinguishes between a theoretical framework and a conceptual framework. Whereas a theoretical framework is grounded in established explanatory theories, a

conceptual framework organises and clarifies the central concepts that structure the inquiry and defines their interrelationship within a specific research context. The present study adopts a primarily conceptual framework structured around three interrelated concepts - constitutionalism, intelligence and social development - while drawing selectively on relevant theoretical insights to inform and deepen the analysis.

Situated within broader scholarly and policy debates, this framework specifies how these concepts intersect in the governance of post-apartheid South Africa and how tensions between them shape institutional practice. It provides the analytical architecture through which the relationship between constitutional norms, intelligence practice and socio-developmental objectives is examined. By making these interrelationships explicit, the framework ensures that the study's findings are interpreted within a coherent intellectual structure and positioned to contribute meaningfully to debates on constitutional governance, accountability and intelligence reform.

### **1.8.1 Constitutionalism**

Constitutionalism establishes high moral and ethical standards within the Constitution (1996) (Motala & Ramaphosa 2002; Sachs 2016; 2017; De Vos & Freedman 2021; Ngcukaitobi 2018). Supporting institutions such as the judiciary, legislature and executive lend legitimacy to intelligence operations in a democratic society (Tsang 2008; Lowenthal 2020; Goldman 2010; Putter 2022; Coleman 1998; Africa & Kwadjo 2009). Chapter 11, Section 209 of the Constitution (1996) designates civilian intelligence as the president's prerogative, aligning with South African law and promoting human rights and social development (Asmal et al. 2011; Sachs 2016). It guarantees socioeconomic rights, human dignity and personal security (De Vos & Freedman 2021; Currie & De Waal 2013; Tansey 2018), reinforcing constitutionalism as a foundation for previously neglected social development. South Africa's constitutional principles, as articulated by Klug (2010), emphasise limiting government power (Lieberman 1999; Madlingozi 2017) and empowering citizens to regulate their elected officials, which can significantly reduce malfeasance among political appointees.

### **1.8.2 Intelligence**

Intelligence studies examine national security and the theoretical foundations of intelligence operations (Shulsky & Schmitt 2002; Bazzell 2015; Chapman 2004; Cimbala 1987; George & Kline 2006; Acuff et al. 2022; Singh 2021; Grizold 1994; Classen 2004). Lowenthal (2020) identifies three primary branches of national intelligence, largely modelled after United States of America (US) practices, which this study adapts to the South African context, avoiding frameworks that contradict local democratic values.

While US intelligence often sets standards, it does not always align with constitutional ideals, having a history of operations that contradict its democratic principles. Field manuals such as FM 2–22.3 (FM 34–52 2006) guide human intelligence collection, detailing procedures for extracting information from detainees (Goldman 2010; Lowenthal 2022; Shulsky & Schmitt 2002; Godson 2001). In South Africa, the intelligence cycle, rooted in historical espionage, requires critical re-evaluation, especially after the intelligence failures during the July 2021 civil unrest in various parts of South Africa, which escalated from protest marches to rioting and looting (Lowenthal 2022).

This study interrogates the relevance of existing methodologies within the constitutional framework (1996), evaluating models proposed by Lowenthal (2022) and Evans (2009). It highlights the need for reform, emphasising collection methodologies while recognising that traditional analysis-centric approaches were inadequate during the unrest. Adapting these models to the South African context raises important questions about compliance with constitutional principles.

### **1.8.3 Social development**

Social development in South Africa aims to enhance the quality of life, rooted in human development theory (Midgley 1995). Max-Neef et al. (1991) and Stewart et al. (2018) emphasise prioritising human dignity over economic growth, highlighting the importance of involving marginalised groups (Bilance 1997). This study asserts that societal development must reflect local realities (Mellet 2020) and empower citizens to define their own developmental paths within a constitutional democracy.

Fanon (2014) and Rodney (1972) argue that colonisation undermined African self-determination, steering the continent toward a Eurocentric model. Despite significant foreign aid, Africa struggles with poverty and inadequate services (Mills 2021; Reno 1998), exacerbated by social inequality and malnutrition (Green 2009; Mills 2021:259–263; Mbeki 2011; Davids, Theron & Maphunye 2005). This study, based on human development theory, examines how citizens can shape their development trajectories, placing human development at the core of its analysis (Max-Neef et al. 1991; Green 2009; Gray 2016; Marais, Muthien, Jansen van Rensburg, Maaga, De Wet & Coetzee 2001).

### **1.9 Delimitation and limitations of the study**

In the context of this study, delimitations establish the boundaries and focus of the study, specifying what is included or excluded, such as particular population's, ethnic groups or time frames. Conversely, limitations highlight potential weaknesses that may impact the findings, including methodological constraints or sample sizes. Acknowledging both delimitations and limitations is crucial for contextualising the research outcomes and enhancing the overall transparency of the study.

This study specifically examines the South African intelligence landscape, focusing on the civilian intelligence agency, the State Security Agency (SSA) and its historical predecessors. A mentionable delimitation of this study is that it investigates the impact of apartheid on social development and traces the shift from militarised intelligence practices to a constitutional framework, highlighting the misuse of constitutionalism to justify abuses.

Before democracy, intelligence services were part of the South African Police (SAP) and the South African Defence Force (SADF), operating under militarised conditions. This research assesses the SSA's compliance with constitutional mandates in Chapter 11, sections 209 and 210 and evaluates the ethical and professional standards required for intelligence personnel. It also analyses relevant legislation, such as the National Strategic Intelligence Act of 1994 and the Intelligence Services Act of 2002, to ensure alignment with constitutional principles.

The study explores the covert nature of intelligence operations and their implications for individual rights, using apartheid-era practices as a comparative backdrop. It argues that ethical guidelines are essential to protect South Africans from abuse. The historical context is crucial, as intelligence under apartheid served political interests, contrasting with post-1996 democratic ideals. The operational activities of the SSA must comply with the Constitution (1996) and relevant legislation, including the National Strategic Intelligence Act 39 of 1994 and the Intelligence Services Act 65 of 2002, while considering additional policies governing these activities.

The timeframe for this study spans 1910 to 1996, reflecting South Africa's transition from an oppressive regime to a constitutional democracy and revealing ongoing disparities in quality of life and access to basic services.

A limitation of this study is that it relies on primary and secondary sources, avoiding firsthand data collection to minimise impacts on individuals and institutions involved in intelligence. While the study's literature may introduce subjectivity, it provides valuable insights, particularly from sources like Jaques Pauw and reports from the Truth and Reconciliation Commission (TRC). Denzin and Lincoln (1994) emphasise that qualitative research encompasses "evolving fields" (Neuman 2011; Lederman & Lederman 2015; Jansen & Warren 2020). This study employs an interpretive approach to evaluate secondary sources for their relevance and credibility, drawing on scholarly works that have undergone peer review. The findings will generate new knowledge and propose alternatives to current intelligence practices.

## **1.10 Definition of key concepts**

### **Bill of Rights**

A Bill of Rights is a declaration detailing the rights and freedoms of citizens (Motala & Ramaphosa 2002; Benyon, 1978; Currie & De Waal 2001). The South African Bill of Rights safeguards the elementary and fundamental rights of all citizens and these rights cannot be denied to any citizen and, thus, a Bill of Rights litigation

structure contains the operational provisions – the provisions regulate how the Bill of Rights can be enforced by the courts and comprise sections 7, 8, 36, 37, 38 and 39 (De Vos & Freedman 2021:399).

## **Constitution**

A constitution is a compilation of the laws and principles of a country. It defines the powers and duties of the government. In South Africa, it is expressed in the basic provisions of the Constitution (1996). Constitutions regulate government power (Currie & De Waal 2013; Le Roux & Davis 2019). A constitution is, thus, the fundamental law of the state (Mweru 2015; Currie & De Waal 2013; Bulmer 2014).

## **Constitutionalism**

Constitutionalism<sup>6</sup> can be considered as obedience to a constitutional system of government. It is a compilation of ideas, attitudes and behaviour that expresses the principle of a government's authority (Lieberman 1999; Le Roux & Davis 2019). A fundamental criterion of democratic constitutional values and principles (constitutionalism) is the belief in a government with power limitations<sup>7</sup> under a supreme law (Lieberman 1999; Bulmer 2014).

## **Intelligence**

Intelligence is the process of planning, preparing, collecting, processing and producing intelligence relevant to the client who most often is the government. Analysis, dissemination and assessment are integral parts of the intelligence process. Intelligence requires the use of various methodologies in obtaining information to produce an intelligence product that is reliable and scientifically testable. The Intelligence cycle is at the heart of the intelligence process and gives

---

<sup>6</sup> Hamilton (1935) posited that constitutionalism is the name given to the trust that people repose in the power of words composed on paper to keep governments in check/accountable (cited in Lieberman, 1999).

<sup>7</sup> Power limitations in this study refer to an organised set of legal democratic prescripts that curtail governments' power over the people and requires democratic accountability at all times and at all levels of government.

direction to target-driven operations in line with the needs of the client (Goldman 2010; Jensen, McElreath & Graves 2018).

### **Counterintelligence**

Counterintelligence can be considered as information gathered about the intelligence activities of adversaries of a country or nation. It further involves activities executed based on the acquired information to counteract acts of espionage, hostile or threatening intelligence activities, sabotage and assassinations conducted by foreign governments or their entities, organisations or people. Thus, counterintelligence involves those deliberate and strategic activities of one intelligence structure against another – often of foreign origin – to debilitate and neutralise intelligence activities to protect the national security of a country and its sovereignty (Goldman 2010; Grizold 1994; Jensen, McElreath & Graves 2018).

### **Human dignity**

Human dignity implies that each person has incalculable human worth, irrespective of their circumstances and must be treated accordingly. The notion of value is inextricably tied to South Africa's "rights culture". Human dignity<sup>8</sup> demands that people must be treated as individual human beings rather than as a collective group.

### **Human rights**

Human rights are basic rights and freedoms that every person in the world has right from the cradle to the grave. The Bill of Rights<sup>9</sup> protects human rights and, subsequently, no citizen of South Africa can be denied these rights (Currie & De Waal 2013; Motala & Ramaphosa 2002).

---

<sup>8</sup> Human dignity means that a person or people feel and have self-respect and self-worth (De Vos & Freedman 2021:563).

<sup>9</sup> The Bill of Rights is the cornerstone of South African democracy and it affirms the democratic values of human dignity, equality and freedom, and protects human rights.

### **1.11 Structure of the study – flow of chapters**

This study follows both a chronological and conceptual progression, tracing the historical evolution and contemporary positioning of constitutionalism, intelligence and social development in South Africa. Its structure reflects a deliberate intellectual design, moving from historical foundations to constitutional analysis, developmental theory and ultimately an integrated examination of the conduct of intelligence within a democratic constitutional order. Each chapter builds systematically upon the previous, ensuring that the final analysis rests on established historical, doctrinal and theoretical foundations.

The study begins by outlining the research problem and conceptual framework, before situating the three core concepts within their historical trajectory from 1910 to 1996. It examines how constitutional structures and intelligence practices evolved across successive political dispensations and provides a comparative constitutional analysis of intelligence under earlier frameworks, where regime security frequently shaped its posture. The focus then shifts to the democratic era and the Constitution (1996), with particular attention to sections 209 and 210, which establish and regulate intelligence services.

The analysis subsequently addresses social development within democratic South Africa, arguing that national security and developmental stability are interdependent. This foundation enables the synthesis of constitutionalism, intelligence and social development in the penultimate chapter, where the conduct of intelligence is evaluated in relation to constitutional mandates, state security, national security and developmental objectives. The study concludes by consolidating its findings, offering recommendations and reflecting on its limitations.

The chapters are structured as follows and were guided by the study timeframe:

#### **Chapter 1: Introduction to the study**

This chapter introduces the research problem, objectives and central argument. It outlines the conceptual pillars of constitutionalism, intelligence and social development, and

situates the study within existing scholarship. The rationale for examining the conduct of intelligence within the framework of the Constitution (1996) is established.

## **Chapter 2: Literature Review**

This chapter reviews relevant literature and situates the three core concepts within the historical timeline of 1910 to 1996. It identifies scholarly gaps, particularly the limited integration of intelligence with constitutionalism and social development.

## **Chapter 3: Comparative constitutional frameworks in South Africa (1910, 1961 and 1983): Constitutionalism and intelligence**

This chapter provides a comparative analysis of the constitutional frameworks of 1910, 1961 and 1983, examining how intelligence operated within each dispensation and how constitutional design influenced intelligence conduct.

## **Chapter 4: Contextualising South African constitutionalism**

This chapter focuses on the Constitution (1996), emphasising constitutional supremacy, the rule of law and accountability. Particular attention is given to sections 209 and 210, which embed intelligence within constitutional design and legislative regulation.

## **Chapter 5: Social development in democratic South Africa**

This chapter conceptualises social development within the democratic state, examining economic, political and social stability as interconnected elements of national security and constitutional governance.

## **Chapter 6: Intelligence – Conduct, policy and implementation of a strategy geared towards social development**

This chapter synthesises the preceding analysis by evaluating the conduct of intelligence in relation to constitutional principles and developmental objectives. It distinguishes between state security and national security and assesses whether intelligence policy and practice align with constitutional and societal imperatives.

**Chapter 7:** Conclusion, brief overview, findings, recommendations and the limitations of the study

This, the final chapter consolidates the study's findings, reflects on the interrelationship between constitutionalism, intelligence and social development, provides the findings, recommendations, and acknowledges the limitations of the research.

## **1.12 Summary**

Chapter 1 establishes the conceptual and methodological architecture of the study. It positions the research as a qualitative desktop inquiry grounded in primary and secondary sources and anchored within the framework of the Constitution (1996). The chapter defines the research problem, articulates its objectives and advances the central argument, situating the study within existing scholarship while identifying critical gaps it seeks to address.

The methodological framework - comprising doctrinal analysis, content analysis and interpretive engagement with authoritative texts - is justified as appropriate for examining constitutional provisions, intelligence governance and social development. Core concepts are defined with precision to ensure analytical coherence, and ethical considerations are affirmed to safeguard scholarly integrity and objectivity.

By integrating constitutionalism, intelligence and development within a single analytical framework, the chapter moves beyond siloed scholarship and establishes the study's distinctive contribution. It lays a rigorous intellectual foundation for evaluating the conduct of intelligence within a democratic constitutional order and clarifies the normative and scholarly stakes of the inquiry.

With the study's scope, framework and objectives firmly established, the analysis now turns to the literature that shapes and contests these foundational concepts - setting the stage for a critical engagement with the historical, constitutional and theoretical currents that inform the chapters ahead.

## **CHAPTER 2: LITERATURE REVIEW**

### **2.1 Introduction**

This chapter presents a literature review on the interplay between constitutionalism, social development and intelligence, emphasising their reliance on the Constitution (1996). It aims to avoid irrelevant information by providing a balanced analysis of various perspectives, including both supportive and opposing views. Intelligence plays a crucial role in advancing socioeconomic rights, particularly in the context of South Africa's governance by the ANC and the NP. The review highlights the impact of divergent ideologies on social stability and national security, noting the erosion of public trust in intelligence services due to their politicisation during apartheid. Ultimately, it examines how constitutional frameworks and oversight mechanisms influence intelligence operations and the importance of public perception in maintaining trust and legitimacy for a stable democracy.

### **2.2 Path and sources that inform the study's literature review**

This chapter centres on the core concepts of constitutionalism, social development and intelligence. It analyses pertinent literature to illuminate their interconnections and implications for understanding South African society, thereby establishing a foundation for the study's exploration of these interactions in both historical and contemporary contexts. The review incorporates "foundational documents"<sup>10</sup> from the 1910, 1961 and 1983 constitutions (for comparative analysis), providing essential historical context through credible, peer-reviewed sources. These sources are organised by discipline and directly relate to the core concepts. The study seeks to clarify their relationships, contrasting the apartheid era with liberation movements to achieve a nuanced understanding.

While existing literature discusses these concepts, few studies explore their interconnections within the contemporary and historical context of South Africa. This study is unique, as it addresses the lack of mirroring studies in the field. Although some writings

---

<sup>10</sup> The phrase "foundational documents" refers to key texts or primary sources that provide essential principles, frameworks or historical context in this study.

focus on one or two relevant concepts, they do not directly link this study's concepts within a single study or research framework (Africa 2009; Africa & Kwadjo 2009; Kleynhans 2021; Pitney 2001; Dulles 2006; Lowenthal 2022; Van Vuuren 2017; Currie & De Waal 2013; De Vos & Freedman 2021; Sachs 2017; Ngcukaitobi 2018).

This literature review chapter is structured into three sections, employing a narrative literature review that blends narration with analysis (University of Wolverhampton 2018). Approximately 260 sources are included in the references, organised to differentiate between factual and academic information, with significant contributions from journalists contextualised to enhance their relevance to the study.

### **2.3 Constitutionalism**

Constitutionalism is a deeply embedded global and South African concept concerned with structuring the relationship between society, government and law, and with limiting public power through legally defined principles (Klug 2010:6–7; Currie & De Waal 2013; Sachs 2016; 2017; Gathitu 2016; Ngcukaitobi 2018; Lieberman 1999). A constitution functions not merely as a legal text, but as the foundational framework regulating citizen–state relations and constraining governmental authority (De Vos & Freedman 2021:3; Lieberman 1999).

Modern constitutionalism emerged from Enlightenment principles of the rule of law, separation of powers, popular sovereignty and rights protection, institutionalised in the Constitution of the United States (1787) and subsequent European developments. The notion of the “founding fathers” reflects the ethical dimension of constitutional design, underscoring that constitutionalism is not solely structural but normative, shaping both governance and political culture (Lieberman 1999; Ellmann 2019; Sachs 2017:8–9).

Following the Second World War, constitutionalism assumed a distinctly rights based orientation. The establishment of the United Nations in 1945 and the Universal Declaration of Human Rights in 1948 reinforced legality, accountability and respect for human dignity as universal governance principles. Constitutional governance increasingly

came to denote a substantive commitment to democracy, rights protection and social development (Asmal et al. 2011; Klug 2010; Sachs 2016).

Within this framework, the regulation of public power extends to intelligence and security institutions. Although modern intelligence services developed alongside constitutional states, they often operated in secrecy with limited oversight. Democratic constitutionalism progressively imposed normative constraints requiring intelligence to function under defined legal mandates, civilian control and legislative and judicial scrutiny. The enduring constitutional challenge lies in reconciling national security imperatives with the protection of fundamental rights.

Across Africa, constitutionalism reflects both global diffusion and distinctive historical experience. Post-decolonisation constitutions were frequently undermined by authoritarian governance and instability. However, the post-Cold War era witnessed constitutional reforms entrenching multi-party democracy, justiciable rights and stronger judicial institutions. Instruments such as the African Charter on Human and Peoples' Rights reinforced a continental rights-based discourse.

In South Africa, constitutionalism possesses both historical depth and transformative significance. Ngcukaitobi (2018:156–159) traces its lineage to the African National Congress's human rights tradition from 1943, while Sachs (1973:68–74) documents earlier constitutional tensions in the Boer republics and Natal (De Vos & Freedman 2021). The negotiated transition of the 1990s occurred within broader global and continental movements toward rights based democracy but involved an unusually deliberate restructuring of constitutional and security institutions.

The Constitution of the Republic of South Africa (1996) is widely regarded as one of the most progressive constitutional texts globally, grounded in human dignity, equality and unity (Sachs 2016; 2017; Asmal et al. 2011). It integrates Enlightenment principles, post-war human rights commitments and African democratic renewal, positioning South

Africa within the global constitutional tradition while responding to its historical injustices and developmental imperatives.

It is within this global, continental and national constitutional framework that this study examines the intersection of constitutionalism, intelligence governance and social development in the Republic of South Africa.

### **2.3.1 Reflecting on the Union and Republic of South Africa (1910–1983)**

The analysis of how a European war between the British and Afrikaners led to a truce that established a White-dominated South Africa is presented from the study perspective. Jointly governed by these groups, the marginalized and oppressed majority (MOM) were denied political rights and avenues for redress (Giliomee et al. 2022; Klug 2010; De Vos & Freedman 2021; Suttner 2015; 2008). The agreement that ended the war resulted in the South Africa Act of 1909, paving the way for subsequent exclusive constitutions from 1961 to 1983 (De Vos & Freedman 2021; Esterhuyse 2012; Maharaj & Jordan 2021). These apartheid-era constitutions perpetuated the oppression of the MOM and were intentionally racially exclusive, lacking fundamental constitutional principles (De Vos & Freedman 2021; Currie & De Waal 2013; Ngcukaitobi 2018).

The 1961 constitution, rooted in apartheid ideology, promoted racial segregation while enhancing Afrikaner nationalism (Devenish 2012). The referendum (19 April 1983), which allowed limited participation from Coloured and Indian individuals, is viewed as tokenism and contradicted democratic principles (Giliomee et al. 2022; Klug 2010:87-89; Simpson 2021). The adage of “divide and rule” is evident in the use of these groups to buffer the White minority rule against the discontented MOM (Lodge 1983; Currie & De Waal 2013).

In summary, constitutionalism in South Africa from 1910 to 1983 was effectively absent, with the term used loosely to describe rules empowering an ideologically driven government (Bulmer 2014; Gathitu 2016; Grimm 2012; Mweru 2015; Lieberman 1999). These constitutions lacked social and political inclusivity (Ngcukaitobi 2018; Sachs 2017; 1973) and failed to articulate any constitutional principles (Klug 2010:86, 89-93).

Understanding the complexities of pre-democratic governance is crucial, as these issues continue to affect South Africa's constitutional democracy (De Vos & Freedman 2021:6-7). The historical context is crucial, as the governance dynamics of the past continue to influence current democratic structures and their functioning (Sachs 2016; Mpofu-Walsh 2021; Mbeki 2011; Lodge 1983; Cronje 2020:122). The political ideology of apartheid also continues to shape the post-1994 democratic government, which exhibits inconsistencies and lacks a cohesive ideological framework (Booyesen 2021).

### **2.3.2 Formation of the Union of South Africa (the constitution of 1910)**

The formation of the Union of South Africa is encapsulated in the South Africa Act of 1909, which was assented to by the British monarch. This act established a power-sharing relationship between the British and Afrikaners, allowing them to divide the wealth and land of South Africa (Simpson 2021; Giliomee 2020). Consequently, this arrangement created an aggrieved and oppressed group within the South African society, referred to herein as the MOM, who lost their citizenship and rights to land ownership (Mpofu-Walsh 2021; Esterhuyse 2012; Simpson 2021; Sachs 2017; Ngcukaitobi 2018; Odendaal 2013).

A series of laws were specifically designed to marginalise the MOM, perpetuating poverty, deprivation and enforced racial segregation. The 1913 Natives Land Act further confined the MOM, allowing the four provinces to enact laws that ensured White dominance over land and resources (Giliomee et al. 2022; Simpson 2021; Ellmann 2019; Klug 2010:246-247; De Vos & Freedman 2021:4-5; Wolpe 1972; South Africa Act, 1909). While land ownership by the MOM was technically possible, the conditions made it nearly impossible for Black, Indian or Coloured individuals to have land registered in their names.

The Union was motivated by a desire to establish South Africa as a territory controlled by European nationals (Giliomee et al. 2022; Simpson 2021; Lodge 1983; Ngcukaitobi 2018; Callinicos 1992). The post-1910 period was characterised by a resurgence of Afrikaner national pride, with little contestation over land ownership. This led to a unification of the Afrikaner community (Giliomee 2020:129-133), while the MOM were increasingly pushed

to the fringes of society, forced to inhabit arid lands unsuitable for development (Lodge 1983; Davis 1987; Ngcukaitobi 2018; 2021).

### **2.3.3 The Republic of South Africa (Constitution of 1961)**

In 1960, Hendrik Frensch Verwoerd secured power, leading South Africa (then still the Union), to leave the Commonwealth to promote apartheid and its economy of separate development (Giliomee et al. 2022; SAHO 2019). Through a legal framework that included a constitution, South Africa became a symbol of racial prejudice and a site for widespread human rights abuses (Simpson 2021; Sachs 2016). The reserves and Bantustans served merely as a labour pool to benefit the White economy, particularly landowners and sectors like agriculture, mining and manufacturing (Ngcukaitobi 2018; SAHO 2019; Wolpe 1988; Lodge 1983; Terreblanche 2002).

After a referendum in which only White citizens were allowed to vote, South Africa was declared a Republic on 31 May 1961, resulting in its expulsion from the Commonwealth. The authority of the emerging republic's parliament was solidified by the "South African Act Amendment Act of 1958", which restricted courts from questioning the validity of laws passed by Parliament (Klug 2010:12). Historically, South Africa lacked the principles of separation of powers and the rule of law. By 1960, the apartheid government asserted that its power would not be challenged, as evidenced by events like the Sharpeville Massacre (March 1960) (Simpson 2021:165-166; Devenish 2012). In response, the ANC shifted its operations underground, engaging in small-scale acts of sabotage against the National Party (NP). However, the government retaliated with the Sabotage Act in 1962 (formally known as the General Law Amendment Act 76 of 1962), prompting the first group of Umkhonto we Sizwe (MK) members to flee into exile for training in supportive countries (Simpson 2021; Sachs 2017; Asmal et al. 2011).

The 1976 Soweto uprising was fuelled by the imprisonment of ANC and Pan Africanist Congress (PAC) leaders and support from exiled freedom fighters who inspired the youth in South Africa (Jeffery 2019; Twala & Benard 1994; Dingake 1987). In June 1976, Soweto erupted as students protested against being taught in the "language of the oppressor"

(Giliomee et al. 2022:505; Lodge 1983:321-323; Simpson 2021:172-178; 267, 279-283). This uprising, along with the Sharpeville incident, highlighted widespread resistance to apartheid and the human rights violations of the era. Both events underscore the failures of intelligence, which was often used to facilitate these abuses (O'Brien 2011; Pauw 2017; Putter 2024). After 1948, the NP developed a reliance on intelligence, seeking assistance from the British, who were the primary intelligence custodians in South Africa (O'Brien 2011; Singh 2021).

#### **2.3.4 Constitution of 1983 – Act 110 of 1983**

The historical context highlights the racial divide in South Africa, characterised by an invisible barrier between the MOM and White South Africans, a divide that was both political and socioeconomic (Giliomee et al. 2022:455-461; Wolpe 1972; 1988; Biko 2017:88-95; Elsdon 2009:7-8, 36-38, 141-145). The study argues that South African constitutions have often been misused, contradicting the principles of a democratic framework (Lieberman 1999; Asmal et al. 2011; Sachs 2017; Anderson, Dodd & Roos 2016; De Vos & Freedman 2021).

By the late 1970s, South Africa under apartheid rule was facing significant political pressure from rising protests organised by the MOM, although it is important to acknowledge that the MOM was not entirely unified (Sachs 2016; Giliomee et al. 2022; Esterhuyse 2021; Meiring 2017). The 1983 constitution aimed to present the Pretoria government's racial policies as more palatable to the international community. In response to the ANC and SACP's two-stage strategy against apartheid, the National Party (NP) sought to create a semblance of inclusivity by extending voting rights to Coloured and Indian South Africans. However, this was largely tokenistic, intended to demonstrate support for the NP's from a segment of the MOM (Giliomee et al. 2022:523-526). The consequent referendum led to the establishment of the Republic of South Africa Act 110 of 1983, which created a Tricameral Parliament with additional houses representing Indian and Coloured people (Giliomee et al. 2022).

Despite these changes, social and political unrest persisted, questioning the sustainability of apartheid and placing immense strain on the populace. Economic hardships from the apartheid government's military efforts affected many South Africans (Barnard 2015; Van Vuuren 2017).

During the 1983 elections for the Tricameral Parliament, widespread uprisings undermined the NP's belief that partial inclusion of the MOM would legitimise apartheid (Simpson 2021; Lodge 1983). The Sebokeng rebellion erupted on the very day Coloured and Indian delegates were sworn in, revealing low voter turnout and a lack of support for the NP's strategy (Giliomee et al. 2022:539-541). Consequently, the state president faced diminishing options (Barnard 2015; Esterhuyse 2012). The continued misuse of constitutions under apartheid created a crisis, suggesting that NP leaders were blinded by their desire to retain power through apartheid ideology. This lack of rational thought prompted a hurried search for alternatives, leading to the notion of "power sharing" (Barnard 2015; Esterhuyse 2012; Asmal et al. 2015; Sachs 2016; 2017). Ultimately, the Tricameral system failed to fulfil its intended role and collapsed prematurely, never serving the interests of the "apartheid puppet masters" (Giliomee et al. 2022; Esterhuyse 2012; Callinicos 1992; Simpson 2021).

### **2.3.5 A historical perspective of constitutionalism**

Constitutionalism and its underlying principles were present in South Africa before the enactment of the Constitution (1996) (Ngcukaitobi 2018; Simpson 2021; Fombad 2010; Van Wyk, Dugard, De Villiers & Davis 1994). It is evident in the analysis that this contrasts with the USA, which has upheld its constitution since 1789. Despite its longevity, the US constitution coexists with a history of severe human rights abuses, including slavery and racial discrimination (Lieberman 1999; Grimm 2012). Coleman (1988) highlights these contradictions in constitutional integrity through Albert's exploration of an amoral constitution.

Historically, constitutionalism has manifested across various eras and nations, yet the presence of a constitution does not guarantee good governance or democracy

(Lieberman 1999; Grimm 2012; Fombad 2010; Meiring 2017). European monarchies, such as the French monarchy, exemplify oppressive regimes that lived in excess at the expense of the poor. The argument presented is that merely having a constitution does not equate to effective governance (UN, 1997). Labuschagne (2004) and Gathitu (2016) assert that the separation of powers is crucial in preventing governmental overreach and abuse of power.

### **2.3.6 Constitutional law**

Constitutions are viewed as compilations of laws that encapsulate the values and complexities of a society. They serve to enshrine the morals and principles of the society from which they arise (Lieberman 1999; De Vos & Freedman 2021; Le Roux & Davis 2019; Ngcukaitobi 2018; Klug 2010). Constitutions constitute the “supreme law” in democratic countries, empowering citizens to hold elected governments accountable and prevent the abuse of power (Le Roux & Davis 2019; Sachs 2016; Chaskalson 2003; Simpson 2019; Maharaj & Jordan 2021).

Constitutional law is rooted in concepts of rights and prohibitions defined by a specific constitution. The Constitution of the Republic of South Africa (1996) is frequently referred to as the “supreme law”, emphasising its inclusive nature, as reflected in its Preamble: “We, the people of South Africa”. The phrase echoes similar language in other constitutions, notably that of the USA (effective 4 March 1789). Previous South African constitutions failed to articulate a unified nation or guarantee equal rights for all citizens, a hallmark of democratic constitutions. Constitutional law delineates the highest law in the country, establishing the separation of powers and the three tiers of government (De Vos & Freedman 2021:3-4, 26-27). The Constitution (1996) occupies a central role in South African society (Klug 2010; De Vos & Freedman 2021), regulating governmental powers while revealing instances of disdain toward constitutional principles (Le Roux & Davis 2019:1-4, 43-45; Lieberman 1999; Parsons 2013). While constitutions should safeguard the rights of all individuals, abuses persist (Sachs 2016; 2017; Chaskalson 2003; Chikane 2017; Pauw 2017; Suttner 2015; Olivier 2016).

### **2.3.7 Principles and theory of constitutionalism**

Constitutionalism is a doctrine that regulates government authority and power (Lieberman 1999; Fombad 2010; Rapatsa 2014; Tambe Endoh 2015; Mweru 2015; Meiring 2017). It encompasses a collection of laws outlined in the Constitution, serving as a mechanism to limit government actions and prevent abuses of power (Lieberman 1999; Sachs 2016; De Vos & Freedman 2021; Klug 2010). This framework is seen as a “system of governance” that restricts governmental power through laws and regulations designed to protect the individual and collective freedoms of all South Africans.

Beyond its definition, constitutionalism involves a commitment to a set of written laws that a nation upholds, supported by social activism and active participation in governance and societal development (Lieberman 1999; Klug 2010; Asmal et al. 2011; Sachs 2017; Max-Neef et al. 1991; Mbeki 2009). De Vos and Freedman (2021:42-45) argue that constitutionalism entails more than mere adherence to the Constitution; it also imposes limitations on the powers of democratically elected governments, preventing arbitrary actions in their duties. Lieberman (1999) emphasises that constitutionalism is fundamentally concerned with the well-being of the nation and the obligation of elected authorities to respect and uphold citizens’ rights. It should, thus, be reflected in the behaviour and attitudes of all South Africans (Suttner 2015; De Vos & Freedman 2021; Lieberman 1999).

### **2.3.8 Civil society and constitutionalism**

This analysis is anchored in three distinct concepts, each highlighting the human element as a common denominator. South Africa’s societal complexity is deeply intertwined with race (Callinicos 1992; Sachs 1972; 1990). The apartheid regime entrenched race and ethnicity within the social fabric of South African society (Terreblanche 2002; Tiryakian 1960; Pampallis & Bailey 2021; Wolpe 1988). The idea that the Constitution (1996) is a living document (Sachs 2017; Currie & De Waal 2021; De Vos & Freedman 2021:4-5) suggests that as long as there are living citizens, there must be ongoing efforts to embody its principles.

All South Africans have a responsibility to ensure that the values enshrined in the Constitution (1996) are reflected in their actions. This aligns with the argument that every citizen should adopt an activist mentality rooted in constitutional principles. Having endured the injustices of apartheid, citizens must draw from historical lessons to shape social development in a way that reflects the nation's aspirations rather than imposed ideologies (Fanon 2014; Quinn 2017; Gordon 2005; Rodney 1972; Rooney 1988).

### **2.3.9 The Enlightenment Era's contribution to constitutionalism**

The contributions of the Enlightenment thinkers, such as Montesquieu and Voltaire, to constitutional development are explored in the study. Alongside these French writers, economists like Adam Smith, in *The Wealth of Nations*, and Karl Marx, in *Das Kapital*, critiqued the unchecked power of monarchs and advocated for alternatives to improve the lives of oppressed citizens (Marx 2010; Smith 2003). The Enlightenment period followed significant historical events, such as the Glorious Revolution (1688) and the French Revolution (1789), both marked by human rights violations and monarchs' excesses, which highlighted a disregard for good governance and fiscal responsibility. Enlightenment writers emphasised the need to regulate power through principles like the separation of powers, recognising that absolute power is prone to abuse (Montesquieu 1748; Samuel 2009).

Montesquieu argued that "man is able to self-regulate", while Voltaire (1763) advocated for aligning human law with natural law. This era introduced the idea that power must be distributed among different governing bodies (Currie & De Waal 2013; United Nations (UN) 1997). The assertion is made that the rule of law and the separation of powers gained traction through these Enlightenment ideas, which were later refined and adopted in various societies (Gathitu 2016; Lieberman 1999). In contrast, under apartheid-era constitutions, South Africa lacked a separation of powers, exhibiting traits of authoritarianism akin to a monarchy, with a political party led by a prime minister or president resembling a monarch's authority.

### **2.3.10 Regulating the power of monarchs – insights into the power of constitutions**

Constitutions are more than mere words in a binding document (Tribe 2000; Lieberman 1999; Sachs 2017; Klug 2010; De Vos & Freedman 2021). Voltaire advocated for a balance between “natural law” and “human law” to empower citizens in governing their development and maintaining a stable society (Raj 2013). Montesquieu, in *The Spirit of the Laws* (1748), argued for regulating power to rest with all citizens, ensuring that governments, including monarchs, are held accountable – a fundamental aspect of democracy (Samuel 2009; Tribe 2000; Lieberman 1999).

The argument posited suggests that the rule of law and separation of powers are essential tools for enhancing social development when used for the common good. When citizens wield sufficient power, the future of society aligns with their will and wishes. Examining the origins of constitutionalism reveals that a robust constitution coupled with honest public participation is powerful (Suttner 2015). South Africans must equip themselves with the rights and guarantees outlined in the Constitution (1996), recognising that unchecked power, as seen in the French monarchy, can lead to human suffering, rights violations and corruption.

A constitution that reflects societal values can hold leaders accountable, granting them authority while ensuring they can fulfil their responsibilities effectively (De Vos & Freedman 2021; Tribe 2000). However, some elected officials may assume that citizens lack knowledge about constitutional accountability (Lieberman 1999; Madlingozi 2017; Le Roux & Davis 2019; Olivier 2016; Chaskalson 2003). This mindset can lead to abuses of power for personal gain, jeopardising the socioeconomic rights of the population (Pauw 2017; Le Roux & Davis 2019; Olivier 2016; Chaskalson 2003; Ellmann 2019; State Capture Report, 2018; Van Rensburg 2020).

### **2.3.11 South African constitutional democracy**

The perspective offered herein argues that constitutionalism, as expressed in the Constitution (1996), is evident in South Africa’s political and social discourse. Ngcukaitobi (2018:5-6) and Simpson (2021:147-148, 153) suggest that constitutionalism emerged

from the MOM. Early forms of constitutional rights can be traced back to 1912 (Ngcukaitobi 2018; Sachs 2016; Simpson 2021). De Vos and Freedman (2021) note that while South African constitutionalism has been influenced by European societies, it is fundamentally shaped by local contexts, aligning with the Freedom Charter's<sup>11</sup> philosophy that the Constitution (1996) should be a "living document".

Sachs (2017) highlights that Oliver Tambo envisioned a free and equal society as a core objective for South Africa's liberation. This liberation cannot be viewed in isolation; Kwame Nkrumah, as Ghana's first president and a Pan-Africanist, aimed to unite Africa while recognising its dependence on global trade and development. Although Nkrumah's ideal of a united Africa may seem naïve, he was acutely aware of the destructive impacts of colonisation and economic exploitation (Nkrumah 1963; Reno 1998; Mills et al. 2017; Ryan 2002). He sought equal access to land and resources for all Africans, critiquing the corruption and self-serving behaviour of some African leaders (Ndlovu-Gatsheni 2018; N'Zue 2010; Reno 1998; Mbeki 2002). The ANC's founding principles, influenced by figures like John Dube and Sol Plaatje, aimed to represent the interests of all citizens and pursue a life free from oppression (Booyesen 2011; Ngcukaitobi 2018). However, further exploration highlights how the ANC's initial values, as enshrined in the Constitution (1996), have degenerated over time.

The path to democracy required significant effort from all stakeholders (Esterhuyse 2012; Barnard 2015; Maharaj & Jordan 2021; Klug 2010; Simpson 2021; Ngcukaitobi 2018). Democracy and freedom were hard-won, emerging from a nation in conflict (Sachs 2017; Simpson 2021; Esterhuyse 2012; Suttner 2015; 2017; Biko 2017; Van Vuuren 2017; Mpofu-Walsh 2021). This study explores human rights abuses and the apartheid regime's intelligence operations, alongside the responses of liberation movements (Mbokodo) (Tiro 2019; Pauw 2017; Winter 1981; Twala & Benard 1994; Simpson 2021).

---

<sup>11</sup> The Freedom Charter was drafted in South Africa in 1955 and adopted at the Congress of the People held in Kliptown, Soweto (25-26 June of that year).

### **2.3.12 Developing a social and democratic posture**

Society is an evolving construct, continuously shaped by new perspectives and social dynamics (Browne & Millington 2015; Fanon 1963; Quinn 2017; Suttner 2015). There are strong connections between freedom and democracy, both grounded in the principles of constitutionalism and limited state power (Suttner 2015; 2008; Tribe 2000; Chaskalson 2003; Lieberman 1999; De Vos & Freedman 2021). The Constitution (1996) is considered a “living document”, implying that amendments will be necessary to keep pace with societal changes (Sachs 2016; 2017; Act 108 of 1996, Section 74).

### **2.3.13 Crafting a people’s constitution**

The concept of a constitution as a “living document” reflects Oliver Tambo’s influence during the first Constitutional Committee meeting (Sachs 2016; 2017; Asmal et al. 2011). The notion of a people’s constitution is rooted in the Freedom Charter, adopted in 1955, showcasing the democratic ideals of the liberation movement. South Africa’s history is marked by racial and constitutional complexities (Benyon 1978; Sachs 1973; Mellet 2020; Madlingozi 2017; Horowitz 1991; Motala & Ramaphosa 2002; Klug 2010). Apartheid not only hindered social development but also undermined national pride and cohesion (Klug 2010). The drafting of a people’s constitution was essential in addressing the past’s social, economic and political injustices (De Vos & Freedman 2021; Asmal et al. 2011; Sachs 2017).

Constitutionalism embodies respect for the rule of law and necessitates transcending mere majoritarian norms (Asmal et al. 2011; Sachs 2017). South African constitutionalism aspires to uphold values that ensure the inclusion of all diverse groups (Currie & De Waal 2013; De Vos & Freedman 2021:52). The Preamble to the Constitution (1996) states that, “South Africa belongs to all who live in it, united in our diversity”, urging citizens to embrace the supreme law and its role in advancing social unity. Before certification, the Constitution (1996) had to meet strict requirements set by the Constitutional Court, infused with principles that ensured its constitutional validity (Motala & Ramaphosa 2002; De Vos & Freedman 2021; Le Roux & Davis 2019; Bulmer 2014; Fombad 2010; Horowitz 1991). The contention is held that constitutionalism extends beyond the text of a

document; it reflects the behaviour and attitudes of society (Lieberman 1999; Currie & De Waal 2013; Simpson 2021). The principles enshrined in the Constitution (1996) create an inclusive framework that guarantees the rights and freedoms of all South Africans without discrimination.

## **2.4 Social development**

Social development in South Africa has been markedly uneven, with historical injustices contributing significantly to contemporary economic inequality (Mpofu-Walsh 2021; Cawe 2021). These disparities are widely understood to originate in the racially exclusionary ideology formally institutionalised as apartheid in 1948. The roots of racial segregation, however, extend further back to colonial rule, during which white settlers, influenced by prevailing European doctrines, were socialised into hierarchical notions of racial superiority (Mellet 2020; Simpson 2021; Giliomee 2020; Rodney 1972; Fanon 1963; 2014; Bosman 1969). Under both Dutch and British administrations, the majority of the population was systematically positioned as a source of cheap labour within an extractive colonial economy (Davis 1987; Lodge 1983; Giliomee et al. 2021; Sachs 1973).

### **2.4.1 Social development contexts – African and European**

This exploration focuses on social development within the South African context, particularly addressing the lasting effects of apartheid and racial segregation. It posits that all South Africans suffered injustices under this autocratic regime, with the separate development policies inflicting psychological harm on generations of the MOM (Lambley 1980; Hickson 1991; Sachs 1973; Fanon 1963; Quinn 2017; Gordon 2005). Apartheid, viewed as a continuation of slavery, is described as “slavery of a special type”<sup>12</sup>. This study advocates for a liberal perspective on social development, critiquing how Africa, in the centuries since its “discovery” by the Western world, was often relegated to a subordinate role in defining its own path, as prescribed by Western nations (Fanon 1963; Rodney 1972; Mills et al. 2017; Mills 2021). Here, “liberal” refers to the copious people-

---

<sup>12</sup> The Bantustans and fenced in areas that were encampments for the MOM served a dual role, to provide a source of cheap labour for the White-dominated South African economy as well as to ensure that the ideology of separate development was a real lived experience for the MOM. This effectively represents enslavement, thus “slavery of a special type”.

centric Constitution (1996), which emphasises a set of rights aimed at comprehensive social development, honouring the dignity and freedoms of individuals. Social development in South Africa must consider historical, cultural and psychosocial contexts. Reno (1998) notes that Africa's warlord culture attracts significant aid, yet little tangible benefit emerges from this support. Given South Africa's proximity and influence, its social development is closely linked to the broader African continent.

#### **2.4.2 Social development and the human component**

Discussions around social development often occur in the context of developed countries that finance the efforts of questionable governments. Here, the argument is made that human development is more crucial than mere material progress (Trobbiani 2013; Gray 2006; 2009; Guest 2004; Davids, Theron & Maphunye 2005). When social development is overly tied to economic factors, it perpetuates a "Euro-Western" model that may not suit local contexts (Mbeki 2009; 2011; Gordon 2005; Mills et al. 2017; Midgley 2001; 2013). In South Africa, social development has often been equated with material wealth, overshadowing the holistic development of individuals, which includes health, wisdom and a dignified life filled with self-worth and respect (Onyeani 2006; 2015; Simon 2015; Browne & Millington 2015; Gordon 2005; Quinn 2017; Sesanti 2021).

#### **2.4.3 Socioeconomic rights**

Basic needs - housing, healthcare, water, safe environments, food security, financial assistance and reliable public services - constitute more than welfare entitlements. Within social development theory, they are foundational conditions for human dignity, agency and meaningful participation in political and economic life. Their systematic denial reflects structural design rather than administrative failure. Under apartheid, racially exclusionary constitutional and legislative frameworks institutionalised such deprivation, prioritising regime preservation over inclusive development.

Education exemplifies this dynamic. As a central driver of mobility and political consciousness, it is integral to social development. Yet apartheid's "Verwoerdian era" entrenched inequality through the Bantu Education system, deliberately constraining the

intellectual and economic advancement of the MOM. Rather than cultivating equal citizenship, education policy produced a controlled labour force confined to marginalised Bantustans (Simpson 2021; Ngcukaitobi 2018; Giliomee et al. 2021; Walker et al. 2011). Education thus operated not as a developmental instrument but as a mechanism of structural containment.

The denial of social development was inseparable from the intelligence and security architecture that sustained apartheid. Intelligence structures were embedded within a constitutional order designed to suppress mobilisation for socio economic rights. Restrictions on housing, land, education and movement were enforced through surveillance, counter-subversion strategies and security legislation. Social deprivation and intelligence governance therefore functioned as mutually reinforcing elements of a system intended to forestall the political empowerment of the majority.

Deprivation was thus integral to a security-centric state model in which constitutional exclusion, intelligence operations and underdevelopment converged. This history sharpens the significance of the post-1996 constitutional commitment to socio economic rights and accountable intelligence governance, both of which seek to dismantle the structural injustices of the previous order.

Currie and De Waal (2013) assert that the Constitution (1996), particularly the Bill of Rights, outlines socioeconomic rights that are integral to human rights. While these rights are guaranteed, it is argued that South Africans must adopt a proactive activist mindset to protect and enhance these rights. Socioeconomic rights, rooted in constitutional principles, aim for a better life for all and the cultivation of a sense of purpose, belonging and security. The Bill of Rights enshrines dignity derived from a secure life, emphasising the importance of sufficiency over deprivation.

#### **2.4.4 Separate development – longevity of apartheid poverty**

The apartheid ideology significantly perpetuated the notion that race delineates human differences, leading to the systematic exclusion of the MOM from economic, political and

social participation. This exclusion has resulted in substantial material and psychological losses, as well as a diminished national identity intricately linked to citizenship (Giliomee et al. 2022; Simpson 2021; Ngcukaitobi 2018; Mpofu-Walsh 2021; Rainbow Nation N/d). The structural framework of apartheid was predicated on the belief that economic wealth should be withheld from the MOM, further entrenching their dispossession of land and essential resources (Giliomee et al. 2022; Ngcukaitobi 2018; Simpson 2021).

The Natives Land Act of 1913 institutionalised the deprivation of basic human rights, leading to enduring poverty that continues to plague an unequal society even after 1994 (Mpofu-Walsh 2021; Mills 2021; Mbeki 2011). Despite the existence of the Constitution (1996) and its comprehensive Bill of Rights, poverty and inequality in South Africa remain pervasive and have not diminished to the levels anticipated by the Constitution's drafters. Effective social development necessitates good governance; however, South Africa appears to be significantly deficient in this regard (Gumede 2005; Dlodlo 2018; Mills 2021; Marais et al. 2001; Gray 2006; Haule 1984).

The historical legacy of apartheid has entrenched poverty and inequality, with political inclusivity yielding limited benefits. Today, the political elite and those closely aligned with power are the primary beneficiaries of economic prosperity, enjoying an improved quality of life compared to the broader South African population. The high levels of corruption associated with self-serving interests have severely compromised state institutions, particularly in light of the “state capture project” (State Capture Report 2018; Le Roux & Davis 2019; Mpofu-Walsh 2021; Mills 2021). Social development cannot flourish within an environment characterised by uncertainty, malfeasance and corruption that currently afflicts South Africa’s democratically elected government (Gass 2014; United Nations 1997; Madlingozi 2017; Mafeje 1986; Max-Neef et al. 1991; Reno 1998; Van Vollenhoven 2015).

#### **2.4.5 A cursory overview of social development and intelligence**

The role of intelligence within a constitutional framework can significantly influence social development (Africa & Kwadjo 2009; Johns & Davis 1991; Hutton 2007; Coleman 1998;

Rapatsa 2014). Historically, under apartheid, intelligence served as a political tool for the government to promote division and fear rather than unity (Africa & Mlombile 2001; Africa 2009; Baldino 2010; Dombroski 2006). National security is intrinsically linked to social security, which is essential for social development (Max-Neef et al. 1991; Fombad 2010; Green 2009; Goredema & Botha 2004). Chapter 11, Section 198 (a-d) of the Constitution (1996) mandates that national security must reflect citizens' commitment to living peacefully and free from fear (Coleman 1998; Baldino 2010; Maurer, Tunstall & Keagle 1985). Intelligence agencies are tasked with safeguarding South Africa as a sovereign state and ensuring the safety of its citizens (Africa & Kwadjo 2009; Putter 2024).

Scholarly and investigative accounts have documented instances in which intelligence structures in South Africa were manipulated to cultivate fear and reinforce racial divisions (Putter 2024; Nathan 2010; Africa & Kwadjo 2009; Van Vuuren 2017; Vale 2019). Such politicisation is widely recognised as incompatible with the constitutional mandate of intelligence within a democratic society and has contributed to a significant erosion of public trust in South Africa's intelligence services (State Capture Report 2018; Putter 2024; Africa 2009; Africa & Mlombile 2001; White Paper on Intelligence 1994; Pauw 2017; 2022; Pitney 2001; Wiener 2011; 2018; Snyckers 2020; Harding 2021; Agrizzi 2020). As reflected in the findings of the State Capture Report (2018), the functioning of intelligence agencies has direct implications for national security and, by extension, for broader social and socioeconomic development.

## **2.5 Intelligence – conduct, methodologies, processing**

The ANC and the NP represent two opposing forces in South Africa's liberation struggle, each establishing distinct security and intelligence frameworks. Intelligence primarily serves to protect a nation from adversaries (Carmel 2004; Andrew 2019; Lowenthal 2022; Chapman 2004; Nathan 2010; Smith 2019). Unlike other governmental bodies, intelligence operates predominantly in secrecy, with covert operations often shielding the public from potential human rights abuses involved in gathering information (Goldman 2010:19, 21, 23–25; Barnard 2015:101, 102, 104-111; Black & Morris 1991; Faini 2021; Hastedt 1991; Coleman 1998; Morris & McGann 2017). The apartheid era was marked

by human rights violations, including torture and extrajudicial killings aimed at quelling dissent (Suttner 2017; Twala & Benard 1994; Asmal et al. 2011; Sachs 2017; Shaik 2020; SAHO 2018; SAPA 1997; TRC 1998; 2002).

Intelligence involves the systematic collection, processing and analysis of information to facilitate timely decision-making by state entities (Lowenthal 2022; Goldman 2010; Barnard 2015; Dulles 2006; Eisenberg, Dan & Landau 1980; Johnson & Wirtz 2015; Shulsky & Schmitt 2002; Dombroski 2006; Wiener 2020; Mistry & Gurman 2020). Effective intelligence operations require ethical planning and execution, aligned with constitutional principles that uphold the rule of law (Africa & Kwadjo 2009; Goldman 2010; Elsdon 2009; Vuk'uzenzele 2013). In contrast, apartheid-era intelligence disregarded these principles, raising ongoing concerns about the constitutional conduct of intelligence agencies post-1996 (High Level Review Panel on Intelligence 2018; Singh 2021; Dombroski 2006; Nathan 2010; Africa 2009; O'Brien 2011; Putter 2024).

### **2.5.1 Apartheid intelligence from 1948**

Following the 1948 elections, South African intelligence underwent a significant transformation as the apartheid regime confronted open opposition from the MOM (O'Brien 2011; Dombroski 2006; Putter 2024; Hutton 2007; Elsdon 2009; Smith 2019; Hutton 1971). Under leaders like Verwoerd and Balthazar Johannes "John" Vorster, the demand for intelligence and related operations surged, driven by a concerted effort to undermine liberation movements from within. The deployment of infiltration and penetration agents aimed to sow discord among opposition structures, coinciding with the brutal suppression of uprisings and the assassination of activists (Hutton 2007; 2009; Thamm 2019; TRC Reports 1998; 2002; Suttner 2008; 2017; International Commission of Jurists 1975).

The establishment of apartheid intelligence was primarily focused on defending the regime while ensuring the MOM remained subservient and controlled (O'Brien 2011; Suttner 2017; Friedman, Friedman, Chapman & Baker 1997; Gourley 2018). Intelligence operations in South Africa were predominantly influenced by British

control, dating back to the formation of the Union in 1910, which solidified its status as a dominion and an asset of the Crown. Consequently, MI5's domestic security role was active in South Africa, reflecting its status as an extension of the British Empire.

#### **2.5.1.1 Bureau of State Security**

The Bureau of State Security (BoSS) (16 May 1969, Government Notice No. 808) was formally established in May 1969 (O'Brien 2011:25–31; Van Vuuren 2017:26–28). Intelligence became synonymous with murder and human rights abuses as Vorster sought to cement the notion of “White domination” in South Africa (O'Brien 2011; Simpson 2021; Winter 1981; Giliomee et al. 2022; Putter 2024; Hutton 2007; Elsdon 2009). While Elsdon (2009) presents a seemingly subjective perspective, the literature nonetheless illuminates the operations of apartheid-era intelligence structures, which exhibited a blatant disregard for human rights. Moreover, the historical context reveals how certain apartheid leaders exploited intelligence services to benefit their regime, a strategy that not only upheld the apartheid ideology but also enabled them to maintain power, despite their unethical conduct in comparison to the Constitution (1996).

#### **2.5.2 South Africa's divisions within intelligence structures**

The structural divisions within South Africa's intelligence community must be understood against the historical consolidation of state power under apartheid. Rooted in colonial racial hierarchy and reinforced by Afrikaner nationalism, apartheid ideology constructed South Africa as a “White man's land”, legitimising coercive control over the majority population (Giliomee et al. 2022; Ngcukaitobi 2018; Bosman 1969). Within this order, intelligence institutions did not emerge as neutral custodians of national security, but as instruments embedded in a racially stratified political system.

Following 1948, this orientation became institutionalised. Intelligence and security bodies were reorganised to defend apartheid and suppress resistance. Barnard (2015:42–52) details the delineation of roles between the South African Police (SAP), the South African Defence Force (SADF) and the Bureau for State Security (BoSS), which together constituted the regime's counter revolutionary apparatus. Established in 1969 under

Brigadier Hendrik van den Bergh, BoSS initially operated alongside the SAP Security Branch before evolving into a more autonomous structure (O'Brien 2011:22, 27). Its reconstitution as the National Intelligence Service (NIS) in 1980 formalised this distinction. Although all reported to the State Security Council (SSC), O'Brien (2011:10) notes that the NIS ultimately achieved "intelligence supremacy".

Formal delineation, including the Department of Foreign Affairs (DFA)'s management of overt diplomatic intelligence (Barnard 2015:50–51; O'Brien 2011:67), did not eliminate institutional rivalry. Competition and professional jealousy frequently undermined coordination (Barnard 2015; Putter 2024; O'Brien 2011), illustrating how fragmentation can erode strategic coherence and weaken national security and socio economic stability (Johnson 2015; Lowenthal 2022:301–305; Shulsky & Schmitt 2002:3, 7–9).

Operationally, apartheid era intelligence prioritised the surveillance and neutralisation of liberation movements, often resulting in violent suppression (Coleman 1988; Simpson 2021:273–275; O'Brien 2011:109–115, 182–187; Elsdon 2009). International support for the exile community intensified these efforts, reflected in Resolution No. 23 (Barnard 2015). In response, the African National Congress (ANC) established Umkhonto we Sizwe (MK) and later its intelligence department, NAT (O'Brien 2011; Rostron 2019; Jeffery 2019; Thamm 2019). On both sides, intelligence operated as a political instrument directed by leadership, underscoring its entanglement in ideological contestation rather than constitutional restraint.

The democratic transition after 1994 marked a decisive normative reconfiguration. Intelligence, previously deployed to entrench racial hierarchy and regime security, was repositioned within a constitutional order premised on legality, accountability and rights protection. Sections 209 and 210 of the Constitution (1996) are central to this transformation: section 209 constitutionally establishes intelligence services subject to national legislation and executive responsibility, while section 210 requires that their activities be regulated by law. Together, these provisions embed intelligence within the

constitutional architecture, subjecting it to democratic control and legal limitation rather than political expediency.

Yet the historical record demonstrates that institutional design, coordination failures and human agency profoundly shape operational outcomes (Putter 2024; Coleman 1988). The politicisation and structural vulnerabilities evident under apartheid did not disappear in 1996; they re-emerged in altered forms within the democratic era. This continuity sharpens the central concern of this study: constitutional text alone cannot guarantee constitutional conduct. Only when intelligence governance is firmly anchored in the principles underlying sections 209 and 210 can it avoid replicating patterns of politicisation that undermine both national security and the social development objectives the constitutional order seeks to advance.

The formation of the Union of South Africa in 1910, pursuant to the South Africa Act of 1909 and following the 1902 Treaty of Vereeniging, consolidated British and Afrikaner political authority within a single dominion framework. During this early period, intelligence collection and security coordination were shaped significantly by British institutional practices. British security models - particularly those associated with MI5 and domestic counter-intelligence - provided the organisational template deemed suitable for South Africa's internal security environment (O'Brien 2011:13–15).

This alignment with British intelligence doctrine enabled continued metropolitan influence over the Union's security architecture and political order. Intelligence structures were therefore not organically developed within a locally accountable constitutional framework, but rather evolved under imperial guidance. This early configuration established patterns of centralised control and executive dominance that would later influence the development of South Africa's apartheid-era intelligence system.

### **2.5.3 Statutory intelligence and South African liberation**

Efforts to establish credible intelligence structures under apartheid were largely ineffective, as widespread human rights abuses and mounting resistance to apartheid

drew significant condemnation from the international community (Asmal et al. 2011; Giliomee et al. 2022; Simpson 2021; Coleman 1988; Davis 1987; Dombroski 2006; Van Vuuren 2017). The examination of the human rights violations that occurred within frameworks lacking constitutional principles is evident in this research and there is support for this position as offered by Klug (2010:6-13, 15-22). Notably, human rights abuses also occurred in ANC camps during exile, exemplified by the infamous Camp Quatro, which serves as a reminder that torture, murder and human rights violations were not exclusive to the apartheid regime (Twala & Benard 1994:78-83). Asmal et al. (2011:168–169) caution against equating these two contexts; however, it is contended that human rights abuses are indefensible, regardless of the perpetrator (Klug 2010:3-4, 86, 240-245; Putter 2024:3-5, 7).

Following the Sharpeville Massacre in March of 1960, the ANC established its armed wing in 1961 under the strategy of an armed struggle. O'Brien (2011:4-6) notes that before this, South Africa, particularly the apartheid regime, lacked an "independent intelligence service". The ANC subsequently formed the Department of National Intelligence and Security (NAT) during the 1969 Morogoro Conference in Tanzania, officially launching the department in April of that year. Initially, the NAT was staffed by members of the ANC's armed wing, none of whom had formal intelligence training, although this training was later provided by the Soviet Union, Libya and East Germany around 1980 (O'Brien 2011:77).

The NAT faced the challenge of countering the infiltration efforts of apartheid security and intelligence forces. Its mandate included both security and counterintelligence operations, with a focus on penetrating apartheid structures (O'Brien 2011:77-78). In the 1980s, the NAT began rehabilitating apartheid spies and established a correctional service under Mbokodo, alongside developing a forewarning capability (O'Brien 2011; Benard & Twala 1994; Coleman 1988). The NAT aimed to neutralise apartheid intelligence efforts and identify infiltration and penetration agents. While the full scope of apartheid intelligence operations remained largely undisclosed, significant information emerged following the

1994 elections and the establishment of the Truth and Reconciliation Commission (TRC) (O'Brien 2011:77, 204-219).

#### **2.5.4 Formulating a new approach to South African intelligence in a democracy**

The intelligence capacity of the apartheid state operated on a militaristic basis, primarily aimed at collecting information to disrupt, destroy and violate the rights of individuals opposing apartheid (Africa & Kwadjo 2009; Africa & Mlombile 2001; Barnard 2015; Esterhuyse 2012; Duncan 2014; Suttner 2017; Maharaj & Jordan 2021; Shillinglaw & Thomas 1988; Dingake 1987). Economic sanctions and international boycotts pressured PW Botha's apartheid government, ultimately leading to the creation of a "professional" intelligence agency, the National Intelligence Service (NIS) (Barnard 2015; O'Brien 2010; Simpson 2021). By the mid-1980s, significant efforts were directed towards establishing a constitutional democracy in the ANC (Sachs 2016; 2017; Klug 2010; Asmal et al. 2011; De Vos & Freedman 2021). The need for a distinct constitution to guide the elected government and serve all citizens became apparent (Sachs 1990; 017). This new era of democratic constitutionalism required a reformed approach to previous intelligence structures, emphasising integration and adherence to constitutional principles. Following the first Convention for a Democratic South Africa (CODESA) in December 1991, it was crucial to break from the politicisation and abuse of intelligence seen in the past.

The apartheid regime enacted legislation aimed at obstructing the liberation movement. This included the General Law Amendment Act 37 of 1963 (the 90-day Act), the Criminal Procedure Amendment Act 96 of 1965 (the 180-day Act), the Sabotage Act of 1962, the Internal Security Act of 1972 (amended in 1976 and 1982), the Public Safety Act of 1953 (amended in 1986) and the Terrorism Act of 1960. These laws facilitated abuses by intelligence services and were supported by the Security Intelligence and State Security Council Act of 1972, as well as the Bureau of State Security Act of 1987 (Act 104 of 1978) (Woodford 2017; Revel 2017; Lass 1975). Each of the four recognised independent homelands – Transkei, Bophuthatswana, Venda and Ciskei – had its own legislation that exacerbated the atrocities of security forces and intelligence services in those regions (O'Brien, 2011:74). The argument that oppressive legislation was pervasive in South

Africa is exemplified by the racially divisive 1958 constitution, which underscored how both colonial and apartheid-era laws served a small segment of the population (De Vos & Freedman 2021:7).

The formation of a democratic government in 1994 resulted in the introduction of new intelligence policies, philosophies and oversight mechanisms that had to integrate aspects from both the apartheid era and the liberation struggle. However, this integration preserved certain conflicting elements, leading to friction between the two paradigms. While the ANC aimed to attain political power, it is conceivable that some collaborators within its ranks held prominent positions, continuing to be influenced by the remnants of the apartheid regime. Legislative governance had to reflect the constitutional democracy emerging from these elections (O'Brien 2011; Putter 2024; Coleman 1988; Klug 2010). The White Paper on Intelligence (1994)<sup>13</sup> aimed to rectify previous intelligence methodologies and practices. A fresh perspective on national security was required to align with the Constitution (1996) and its principles (Putter 2024:8-9; Africa & Mlombile 2001:4-7; Hutton 2009; Coleman 1998; Africa 2009; Singh 2021). However, the expectation that intelligence officers would act ethically and beyond reproach proved misguided, as intelligence became a political and financial tool for a select group of elites. The ideals of the Constitution (1996) were not upheld, as evidenced by findings from the Review Panel on Intelligence (2018) and the *State Capture Report* (2018) (Putter 2024; Olivier 2016; Suttner 2015; Mpofu-Walsh 2021; Booysen 2021; Callinicos 2021; Shai 2017).

#### **2.5.4.1 National security and intelligence enshrined in a constitution**

Bernhardt (2003) asserts that effective intelligence operations, from environmental scanning to timely information dissemination, are crucial for national security, which in turn is essential for social development (Carmel 2004; Cimbala 1987; Born, Leigh & Wills 2011; Snow 2020; Pitney 2001; Levite 1987; Laqueur 1985). The Bill of Rights, particularly Section 12, guarantees individual freedom and security, linked to Chapter 11

---

<sup>13</sup> The White Paper on Intelligence (1994) aimed to establish a legal framework for intelligence operations and promote accountability, oversight and democratic principles within the intelligence community.

(ss 198-210) on security services. Section 198(a-d) underscores the role of national security in nurturing peace, stability and social development (Duncan 2014; Nathan 2010; Abrahamsen 2016; Africa 2009; Lowenthal 2022; Africa & Mlombile 2001; Hutton 2007; Mallya 2022). However, the erosion of the rule of law in South Africa contributes to social instability, as intelligence agencies strive to operate within a constitutional framework (Africa & Kwadjo 2009; Putter 2024; *High-level Review Panel on Intelligence Report* 2018). Despite the constitutional framework, these agencies have struggled with integration and performance (Africa & Kwadjo 2009; Nathan 2010; Lebakeng 2023; Coleman 1998), with remnants of apartheid-era practices and unethical conduct undermining constitutional values (O'Brien 2011). Additionally, some intelligence officers may retain political ties and foreign connections, posing a threat to national security (Barnard 2015; Van Vuuren 2017).

### **2.5.5 South African intelligence: conduct, structure and regulatory frameworks**

The historical legacy of intelligence in South Africa, shaped by segregation and systemic oppression, provides essential context but should not eclipse its normative potential within a constitutional democracy. Under apartheid, intelligence structures operated as an extensive surveillance network, monitoring even minor acts perceived as threats to state security (Esterhuysen 2012:178–179; O'Brien 2011; Putter 2024:2–4). Following Resolution No. 23, the National Intelligence Service (NIS) was tasked with conducting intelligence operations on the African National Congress (ANC), reinforcing the regime's defensive posture (Barnard 2015; Simpson 2021; Esterhuysen 2012; O'Brien 2011). Infiltration and penetration of the ANC were common practices aimed at assessing organisational strengths and vulnerabilities, and securing strategic advantage (Winter 1988; Pauw 2017; 2022; O'Brien 2011; Maharaj & Jordan 2021; Hooper 2012). Intelligence during this period functioned primarily as a political instrument designed to preserve regime stability.

Yet the late apartheid period also marked the beginning of a transition in intelligence engagement. The NIS entered into selective contact with members of the ANC to facilitate negotiations that would ultimately shape the democratic settlement (O'Brien 2011;

Esterhuyse 2012; Barnard 2015; Simpson 2021; Wiener 2018; 2020). By 1993, the NIS and the ANC's Department of Intelligence and Security (DIS) sought to redefine the purpose and ethos of intelligence within a future democratic order, emphasising political neutrality, professional conduct and the delicate balance between secrecy and transparency (O'Brien 2011:197, 200; Africa & Mlombile 2001). The Sub-Council on Intelligence similarly underscored the necessity of robust oversight mechanisms to prevent the recurrence of past abuses (O'Brien 2011:201; White Paper on Intelligence 1994; Africa & Mlombile 2001:4–6).

With the advent of constitutional democracy in 1994 and the adoption of the Constitution in 1996, intelligence was formally repositioned within a rights-based framework. The restructuring process required adherence to the rule of law and constitutional supremacy (Africa & Mlombile 2001:3–7, 9–10). Control of the newly configured intelligence community demanded accountability and exemplary conduct from political appointees and senior officials, ensuring fidelity to constitutional principles (O'Brien 2011:201–202; Coleman 1998; Putter 2024). The Constitution establishes the interdependence of intelligence and national security as functions intended to serve the populace rather than partisan interests, thereby requiring a decisive break from the politicisation that characterised earlier eras (O'Brien 2011:205–217, 182–183; Africa 2009; Klug 2010; Coleman 1998).

The contemporary legislative framework reflects this constitutional repositioning. Intelligence operations are governed by the National Strategic Intelligence Act 39 of 1994, the Intelligence Services Act 65 of 2002, the General Intelligence Laws Amendment Bill (2003), and the White Paper on Intelligence (1994). Parliamentary oversight is exercised through mechanisms including the Joint Standing Committee on Intelligence and the Standing Committee on Public Accounts, designed to ensure compliance with the principles articulated in the White Paper (White Paper on Intelligence 1994). Notwithstanding this framework, post-democratic critiques suggest that intelligence structures have at times reverted to political instrumentalisation (Pauw 2017; 2022; Putter 2024; Africa & Kwadjo 2009; Corbett 2010). Reports such as the Judicial Commission of

Inquiry into State Capture (2018), the High-Level Review Panel (2018), and analyses by Harber (2020), Williams (2021) and Snyckers (2020) highlight governance weaknesses and failures of oversight, raising concerns about compliance with the constitutional and statutory regime.

Accordingly, while the historical trajectory of South African intelligence reveals deep patterns of politicisation and executive dominance, the constitutional order mandates a fundamentally different orientation. Intelligence, when properly regulated, serves not merely national security but the broader objectives of accountability, legality and social development. The central challenge, therefore, lies not in the existence of intelligence as a state function, but in ensuring that its exercise remains anchored to constitutional supremacy and the rule of law.

Apartheid-era intelligence structures are widely recognised as having been organised and resourced primarily to serve political objectives, frequently accompanied by serious human rights violations. The absence of meaningful oversight and limited adherence to the rule of law were characteristic features of intelligence governance under the apartheid constitutional order. The democratic transition introduced a restructured intelligence framework, including the appointment of an Inspector-General of Intelligence and the establishment of oversight mechanisms intended to strengthen accountability. Notwithstanding the existence of comprehensive legislative and policy frameworks, scholarship consistently observes that the effectiveness of intelligence institutions ultimately depends on the integrity and ethical conduct of the individuals entrusted with their administration (Baldino 2010; Goldman 2010; Shulsky & Schmitt 2002; Putter 2024; Africa 2009; Mistry & Gurman 2020).

#### **2.5.5.1 The processing of information and the intelligence cycle**

The intelligence cycle, originating after World War I as a methodology for processing espionage data and implementing counterintelligence (Kent 1974; Andrew 2018; Hughes-Wilson 2016; Lowenthal 2022; Wheaton 2011), prompts critical examination of its relevance today. This model raises questions about the nature of intelligence in South

Africa and the influences shaping its democratic intelligence agency. The country's intelligence history has been profoundly affected by British and other foreign assistance to both the apartheid regime and liberation movements, which subsequently merged into the post-apartheid intelligence framework (O'Brien 2011; Barnard 2015; Hansen 1996; Hassan & Hijazi 2018; Hastedt 1991; Lowenthal 2022). It is further the study's contention that the democratic intelligence agency must be understood within the context of its historical influences, operational methodologies and the necessity for a constitutionally aligned intelligence framework (White Paper on Intelligence 1994; Africa & Mlombile 2001; Bernhardt 2003; Dombroski 2006; Africa & Kwadjo 2009; Smith 2022; Faini 2021).

The transformation of raw information into actionable intelligence is crucial, requiring strict operational security. Intelligence must remain confidential; otherwise, it loses its value (Baldino 2010). The intelligence cycle relies on human agents, whose inherent biases and subjective interpretations can compromise the integrity of the process (Lowenthal 2022). Wheaton (2021) highlights these concerns, noting the historical context while acknowledging the potential for bias in intelligence production. The frailties of human nature render intelligence inherently vulnerable (Lowenthal 2022:73-87; Classen 2004, 2011; Friedman et al. 1997; Levite 1987; Sukman 2018). Hastedt (1991) emphasizes the importance of control over both access to intelligence and the ethical conduct of those involved in its dissemination. This raises concerns about intelligence being "creatively constructed" and presented as fact, potentially driven by agendas (Hall & Citrenbaum 2012; Hutton 2009; Hulnick & Mattausch 1989).

In democratic South Africa, these human frailties and political influences persist, allowing proximity to political elites to shape intelligence priorities (Putter 2024; Van Vuuren 2017; Hitz 2008; Kleynhans 2021; Wilson Center 2017; Shaik 2020; Rostron 2019; Barnard 2015; High-Level Review Panel on Intelligence Report 2018).

#### **2.5.6 Truth and reconciliation – human rights abuses**

The TRC, established under the Promotion of National Unity and Reconciliation Act 34 of 1995, was created in 1994 to address human rights injustices from both the apartheid

regime and liberation movements. Its primary aim was to unify the nation and to prevent future atrocities and violations under a constitutional democracy (Sachs 2016:55–57, 59, 61, 65; Jeffery 2019:98-99, 184-185; Wilson Center 2017; Fedorowich 2005). The secretive list of apartheid-era spies within the ANC is inextricably linked to the TRC, which was tasked with investigating intelligence atrocities committed by both sides. However, the list remains confidential and full disclosure has not occurred (Ancer 2019; Winter 1988; Pitney 2001; Piegl & Newman 2013; Shaik 2020; Steele 2000; Thamm 2019; Hutton 2007; 2009; Elsdon 2009).

The TRC represents a distinctly South African approach to confronting its past, thereby encouraging a degree of healing and the potential for national unity, once fractured by a racially charged ideology (Asmal et al. 2011:184-185). While the TRC investigated the operations of intelligence structures and their associated human rights abuses, it aimed to close the chapter on South Africa's painful history. The military-style intelligence operations resulted in significant human rights violations, necessitating a reconciliatory approach grounded in truth and full disclosure. However, this initiative did not fully address the needs of the countless victims of apartheid's intelligence services (O'Brien 2011:180-184, 220-225). Notably, the NP indicated that only former president F.W. de Klerk would testify, suggesting that certain individuals were sacrificed in the name of democracy and nation-building.

In establishing a democratic intelligence agency aligned with the Constitution (1996), the integration of liberation forces and apartheid-era services required a "clean slate" from which to build this new entity (Africa & Mlombile 2001). Members of the new agency were expected to possess a clear conscience and "bloodless hands". Although the TRC was intended to conclude the discourse on apartheid-era intelligence abuses, this objective was not realised. The TRC could have endowed the new intelligence agency with credibility; however, political influences impeded this goal, particularly during negotiations between liberation forces and the NP government. Significant agreements were reached; notably, the decision to withhold the disclosure of all apartheid-era spies on both sides. Just as the ANC infiltrated the apartheid intelligence services, so too did the apartheid

forces infiltrate the ANC. This lack of transparency continues to pose security concerns, as it remains possible that individuals were recruited by foreign intelligence services (Africa & Mlombile 2001:3-4).

## **2.6 Summary**

The literature review interrogates the interplay between constitutionalism, intelligence governance and social development through five articulated objectives and corresponding research questions, with particular attention to three apartheid era constitutions. It situates these concepts within South Africa's constitutional evolution, beginning with the Treaty of Vereeniging (1902) and the formation of the Union of South Africa in 1910, which consolidated British imperial authority while entrenching racial exclusion within formally self-governing structures.

The 1948 electoral victory of Afrikaner nationalism marked a decisive ideological consolidation of state power, transforming racial segregation into institutionalised policy. By 1961, under Hendrik Verwoerd, withdrawal from the Commonwealth and the declaration of a republic formalised a constitutional order structured along racial lines. Resistance movements, including the MOM, exposed the contested legitimacy of this order and highlighted the intimate relationship between constitutional authority, intelligence control and systemic oppression.

Comparative engagement across the pre apartheid, apartheid and post-apartheid periods reveals enduring structural continuities shaping contemporary constitutionalism, intelligence governance and social development. The literature demonstrates that constitutional design and intelligence architecture have never operated in isolation; rather, they have materially shaped societal outcomes and the distribution of political power.

Accordingly, the review establishes the theoretical and historical foundations necessary for a comparative constitutional examination of South Africa's 1910, 1961 and 1983 constitutional frameworks, through which the evolving relationship between constitutionalism and intelligence governance may be critically assessed.

## **CHAPTER 3: COMPARATIVE CONSTITUTIONAL FRAMEWORKS IN SOUTH AFRICA (1910, 1961 AND 1983): CONSTITUTIONALISM AND INTELLIGENCE**

### **3.1 Introduction**

This chapter examines the historical trajectory of South Africa's constitutionalism, social development and intelligence through the three constitutional frameworks enacted prior to the democratic transition in 1994 (1910, 1961 and 1983). For present purposes, "constitutional" refers to the formal legal frameworks and underlying principles that structured, authorised and constrained state power in each period. Although constitutionally enacted, these frameworks were structurally exclusionary and systematically marginalised the majority of South Africans.

While liberation movements such as the Pan Africanist Congress (PAC) and its military wing, the Azanian People's Liberation Army (APLA), sought to dismantle apartheid, this analysis centres on the African National Congress (ANC) and the National Party (NP), whose negotiations ultimately shaped the transition to democracy. Both parties participated in the Convention for a Democratic South Africa (CODESA), convened on 21 December 1991, which set in motion the constitutional processes culminating in the 1994 elections.

The South African War (11 October 1899 to 31 May 1902) laid the groundwork for the Union of South Africa and the 1910 Constitution. A 1960 referendum preceded the establishment of the Republic and the 1961 Constitution, entrenching a racially stratified constitutional order. The 1983 constitutional amendments introduced a tricameral parliamentary system granting limited representation to Coloured and Indian South Africans, a reform widely regarded as strategically designed to project inclusivity while preserving majority exclusion. This configuration reflected elements of "divide and rule", as meaningful political power remained concentrated within a racially restricted framework.

Between 1910 and 1983, these constitutional arrangements consolidated apartheid governance, notwithstanding incremental reforms presented as democratising measures. Together, they form the comparative foundation for assessing how constitutional structure shaped intelligence governance and the broader distribution of political power.

### **3.2 Conceptual and contextual foundations: The social complexity of constitutionalism and intelligence**

This section establishes the conceptual and contextual foundations necessary to understand the complex relationship between constitutionalism and intelligence within South Africa's historical development. The term "MOM" is used in this study to denote the majority of the population who were subjected to racial, social, political and economic exclusion under apartheid, primarily comprising Black, Coloured and Indian South Africans, as well as other marginalised communities.

Under successive constitutional frameworks prior to 1994, legal and political authority was structured in a manner that privileged the White minority population, while systematically limiting the citizenship, property and political rights of the majority. These constitutional arrangements institutionalised racial hierarchy and entrenched socioeconomic disparities that extended beyond race to encompass social, cultural and religious divisions. Although post-1994 constitutional democracy formally recognises diversity and equality, the historical legacy of these divisions continues to shape social complexity within the state (Mellet 2020; Mpofu-Walsh 2021; Mbeki 2002; Mbeki 2011; Biko 2017).

The constitutions of 1910, 1961 and 1983 must therefore be understood not merely as legal instruments, but as frameworks that structured power, inclusion and exclusion within society. Within this context, intelligence institutions operated as instruments of the prevailing constitutional order, reflecting and reinforcing the social and political hierarchies embedded in those frameworks. The role of the African National Congress (ANC), alongside other liberation movements and international alliances, forms part of the broader socio-political context within which these constitutional transformations unfolded.

In South Africa, intelligence has historically been deployed as an instrument of political authority. Colonial administrations leveraged intelligence structures to consolidate and maintain control, embedding surveillance and information-gathering within broader strategies of governance (Kleynhans 2021; Lowenthal 2022; Kish 1995; Africa & Kwadjo 2009). The strategic significance of intelligence became more pronounced during the two world wars. In particular, the Second World War underscored the operational value of codebreaking, counter-intelligence and espionage, functions largely associated with British security doctrine and overseen by MI5 within the South African context (Andrew 2019:449; Kleynhans 2021; Africa & Kwadjo 2009). The concept of intelligence itself has deep historical antecedents, often traced to 187 BC and reflected in Sun Tzu's *Art of War* (496 BC), which emphasises the strategic centrality of espionage and information in military planning (Andrew 2019; Tzu 1988:165-170; Chapman 2004).

During both world wars, British authorities relied extensively on human intelligence (HUMINT) and signals intelligence (SIGINT), adapting these methods to the South African environment. Domestic dynamics further complicated the intelligence landscape, as groups such as the Ossewabrandwag aligned themselves with German interests during WWII (Kleynhans 2021; Neiberg 2017; Giliomee et al. 2022:400, 430-431; Elsdon 2009:11-29). Although intelligence capabilities were initially constrained, they developed significantly in the post-war period in order to strengthen British national security and counter perceived threats (Lowenthal 2022:46-52). This institutional maturation provided an operational foundation upon which the apartheid state would later expand and intensify intelligence practices after 1948 (O'Brien 2011; Simpson 2021; Africa 2009).

Following the National Party's electoral victory in 1948, intelligence operations were progressively escalated to monitor and suppress dissent. As repression intensified, resistance movements recalibrated their strategies. In 1961, the African National Congress (ANC) initiated its armed struggle and established Umkhonto we Sizwe (MK) as its military wing. This development represented a strategic response to sustained political exclusion and state violence. To enhance coordination and operational capacity, the ANC and its allies subsequently established the Department of National Intelligence

and Security (NAT) (O'Brien 2011:77, 173). Intelligence, therefore, became central not only to regime preservation but also to organised resistance.

Both the ANC and the National Party (NP) were implicated in conduct that contravened emerging human rights norms (O'Brien 2011:17-21, 172; Simpson 2021:263-264). However, while the apartheid state operated within constitutions that entrenched racial exclusion, the ANC and its allies articulated a vision of a democratic constitutional order grounded in human rights, ethical leadership and equality (Ngcukaitobi 2018; Sachs 2016; Simpson 2021). This ideological divergence would ultimately shape the constitutional transition and redefine the normative expectations placed upon intelligence institutions in the post-1994 dispensation.

### **3.3 Constitutions, European settlement and social dis-ease**

To understand the promulgation of South Africa's constitutions from 1910 to 1983, it is beneficial to briefly examine the historical context. Atrocities stemming from slavery and colonialism are intertwined with human rights abuses throughout South African history, predating apartheid circa 1943 (Sachs 1973; Giliomee, Mbenga & Nasson 2022; Ngcukaitobi 2018). The MOM has faced oppression since their first encounters with European seafarers, leading to the emergence of mixed-race individuals known as Coloureds (Sachs 1973; Giliomee et al. 2022; Mellet 2020; Ngcukaitobi 2018). This dehumanising practice (slavery) commodified individuals, underscoring the unconstitutional values that the 1910, 1961 and 1983 constitutions ostensibly upheld. The advancement of "White rights" was achieved at the expense of the MOM, establishing a framework of discrimination and oppression (Simpson 2021; Ngcukaitobi 2021; Chaskalson 2003).

The MOM were stripped of their human rights, freedoms and dignity, severely affecting their social development while subjecting this group to "slavery of a special type" (Giliomee et al. 2022; Simpson 2021; Sachs 2016:216–219; Gray 2016). The South African War (1899–1902) is seen as a catalyst for the 1910 constitution, as Afrikaner nationalism was suppressed to favour British supremacy, leading to the formation of the

Union of South Africa. The forced surrender of the Afrikaners left lasting animosity, exacerbated by the horrors of British concentration camps (Giliomee et al. 2022:226–277, 308–309, 414, 417; Giliomee 2020; Muller 1981; Lee 1986). This animosity advanced a sense of “self-protectionism” in subsequent constitutions (1961 and 1983), as Afrikaner nationalism sought to prevent a repeat of past Afrikaner oppression, often at the expense of the MOM.

### **3.3.1 The Treaty of Vereeniging – 31 May 1902**

After the South African War (1899–1902), General Louis Botha and other Afrikaner delegates met with British representatives, led by Field Marshal Lord Herbert Kitchener, in Vereeniging on 15 May 1902 (Giliomee et al. 2022). Concerns arose over hunger leading to starvation and the presence of an armed MOM. By late May, new surrender terms were negotiated, which explicitly excluded the MOM from the franchise, consolidating political power within White South African groups (Simpson 2021:6-7). This agreement aimed to divide South Africa’s wealth, establishing the two White negotiating parties as joint custodians (Giliomee et al. 2022:321, 331). Afrikaner delegates returned on 28 May 1902 to seek approval from their constituents, with Jan Smuts advocating for acceptance of the conditions to enable Afrikaners to regain control over their future.

The Treaty of Vereeniging was signed on 31 May 1902, officially ending the war and initiating the reconstruction of South Africa under White rule. Although the war formally ended in May 1902, the practical implementation of the “Treaty terms” extended into 1903. This marked the beginning of a systematic and systemic approach to creating future constitutions that institutionalised discrimination against the MOM. The treaty was significant as it established constitutions as tools of political and economic oppression, perpetuating the impoverishment and marginalisation of the MOM. The economic disparity was entrenched, with a focus on rebuilding the country, particularly the mining sector, which required a capable labour force. This strategy extended beyond mining to all economic sectors needing revitalisation, aiming to create a thriving economy that satisfied both British and Afrikaner interests, envisioning a “White economy” supported by predominantly MOM labour (Giliomee et al. 2022; Ngcukaitobi 2018).

### **3.4 A test in constitutionality for the South Africa Act of 1909**

Drafting a constitution extends beyond merely outlining chapters, sections and subsections (Klug 2010; Sachs 2016:1, 155–157). By nature, constitutions serve as the foundational laws governing a country. While constitutions have been in existence since 1600, the USA possesses the oldest ratified constitution, established on 21 June 1788, despite the constitution of San Marino, known as the “*Statuta Decreta ac Ordinamenta Illustris Reipublicae ac Perpetuae Libertatis Terrae Sancti Marini*”, being approximately 200 years older. The distinction lies in the codification of the latter; as it is uncoded, not all its principles hold legal status. Therefore, the US constitution is recognised as the oldest because it fulfils all the criteria of constitutionalism. Without constitutionalism, constitutions become mere compilations of laws and customs.

By 1909, there was enough consensus, reconciliation and political will to implement the constitution in the form of the Union of South Africa. In September 1909, King Edward VII assented to the Act, followed by a Royal Proclamation in December 1909. The Union of South Africa (1910) consisted of four provinces – the Cape, Transvaal, Natal and the Orange Free State – that had previously functioned as colonies (Simpson 2021; Giliomee et al. 2022; Ngcukaitobi 2018). The Act established English and Afrikaans as the two official languages for Parliament, schools, courts and the Public Service (Giliomee et al. 2022:331; Simpson 2021). Under the Act, the country was governed by the British (effectively the King), while each province was assigned an administrator, preferably a resident of that province. Davis (1987:3) contends that the Union of South Africa was formed without representation for the MOM and within two years, South Africa would see a rise in resistance to apartheid.

#### **3.4.1 Powers and qualifications – executive government**

The Act of 1909 outlined the structure and functioning of Parliament, along with the qualifications required for senators. This framework posed a significant warning for the broader South African population. Besides the age requirement of 30 years, candidates had to be male, British subjects of European descent and residents of one of the colonies before the Union’s formation. Additionally, they were required to own fixed property valued

at no less than five hundred pounds. These stipulations disqualified the MOM from holding any political office.

Subsection 32 of the Act underscores the deliberate exclusion of the MOM from political participation. The rights of these citizens were disregarded during negotiations among the White factions, resulting in a predetermined electorate. This subsection stated that the House of Assembly would consist of members chosen directly by voters within the provinces. Subsection 33 specified the number of representatives for each province, based solely on the count of eligible White European male adults. The allocation of representatives would increase in proportion to the number of eligible White male voters. Consequently, the Cape of Good Hope had the highest number of White male voters, predominantly of British descent.

Despite Subsection 35(1,2) claiming that no individual could be disqualified as a voter based on race, this was immediately countered by a provision allowing legislation to bar the MOM from voting. Moreover, the Act permitted Parliament to establish the qualifications necessary for voting. Before the Act's assent, the Treaty of Vereeniging had already excluded the MOM from voting rights, binding the British government to this agreement under Clause 8 (Giliomee et al. 2022:329).

### **3.4.2 The unconstitutional 1913 Natives Land Act**

Land has historically constituted a central source of wealth, economic participation and social stability for the majority of the population (Ngcukaitobi 2018). Under the legal framework of the Union of South Africa, land allocated to African communities was not held in full ownership but administered under the custodianship of the "Commissioner for Kaffir Locations", with formal title vested in the state (Ngcukaitobi 2018:64). This arrangement entrenched structural dispossession within a formally constituted parliamentary order. For the purposes of this chapter, "unconstitutionality"<sup>14</sup> is not invoked

---

<sup>14</sup> "Unconstitutional" refers to actions, laws or provisions that violate or contravene the principles and stipulations set forth in a constitution, undermining the rule of law and the rights enshrined therein (Tribe 2000; Mweru 2015; Grimm 2012).

in a strict judicial sense, as the 1910 framework was grounded in parliamentary sovereignty and did not permit substantive constitutional review. Rather, the term is employed normatively to describe legislation that fundamentally contravened core constitutional principles, including equality before the law, protection of property interests and constraints on arbitrary state power.

The Natives Land Act of 1913 exemplifies this disjuncture between constitutional form and constitutional substance. Although enacted under Parliament's lawful authority, the Act institutionalised racial exclusion in land ownership and entrenched systemic inequality. It reveals how a formally valid statute may nonetheless violate the underlying values associated with constitutionalism. Within this study, the Act therefore serves as a foundational illustration of the divergence between constitutional structure and constitutional legitimacy in South Africa's pre democratic order.

The Natives Land Bill of 1913, introduced by J.W. Sauer on 9 May 1913, reflected the racially divided landscape of South Africa and the prevailing political ideologies. In a parliamentary statement on 28 February 1912, Sauer highlighted the alarming rate at which natives were buying land in the Transvaal (Simpson 2021:39). The Act included a "Schedule of Native Areas" (Simpson 2021:40), formalising the appropriation of land and confining the MOM to native reserves and designated race zones (Ngcukaitobi 2021:3, 22, 53, 114–115; Giliomee et al. 2022:251, 335). The 1913 Land Act not only violated human rights but also incited resistance against the constraints imposed by the 1910 constitution on the MOM. Relegating non-White people to uninhabitable reserves and homelands led to growing dissatisfaction, leaving the MOM feeling increasingly threatened.

### **3.4.3 The South African Native National Congress (SANNC)**

The establishment of the South African Native National Congress (SANNC) in 1912 marked a significant mobilisation of South Africans aimed at securing recognition for the MOM within society. This organisation was intended to serve as a permanent national representation for the MOM under the Union. Led by Pixley ka Isaka Seme, the SANNC

sought to evolve into a more dynamic body that represented all South Africans (Ngcukaitobi 2018; Simpson 2021:29-32). On 8 January 1912, leaders from various local organisations and chiefs convened to officially form the SANNC. Following this inaugural Native Union conference, a concerted effort emerged to create a unified political structure to advocate for the rights of the MOM. The SANNC became a foundational element that ultimately led to the formation of the ANC. At its 1923 annual conference in Bloemfontein on 24 May 1923, the SANNC resolved to change its name to the ANC (Simpson 2021:81; Giliomee et al. 2022:333, 341-344, 359). This name change was not merely symbolic; it reflected a commitment to presenting a united front to restore the rights of the MOM (Ngcukaitobi 2018:257-259, 261-263, 266-268). Additionally, there was a need to advance collaborative relationships with other political entities, including the Communist Party of South Africa, which included White South Africans (Giliomee et al. 2022:484, 488).

The 1910 constitution, along with the Natives Land Act of 1913 and the Natives Urban Areas Act of 1923, solidified the subjugation of the MOM (Giliomee et al. 2022:364-365). Barry Hertzog contextualised this legislation when he opposed Field Marshal Jan Smuts' proposal to grant land ownership to the MOM. In 1922, Hertzog argued that while natives should acquire their own land, they could not demand rights, asserting that the MOM could live in "our land but cannot demand any rights" (Giliomee et al. 2022:364). He further stated that granting land ownership would inevitably lead to demands for the "White man's vote" (Giliomee et al. 2022:364). This discourse unfolded while the 1910 constitution placed the British at the helm of the South African state.

Political tensions existed between British and Afrikaner South Africans, as the Afrikaner nation sought to preserve its identity and heritage. Being British subjects conflicted with Afrikaner nationalism and their desire for self-determination in South Africa (Giliomee et al. 2022; Simpson 2021; Giliomee 2020). The ANC faced continuous destructive pressure from the apartheid regime and the MOM remained fragmented, weakening the ANC and leaving it somewhat dilapidated. The Coloured community mobilised under leaders like Abdullah Abdurahman, head of the African Political Organisation (APO) (Giliomee et al.

2022:382-383). This fragmentation was detrimental not only to the ANC, but particularly to the MOM.

The ANC revived when Dr Alfred Xuma was elected president in 1940 (Lodge 1983:24). This was significant, especially given the ANC's experience of being misled by Smuts before joining the war effort. Smuts had advocated for South Africa to enter WWII as an ally of Britain (Giliomee et al. 2022; Simpson 2021:116-117). Under Xuma's leadership, the ANC sought to rebuild, achieving nearly 30 000 paid-up members by 1953 (Ngcukaitobi 2018; Lodge 1983:24-26, 74-76). WWII not only reinvigorated the ANC but also made the MOM acutely aware of their status as mere spectators in their own destinies. The post-war period, however, brought no relief from the MOM's plight, which was exacerbated by further deception from European powers (Giliomee et al. 2022:422-425). Towards the war's end, the ANC had become a moribund organisation, with political and social activism diminishing. Hopes for change following the war did not materialise, resulting in a lack of tangible economic, political and social progress. When the ANC supported Smuts' war efforts, there was an expectation that the MOM would receive better treatment and recognition in return. This expectation was unfulfilled, as Afrikaner nationalism surged, culminating in the NP's rise to power in 1948 and subsequent abuses by security and intelligence forces (Giliomee et al. 2022:445-458; O'Brien 2011).

### **3.5 South African Republic 1961 – leaving the Commonwealth**

The Commonwealth was established on 11 December 1931, comprising Australia, Canada, India, New Zealand, Pakistan and South Africa, with member nations sharing intelligence (Giliomee et al. 2022:277, 390; Lowenthal 2022). The 1926 Commonwealth conference in London produced the Balfour Declaration, which recognised the dominions as "autonomous communities within the British Empire", asserting their equality with the United Kingdom. Early on, James Bryce, a British constitutional scholar, described the Free State in South Africa as embodying the ideal attributes of a commonwealth, based on free people united in a "social compact for mutual help and defence" (Giliomee et al. 2022:277). However, while the Commonwealth aimed to provide freedom, protection and a better life, the reality for the majority of South Africans (i.e. MOM) involved widespread

abuse, poverty and humiliation, revealing that the fundamental human rights it espoused were largely illusory.

The plight of poor White South Africans became a political issue rather than a social development concern. Scholars like Koorts (2014), Giliomee et al. (2022), and Terreblanche (2002) argue that after the South African War (1899–1902) and WWII (1939–1945), the increasing number of impoverished White people became a source of embarrassment for leaders such as D.F. Malan, J.B.M. Hertzog, and Hendrik Frensch Verwoerd. This situation galvanised Afrikaner nationalism, prioritising the upliftment of White South Africans over the MOM. Consequently, basic services were directed toward White people while the MOM (majority of South Africans) remained in severe poverty.

As Minister of Native Affairs in 1950, Verwoerd implemented racially divisive laws. Following J.G. Strijdom's death, Verwoerd became Prime Minister in 1958. While he moderated the language of his racism, he maintained a plan for racial segregation, viewing the MOM as inferior and stateless. Verwoerd also grappled with South Africa's dependence on Britain and the Commonwealth, carefully crafting his rhetoric to align with the political climate post-1945. Verwoerd believed that property rights and a leasehold system would make the MOM feel invested in the land, as revealed in discussions with Anton Rupert in March 1960 (Giliomee et al. 2022:477). However, he could not concede land or property rights to the MOM, adhering to the belief that South Africa was a "White man's land" (Giliomee et al. 2022:364; Elsdon 2009). His vision of an independent Afrikaner nation under its own flag was essential to his ideology (Giliomee et al. 2022:390-391). The push for an independent "White South Africa" grew and with Verwoerd in power, Afrikaner Nationalism and apartheid ideology intensified, pressing Britain for concessions regarding Afrikaner independence (SAHO 2011; Giliomee et al. 2022; Simpson 2021). Verwoerd's ardent support for Nazi ideals illustrated his belief that the MOM did not need to develop but rather should remain marginalised.

Following an assassination attempt in April 1960, Verwoerd planned a referendum amid rising demands for Black liberation (Giliomee et al. 2022:478). The referendum passed

with 52% in favour of a republic, as noted in *Government Gazette No.7557* [Notice 1744] (26 October 1960) (Bron-Swart 2021; Giliomee et al. 2022:479). Initially, Verwoerd had claimed South Africa would stay in the British Commonwealth, citing benefits like trade and protection. However, as mass action from the MOM grew and international condemnation of apartheid intensified, enthusiasm for his proposal waned. With a mandate from White voters, Verwoerd prioritised the Republic and Afrikaner self-determination over Commonwealth ties (Giliomee et al. 2022:390-391; Simpson 2021:171-173). South Africa became increasingly isolated, prompting Verwoerd to withdraw from the Commonwealth. Amid resistance to apartheid, the Republic of South Africa was officially formed on 31 May 1961.

### **3.5.1 Vorster's rise and apartheid's militarised intelligence capacity**

Verwoerd was steadfast in his commitment to Afrikaner Nationalism and to counter the growing protests and politicisation of the MOM, he sought an ally in Balthazar Johannes 'John' Vorster. Vorster, a far-right Nationalist politician, served as minister of Justice (1961–66), prime minister (1966–78) and president (1978–79) in South Africa. Verwoerd appointed him Minister of Justice in 1961 (Giliomee et al. 2022:486; Simpson 2021:188; O'Brien 2011:24–26; Elsdon 2009:16-20, 29-41, 76-83). Vorster believed that the security of the apartheid state was paramount, implementing various Acts (legislation) to suppress any opposition to apartheid policies and the government. Under his tenure, measures such as house arrest, banishment of individuals and organisations, detention without trial and solitary confinement became legally sanctioned, leading to widespread arrests of anti-apartheid leaders and activists. Throughout the 1960s, intelligence operations were increasingly deployed to quell protests and target political leaders aiming to unite the MOM against apartheid. The oppression and human rights violations perpetrated by apartheid forces escalated, with the South African Police (SAP) and South African Defence Force (SADF) more frequently employed to uphold the apartheid regime (Africa & Kwadjo 2009; O'Brien 2011; Coleman 1998).

Vorster's intelligence strategy was predicated on the belief that South Africa was at war. Two distinct factions emerged: one opposing apartheid's racially charged policies and the

other consisting of a political elite that ruled with an iron fist, intent on preserving White dominance. This “political elite” manipulated laws and disregarded the rule of law to facilitate the passage of legislation, often in the absence of an independent judiciary (De Vos & Freedman 2021; Klug 2010; Simpson 2021).

### **3.5.2 Apartheid intelligence – a political tool to maintain power**

Vorster recognised the strategic importance of intelligence in maintaining control. In April 1963, he secured approval for the “90-day Act”, which lifted restrictions on the security forces, allowing them to use torture to extract information from detainees. He also highlighted the growing threat posed by the ANC and the PAC, as these organisations adopted increasingly militant tactics. Vorster noted that, following the arrest of ANC leaders, “somewhere there should be people who can direct us to these leaders” (Simpson 2021:188). Consequently, establishing networks of police spies and informers became a priority to suppress any revolutionary activities. By 1967, laws permitted the detention of individuals suspected of terrorism, allowing them to be held without legal representation, with access restricted solely to law enforcement (Giliomee et al. 2022:487). The Sharpeville Massacre in 1960 exemplified the use of unconstitutional detention based on suspicion, with the apartheid state drafting and enforcing legislation that legitimised its unlawful actions (Asmal et al. 2011; Sachs 2016; 2017; Coleman 1998; Putter 2024; Africa & Mlombile 2001).

The general election in March 1966 granted the National Party (NP) enough seats to continue governing South Africa. Following HF Verwoerd’s assassination on 6 September 1966, the NP parliamentary caucus swiftly elected Vorster as the new leader just a week later (Simpson 2021:209; Elsdon 2009). Vorster openly committed to following the path laid out by Verwoerd, which entailed maintaining oppressive measures to keep South Africa divided and social development inconsistent and disparate (Terreblanche 2002; Tiryakian 1960; Njoku 2004). This marked an era where the rights and freedoms of the MOM were further violated, reduced to mere tokens serving the interests of the White ruling party (Bundy 2015; Esterhuysen 2012; Simpson 2021). Vorster did not hesitate to deploy police, military and intelligence agencies to thwart any efforts to challenge White

authoritarianism (O'Brien 2011:22, 26, 66-69). Bolstered by Verwoerd's withdrawal from the Commonwealth and the indifference shown to the international community, including organisations like the UN, Vorster aimed to consolidate power within the NP and perpetuate the oppression of dissenting voices against apartheid policies. The apartheid ideology and economy were structured to prioritise the preservation and upliftment of White South Africans socially, politically and economically, thereby giving them perceived racial superiority (Cawe 2021; Bundy 2015; Dombroski 2006; Coleman 1998; Callinicos 1992).

By the time Vorster assumed control in South Africa, the ANC had already gone underground, forming connections with the international community and supportive groups abroad. This shift was largely prompted by the Rivonia raid at Lilliesleaf farm, which forced ANC leadership into exile and necessitated clandestine operations (Lodge 1983:297). The government's heavy-handed tactics against the ANC and PAC galvanised a strategy to combat apartheid both domestically and with international support. The aim was to exert enough pressure on the apartheid regime to force an economic collapse or compliance with global demands (Asmal et al. 2011).

In 1963, with help from international scholars, the Special Committee on Apartheid was established, later becoming a significant force at the UN. Exiled South Africans worked tirelessly, leveraging international law as a tool against apartheid. The International Committee of the Red Cross (ICRC) played a crucial role in recognising the ANC's armed struggle under the Geneva Convention protocols in 1977, extending the definition of international armed conflict to include wars of national liberation (Protocol 1: 1977) (Asmal et al. 2011). Despite these efforts, the ANC and its allies found themselves at a disadvantage without a strategic intelligence plan to counter the apartheid security forces (Jeffery 2019; Jensen et al. 2018; Johnson & Wirtz 2015). The armed struggle (1960–1994) emerged as a necessary response to the escalating oppression from apartheid's security and intelligence operations (O'Brien 2011; Kasrils 1993; Africa 2009; Acuff et al. 2022; Bundy 2015:61-62). This struggle was a direct reaction to increasingly oppressive

legislation enacted by the National Party government, which empowered security forces, compelling the ANC to respond with proportional force to effectively counter these threats.

### **3.5.3 The ANC's military wing and intelligence capacity**

In 1979, the ANC's military wing, MK, established a special operations unit under the command of the revolutionary council. Military intelligence (the SADF) had been in formation since the 1970s, becoming official around 1977/78. Alongside the revolutionary council, which managed regional intelligence and security, the Morris Seabelo Rehabilitation Centre, known as Camp 32, emerged. This facility is linked to numerous allegations of killings, torture and human rights violations, with Quatro being referred to as a death camp (Simpson 2021:263, 264, 266; O'Brien 2011:78; Hooper 2012). The abuses at these camps starkly contrasted the ANC's proclaimed commitment to human rights and its efforts to mobilise international support for better treatment of incarcerated members and MK fighters (Asmal et al. 2011). The ANC leadership was aware of the maltreatment of those labelled as "traitors" or "apartheid spies" (Twala & Benard 1994:78–80; Aker 2019).

In 1987, Oliver Tambo visited Quatro and witnessed the unsanitary conditions in which prisoners were kept. This visit occurred during a pivotal period when the ANC was drafting a constitution for a democratic South Africa, with a constitutional committee established by the mid-1980s (Asmal et al. 2011:102-107; Sachs 2016:9-15). By then, ANC members participated in the International Commission of Inquiry into the Crimes of the Apartheid regime (Asmal et al. 2011:95).

The UN's recognition of the ANC as a liberation movement granted its leadership access to various international forums, leading to ANC detainees being treated as prisoners of war in South Africa (Asmal et al. 2011:87-89, 93-97). The anti-apartheid struggle garnered significant international support, making international law a crucial tool for promoting human rights. The ANC focused on developing its political and intelligence strategies to effectively counter apartheid security forces, seeking assistance from international allies to bolster its military and intelligence capabilities (Jeffery 2019; O'Brien 2011; Barnard

2015). The struggle against apartheid transcended national boundaries, evolving into a global fight for justice and human rights (Asmal et al. 2011:96-98).

The metaphorical depiction of a “world war” underscores the collective international effort against apartheid, not as a literal conflict but as a collaboration among liberation movements to dismantle apartheid and establish constitutional democracy. The ANC’s strategic alliances with various nations would later require reciprocation, influencing South Africa’s political and ideological alignments in international relations, particularly with countries like Russia, various African states, the USA and Britain (Simpson 2021:416-417; Faini 2021; Smith 2022; Africa & Kwadjo 2009). Today, South Africa’s membership in the Brazil-Russia-India-China-South Africa trade bloc (BRICS) reflects an ongoing commitment to enhanced cooperation among member states while providing a counterbalance to dominant Western powers.

#### **3.5.4 Intelligence, murder and human rights abuses – blurred lines**

Dulcie September was viewed as a significant threat to the apartheid regime, serving as the ANC’s chief representative in Paris. On 29 March 1988, she was shot in the head twice with .22 calibre bullets, an act described by Pauw (2017:207-208). Supporting this account, Van Vuuren (2017:211-212) identifies Solly Smith (aka Samuel Khanyile), an ANC member managed by Craig Williamson<sup>15</sup>, who was positioned to succeed September and had access to her apartment to gather information for his handlers. Other ANC leaders and supporters were similarly targeted; for instance, Albie Sachs was injured in a car bomb explosion in April 1988. The South African intelligence service operated a unit known as the Z Squad, which European intelligence services were aware had a hit list of at least twenty individuals, including September and Sachs (Pauw 2017:207; TRC Report 1998, 2002; Van Vuuren 2017; Maharaj & Jordan 2021; Elsdon 2009; Hooper 2012).

---

<sup>15</sup> Craig Williamson was a covert operative known for his involvement in the apartheid-era security forces. He was a key figure in the country’s intelligence community and worked for the Bureau of State Security (BoSS) under the apartheid regime. Williamson is infamous for his role in covert operations, including the targeting of anti-apartheid activists and appeared before the TRC.

This information highlights the “legal sanction” employed by the apartheid regime to execute individuals perceived as threats to its stability. Analysing the actions of both the ANC and the apartheid government reveals a willingness from leaders on both sides to authorise killings. Despite the existence of international laws governing intelligence operations in both peacetime and wartime, these distinctions are frequently obscured or ignored to further political agendas (Reno 1998; Kish 1995; Reich 1990; Faini 2021; Africa & Mlombile 2001). Furthermore, the apartheid-era constitutions lacked effective regulatory mechanisms to control security and intelligence services, a shortcoming also observed in the oversight of liberation forces involved in criminal activities to advance their cause (O’Brien 2011; Putter 2024). The literature and data collected for this study indicate that, while significant differences exist between the intelligence structures and resources of the two adversaries, both adopted strategies and methodologies akin to those of foreign intelligence agencies. The Zondo Commission Report, Part V (2018) on the conduct of the State Security Agency underscores abuses of policy and state resources, a disregard for constitutional principles – particularly the rule of law – and a lack of oversight, as indicated by findings from the Auditor-General (Judicial Commission of Inquiry into State Capture Report 2018:1-4, 10, 12, 14, 21, 26-27). This suggests that the current democratic intelligence agency shares certain similarities with the intelligence frameworks of the apartheid era (Putter 2024).

### **3.5.5 Recognising unconstitutionality – correcting atrocities**

This study highlights that since 1943, the ANC has positioned itself as a champion of human rights and an advocate for constitutionalism (Ngcukaitobi 2018:1-5). While Oliver Tambo was well-versed in these principles, the violence perpetrated by the Mbokodo (Twala & Benard 1994) appears to have been overlooked under his leadership. This prompts a critical examination of whether Tambo, in contrast to Verwoerd’s overtly oppressive policies of “baasskap” and racial segregation, truly upheld human rights within the ANC. Often remembered as a thoughtful and disciplined leader (Asmal et al. 2011; Sachs 2017), Tambo was expected to embody these principles and prevent human rights violations within the liberation movement. Sachs (2017:6-8) recounts a meeting with Tambo, who sought his help in dealing with “agents sent by Pretoria”. While these

intelligence agents were detained, Tambo's own contributions to the ANC's constitution remained silent on such issues. This raises important questions about Tambo's role in advocating for laws that would ensure the humane treatment of prisoners of war and the protection of their rights (Asmal et al. 2011:98-99). Under his guidance, efforts were made to engage with international law and relevant UN declarations to strengthen these commitments.

### **3.5.6 Intelligence tactics and counter-tactics – liberation versus apartheid**

The apartheid regime's security forces strategically developed networks of informers, infiltration agents and death squads to undermine liberation efforts by turning the ANC against itself. In response, the liberation movements had to adapt their intelligence strategies, with each side attempting to outmanoeuvre the other, creating a dynamic interplay that became a hallmark of their operations. Effective intelligence relies on a deep understanding of adversaries and secret infiltration provides a crucial advantage (Acuff et al. 2022; Lowenthal 2022; Barnard 2015; Kleynhans 2021; Kent 1974). Pauw (2017) sheds light on the individuals behind the apartheid government's assassinations of anti-apartheid activists like Anton Lubowski and David Webster, drawing from interviews with former operatives (Pauw 2017:9-11; TRC Report 1998; 2002; Van Vuuren 2017; Dombroski 2006; Dulles 2006; Hutton 2007; Elsdon 2009). He describes the brutal killings of Vuyani Mavuso and Peter Dlamini, using insights from Civil Cooperation Bureau (CCB) agents and other apartheid operatives, supported by TRC reports. Evidence indicates that apartheid leaders were aware of these human rights abuses, yet they consistently denied any knowledge or authorisation of the atrocities committed by their security forces. Disinformation campaigns, such as the STRATCOM operation, were employed to create distrust among ANC members (O'Brien 2011:33–37; Winter 1981; Elsdon 2009). The National Intelligence Service (NIS) was directed by higher authorities to gather intelligence on the ANC under Resolution No. 23 (Esterhuyse 2012; Barnard 2015:217-218; Simpson 2021:319-320), reflecting a well-established intelligence methodology involving either recruiting insiders or infiltrating targets (Jensen et al. 2018; Barnard 2015; Lowenthal 2022; Shaik 2020; Johnson & Wirtz 2015). By 1966, the apartheid regime recognised its reliance on British and other Western countries for developing robust

intelligence structures, culminating in the establishment of the State Security Advisory Board (SSAB). However, the lack of intelligence sharing between the SAP and SADF often led to catastrophic failures (O'Brien 2011:23; Africa 2009). This prompted attention towards the old Union Defence Force and the formation of the South African Defence Force (SADF). Under PW Botha, the South African Police (SAP) also received significant focus, resulting in the creation of entities like BoSS, CCB and the SAP Security Branch (O'Brien 2011; Winter 1981; Simpson 2021). These organisations operated with impunity, as apartheid leaders largely ignored the human rights abuses they perpetrated.

#### **3.5.6.1 Differences between apartheid and liberation movement intelligence**

This comparative analysis examines how the apartheid regime used its intelligence capabilities to suppress resistance to the ideology underpinning racial oppression and separate development. After 1910, intelligence operations remained under British control, but this study focuses primarily on the post-1948 period, when intelligence tactics were increasingly directed against perceived enemies, including the ANC, its allies and the international community supporting the anti-apartheid movement. From 1948, apartheid officially designated the separation of individuals based on race, class and economic status (Asmal et al. 2011; O'Brien 2011; TRC Report 1998; 2002; Wolpe 1988). This physical separation was supported by the 1913 and 1936 Land Acts (Giliomee et al. 2022; Mellet 2020). The strategic objective of apartheid-era intelligence was to keep the majority oppressed and to silence any dissent. This study highlights the regime's brutality and undemocratic principles while addressing the intelligence methodologies employed (Tiro 2019; Twala & Benard 1994; Pauw 2017; O'Brien 2011). In comparing the intelligence structures of the liberation movements to those of the apartheid-era security agencies, it is evident that both sides committed serious human rights abuses. The ANC fought for what could be deemed a noble cause; however, under the leadership of its key figures, individuals were killed, tortured and maimed. Twala and Benard (1994:71-72) and the TRC reports (1998; 2002) identify several leaders who were aware of the abuses and killings occurring in Quatro/Camp 13, as well as the violations in Pango, Viana and Caculama camps.

### 3.5.7 Developing the ANC's NAT counter-offensive

The ANC established its Department of National Intelligence and Security (NAT) as a response to the apartheid regime's intelligence tactics. This development stemmed from the rise of the Mbokodo, which operated with unrefined methodologies, necessitating innovative approaches and the adaptation of practices as needed (Twala & Benard 1994; O'Brien 2011:78). The Mbokodo emerged from the MK Special Operations units (O'Brien 2011:78; Jeffery 2009:126-127), aiming to create offensive and defensive counterintelligence entities within Black townships and, to some extent, White suburbs. Shaik (2020) notes that a grassroots network supported elements of a "people's war" (Jeffery 2019), although trust was often compromised due to infiltration by apartheid security forces (Shaik 2020:193-199). A "cell system" was employed to ensure secrecy and operational security (Kasrils 1993). However, insights from the *Nightingale Reports* indicate that while support from within the apartheid intelligence environment existed, it had to be approached cautiously (Shaik 2020:72-74; Coovadia 2021). The effectiveness of these networks was exemplified by Operation Vulindlela (Vula), which aimed to create "moles" within the SAP Security Branch (O'Brien 2011:172-175).

Faced with an increasing number of spies, the ANC moved its operations and political activities underground to enhance security for its operatives. Suttner (2008:18-19) discusses a 1953 agreement that prompted this decision, anticipating the Nationalist government's response to rising dissatisfaction with apartheid legislation and human rights abuses. The apartheid regime's disregard for human rights intensified the need for secrecy. In wartime, intelligence operations must align with strategic objectives (Carmel 2004). Article 13(e) of the 1874 Draft Convention suggests that espionage is permissible during wartime (Kish 1995:123; Davenport, Eddy & Gillman 1978).

Reflecting on the moral foundation of the ANC since its inception, evidence indicates a shift from a principled organisation to one akin to the "bestial Khmer Rouge of Cambodia" (Twala & Benard 1994:95). The actions of the Mbokodo, overseen by figures like Joe Modise and Chris Hani, reveal a troubling departure from the ANC's original ideals (Twala & Benard 1994:70-72). TRC reports highlight that the ANC violated its own principles,

while the apartheid regime's commitments to the UN and other international bodies were largely disingenuous.

### **3.6 The development of intelligence capabilities – ANC and NP**

As a liberation movement, the ANC had to adapt its strategies to counter the National Party's (NP) intelligence operations post-1948. By that year, the NP had redefined itself with a strong Afrikaner nationalist ideology (Kleynhans, 2021:24-25; Tiryakian 1960; Muller 1981). The formalisation of apartheid became legally established, leading to amendments to the 1910 constitution in the 1960s to bolster Afrikaner pride and the formation of the Republic of South Africa. With the country's exit from the Commonwealth and the establishment of a republic in 1961, British control over South Africa's intelligence diminished. The NP's 1948 victory strained its relationship with Britain, especially after 1944 when MI5 ceased formal intelligence exchanges with the NP. MI5 and MI6 handle the UK's intelligence needs, with MI5 focused on domestic threats and MI6 on external ones.

Post-1948, South Africa recognised the necessity for its own intelligence capabilities to defend against threats to apartheid. O'Brien (2011:17-19) notes the NP's reliance on British intelligence due to a lack of local expertise. When MI5 stopped its dialogue with the NP after 1948, the NP became acutely aware of its dependence.

To maintain influence in South African policy, Sir Percy Sillitoe helped establish the South African Police's Special Branch, which focused on interception, counter-espionage and anti-communism (O'Brien 2011:17–19; Winter 1981; Elsdon 2009). Sillitoe opposed creating a South African security service modelled after MI5, fearing it would be misused against political opposition and the British community sympathetic to non-nationalist views. He warned that such a capability could be employed to suppress Black South Africans and any entities opposing apartheid (Andrew 2009; Van Vuuren 2017; Heunis 2007).

Distrust within the security establishment partly stemmed from hardliner Afrikaner nationalists within the SAP, who viewed external influence with suspicion. Nevertheless, British intelligence maintained a formative influence on the development of South Africa's security architecture. This study argues that Britain strategically cultivated institutional dependence by transferring intelligence tradecraft and organisational design, thereby shaping the evolution of South Africa's early intelligence structures. In this sense, South Africa's intelligence system reflected strong British doctrinal influence, particularly after the country became a republic in 1961. The imprint of Sir Percy Sillitoe is discernible in the structural design and operational philosophy of South African intelligence agencies (O'Brien 2011:18).

By May 1969, the Bureau for State Security (BoSS) was established under Brigadier Hendrik van den Bergh, consolidating authority over the emerging intelligence framework (O'Brien 2011:22-23; Putter 2024; Winter 1981:34-41; Elsdon 2009). Although initially conceived as a centralised security instrument, BoSS would later evolve into a more professionalised intelligence entity (O'Brien 2011:69-71; Barnard 2015:55-61; Van den Berg 2018). Early SAP intelligence personnel received counter-subversion training from British agencies, reinforcing the argument that subsequent institutional designs - culminating in the National Intelligence Service (NIS) - retained elements of British organisational doctrine (Barnard 2015). This connection arguably afforded Britain strategic insight into South African intelligence practices. However, the relationship evolved over time, particularly when the NIS reportedly exposed a British operative, signaling a recalibration of intelligence relations (Barnard 2015; Smith 2022; Faini 2021).

Simultaneously, the ANC consolidated its role as a political representative of the MOM. In the aftermath of the Sharpeville massacre in 1960, the ANC and the SACP began exploring armed struggle as a strategic response to escalating state repression (Giliomee et al. 2022:480-484). At an SACP conference in December 1960, Rusty Bernstein advanced the argument for armed resistance, citing the limited success of previous methods of protest. Nelson Mandela had, as early as 1953, expressed support for the possibility of armed resistance under certain conditions (Simpson 2021:174-175). Lacking

formal military and intelligence expertise, the ANC was compelled to develop organisational and strategic capacities capable of countering the apartheid regime's expanding security and intelligence apparatus.

Following the 1976 uprisings, many activists joined the armed struggle in exile. The ANC's military wing, MK, established a special operations unit under the revolutionary council in 1979, while the SADF military intelligence had been active since approximately 1977/78. Alongside the revolutionary council's regional structures, the Morris, Seabelo rehabilitation centre, known as Camp 32, emerged, infamous for killings and human rights violations, with Quatro regarded as a death camp (Simpson 2021:263-266; O'Brien 2011:78). These abuses contradicted the ANC's professed commitment to human rights and its efforts to gain international support for better treatment of incarcerated members (Asmal et al. 2011). The leadership was aware of the abuses against those labelled "traitors" or "apartheid spies" (Twala & Benard 1994:78-80; Ancer 2019).

By the mid-1980s, ANC leaders in exile began discussions leading to a constitutional committee, with its first meeting in Lusaka in January 1986. Tambo faced international pressure to develop constitutional guidelines for South Africa, fearing that the NP might pre-empt the ANC's proposals (Asmal et al. 2011:103-106; Sachs 2016; 2017). This chapter analysis contrasts the brutality of apartheid intelligence with its constitutions while examining the ANC's call for international support against apartheid crimes, despite allowing atrocities in its own camps, known to Tambo (Twala & Benard 1994; Sachs 2016). While advocating for human rights and respect for combatant rights arrested by the apartheid regime (Asmal et al. 2011:103-106), Tambo's role in engaging the UN and promoting constitutionalism complicates the narrative, revealing contradictions between his principles and the human rights violations within the ANC.

### **3.6.1 The construct of a people's war**

This study suggests that a stone, devoid of life or conscience, serves the purposes chosen by humans. This analogy applies to both the ANC's Mbokodo and entities like the Civil Cooperation Bureau (CCB) and Koevoet, which the apartheid regime employed

(Hooper 2012:11, 34-36, 81-85; O'Brien 2011:49-51). The CCB was established by the South African Defence Force in May 1986<sup>16</sup>, while Eugene de Kock, led C1 (later designated C10) at Vlakplaas (SAP) from around 1985 (O'Brien 2011:161; Africa & Mlombile 2001). This operation began in 1979 under Colonel Jan Viktor and Brigadier Johan Coetzee, reflecting the regime's significant investment in counter-revolutionary units to suppress the ANC and its allies using the security forces of the SAP and SADF (Putter 2024; Africa & Mlombile 2001).

As the ANC developed its armed struggle around 1961, its leadership confronted unforeseen challenges. Under Mandela's direction, the ANC and SACP launched their military wing, MK (known as the "Spear of the Nation") (O'Brien 2011:20). Adopting an underground revolutionary stance required a competitive fighting strategy against the better-trained apartheid security forces, backed by government-sanctioned laws like the Suppression of Communism Act 44 of 1950 and the Terrorism Act 83 of 1967.

To refine their offensive strategy, the ANC sought training and support (Jeffery 2009:25-27). Inspired by North Vietnam's guerrilla tactics under General Vo Nguyen Giap, the ANC delegation – including Oliver Tambo and Joe Slovo – sought guidance from North Vietnamese leaders (Jeffery 2009:25; O'Brien 2011:21-22, 74-78). Although the SADF, SAP and various Special Forces units had substantial resources, the liberation movement leveraged the mass mobilisation of the MOM. The lessons learned in Vietnam proved invaluable against apartheid forces, allowing the ANC to conduct operations that disrupted the regime and created confusion among the populace (O'Brien 2011:98-101).

Tambo recognised the ANC faced a "bad strategic situation", suggesting an overemphasis on armed struggle while neglecting the political and psychological aspects necessary to influence both apartheid leaders and the public (Jeffery 2009:25). Intelligence became crucial for the liberation movement (Rostron 2019; Shaik 2020; Barnard 2015; O'Brien

---

<sup>16</sup> Nominally a civilian organisation that could be plausibly disowned by the apartheid government, the CCB drew its operatives from the SADF itself or the SAP. According to General Joep Joubert, in his testimony before the TRC, many operatives did not know that they were members of an entity called the CCB.

2011; Africa & Mlombile 2001:1-3; Sinclair 2003; Lutz & Lutz 2005). The ANC and SACP adapted the Vietnamese strategies to the South African context, incorporating and refining these approaches. Jeffery (2009:26-28) and O'Brien (2011:21, 98-99) outline the stages of a "people's war", which does not conform to conventional warfare but instead emphasises fluid tactics aimed at disrupting the enemy. The ANC adopted a similar yet tailored strategy to induce panic while educating South Africans about the injustices of apartheid and promoting democracy as a viable alternative. The attack on the Moroka Police Station in Soweto on 3 May 1979, marked the first use of grenades and firearms by the ANC in its armed struggle (Simpson 2021).

However, in its dealings with spies and prisoners of war, the ANC compromised its human rights principles. This study argues that both the ANC and the apartheid regime violated their constitutional tenets to achieve political success. The 1910 constitution enshrined racial divisions desired by Afrikaners, marking the beginning of a struggle for control that prioritised political victory "at any cost". Consequently, this led to the development of a war and intelligence strategy by the Afrikaner nation, with apartheid becoming the guiding ideology for subsequent legislation. In response, the ANC mirrored the regime's brutality, establishing its own oppressive security apparatus.

### **3.6.2 Apartheid intelligence and human rights atrocities**

The apartheid regime's security forces systematically established networks of informers, infiltration agents and death squads to target liberation movements. This strategy was in place as early as 1948, coinciding with the ANC and other anti-apartheid entities beginning to exert a counterforce against the apartheid armed forces (O'Brien 2011:21, 36-37). O'Brien (2011) highlights the regime's strategic focus on identifying and capturing members of MK and the ANC within the intelligence landscape. The deployment of infiltration agents and "askaris" triggered an atmosphere of distrust within ANC ranks, ultimately benefiting the apartheid regime and its intelligence operations (O'Brien 2011:37; Putter 2024; Faini 2021; Smith 2022; Elsdon 2009).

Both the ANC's and the apartheid-era intelligence structures exhibited a tendency to misuse funds and violate regulations (Putter 2024; Africa 2009). The absence of effective regulatory mechanisms suggests that intelligence was wielded as a political tool, serving the interests of a select few rather than promoting national stability and security. From 1910 to 1996, the development of intelligence capabilities involved significant trial and error, ultimately straying from its intended purpose. Following the end of apartheid in 1994, greater emphasis was placed on establishing oversight bodies and refining the laws governing intelligence operations. During the apartheid era, oversight was notably lacking, allowing intelligence operatives to exploit the system and misappropriate funds, often under the pretext of covert operations (Africa & Kwadjo 2009; Africa & Mlombile 2001; Putter 2024).

The Zondo Commission Report (2018) delivered similarly damning findings regarding the State Security Agency, indicating widespread disregard for policies and even the Constitution (1996). The report also pointed to deficiencies in regulatory frameworks, particularly the White Paper on Intelligence (1994), which aimed to ensure that intelligence conduct was properly regulated and shielded from abuse. According to the Zondo Commission, oversight was inadequate, resulting in intelligence being used primarily as a means to consolidate political power and facilitate self-enrichment.

### **3.6.3 The creation of a professional intelligence service**

The apartheid regime's security and intelligence frameworks were predominantly militaristic until the late 1970s. The Information Scandal of 1978 precipitated a major institutional shift, resulting in the marginalisation of Vorster and Van den Bergh, while PW Botha consolidated authority and significantly strengthened the Department of Military Intelligence (DMI) (Van Vuuren 2017; O'Brien 2011; Putter 2024:1-4, 9). Botha regarded the Information Scandal as the National Party's most shameful episode, with segments of the media characterising it as a coup (Van Vuuren 2017:45, 54-55). Even prior to these events, tensions had begun to surface within the intelligence establishment. By 1974, relations between the BoSS and the US Central Intelligence Agency (CIA) had deteriorated, particularly after the Lisbon coup in April 1974 exposed South Africa's arms

supply to Portugal in opposition to the MPLA and SWAPO. Although the BoSS had previously shared intelligence with the CIA, developments in Mozambique embarrassed both the regime and its intelligence apparatus, revealing the fragility of its external alliances.

In 1978, PW Botha established the Department of National Security (DONS), reflecting the close relationship between the Department of Foreign Affairs (DFA) and the intelligence community. Currently known as the Department of International Relations and Cooperation (DIRCO), the department has, in contemporary reporting, been associated with the placement of intelligence operatives in diplomatic roles (News24, 26 September 2019: “Top spy Thulani Dlomo still AWOL eight months after being recalled to the SSA”). Such practices illustrate the longstanding use of diplomatic structures as operational cover within intelligence frameworks. By 1980, the National Intelligence Service (NIS) replaced DONS (O’Brien 2011:66; Putter 2024:3-7). The appointment of Niel Barnard in 1979 marked the beginning of a shift toward a more professional intelligence service, formally established in 1980 (O’Brien 2011:10, 22-26, 66; Simpson 2021; Van Vuuren 2017). The NIS sought to curtail the operational excesses of the BoSS “Z-Squads” and reposition itself as an analytical and advisory body responsible for assessing information for the State Security Council (SSC) (O’Brien 2011:66; Barnard 2015; Singh 2021). Under Barnard’s leadership, the NIS became PW Botha’s principal intelligence instrument (Van Vuuren 2017:41-42; O’Brien 2011).

Barnard (2015:42-45) details the deliberations preceding the formation of the NIS, distinguishing between external intelligence operations managed by DMI and internal security functions overseen by the SAP. His vision positioned the NIS as operating across both spheres with a broader national security focus (Barnard 2015:53-55). However, despite the formal establishment of structures such as BoSS, DMI and SAP, effective coordination remained limited. O’Brien (2011:61, 67) corroborates this assessment, illustrating the disorganised and competitive nature of the intelligence environment prior to 1980. The professionalisation process was influenced in part by Afrikaner academics who contributed to the conceptual development of intelligence practice and later played

roles in facilitating negotiations toward democratic transition (Maharaj & Jordan 2021; Asmal et al. 2011; Heunis 2007; Esterhuyse 2012; O'Brien 2011).

The establishment of the South African National Intelligence Service (NIS) in 1980 followed earlier reform initiatives, including the Potgieter Commission (1969) and the Coetzee Commission (1978-1979), both aimed at strengthening intelligence capability (Barnard 2015:40-41; O'Brien 2011:28,52). These reforms reflected the apartheid government's recognition of the need to clarify departmental mandates and reduce institutional rivalry. To achieve greater operational coherence, the SAP, DMI and NIS were required to define their respective roles and enhance coordination (Barnard 2015:42-55; O'Brien 2011).

At the same time, liberation movements were developing parallel intelligence capabilities, including the NAT and its counterintelligence unit, Mbokodo, while simultaneously confronting infiltration by apartheid security structures. Unlike the apartheid intelligence system, which operated within racially exclusionary constitutional arrangements, liberation movements articulated a future commitment to constitutionalism and the rule of law, even though they too encountered serious challenges in upholding human rights standards during conflict. The divergence between authoritarian intelligence governance and emerging constitutional aspirations would become central to the restructuring of intelligence within the post-1994 democratic order.

### **3.7 Summary**

This chapter has examined the historical evolution of constitutionalism, intelligence and social development, demonstrating how intelligence structures were deployed to entrench racial domination and consolidate executive power. The constitutions of 1910, 1961 and 1983 institutionalised exclusion and failed to provide meaningful checks and balances, enabling autocratic governance while constraining inclusive development. The National Party's ascent in 1948 marked the decisive expansion of intelligence as a tool of regime preservation within this structurally exclusionary order.

While the National Party and the African National Congress emerged as principal adversaries, both developed intelligence capabilities shaped by broader geopolitical forces, including British security influence and Cold War dynamics. Intelligence became central to repression and resistance alike, and was implicated in human rights violations on both sides, reflecting a security paradigm prioritising political survival over constitutional accountability. Yet intelligence also informed negotiation processes that facilitated democratic transition.

The central insight is clear: intelligence is normatively defined not by its existence, but by the constitutional framework that governs it. This conclusion provides the foundation for the next chapter, which examines how the post 1996 constitutional order seeks to embed intelligence governance within legality, accountability and social development.

## **CHAPTER 4: CONTEXTUALISING SOUTH AFRICAN CONSTITUTIONALISM**

### **4.1 Introduction**

This chapter situates South African constitutionalism within the transformative rupture effected by the Constitution of the Republic of South Africa, 1996. In contrast to the constitutional frameworks of 1910, 1961 and 1983, which entrenched racial exclusion, minority rule and executive dominance under parliamentary sovereignty, the 1996 Constitution establishes constitutional supremacy, justiciable rights and an enforceable Bill of Rights applicable to all who live in South Africa. It reconfigures state authority around equality, accountability and dignity, most notably through the entrenchment of socioeconomic rights in sections 26 and 27, which recognise access to housing, healthcare, food, water and social security as constitutional commitments integral to social development.

This normative transformation extends decisively to the security domain. Chapter 11, particularly sections 209 and 210, constitutionally embeds intelligence services within a framework of legality, civilian oversight and democratic accountability, rejecting their prior deployment as autonomous instruments of regime preservation. Intelligence authority is thus derived from - and limited by - constitutional principle. In advancing objectives (ii), (iii) and (iv), this chapter demonstrates that constitutional design is not merely structural architecture but the normative foundation of intelligence legitimacy, shaping whether security power serves repression or human security within a democratic order.

### **4.2 Constitutional design, influences and broad-based social inclusivity**

This chapter situates South African constitutional design within broader historical, political and intellectual traditions. Scholars such as Tribe (2000), Trobbiani (2013) and Lieberman (1999) observe that constitutions do more than organise government: they structure accountability, regulate public power and empower citizens (De Vos & Freedman 2021; Le Roux & Davis 2019; Acuff et al. 2022). Central to this conception is the rule of law, entrenched through South Africa's Bill of Rights, which constrains state authority while fostering civic vigilance and constitutional engagement (Sachs 2017; Asmal, Hadland &

Levy 2011; Suttner 2015). By contrast, apartheid era constitutional frameworks hollowed out the rule of law by legitimising racial hierarchy and facilitating systemic abuses of power. Intelligence and security institutions were accordingly deployed as instruments of control, frequently “weaponised” against those designated threats to national security (Putter 2024; Africa & Mlombile 2001; Africa & Kwadjo 2009). Constitutional design thus directly shaped the normative and operational boundaries of intelligence practice.

Earlier constitutional arrangements, including the 1858 constitutional framework, primarily consolidated authority and entrenched exclusion (Sachs 1973; Klug 2010:11; De Vos & Freedman 2021:7). Comparative experience illustrates how constitutional design may either entrench or restrain power. The Constitution of the United States of America (1789), grounded in separation of powers and a supreme Bill of Rights, and San Marino’s constitutional order of 12 August 1600, shaped by custom and judicial practice, represent distinct constitutional traditions (Bulmer 2014; Grimm 2012; Mweru 2015; De Vos & Freedman 2021). Enlightenment thought, particularly Montesquieu (1748), profoundly influenced modern constitutionalism and continues to inform expectations of institutional restraint (Lieberman 1999; Tribe 2000; Gathitu 2016; Labuschagne 2004).

The adoption of the United Nations Universal Declaration of Human Rights (UDHR) in 1948 coincided with the National Party’s accession to power, underscoring South Africa’s divergence from consolidating global human rights norms (Giliomee et al. 2022; Simpson 2021; United Nations 2010). Constitutional legitimacy, as Sachs (2017) and Klug (2010) emphasise, rests not merely on formal enactment but on societal values and dignity (Asmal et al. 2011; Ngcukaitobi 2018), while law derives authority from social legitimacy (Lieberman 1999; De Vos & Freedman 2021; Gathitu 2016; Sachs 2016; Steinberg 1991; Chaskalson 2003; Olivier 2016; Van der Merwe & Olivier 1980).

The negotiated Constitution of 1996 emerged from this global and domestic convergence. Preparatory work by the ANC’s Constitutional Committee from 1986, intensified by 1989, articulated principles for a democratic dispensation (Klug 2010:16; Sachs 2017:11–13; De Vos & Freedman 2021:17–21; Bundy 2015; Benyon 1978). Through CODESA,

diverse actors engaged constitutional anxieties, including minority protections and fears of “reverse apartheid”, notwithstanding the ANC’s commitment to non-racialism (Klug 2010:16, 30; Sachs 2017; United Nations 2010; Asmal et al. 2011:144). Influenced by the United Nations Charter (1945), the Freedom Charter (1955) and Africans’ Claims (1943), the resulting constitutional vision contrasted sharply with apartheid constitutionalism (Asmal et al. 2011:13–14, 104–105, 108–109; Sachs 2017:14–18).

South Africa’s constitutional transformation was therefore embedded within progressive global ideologies, liberation thought and international anti-apartheid alliances (Esterhuyse 2012; Asmal et al. 2011; Ngcukaitobi 2018; Klug 2010; Sachs 2017; Biko 2017; Fanon 1963, 2014; Gordon 2005; Sesanti 2021; Rodney 2019). The 1996 constitutional design does not merely reorganise state authority; it reconstitutes the normative architecture of governance itself. It establishes constitutional supremacy as the definitive source of political legitimacy and recalibrates the relationship between power and accountability, such that intelligence institutions derive both their authority and their limits from constitutional principle. In this sense, constitutionalism operates not as procedural formality but as the substantive determinant of whether intelligence serves domination or democratic human security.

The Constitution of 1996 is widely understood to have been shaped by South Africa’s complex historical experience, with its provisions reflecting a deliberate response to past injustice and institutionalised inequality (Currie & De Waal 2013; De Vos & Freedman 2021; Mbeki 2002; Chaskalson 2003; Sachs 2016; 2017; Ngcukaitobi 2018).

The Atlantic Charter, established between the United States of America (USA) and Great Britain in 1941, has been subject to various interpretations and misconceptions. Winston Churchill, influenced by his racial biases, mistakenly believed it applied only to White individuals in the colonies, reflecting a personal perception that suited his interests. This example highlights how the implied content and context of documents like the Charter and even constitutions are often open to interpretation, allowing individuals to deliberately construe them for their own purposes and interpretation (Ngcukaitobi 2018:266). The

Matthews Committee drafted the Africans' Claims to echo the Atlantic Charter, aiming to establish an "African Bill of Rights for South Africa". By November 1943, the "Charter for Africans" was completed and adopted at the ANC's 1943 conference. Smuts endorsed the Africans' Claims, with Deneys Reitz affirming the freedoms applicable to "African people in South Africa" (Ngcukaitobi 2018:268-269). However, the liberation of South Africa was not realised with the proclamation of the Africans' Claims. This study argues that attitudes towards the MOM remained unchanged, with the apartheid ideology relegating them to a status of lesser citizenship, while citizenship was viewed as exclusive to White South Africans (Ngcukaitobi 2018; Simpson 2021; Trilsch 2009). The aspirations for equality and full political, social and economic participation were unfulfilled and the liberation movement received minimal support from the United Nations (UN) or the Commonwealth (Ngcukaitobi 2018; Simpson 2021; Klug 2010; United Nations 2010).

Klug (2010:60, 156-157) notes the adoption of the ANC's Africans' Claims as the foundation for the "Bill of Rights", boldly proclaiming "one man, one vote". The constitutional character of the ANC is evident in its efforts to create radical documents to regulate the rights and freedoms of all South Africans (Klug 2010; Ngcukaitobi 2018; Simpson 2021). Despite the similarities between the Africans' Claims and the Atlantic Charter, the latter did not garner support from the international community, primarily dominated by the USA and Britain. The influence of these global powers effectively silenced the Africans' Claims, muffling the voices of Africans (Giliomee et al. 2022; Ngcukaitobi 2018; Fanon 2014; Simpson 2021). This study posits that MOM leaders were able to engage in international discourse (Ngcukaitobi 2018; Asmal et al. 2011; Sachs 2017). The struggle for liberation faced not only the apartheid and colonial governments in South Africa but also the racially biased mentalities of developed countries that still regarded Africans as subhuman (Fanon 2014; Gordon 2005; Sesanti 2021; Mbeki 2009; Ngcukaitobi 2018; Esterhuyse 2012; Eloff 2017).

The 1943 "wartime elections" saw Smuts' United Party defeat Malan's National Party (NP), which maintained forty-three seats under its HNP banner (Baird 2007; Giliomee et al. 2022). Influenced by the "colour issue", these elections marked the first recorded use

of “apartheid” (Simpson 2021; Giliomee et al. 2022). The term was favoured over “afhok”, which more accurately depicted the oppressive conditions in homelands and Bantustans, restricting the movement of Black South Africans (Lodge 1983; Davids et al. 2005; Pampallis & Bailey 2021; Odendaal 2013; Simpson 2021). By 1948, political power shifted from the UP to Afrikaner voters, leading to the establishment of apartheid as a government-sanctioned policy of segregation. The ANC emerged as the primary opposition, pressuring the apartheid system and gaining international support for sanctions through “international law” (Asmal et al. 2011; Kish 1995; Giliomee et al. 2022; Simpson 2021; Klug 2010; Howard 1979). As tensions escalated, the Defiance Campaign of 1952 marked a shift to more violent protests (Suttner 2015; Simpson 2021). The South African government increasingly relied on security forces to suppress dissent (Klug 2010; Lodge 1983). The Freedom Charter called for improved living conditions and human rights, reflecting the constitutional values evident in both the Freedom Charter (1955) and the Constitution (1996) (Sachs 2016; De Vos & Freedman 2021). This is included to highlight the integral role of the historical context and evolution of constitutionalism in South Africa, demonstrating how these developments shaped the political landscape and emphasised the necessity of human rights and democratic values.

The constitution for a democratic South Africa has a historic lineage tied to the liberation struggle (Odendaal 2013; Simpson 2021; Ngcukaitobi 2018). The moral compass of the ANC and its allies significantly influenced the design of a democratic South Africa (Suttner 2015:28; Asmal et al. 2011:287; Ngcukaitobi 2018:257-259). The pursuit of equality, justice, human rights and dignity has been evident since the creation of the ANC in 1912, reflecting the ethics and morality that underpin the spirit of constitutionalism (Ngcukaitobi 2018:257; Asmal et al. 2011:135). The ANC’s ethical foundation is linked to individuals who challenged the immoral apartheid laws through the existing judicial system (Ellmann 2019:37, 39, 47; Ngcukaitobi 2018; Sachs 2017; Hunt 1990). These individuals provided valuable insights and strategic guidance toward ending apartheid while upholding a robust value system (Ellmann 2019; Asmal et al. 2011:104, 107, 144; Esterhuyse 2012:208-210, 277).

The Defiance Campaign (June 1952) culminated in violent suppression, leading to the Sharpeville Massacre (1960) due to the apartheid regime's heavy-handed approach in maintaining its ideology (Asmal et al. 2011:39; Sachs 2016:51, 303; Simpson 2021:165-167, 187; Esterhuyse 2012:105, 144; Giliomee et al. 2022:474, 476-477). The pass laws infringed upon the rights of all South Africans to work and move freely, as the apartheid government sought to confine the MOM to designated areas, notably affecting Black South Africans (Simpson 2021:19-21, 151, 153-158). The Sharpeville uprising exposed the inhumane laws prevalent during the apartheid era, alongside several equally draconian laws under the 1961 Constitution (Le Roux & Davis 2019:97-101; Lodge 1983:201-203; Simpson 2021).

In 1976, student protests highlighted the human rights violations of the apartheid regime, which used intelligence and security forces to suppress dissent (Giliomee et al. 2022:486; Asmal et al. 2011:61-62, 64). Apartheid was notorious for its human rights atrocities and the growing momentum of opposition within the country further alienated the Pretoria regime due to its oppressive policies. In 1973, the UN General Assembly adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid, recognising it as a crime against humanity (Asmal et al. 2011:92). Senator Robert Kennedy condemned apartheid in 1966 as a “differing evil” and asserted the necessity of taking a stand against this injustice (Simpson 2021:279). Apartheid could not be justified indefinitely. The establishment of a sound Constitution (1996) and a Bill of Rights that embraced prosperity, growth, equality and humanity provided a viable solution to the devastation wrought by apartheid in South Africa (Sachs 2017; Klug 2010; De Vos & Freedman 2021; Barnard 2015; Esterhuyse 2012; Eloff 2017). The constitutions existing between 1910 and 1983 offer scant evidence of constitutional soundness, primarily due to the absence of foundational constitutional principles.

### **4.3 South African constitutionalism**

Constitutionalism holds a different meaning to different societies and individuals as constitutionalism is tied to experiences and the manner in which these lived experiences are expressed in a body of laws girded by principles. Lieberman (1999) and De Vos and

Freedman (2021) concomitantly allude to constitutionalism being linked to the fabric and construct of a society. Constitutionalism in the South African context reflects a divided and unconstitutional past (De Vos & Freedman 2021:43-44; Sachs 2017). Constitutionalism is the touchstone of South Africa's democracy and the bedrock of constitutional law. Constitutionalism implies that the government must act under the authority of the Constitution (De Vos & Freedman 2021:42-43, 75-76; Sachs 2016:130-132). Constitutionalism envisions the rights and freedoms of the South African nation and places the Bill of Rights as the guarantor of rights and freedoms (De Vos & Freedman 2021:42-43; Asmal et al. 2011:167-168; Suttner 2015). The historical complexity which South Africa inherited post-1994 is implicit in the Constitution (1996) in that no government institution may possess too much power to inflict human rights abuses on the citizens (Ngcukaitobi 2018; Sachs 2016; 2017; Chaskalson 2003; Ellmann 2019; Biermann 1963). Asmal et al. (2011) and Sachs (2017) posit that the shaping, content and social bias of the Constitution (1996) is directly proportionate to the elements of racial segregation, disparate social development, the deliberate dehumanisation and the violation of the human rights of the MOM (Fanon 1963; Bundy 2015; Sachs 1990). Reflection on the French Revolution (1789-1794) shows that in the absence of regulatory mechanisms and laws, the social order of society will self-destruct when power is exclusive to a minority elite (Montesquieu 1748; Samuel 2009).

The South African society was governed by the Dutch and British who enforced the laws of their respective motherlands, thereby framing South Africa's laws around these existing yet distant laws designed for different cultures and societies (Giliomee et al. 2022; Simpson 2021; De Vos & Freedman 2021; Mellet 2020; SAHO 2019). European societies typically had a hierarchical social structure with monarchs who held almost absolute power (Mojapelo 2013; Sachs 1973; 2016; Giliomee et al. 2022; Ngcukaitobi 2018; Commonwealth Secretariat 1991). Laws were in place to ensure that citizens obeyed, while the rulers or monarchs held a flagrant disregard for those laws (Fombad 2010; Tambe Endoh 2015; Raj 2013). As with the French monarchy, this position allowed for abuses and unrestricted power. The king was the "administrator" of society with no checks and balances or higher law to limit the power and abuse of that power. The separation of

powers did not exist. “Absolute power” rested with the upper echelons of French society which went unregulated and unchecked (Gathitu 2016, Labuschagne 2004; Mojapelo 2013; Currie & De Waal 2013:18; De Vos & Freedman 2021:43, 57). No laws existed to hold the monarchy accountable and there was an absence of any guarantees for the rights of citizens. The rule of law and the separation of powers were despised (South Africa Act, 1909; Biko 2017; Johns & Davis 1991).

Constitutionalism is a set of enforceable laws to which an elected government is subject (Lieberman 1999 [McIlwain 1966]; Klug 2010; Tribe 2000). Constitutions obligate governments to serve the citizens while having just enough power to govern effectively (Asmal et al. 2011:168-169; Lieberman 1999; Currie & De Waal 2001; 2013). Constitutionalism refers to the regulation of power between a government, which is democratically elected and the citizens who exercise their right to vote (Rapatsa 2014; Lieberman 1999). The Constitution (1996) vests more power in the citizenry to allow the government to be held accountable (De Vos & Freedman 2021; Sachs 1990; Lieberman 1999; Chaskalson 2003; Siegan 1994). To the ancient Greeks, a constitution was considered to mean “the state as it actually is” (Lieberman 1999). This implies that constitutionalism is taken rudimentary as a descriptive fact while constitutionalism can also be contextually interpreted descriptively or prescriptively (De Vos & Freedman 2021:44-45; Lieberman 1999 [McIlwain 1966]). Rapatsa (2014) and Lieberman (1999) consider constitutionalism to mean the interrelationships between society, politics and the law. By deduction, the state is, thus, “regulated” by a supreme law so that power may be regulated and restricted from being abused (Rapatsa 2014; Currie & De Waal 2013). The Constitution (1996) has immense power as an “inanimate thing” that “presents no tangible attributes yet it is dependent on society to give force to this power” (Chaskalson 2003; Sachs 1973; 2017; Motala & Ramaphosa 2002).

#### **4.4 Constitutionalism and society**

Constitutionalism signifies the relationship between the values and attitudes of a society and how that society relates to human rights, dignity and civility (Asmal et al. 2011). Constitutionalism permits the democratic South African society to use their constitution

given the power to hold the government accountable and in check while regulating and ensuring that the society exercises this right proportionately and justly (Le Roux & Davis 2019; Bulmer 2014; Rapatsa 2014; Tribe 2000; Rautenbach 2014). The degree to which a society embraces and upholds constitutionalism indicates its level of social development and its commitment to the Constitution (1996), which grants citizens the legal authority to defend their rights and freedoms (Marais et al. 2001; De Vos & Freedman 2021; Gathitu 2016; Sachs 2017).

When deliberating the constitutions from 1910 to 1983 it becomes evident that constitutionalism can be interpreted in varying ways depending on the context and those societal values, customs and cultures wherein constitutionalism may be interpreted (Motala & Ramaphosa 2002:18-19; De Vos & Freedman 2021:42-49; Gathitu 2016; Currie & De Waal 2013). This interpretation may often reflect an ideology and when power is not regulated through constitutions, power may be abused by deliberately misinterpreting constitutions (Currie & De Waal 2013; De Vos & Freedman 2021; Sachs 2016; Le Roux & Davis 2019; Lieberman 1999). Lieberman (1999) proffers that not all constitutions are constitutionally sound; thus, lack constitutionalism or the essential constitutional principles. These constitutions are considered sham constitutions and are often seen when a constitution poses as a democratic constitution, but no real democratic principles and human rights are evident. Scholarly analysis frequently characterise the apartheid-era constitutions as lacking the substantive and normative qualities associated with genuine constitutionalism, with some commentators describing them as “sham constitutions” that failed to satisfy accepted constitutional standards (Sachs 2016; Lieberman 1999; Currie & De Waal 2013; Steinmann 2016). The apartheid legal order is widely regarded as having departed fundamentally from the core principles of constitutionalism, particularly equality, accountability and the protection of rights (Sachs 2016; 2017; Suttner 2015; Tambe Endoh 2015). Rather than fostering national unity, apartheid entrenched racial division and institutionalised exclusion - an approach that stands in direct opposition to constitutionalist ideals. As reflected in Nelson Mandela’s account, for Black South Africans under apartheid, life was experienced as “a sequence of persistent embarrassments, deprivation and humiliation” (Asmal et al. 2011:167;

Steinmann 2016; Marais et al. 2001), underscoring the human consequences of a system devoid of constitutional protection. These dynamics reflect a distortion of constitutional form and principle, accompanied by the systematic socialisation of the majority of the population into an ideology grounded in racial hierarchy and exclusion. Such patterns were not confined to South Africa; global colonial discourses similarly dehumanised African peoples, frequently portraying them as inferior or subhuman within dominant political and intellectual traditions (Currie & De Waal 2013; Fanon 1963; Rodney 1972; Simpson 2021).

Constitutionalism is embodied in the actions, attitudes and characteristics of both governments and the citizens who elect them (Le Roux & Davis 2019:82-83, 262-264). The manner in which citizens are treated, along with the defence or violation of their rights, reflects the accountability of governments. When power is unbridled, it often leads to constitutional delinquency (Currie & De Waal 2013; Sachs 1973; 2017). Constitutionalism embodies values and principles that protect societies, ensuring the rights and freedoms of individuals while facilitating mechanisms for holding governments accountable (Asmal et al. 2011; Alberts 2009; Le Roux & Davis 2019; Sachs 2016; Dugard 2018). It does not tolerate arbitrary governance; rather, it demands recognition and respect for individuals' rights, regardless of the "contrary will of elected leaders or popular majorities" (Lieberman 1999:730). Lieberman (1999) cites Fellman (1973:485), noting that "the idea of constitutionalism is a cluster of particular jurisprudential and sociological attributes summed up as limited government under a higher law". Thus, not every state that claims independent sovereignty or espouses democratic and constitutional principles can genuinely claim the mantle of constitutionalism (Lieberman 1999; De Vos & Freedman 2021; Klug 2010; Van Wyk et al. 1994; Van Zyl Slabbert 2006; Nathan 2010; Ndlovu-Gatsheni 2018; Siegan 1994). Ultimately, constitutionalism is not merely a theoretical construct; it must be actively lived by citizens, as their everyday actions reflect their commitment to upholding constitutional principles and respecting the rule of law.

#### **4.4.1 Constitutional rights, social responsibility and activism**

When the Constitution (1996) was promulgated in South Africa, there were many assumptions. One was that all elected leaders would be morally and ethically sound and be servants of the people (Sachs 2016; Currie & De Waal 2013; De Vos & Freedman 2021; Reno 1998; Quinn 2017; Rapatsa 2014; Sesanti 2021; Simon 1982). The second was that the adoption of the constitution would guarantee constitutionalism (Lieberman 1999 [Fellman 1973]; Siegan 1994; Booysen 2011; 2021; Suttner 2015; SAHO 2019). In retrospect, South Africa had three constitutions (1910, 1961 and 1983), but none of these constitutions equated to constitutionalism. Constitutionalism is generally understood to be grounded in the principle of a supreme or higher law, premised on equality before the law and the absence of arbitrary distinction. Within a constitutional democracy, all persons are subject to the law, and all law derives its validity from, and remains subordinate to, the Constitution as the supreme normative authority - often described as the “law of laws” (Currie & De Waal 2013:8–9). De Vos and Freedman (2021:229, 232-233) further emphasise the integrative role of the Constitutional Court and caution against viewing the common law as separate from, or insulated against, constitutional control. As the supreme law, the Constitution of 1996 requires that all legislation and conduct comply with constitutional standards.

The Constitution (1996) was designed to address the wrongs of the past political ideology (Preamble to the Constitution, Chapter 1, 1996; Suttner 2015). Constitutionalism seeks to distribute “public power” not only to different institutions of government but primarily to give power back to South African citizens so that they may hold their elected leaders to account (De Vos & Freedman 2021:42-43; Sachs 2016:11). South African citizens are subject to laws which translate into the requisite for the government to be subject and accountable to the supreme law which is the Constitution (1996). Conversely, society has laws and these laws influence and enforce certain behaviours (Tribe 2000). Constitutions are written documents and cannot control people; thus, the attitude and the manner in which elected leaders and citizens embrace and live the “spirit” of their constitution determines the actual power of the written document (Lieberman 1999; De Vos & Freedman 2021; Currie & De Waal 2013; Klug 2010). Under the Constitution (1996), all

citizens are equal, and this includes elected leaders who are citizens and are therefore accountable to the Constitution (Lieberman 1999; Sachs 2017; Asmal et al. 2011; De Vos & Freedman 2021:402-403).

Citizens must [ideally] embrace their constitution which provides citizens with sufficient power to exercise control over their government. Every citizen must adopt a responsible “activist mindset” to constructively contribute to social development and the creation of national pride (Sachs 2016; 2017; Klug 2010; De Vos & Freedman 2021:784-785; Suttner 2015:232-235). The Constitution (1996) sufficiently empowers citizens to take control of their lives while holding the government accountable in terms of its constitutional obligations (Currie & De Waal 2013; De Vos & Freedman 2021; Sachs 2016; Klug 2010, Suttner 2015; Callinicos 1992; Callinicos 2021). Tied to the Constitution (1996) and in contrast to the constitutions (1910, 1961 and 1983), “human rights are inalienable rights” (Currie & De Waal 2013; De Vos & Freedman 2021). The Constitution (1996) appears to have a social development bias and this is reflected in the set of socioeconomic rights (Currie & De Waal 2013; De Vos & Freedman 2021; Blake & Walters 1987; United Nations 2010; 2021).

With the guaranteed rights and freedoms enshrined in the Bill of Rights, there is a responsibility that rests on citizens, their elected leaders, political appointees and all state institutions that must serve the society (Habib 2019; Tribe 2000). This study will argue that while an activist mindset ensures full participation in the economic, social and political spheres there must be discipline and a great deal of respect for the rule of law at all levels and sectors which comprise that society (Sachs 2016; 2017; Duncan 2018; Laqueur 1985; Suttner 2015; Sukman 2018).

The United Nations Universal Declaration of Human Rights (UDHR) (1948) has been influential in the development of international human rights laws (Blake & Walters 1987; Asmal et al. 2011; Sachs 2016; Kish 1995). Historically, customary law has been evident in South Africa and can be traced to the Africans’ Claims and the subsequent “bill of rights” that emanated from the African Claims in 1943 (Asmal et al. 2011:100; Motala &

Ramaphosa 2002). Citizens have always had a social responsibility to ensure their safety and freedoms and for the development and refinement of constitutionalism. There is an obligation to each other while ensuring accountability from their leaders and those institutions that have the constitutional obligation to ensure a safe and conducive environment for social development for a quality-laden life free of fear (Sachs 2016; Ngcukaitobi 2018; Currie & De Waal 2013; Africa & Mlombile 2001; Bernhardt 2003; Esterhuyse 2012; Cimbala 1987; Dombroski 2006; Carmel 2004; Elagab & Elagab 2007).

Upon taking up the “mantle” of a “civic activist posture”, each citizen must respect the rule of law and acknowledge their individual responsibility to society (Suttner 2015:211-213; Klug 2015:297-299; Howard 1979). This responsibility equally applies to elected leaders and political appointees, who are tasked with ensuring the protection of the Constitution (1996) and the rights and freedoms of the citizenry they serve (Sachs 2016; Currie & De Waal 2013; De Vos & Freedman 2021; Act 108 of 1996). South Africa’s complex societal structure necessitates that the “different roles (executive, legislature and judiciary) be constantly clarified” (De Vos & Freedman 2021:106; Sachs 2016:172). This study posits that under the Constitution (1996), there appears to be a “conflation of roles” among these three branches of government. Instances of overreach have been observed, particularly concerning the “justiciability” of adjudicating socioeconomic rights claims (Currie & De Waal 2013:564-568). While the roles of the executive, legislature and judiciary are defined, the human element often disrupts this structure.

In the context of the Constitution (1996), upholding the rule of law is essential not only to prevent societal degradation but also to avert a lawless society from self-destruction (Bookchin, 1970; Grimm, 2012; Lieberman, 1999). Anarchism, as a branch of communism, advocates for minimal governmental authority; however, Bookchin (1970) did not foresee that society comprises fallible individuals capable of developing an insatiable thirst for power. Regulating power within society is crucial to preventing a “social meltdown” of values ethics and morals (Sachs 2017; Le Roux & Davis 2019; Ellmann 2019). The rule of law must be embedded in the “moral compasses” of all citizens and leaders to prevent atrocities and barbarism, such as slavery and the oppression of

individuals based on race and ethnicity (Rodney 1972:14; Sachs 2016:39, 171-172; Suttner 2015:96-97; Currie & De Waal 2013:290-291).

Social activism should be grounded in selflessness and a commitment to the “greater good”. Embracing this ideal allows societies to thrive and empowers them to take charge of their own social development. This study encompasses three interrelated concepts: constitutionalism, social development and intelligence. The connection between these concepts is contingent upon how citizens engage with constitutional principles to act responsibly and responsively (Suttner 2015; Asmal et al. 2011; Ellmann 2019; Max-Neef 1991; Marais et al. 2001). The Constitution (1996) equips South African citizens to determine the pace and magnitude of their social development and shapes how society collectively interacts with the government to ensure a better life for all (Suttner 2015; Klug 2010; Steinberg 1991; Ndlovu-Gatsheni 2018; Browne & Millington 2015; Fombad 2010).

#### **4.4.2 Constitutional principles, guidelines and the regulation of state power**

In 1988, the ANC published guidelines for the drafting of a democratic South Africa (De Vos & Freedman 2021:16-17). Asmal et al. (2011:167-168) demonstrate that the guidelines for the Constitution (1996) were influenced by the Freedom Charter (1955). This study has indicated that certain influences are evident in the Constitution (1996) and that these influences were derived from the thinking of individual leaders, the international community as well as the lived experiences under apartheid. The guidelines set out that there had to be a Bill of Rights stipulating guarantees for such rights (Asmal et al. 2011; De Vos & Freedman 2021:26-17; Klug 2010:60-65). The Bill of Rights encapsulated specific rights that would ensure that every citizen was treated equally and justly and that no prejudices may exist. The constitutional muster of the democratic constitution would be dependent on the evidence of constitutional principles. The Harare Declaration (August 1989) was a commitment signed by the ANC and the NP and ensured that the apartheid regime would ensure a peaceful and conducive atmosphere for “negotiations” (Asmal et al. 2011:175; De Vos & Freedman 2021:17).

The presentation and acceptance of a set of guidelines can be considered a monumental step in ensuring that South Africa was not destroyed due to political idiosyncrasy or grandstanding (Sachs 2017; Esterhuyse 2012:115, 125, 233-235). The importance of human rights was pivotal in that South Africa, at the time of signing the Harare Declaration, was still experiencing violence and blood-letting, particularly in KwaZulu-Natal (Esterhuyse 2012:233). The developmental stage of the Constitution (1996) was different as it was a consultative and inclusive process (Esterhuyse 2015:232). Having guidelines meant that the democratic constitution already had “form” and through a process of reconciliatory negotiations the structure could be concretised (Sachs 2016:33-35). The constitutional guidelines were due in part to international pressure that required the ANC to produce some sort of framework for a democratic constitution (Asmal et al. 2011:101-103; Sachs 2017:5-11, 27). The significance of the ANC’s guidelines must not be viewed in isolation from the encompassing principles (De Vos & Freedman 2021:16-17).

South Africa’s Constitution (1996) was started from a perspective based on past political and social injustices. It was, thus, important to craft a constitution that was mindful of the past yet sought to remedy the past ills. A set of principles girds the Constitution (1996). These principles reflect the past, which was evidenced by the social injustices, the discrimination based on the colour of a person’s skin as well as economic exclusion that left the MOM languishing in poverty (De Vos & Freedman 2021: 34; Sachs 2016; Wolpe 1972; 1978; Mpofu-Walsh 2021). Constitutional principles are those values which inspire constitutionalism (Sachs 1990). When interpreting the Constitution (1996), it is done within an overarching context of the political, social and economic context of the country (De Vos & Freedman 2021:34-35). Constitutionalism is anchored by descript principles based upon the values espoused by a society. A constitution must not be interpreted as functioning solely within a political or economic framework but rather within the broader context of society (De Vos & Freedman 2021:35, 42-43). Sachs (2016) and Asmal et al. (2011) contend that the Constitution (1996) was founded on the aspirations of the South African people. The principles that serve as a cornerstone of the Constitution (1996) articulate both the historical context of South Africa and the vision for a constitutional

democracy (Klug 2015:220-221; De Vos & Freedman 2021:46-49). While the Constitution (1996) embodies lessons from the past and a commitment to correction, the reality for the marginalised communities still reflects historical inequities in the present (Suttner 2015:59-61; Mpofu-Walsh 2021). The principles underpinning the Constitution (1996) express a collective desire for a “better life for all”, emphasising elements of just social development alongside the limitation of state power. The principles are saliently set out below;

“The Republic of South Africa is one, sovereign, democratic state founded on the following values: (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms. (b) Non-racialism and non-sexism. (c) Supremacy of the constitution and the rule of law” (Act 108 of 1996, Chapter 1).

By contrast to the previous constitutions (1910, 1961 and 1983), the Constitution (1996) has evolved as do most constitutions so that they can reflect the needs of citizens but simultaneously constitutions must reflect the nature and essence of the society for whom they are drawn up (Lieberman 1999; Sachs 2016; Currie & De Waal 2013). When the Enlightenment Era writers first put forward a set of rules to regulate power, the conduct of the monarchs and the rights of citizens, it was evident that the citizens required certain things to live better lives. The need to be treated with dignity was apparent and this later became a set of human rights which today infuses several constitutions (Fombad 2010; Gathitu 2016; Lieberman 1999). The guidelines (presented by the ANC) stated what should be contained in the Constitution (1996) while the principles define the conduct of government, the people and how these two entities relate to each other (Sachs 2017; De Vos & Freedman 2021). Currie and De Waal (2013:10) posit that constitutionalism is augmented by an entrenchment of the rule of law. Concomitantly, Motala and Ramaphosa (2002:221) argue that a constitution serves a twofold purpose and that is to “grant power and limit power”.

#### **4.5 Negotiation, adoption and certification of the Constitution (1996)**

The emergence of the Constitution (1996) is inextricably linked to “negotiations and secret talks” (Esterhuyse 2012; Barnard 2015; Sachs 2016). The foresight and commitment necessary for a peaceful resolution to the injustices of apartheid depended on the collective will of all South Africans. The Convention for a Democratic South Africa (CODESA), which commenced in 1991, brought together various parties to negotiate and draft a constitution intended to serve the entire nation. Anticipation ran high as representatives from 19 political parties convened to establish a democratic framework grounded in constitutional principles. The ANC’s Freedom Charter significantly shaped the Convention’s character. Asmal et al. (2011:120) note that Albie Sachs proposed a reconstruction of the government of national unity, which subsequently informed the government’s Reconstruction and Development Programme (RDP). However, the ANC’s withdrawal from the talks in May 1992, exacerbated by the Boipatong massacre on June 17, 1992, threatened to derail the negotiations, prompting the ANC to initiate a rolling mass action campaign (Giliomee et al. 2022). The CODESA was a multifaceted process that began with amicable discussions between the National Party (NP) government and the ANC in exile. Niel Barnard, head of the National Intelligence Service (NIS), played a crucial role in facilitating these talks, during which senior intelligence officers, including Mike Louw and Maritz Spaarwater, met with prominent ANC leaders Thabo Mbeki and Jacob Zuma, reflecting the mandate outlined in Resolution No. 23 (O’Brien 2011:1-3; Simpson 2021:319; Giliomee et al. 2022:555). By July 1993, the publication of the draft interim constitution marked a significant milestone, paving the way for national elections. South Africa’s transition to democracy was predicated on the belief that a peaceful settlement could be achieved, ensuring that all parties felt their specific concerns were addressed, fears mitigated and compromises solidified (Sachs 2017; Asmal et al. 2011; Simpson 2021; Esterhuyse 2012).

The process of drafting a constitution capable of withstanding constitutional scrutiny was preceded by a period of strategic negotiation and broader political struggle that culminated in CODESA 1 and CODESA 2. The first plenary session of the CODESA began on 21 December 1991 and CODESA 2 began on 15 May 1992 (Klug, 2010; Asmal

et al. 2011:131-134). These conventions were marked by protests and placed the delicate negotiations in peril of collapse (Giliomee et al. 2022:559; Klug 2010; De Vos & Freedman 2021; Esterhuyse 2012; Barnard 2015). The three preceding agreements (Groote Schuur Accord, 1990; Pretoria Minute, 1990; DF Malan Accord, 1991) sought to get consensus and commitment primarily from the ANC and concessions from the NP to endeavour towards peace and to negotiate a political settlement (Giliomee et al. 2022:569). CODESA 1 broke down when the ANC left due to a failure by the NP to make substantial concessions and the turbulence in the townships, particularly Boipatong (Giliomee et al. 2022:571; Simpson 2021:331-339). When an agreement was reached, a sunset clause served to keep both major political entities bound to an election that would have a transitional government until 1999 (Simpson 2021:344-345). It is worthwhile to mention that when the ANC walked out of the negotiations, international pressure was placed on the ANC leadership by, among others, the ANC's ally, Russia. This resulted in the signing of the Record of Understanding on 26 September 1992 (Giliomee et al. 2022:571-571). Callinicos (1992:92-95) proffers that while the ANC held its specific agenda, elsewhere in the world, there were already political and economic agendas at play (Nathan 2010).

The Constitution (1996) had to receive certification from the Constitutional Court to ensure that the prescripts and the principles of constitutionalism were evident and substantive. The rule of law is considered a prerequisite for constitutionalism and, therefore, this had to be evident and clear in the Constitution (1996) before the Constitutional Court could hand down certification. To this end the rule of law had to be specifically evident and, thus, the Constitution (1996) makes it clear in the Founding Provisions, Chapter 1, Section 1(c) – Supremacy of the constitution and the rule of law (Currie & De Waal 2013:10-11; De Vos & Freedman 2021:304-306). For the final certification to be granted the Constitution (1996) had to contain and substantively clarify and show the presence of thirty-four constitutional principles that had to be agreed to by all the parties participating in the multi-party negotiating process (De Vos & Freedman 2021: 39, 305-306; Motala & Ramaphosa 2002; Maharaj & Jordan 2021).

The First Certification Judgment was delivered on 6 September 1996. The Constitutional Court refused to certify this text as the Court identified several provisions that did not comply with the “constitutional principles”. The second certification application was brought on 4 December 1996 with the required amendments and the second application was granted. This followed a process of the Constitution (1996) being signed by President Nelson Mandela, on 10 December 1994 and officially published in the *Government Gazette* on 18 December. A presidential proclamation brought the Constitution (1996) into effect in February 1997 (Motala & Ramaphosa 2002; Currie & De Waal 2013; De Vos & Freedman 2021; Act 108 of 1996). The interim constitution (1993) established the Constitutional Court and upon the certification and adoption of the Constitution (1996) the Constitution (1996) became the supreme law of South Africa. By comparison to the constitution of 1858, which was inherently and overtly racist, the Constitution (1996) was based upon constitutional principles that ensured the dignity and equality of all citizens (De Vos & Freedman 2021:7). By further comparison and deduction, the Constitution (1996) gave the Constitutional Court the sole and discretionary right to interpret the Constitution. This makes the Constitution binding on all organs of the state and further gives priority over all other rules made by the government, legislatures and courts (Currie & De Waal 2013:9). South Africa is, thus, a constitutional democracy that has a constitution that oversees all laws and should such laws be inconsistent with the Constitution (1996), such laws will not have “force of law” and such laws will be unconstitutional and illegal (Currie & De Waal 2013:9; [Act 108 of 1996]).

As the supreme law of South Africa, the Constitution (1996) restricts the power of the government and its institutions to avoid any abuse of power and state resources. These rights and freedoms are encapsulated in the Bill of Rights which guarantees these rights. The ANC had set down the requirements for a Bill of Rights to be included in the Constitution (1996). In the presence of a Bill of Rights the state and society became obligated to uproot socioeconomic inequalities and malfeasance that had been promoted and enforced through unconstitutional constitutions under apartheid (Asmal et al. 2011:112).

#### **4.5.1 A Bill of Rights augmented by a democratic constitution**

A Bill of Rights is a declaration detailing the rights and freedoms of citizens (Motala & Ramaphosa 2002; Benyon 1978; Currie & De Waal 2001). This statement is reflective of the application, which states that the Bill of Rights “applies to all law and binds the legislature, the judiciary and all organs of state”. A provision of the Bill of Rights also binds natural and juristic persons (Currie & De Waal 2013:33). It could be stated that a bill of rights is a statement of the basic laws to protect the rights of a country’s citizens. The interpretation of the Bill of Rights within the democratic South African context implies that the Bill of Rights protects the fundamental rights and freedoms of all citizens and cannot be denied to any South African. This stipulated guarantee is upheld and enforced by the Constitution (1996). The Bill of Rights is intricately tied to the concept of fundamental rights, which views every person as a human being, no matter how marginalised or despised that person may be. Under a constitution and a Bill of Rights, every person should have these fundamental rights (Sachs 2016:151). De Vos and Freedman (2021:430), along with Currie and De Waal (2013), argue that: “rights in the Bill of Rights are fundamental rights; however, these are not absolute rights and the Constitution (1996) expressly provides for a limitation of these rights”.

Historically, South Africans have been denied certain rights and freedoms. The apartheid government enforced the death penalty. It is to this end that the drafters of the Constitution (1996) sought to enforce a set of human rights and among these was the right to life (Sachs 2016:150-152). The Bill of Rights (Chapter 2, section 7) declares the rights of all people living in South Africa and the obligation of the government to “respect, protect, promote and fulfil the rights in the Bill of Rights”. Under apartheid, the death penalty was permitted and it was meted out to individuals who were outspoken against the apartheid policies (Sachs 2016; Asmal et al. 2011; Currie & De Waal 2013:260). The Bill of Rights (Section 11) states that everyone has the right to life. This is, however, a limited right and is argued against the right to protect one’s own right to life and in so doing, the life of another person may be taken (Currie & De Waal 2013; Sachs 2016:151). The right to life is, thus, not absolute when contextualised but, fundamentally, the state under apartheid policies abused this right for its own aims and to this end, the constitutional committee

and the drafters sought to limit state power and to provide a more humane approach. In this study, state power, along with the power of the intelligence agency, is regulated through mechanisms, laws and the oversight bodies that are delegated by Parliament. This does not provide the individual with unrestrained power but rather subjects the individual to responsibility and just like the government, the individual has to conduct themselves subject to the dictates of the rule of law under the Constitution (1996).

#### **4.5.2 Socioeconomic rights**

While the Constitution protects an integrated framework of civil, political and socioeconomic rights, this section concentrates specifically on socioeconomic rights. This focus is deliberate. Civil and political rights - including freedom of expression, equality before the law and political participation - are foundational to democratic governance and have been widely examined in constitutional scholarship. However, in the South African context, the most distinctive and transformative dimension of the 1996 constitutional order lies in its explicit entrenchment of justiciable socioeconomic rights.

Unlike many constitutional systems that confine rights protection primarily to negative liberties, the South African Constitution imposes positive obligations on the state to address material deprivation and structural inequality. Given that apartheid's legacy was fundamentally socioeconomic - manifested in unequal access to land, housing, healthcare, education and economic opportunity - the constitutionalisation of socioeconomic rights represents the clearest normative departure from the past.

Accordingly, the focus on socioeconomic rights in this chapter is not intended to diminish the importance of civil and political rights. Rather, it reflects the argument advanced in this study: that the transformative character of South African constitutionalism is most visibly expressed in the state's obligation to promote substantive equality and social development. In addition, because this study interrogates the relationship between constitutionalism, intelligence governance and human security, socioeconomic rights provide a particularly relevant analytical lens. Human security is inseparable from access to housing, healthcare, food, water and social protection. The legitimacy and orientation

of intelligence institutions must therefore be assessed not only in relation to political freedoms, but also in relation to the constitutional commitment to advance socioeconomic wellbeing.

#### **4.5.3 Chapter 11, Intelligence (sections 209 & 210)**

Section 12 of the Bill of Rights guarantees the right to freedom and security of the person, establishing personal safety as a constitutional entitlement rather than a discretionary benefit conferred by the state. This protection is institutionally reinforced through Chapter 11 of the Constitution (1996), which regulates the security services of the Republic and embeds them within a framework of legality, accountability and democratic control. When read together with the socioeconomic rights entrenched in sections 26 and 27, Chapter 11 confirms that security in the South African constitutional order is not narrowly defined as regime preservation or territorial defence, but as the protection of a rights-based democratic society.

Section 198 articulates the governing principles of national security. It affirms that security services must reflect “the resolve of South Africans to live as equals, in peace and harmony”, and that national security must be pursued in compliance with the law, including international law. Importantly, section 198(c) subjects national security to the authority of Parliament and the national executive. This provision constitutionally repudiates any notion of an autonomous or self-directing intelligence establishment. Security institutions are subordinated to democratic authority and constitutional values.

Within this framework, Section 209 regulates the establishment of intelligence services. Section 209(1) empowers the President to establish a civilian intelligence service, a defence intelligence division and other intelligence structures necessary for national security. Section 209(2) vests political responsibility for control and direction in the President. Intelligence authority is therefore constitutionally located within accountable executive structures and cannot exist as an unregulated centre of power.

Section 210 further strengthens this architecture by requiring national legislation to regulate the objects, powers and functions of intelligence services, including mechanisms for civilian monitoring. This constitutional directive ensures that intelligence operations must be defined and limited by statute. Legislation such as the National Strategic Intelligence Act (1994), the Intelligence Services Act (2002), the Intelligence Services Oversight Act 40 of 1994 and the General Intelligence Laws Amendment Bill (GILAB) (2023) gives effect to this requirement (De Vos & Freedman 2021:482–483; Lamola 2022; Olivier 2016; Mojapelo 2013; Sachs 2016; Klug 2010; Africa & Kwadjo 2009; High Level Review Panel Report 2018).

The White Paper on Intelligence (1994) reinforces the principle of parliamentary and executive oversight, assigning supervisory responsibility to the Joint Standing Committee on Intelligence (JSCI) (O'Brien 2011:214–215; Africa & Mlombile 2009). This oversight framework reflects a deliberate constitutional break from apartheid-era intelligence practices, where secrecy operated as a mechanism of impunity and oversight structures were either ineffective or politicised (Simpson 2021; Tiro 2019; O'Brien 2011; Putter 2024; Africa & Mlombile 2009; Pauw 1997; 2017; Goldman 2010; Shaik 2020; Moerane 2020; Rapatsa 2014; TRC 1998; 2002).

The constitutionalisation of intelligence must therefore be understood as both structural and normative. Structurally, Chapter 11 subjects intelligence services to executive accountability, parliamentary scrutiny and statutory regulation. Normatively, it aligns intelligence activity with the foundational values of the Constitution - dignity, equality, the rule of law and democratic governance (Act 108 of 1996; Laqueur 1985; Africa 2009; Baldino 2010; Acuff et al. 2022; Dombroski 2006; Africa & Kwadjo 2009 [Nathan 2009:155–176]). Intelligence is no longer conceived as an instrument of regime security, but as a constitutionally bounded institution serving the broader constitutional project.

This constitutional project includes the advancement of socioeconomic rights discussed in section 4.4.2. National security, properly understood within the South African constitutional framework, is inseparable from human security. The protection of housing,

healthcare, food, water and social security depends upon social stability, lawful governance and the prevention of threats that undermine democratic order. Conversely, intelligence practices that disregard constitutional limits would threaten the very rights the Constitution seeks to protect. The legitimacy of intelligence services therefore derives not merely from their effectiveness, but from their fidelity to constitutional principles and their contribution to a secure environment in which socioeconomic rights can be progressively realised.

The Constitution (1996) does not prescribe operational detail, but its supremacy requires that all intelligence legislation and conduct conform to constitutional values. No institution - including intelligence services - exists beyond constitutional scrutiny. In contrast to apartheid constitutions that tolerated or facilitated intelligence impunity, Chapter 11 embeds intelligence within a rule-of-law paradigm that affirms accountability, transparency (within lawful limits) and democratic control.

In fulfilling the chapter's stated objective, this section demonstrates that Chapter 11 is not peripheral to constitutionalism but central to it. It redefines intelligence as a constitutionally regulated function of democratic governance, integrally linked to the protection of rights and the advancement of socioeconomic wellbeing. Intelligence legitimacy in South Africa therefore rests not on secrecy or executive prerogative, but on constitutional compliance and alignment with the transformative aims of the 1996 constitutional order.

#### **4.6 Summary**

This chapter has contrasted South Africa's apartheid-era constitutional order - marked by authoritarian governance, parliamentary supremacy and the absence of substantive rights protection - with the transformative constitutionalism inaugurated in 1996. Under apartheid, principles such as the separation of powers and the rule of law functioned largely as formal constructs within a racially exclusionary framework that legitimised systemic inequality. The Constitution of 1996 constitutes a decisive normative rupture, entrenching constitutional supremacy, justiciable rights and an enforceable Bill of Rights

binding both state and citizen. In doing so, it redefines state authority as constitutionally limited, accountable and development-oriented.

The chapter has further situated Chapter 11 within this democratic architecture, demonstrating how sections 209 and 210 embed intelligence services within legality, civilian oversight and constitutional restraint - a clear departure from their prior instrumentalisation. While the historical infiltration of the ANC by apartheid intelligence structures underscores the fragility of democratic security institutions, the constitutional framework establishes safeguards intended to prevent the recurrence of political abuse. Constitutionalism thus emerges not merely as institutional arrangement, but as the normative condition for legitimate governance and the advancement of human dignity.

Having delineated the normative and structural foundations of the 1996 constitutional order, the analysis now interrogates its practical expression within the sphere of social development. The next chapter examines how constitutional commitments to dignity, equality and socioeconomic rights have been mediated through policy, institutional capacity and governance outcomes in democratic South Africa.

## **CHAPTER 5: SOCIAL DEVELOPMENT IN DEMOCRATIC SOUTH AFRICA**

### **5.1 Introduction**

The structural legacy of unequal social development in South Africa continues to shape contemporary governance and social cohesion. Despite progress since 1994, inequality rooted in land dispossession and racial exclusion persists (Lambley 1980). This chapter contends that social development is inseparable from constitutional stability and the effective regulation of intelligence. Intelligence institutions shape the security environment within which inclusive growth and redress occur, reinforcing constitutional commitments to rights, civic participation and accountable governance (Lebakeng 2023; Gwatiwa 2024; Max-Neef et al. 1991; Mbeki 2016; Suttner 2008; 2015). The Constitution (1996) and the Bill of Rights thus establish both the normative framework and the limits within which intelligence must operate (Asmal et al. 2011; Sachs 2017).

However, the misuse of intelligence powers threatens constitutional democracy and the socioeconomic rights central to social development. The targeting of activists and NGOs, together with practices reflected in Resolution No. 23 (1989), illustrates the subordination of national safety to political interests (GILAB draft 2023; Simpson 2021; Barnard 2015; Esterhuyse 2012). Patterns described as “generally accepted practice” (Barnard 2015; Duncan 2018; Prunckun 2012; Goldman 2010; Lowenthal 2022; Lebakeng 2023) expose vulnerabilities associated with espionage, including violations of international law and the rendering of individuals “open prey” (Barnard 2015; FM 2-22.3 2006; Shillinglaw & Thomas 1988). Accordingly, intelligence is indispensable to national security only insofar as it remains constitutionally constrained and aligned with the protection of rights and the advancement of social development (Currie & De Waal 2013; Davids et al. 2005).

### **5.2 Objective of social development**

Social development in this study emphasises improving the lives of South Africans. Each society has unique elements essential for its social development and this study argues that it entails the enhancement of citizens’ quality of life. Basic needs must be met to quantitatively assess living standards (Browne & Millington 2015; Gray 2006; Midgley

2013; Max-Neef et al. 1991). Before the establishment of constitutional democracy, South African society was deeply divided along racial lines, influencing access to services that support social development (Biermann 1963; Commonwealth Secretariat 1991; Njoku 2004; Currie & De Waal 2013:564-565). Most South Africans faced poverty and lived in inhospitable conditions, hindering any meaningful development (Giliomee et al. 2022; Mellet 2020; Lodge 1983; Currie & De Waal 2013).

The Constitution (1996) guarantees equal access to rights for all South Africans, without regard to race (Currie & De Waal 2013; Marais et al. 2001; Simon 2015; Mills et al. 2017; Browne & Millington 2015). Historically, resources needed for social development were disproportionately allocated, leading to widespread social underdevelopment (Reno 1998:15, 55-57; Commonwealth Secretariat 1991:72-77; Rodney 1972). At its core, social development aims to meet basic human needs and improve services that allow individuals to live safely and with dignity (Mills 2021:47-49, 153-155; Njoku 2004; Cawe 2021; Reno 1998). Essential elements include food, water, healthcare and social security, both physical and psychological. Currie and De Waal (2013:559-562, 573-574) emphasise that first- and second-generation rights are interdependent. Furthermore, a safe environment, ensuring privacy and protection from external threats, is fundamental to robust social development (Simon 2015; Gray 2016; Midgley 2013; Marais et al. 2001; Johnson 2010).

Safety and security are integral to social development objectives. The Constitution (1996) includes a Bill of Rights that aims to improve the lives of all South Africans (Act 108 of 1996; Plaatjie 2020; Reno 1998; Mills et al. 2017; Rooney 1988; Gordon 2005; Sesanti 2021; Hulnick & Mattausch 1989; Mbeki 2011). Social development seeks effective ways to provide for basic needs, ensuring individuals enjoy safety and freedom to reach their full potential as societal members (Njoku 2004:3-6, 7, 8, 9-21; Commonwealth Secretariat 1991; Cawe 2021; Currie & De Waal 2013:270-273). Under the Constitution (1996), the government has an obligation to enhance the quality of life for all citizens (Marais et al. 2001; Preamble Act 108 of 1996; Currie & De Waal 2013; Mills 2021). Gass (2014) emphasised that social development was about people, highlighting that societies must

be active participants in their development. Social development is context-specific, influenced by varying cultural, religious, political and economic factors (Max-Neef et al. 1991:4-5, 8-9; Ngcukaitobi 2018:13, 14, 18-19, 165, 191; Mbeki 2002:82-84).

In this study, the objective of social development is to improve the lives of citizens, their communities, societies and nations. Social development should be grounded in the needs and desires of people, avoiding politicisation and control by governments. Max-Neef et al. (1991:4-6) argue that the issue of “monetarism” adversely affects social development, promoting a dependency on governments that control the necessary resources. The Constitution (1996) seeks to balance power dynamics, enabling South Africans to design and implement domestic social development. Consequently, there should be equal partnerships between communities and their government (Max-Neef et al. 1991; Onyeani 2006; Blake & Walters 1987; Cronje 2020; Mills 2021; Fanon 2014:12-14, 202, 205; Marais et al. 2001; Maier 1987).

### **5.3 Historical colonial influences on economic and social development in African and South African contexts**

Africa and South Africa share a history marked by underdevelopment, rooted in the notion that the continent should develop according to Western economic models. This idea is a legacy of colonialism, which allowed Europe to benefit while keeping Africa underdeveloped (Cawe 2021; Mills et al. 2017; Mbeki 2002:46-48, 53-55; Quinn 2017; Gordon 2005; Onyeani 2006:73-82, 83-86, 97-101). Africa provided the labour necessary for European development (Onyeani 2006; Fanon 1963; Quinn 2017). Marx (2010:1-3) argues that Europe’s capitalist structure exploited African land and labour for profit, severely hindering social and human development for Black Africans (Fanon 2014:32-37, 73-77, 108-109; Mbeki 2009; 2011; Ryan 2002; Quinn 2017; Rodney 1972). Commodities were amassed for the benefit of a wealthy elite, undermining social development (Mpofu-Walsh 2021:40-42, 60-61, 82; Commonwealth Secretariat 1991; Marx 2010; Giliomee et al. 2022; Esterhuyse 2012:164-165).

Post-1994, the challenge of wealth distribution, tied to the apartheid economy, necessitated redress through practical constitutional measures (Siegan 1994; Horowitz 1991; Sachs 2017; Mweru 2015; Rapatsa 2014). Profit is often proportional to the interests of “commodity hoarders”, where workers become consumers of their own produced goods (Cawe 2021; Njoku 2004; Wolpe 1972; Gordon 2005; Mills et al. 2017; Onyeani 2006:7-11, 109-119). Smith (2003) argues that even workers can generate wealth through their labour, while Marx (2010) emphasises the need for producers to own the means of production. The necessity of labour became evident as marginalised groups were confined to reserves and homelands (Giliomee et al. 2022; Young 1982; Wolpe 1988; Gordon 2005). Labour turned into a commodity, leading to exploitation likened to a “special type of slavery”<sup>17</sup> (Mbeki 2011:5-8, 11; Mpofu-Walsh 2021; Cawe 2021; Blake & Walters 1987; Currie & De Waal 2013:290-291; Ryan 2002:103, 107; Callinicos 1992). This dynamic benefited the apartheid economy, which retained production control in white hands while excluding the majority from economic power (Cawe 2021:3, 11-13; Brown 2015; Max-Neef et al. 1991:49-54).

The concept of “economies of scale”<sup>18</sup> highlights the increasing production costs that inflate product prices (Smith 2003; Marx 2010; Mills 2021; Mafeje 1986). Greater capital investment leads to higher prices, allowing capitalism to exploit workers while costs rise (Smith 2003; Mbeki 2011:174-179; Mbeki 2009). Consequently, labour providers struggle to survive, diminishing their chances of accumulating wealth and their quality of life remains stagnant (Mpofu-Walsh 2021; Cawe 2021; Gumede 2015). Smith (2003) and Marx (2010) advocate for improved worker conditions from contrasting economic perspectives, yet neither adequately address community development needs, perpetuating dependency on the government for economic relief (Gray 2006; Midgley

---

<sup>17</sup> “Slavery of a special type” in this study context further implies that human beings sold themselves as a means to survive and keep their families alive with the mere basic needs in a White-dominated political economy.

<sup>18</sup> The term “economies of scale” is often linked to the work of the economist Alfred Marshall in the early part of the 20th century. This concept is in his work *Principles of Economics* (1890). “Economies of scale refers to the cost advantages that can be attained by increasing the level of production”; however, these cost savings do not necessarily benefit consumers, as they may result in higher prices for goods due to the profit margins sought by enterprises.

2001, 2013; Reno 1998; Mills et al. 2017; Max-Neef et al. 1999). The complexity of social development in Africa stems from historical economic disadvantages imposed by colonisation (Ryan 2002; Njoku 2004; Biermann 1963). Rodney (1972) and Rooney (1988) argue that Africa's underdevelopment is directly linked to external economic control. Achieving genuine social development requires Africa to reclaim its developmental autonomy and establish a distinctly African development framework (Cawe 2021; Fanon 1963; Gordon 2005; Mpofu-Walsh 2021; N'Zue 2010; Mills et al. 2017; Njoku 2004; Mbeki 2009).

### **5.3.1 Underdevelopment in South Africa – the effect of European development**

South Africa experienced the economic contestation of European states as was evidenced by the South African War (1899–1902). This war saw two European nations battle for the economic upper hand as well as for political dominance in the country. When the treaty of Vereeniging was signed, the MOM was once again left to develop in the absence of the prerequisites of economic empowerment and political inclusion (Mpofu-Walsh 2021; Mbeki 2009; Carmody 2016; Giliomee et al. 2022; Van der Westhuizen 2015; Simon 2015). The Natives Land Act (1913) created existential poverty for generations to follow and the lack of access to land as a social development enabler created a landless group of South Africans who became increasingly dependent on the apartheid economy (Lodge 1983; Mellet 2020; Midgley 2001; Gray 2006; Marais et al. 2001). South Africa as a divided country concomitantly had disparate social development which resulted in an impoverished labour source (Terreblanche 2002; Wolpe 1988; Tiryakian 1960). Development was ultimately controlled by the owners of the means of production particularly in the mining and agricultural sectors (Reno 1998:30-34; 36-38; Commonwealth Secretariat 1991:92-95; Mills 2021; Rodney 1972; Max-Neef et al. 1991; Giliomee et al. 2022; Simpson 2021; Ngcukaitobi 2018; 2021). South Africa's production sector was not a joint inclusive venture but rather excluded the MOM who became increasingly opposed to their living conditions under the apartheid economy (Sachs 1973; 1990; Simon 2015; Simpson 2021; SAHO 2011). Equal economic participation in the South African economy would have ensured healthy competition and would have contributed to the development of a more robust economy (Wolpe 1972; Terreblanche

2002; Tiryakian 1960; Young 1982). Economic inclusion ensures that citizens can control their social development which Marx (2010) posits is a key requirement for individuals to control their labour and to benefit materially and at a social level where such persons may become the architects of their own social prosperity (Blake & Walters 1987; Mills et al. 2017; Trilsch 2009; Onyeani 2006).

#### **5.3.1.1      Apartheid's contribution to underdevelopment**

This study argues that underdevelopment in South Africa is structurally linked to a political ideology that enforced economic and political division through racial discrimination (Simpson 2021:8–11, 30–31). Apartheid did not merely produce inequality; it institutionalised economic exclusion through law, policy and constitutional design. The apartheid state constructed a racially stratified political economy that privileged White capital accumulation while systematically constraining the productive capacity of the majority of the population (MOM).

A central mechanism of this exclusion was the migrant labour system, which functioned as a reservoir of cheap labour derived predominantly from the MOM. This system enabled wealth accumulation for predominantly White landowners, mine owners and owners of the means of production, while externalising the social costs of labour reproduction to impoverished rural homelands (Simpson 2021; Van der Westhuizen 2015; Van Vuuren 2017; Vigoda 2003; Ngcukaitobi 2018; Lodge 1983). The migrant labour regime entrenched a dual economy: a modern industrial core dependent on racially subordinated labour, and a marginalised periphery deprived of meaningful investment. This arrangement was not an unintended market outcome but a deliberate economic strategy embedded within apartheid governance structures.

Under what may be described as “apartheid constitutionalism”, the state’s commitment to inclusive social development was severely limited. Constitutional frameworks prioritised parliamentary sovereignty and racial control rather than enforceable social obligations. As a result, there were no constitutional mechanisms compelling equitable resource allocation or inclusive economic planning. This absence of enforceable social

development obligations deprived the majority population of the institutional means to design and participate in development blueprints that could enhance collective wellbeing (Ngcukaitobi 2018; 2021). Economic participation was racially mediated, and social mobility structurally restricted.

Although South Africa experienced measurable industrial growth and infrastructural development during the apartheid era, such development occurred at profoundly unequal levels (Mpofu-Walsh 2021:17–20, 40–41; Cawe 2021; Mbeki 2011). Resources essential for sustained development - including quality education, healthcare, infrastructure and financial capital - were disproportionately allocated to White South Africans (Cawe 2021:30–32, 34–42). This disparity was rooted in the ideology of “separate development”, which mandated that the MOM develop independently within fragmented homelands lacking viable economic foundations (Giliomee et al. 2022:266–270, 445–449, 453–459; Simpson 2021:128–132, 172–174). These territories were deliberately structured to confine the majority population while restricting access to productive land, capital and infrastructure necessary for social and economic advancement (Giliomee et al. 2022:251–253, 323–325, 335; Simpson 2021:40–42, 79, 152; Ngcukaitobi 2018:76–77, 155, 187, 196–197, 241–245).

South Africa’s underdevelopment is therefore inseparable from its segregated development model, which channelled disproportionate resources toward White social advancement and institutional consolidation. Growth occurred without inclusion, and accumulation proceeded without redistribution. The structural marginalisation of the majority population constrained domestic demand, suppressed entrepreneurial development and weakened the foundations of a robust, integrated national economy.

The country’s withdrawal from the Commonwealth and the broader international sanctions regime further intensified economic isolation, compelling the apartheid state to pursue a constrained form of economic self-reliance (Mbeki 2011). While certain sectors adapted through import substitution and internal industrial development, international

isolation limited technological exchange and global integration. South Africa's development trajectory thus remained both exclusionary and structurally constrained.

This pattern resonates with broader analysis of development challenges across the African continent, where external dependency and aid dynamics have often hindered sustainable growth (Reno 1998; Rodney 1972; Mbeki 2011; Mills et al. 2017; Cawe 2021; Sesanti 2021; Mallya 2022). However, South Africa's case is distinctive in that underdevelopment was not solely externally conditioned but internally legislated. Apartheid constituted a legally enforced development paradigm that prioritised racial hierarchy over inclusive growth.

Moreover, apartheid-era constitutional arrangements did not embed enforceable obligations requiring the state to promote inclusive social development, human security or social cohesion. In the absence of constitutional accountability mechanisms directed toward substantive equality, development policy remained racially selective and politically exclusionary (Njoku 2004; Bundy 2015; Callinicos 1992; Suttner 2015; Onyeani 2006; 2015; Sesanti 2021; Browne & Millington 2015; Midgley 1998; Africa & Mlombile 2001).

Apartheid's contribution to underdevelopment must therefore be understood as structural, constitutional and ideological. It entrenched a bifurcated economy, normalised resource inequality and suppressed the developmental potential of the majority population. The democratic era inherited not merely inequality, but a historically engineered pattern of distorted development whose effects continue to shape South Africa's socioeconomic landscape.

#### **5.4 Separate development and the apartheid economy**

The apartheid economy<sup>19</sup> was inseparable from the doctrine of separate development. Economic exclusion was not incidental to racial classification; it was its structural

---

<sup>19</sup> The "apartheid economy" was characterised by racial segregation and concentrated White economic control, restricting social mobility for the majority (MOM) through discriminatory labour practices and policies favouring White-owned industries. It remained heavily dependent on mining, which relied primarily on majority labour (Simpson 2021; Giliomee et al. 2022; Sachs 1973; Lodge 1983).

objective. Through legislative design, the majority of South Africans were denied meaningful access to land, skilled employment, capital accumulation and political citizenship, producing generational poverty and constraining social development.

This economic order rested on a legal regime that allocated rights and opportunities along racial lines (Commonwealth Secretariat 1991; History.com Editors 2010; Maluleke 2019; SAHO 2019; 2022; Welsh 2009). The Population Registration Act of 1950 formalised racial categorisation into White, Indian and Black groups (Giliomee et al. 2022:455), while the unstable classification of Coloured persons exposed the administrative arbitrariness of apartheid's racial taxonomy (Giliomee et al. 2022; Mellet 2020). Officials determined racial identity through subjective assessments rooted in prevailing stereotypes (Giliomee et al. 2022; Mellet 2020; Simpson 2021:79), and access to residence, mobility and employment depended on hierarchical racial placement rather than citizenship (Simpson 2021:79, 86, 123, 131; Koorts 2014; Giliomee et al. 2022:329, 381–382, 407, 508). Classification thus functioned as an economic gatekeeping mechanism long before entry into the labour market.

Legislation extended beyond categorisation to spatial and occupational control, prescribing where individuals could live, study and work (Mpofu Walsh 2021:41–43; Simpson 2021:79–81). Rather than cultivating common citizenship, the state fragmented society into administratively managed racial compartments (Simpson 2021; Giliomee et al. 2022; Mellet 2020; Mbeki 2002; Onyeani 2006). Segregationist foundations predated 1948: Hertzog's programme in the 1920s and the Bills introduced in June 1926 including the Natives Land Act (1913) Amendment Bill and the Representation of Natives in Parliament Bill - curtailed land access and political participation, normalising exclusion through law (Simpson 2021:6–7, 28, 30–31, 79–81, 103–104).

Labour regulation entrenched this hierarchy. The Mines and Works Act of 1911 reserved skilled occupations for White workers and institutionalised racially differentiated wage scales (Giliomee et al. 2022; Lodge 1983; Ngcukaitobi 2018; 2021). Occupational mobility was racially predetermined, and White labour was shielded from so-called “non-European

competition". Land dispossession reinforced this structure. The Sauer Report culminated in the Natives Land Bill of 1913, introduced on 9 May 1913 (Simpson 2021:40–41; Giliomee et al. 2022:251, 324, 335, 446; Fanon 2014; Ngcukaitobi 2021:79–82), confining the majority to economically marginal territories incapable of sustaining independent development (Fanon 2014:108–109; Simpson 2021:9–11, 151–152; Giliomee et al. 2022:268, 362–364, 408–409; Ngcukaitobi 2021:23–25, 33–39, 118–120). These policies entrenched dependence on migrant labour systems and deprived communities of productive assets (Ngcukaitobi 2018; 2021; Davids, Theron & Maphunye 2005; Gray 2006; Green 2009).

Development under apartheid was racially concentrated. Infrastructure and welfare provision expanded for White South Africans while the majority remained excluded (Terreblanche 2002; Midgley 1998; Ngcukaitobi 2018). The system secured inexpensive labour and consolidated White socioeconomic advantage (Lodge 1983; Mpofu Walsh 2021; Gray 2006; Green 2009; Cawe 2021). The cumulative effect was structural dependency, as the majority became reliant on employers oriented toward profit rather than social welfare (Marx 2010; Brown 2015; Browne & Millington 2015; Marais et al. 2001; Mbeki 2009).

Separate development therefore operated not merely as ideology but as a legally engineered economic system designed to preserve racial hierarchy through the regulation of land, labour and capital. By linking racial identity to spatial location, employment opportunity and asset ownership, the apartheid economy institutionalised inequality in ways that continue to shape contemporary socioeconomic fragmentation.

## **5.5 Social development – contextualisation of the study definition**

The definition of social development is inherently complex and resists reduction to a singular, universally applicable formulation. Its interpretation requires social scientists to engage critically with the dynamics of the society, community, culturally diverse population or nation under study (Midgley 1995; 2013). Social development cannot be abstracted

from context; it is shaped by historical trajectories, economic arrangements and political structures.

Conceptually, social development has evolved alongside - and, in some respects, from - the discourse on human development. This evolution reflects not only a shift in theoretical emphasis but also the growing prominence of commercial and economic spheres in shaping social life. Development is frequently interpreted through the lens of industrial expansion and labour market participation, linking societal progress to economic productivity and integration into capitalist systems (Marx 2010; Bookchin 1970; Blake & Walters 1987; Ndulu, Stephen, O'Connell, Bates, Collier & Soludo 2010; Max-Neef et al. 1999). Within such frameworks, labour becomes central to both individual advancement and national growth.

However, in capitalist-oriented societies, labourers are often permitted only limited advancement, particularly where expanded empowerment might disrupt systems dependent on inexpensive labour and profit maximisation (Marx 2010; Mpofu-Walsh 2021; Callinicos 1992). In this regard, social development is frequently subordinated to economic imperatives. Where profitability underpins policy direction, social investment may be constrained by concerns that broader empowerment could destabilise established economic hierarchies.

The term “social development” itself comprises two interrelated yet conceptually distinct components. Its definitional scope is therefore shaped by context, setting and political complexity (Njoku 2004:3-5; Max-Neef et al. 1991:4, 5, 8-11; Midgley 2001). In the South African context, this study argues that social development is closely intertwined with monetarisation - or what Max-Neef et al. (1991:4) describe as monetarism. Development, particularly within policy discourse, is often measured through economic indicators, fiscal capacity and market participation. Consequently, social development appears constrained in the absence of monetary resources, reinforcing the perception that financial capital is the primary driver of social progress.

This position, however, remains contested. The concept of “human scale development” seeks to decouple social advancement from strict monetarist frameworks by centering people rather than profit. It emphasises the qualitative improvement of lives, the strengthening of identity and the cultivation of self-worth within society (Max-Neef et al. 1991:16). Such an approach challenges purely economic interpretations of development and foregrounds human needs, participation and dignity as central components of societal progress.

The search for a singular and definitive understanding of social development is likely to remain an expanding area of scholarly inquiry (Midgley 2001; Gray 2006; Simon 2015). As societies transform, both collective and individual needs evolve, necessitating continual reconsideration and refinement of definitional boundaries (Njoku 2004:9-21; Gordon 2005; Sesanti 2021). Social development, therefore, is neither static nor universally fixed; it is an adaptive concept that must respond to changing economic realities, social expectations and political commitments.

### **5.5.1 The human component – human-scale development**

Due to the wide array of variables that manifest in societies, there exists a dilemma for constructing a single definition of social development. Social development has one element that is universal and that is the set of basic needs of each society, population or cultural group (Midgley 2013; Gray 2006; Ki-moon 2015; Gass 2014; Max-Neef et al. 1991; Mills 2021). This study posits that there exists an inseparable connection between human beings and their basic needs for social development to flourish. Social development is inextricably tied to any society through the most basic denominator, namely human beings (Marais et al. 2001; Mandela 1994; Max-Neef et al. 1991; Gray 2016; Green 2009; Simon 2015; Midgley 2001). There has to be a group identity that exists at a national, societal or cultural level that presents a distinct set of basic needs that are specific to any group that identifies with and among each other. Where such a need is identified or required there will be a totem or sacred symbol that serves to unite such a group (Blake & Walters 1987:11-13; Mandela 1994; Maier 1987).

There are three distinct pillars, “human needs, self-reliance and organic articulations”, which Max-Neef et al. (1991:8-9) describe as the “pillars which support Human Scale Development”. Furthermore, Max-Neef et al. (1991) argue that people must be the main protagonists in their social development and it is crucial to respect this vital role that citizens have to fulfil (Max-Neef et al. 1991:8-9). The importance of the “civic activist mindset” is crucial to robust and sustainable development, which Max-Neef et al. (1991) posits is based on civil/social participation in conjunction with equal collaboration with the state (Max-Neef et al. 1991:59-62; Mbeki 2002).

The idea of equal partnerships with the state and society applies to South African society, as before 1994, the state was the final arbiter regarding matters such as social development, national cohesion and the allocation of resources that would enhance dynamic inclusive social development (Mpofu-Walsh 2021:16, 17, 19-21; Cawe 2021:62-65; Max-Neef et al. 1991; Ndulu et al. 2010; Mbeki 2002). South Africa has experienced the classification of human beings, which has been tied to the allocation of resources, including the monetarisation of social development.

This study posits that due to the capitalisation of the minds of people, material wealth and wealth accrual became intrinsically tied to the self-worth and value systems present in most societies (Onyeani 2006; Fanon 1963; Callinicos 1992). Social development, as argued by Max-Neef et al. (1991) and Marx (2010), should not be tied to material wealth but rather to the mental and physical (holistic) well-being of people. This concept separates wealth into distinct categories such as health, longevity, the enjoyment of life, and value in all aspects that contribute positively to the lives of people (Midgley 1998; Gray 2016; Green 2009; Haule 1984; Fanon 1963; 2014; Gordon 2005).

### **5.5.2 Social development and national security**

Max-Neef et al. (1991:33, 40) proffer that national security is a requisite for social development in that there has to be a stable and peaceful environment wherein people can live freely and with the knowledge that they are safe to conduct their lives in a manner that adds quality to the individual's life. Human safety depends on national safety and in

this study, the concept of national security is the responsibility of the civilian intelligence agency (Africa & Kwadjo 2009; Africa & Mlombile 2001). This does not negate any security and safety roles that are the purview of the South African Police Service (SAPS) and the South African National Defence Force (SANDF), as established post-1996. The Constitution (1996) stipulates the roles of the security forces and how these structures must operate and conduct their functions under the rule of law while upholding and supporting the Constitution (1996). National security is an imperative that ensures the safe existence of sovereign nations and in the context of this study, it implies that the South African nation must have a safe environment that is conducive to social development. The study argues that national safety at a domestic level is essential in promoting political and social stability (Esterhuyse 2012:31, 39-43; Maharaj & Jordan 2021:7-11; 56-59; 181, 183-189, 193-197; Mallya 2022; Barnard 2015:77-80, 80-94; Goldman 2010:3-7, 26-29; Lowenthal 2022:1, 24-31; 460-463; O'Brien 2011; Shulsky & Schmitt 2002:1-7).

The context of national security is broad in that every nation has a set of national interests and due to the flexibility within the absence of a single definition for national security; this void allows for interpretations and subsequent actions to be taken often with the sanction of a government or dually delegated structure (Lowenthal 2022; Goldman 2010; Gourley 2018). The fluidity existent in societies allow for certain concepts and government functions to be used within the ambit of satisfying a specific agenda (Alberts 2009; Agee & Wolf 1978; Lowenthal 2022; Acuff et al. 2022; Prunckun 2012; Shaik 2020; Ryan 2002; Van Vuuren 2017). These agendas are tied to political ideologies that express themselves as trade agreements, territorial expansion or the control of foreign governments to improve the global standing of a nation (Barnard 2015:101-105, 129, 176; Goldman 2010:61-63).

South Africa has existed in two dimensions which were distinguishable as eras based upon right and wrong or ethical and unethical. Here the study refers to the manner in which national security existed between an apartheid-era democracy and a constitutional democracy. Both these dimensions had “constitutions”, with the distinction that one

dimension did not have governance and respect for the rule of law. The omnipotence of a supreme parliament allowed the government to control the judiciary and, thereby, also control the laws and the morality that society was subject to. In this study, there is evidence that the ethics tied to a supreme law was absent and this gave immense power to a government that primarily recognised the basic needs and human rights of a specific national group. This created an environment that saw one group benefit economically and prosper, while the majority languished in squalid conditions with ever-present disparate social development. This study argues that while national security must benefit an entire nation, this was not evident in South Africa before the constitutional democracy (1994).

The advent of a constitutional democracy placed the Constitution (1996) at the centre of society and entrenched the constitutional principles espoused in the Constitution (1996). National security became a national set of governing principles and are clearly set out in Chapter 11, section 198 (a,b,c,d). National security under the Constitution (1996) is reflective of the resolve of all South Africans to live as equals, in peace and to seek a better life that unambiguously reflects how social development must be evident in the national security initiatives and the resolve of the civilian intelligence agency to bolster social development through the provision of adequate and unshakable national security (Lowenthal 2022; Goldman 2010; Africa & Kwadjo 2009; Mallya 2022 Africa & Mlombile 2001; Bernhardt 2003; Born et al. 2011; Kish 1995).

## **5.6 The Bill of Rights – a guarantee for social development**

The Constitution (1996) makes clear and evident that the Constitution (1996) is the law and, subsequently, the ultimate law that regulates all laws within the Republic of South Africa. This implies that no law may exist that the Constitution (1996), when interpreted by the Constitutional Court, may be found unjustifiable (De Vos & Freedman 2021). This would nullify any such law and it will be deemed unconstitutional. South African constitutionalism is uniquely South African in that it represents the diversity of the South African nation while being mindful of the past and the negative remnants from a past era. Within the context of constitutionalism, there exists a prescript that limits the power of the state. “The constitution limits the power of the state to ensure that the state does not

violate any laws nor can the state violate the human rights of its citizens” (Currie & De Waal 2013:8-9). To this end the government becomes obligated to fulfil its role towards the citizens and actions that contradict the Constitution (1996) would be illegal and shall be subject to judicial processes when the judiciable requirements for the litigation have been satisfied (Currie & De Waal 2013; De Vos & Freedman 2021; Klug 2010; Mallya 2022; Africa & Kwadjo 2009).

Under the Constitution (1996), the old apartheid doctrine of parliamentary supremacy has been nullified and replaced by a constitutional democracy that enforces the separation of powers (South African Act of 1910; Klug 2010; Mojapelo 2013; Alberts 2009; De Vos & Freedman 2021). The apartheid system placed the judiciary under the power of parliament, while in a constitutional democracy, the rule of law is vested in the authority of the Constitution (1996). This places the government under the Constitution (1996) and makes it subject to the rule of law, implying that the government and the laws that it passes may be contested by the courts (De Vos & Freedman 2021:220-226; Currie & De Waal 2013:72-77; Klug 2010:72-73; 75, 115). Under the Constitution of the Republic of South Africa (1996), equality before the law and the supremacy of the Constitution are foundational principles that regulate the exercise of public power and bind all organs of state (Currie & De Waal 2013; De Vos & Freedman 2021; Klug 2010; Mallya 2022; Sachs 2016; 2017; Suttner 2015; Fombad 2010; Lieberman 1999). The Bill of Rights forms an integral component of this supreme legal order and cannot be separated from the authority of the Constitution itself. It establishes the normative framework within which rights and freedoms are recognised, protected and enforced. In contrast to the authoritarian legal culture associated with apartheid, the constitutional dispensation is premised on equality, human dignity, freedom and the advancement of socioeconomic rights, all subject to the discipline of the rule of law (Klug 2010:113–117; Sachs 2017). As the supreme law, the Constitution renders the Bill of Rights justiciable and binding on the legislature, the executive and the judiciary.

In South Africa, the Bill of Rights deliberately seeks to distance itself from the era of parliamentary supremacy that appears to have held no regard for human rights. The Bill

of Rights is laden with rights and freedoms for all South Africans and this set of copious rights aims to set the country on a path to dynamic and substantial social development. The caveat contained therein is that citizens need to take ownership of their rights and substantially hold the government to account. Within this study, the student makes the pronouncement that South Africa must develop a citizenry that is responsible and that takes their social development, growth and future prosperity seriously. This may be achieved through the creation of civic activism wherein each citizen is invested and willing to play an active role in contributing to a better life for all (Max-Neef et al. 1991:8, 18-19, 24-28; 42-43; 55-65, 93; Mbeki 2002:53-71; 103-107). The differences that are notable between Latin America and South Africa are comparable to any set of countries. This statement means that social development has very distinct correlations across all nations and to this end, collaboration may present solutions rather than identifying differences among people.

#### **5.6.1 Socioeconomic rights and South African constitutionalism**

Constitutionalism in South Africa is based on 34 constitutional principles that are designed to ensure that the elected government acts and conducts itself in a manner that indicates service to the South African population. As shown in Chapter 4 of this study, constitutionalism limits the power of the government while commensurately increasing the power of citizens (Currie & De Waal 2001; 2013). The Bill of Rights cannot be considered to be void of any development bias in that it presents distinct elements that can support the development and social development of all citizens (Sachs 2017; Currie & De Waal 2013; Rodney 2019). The right that every citizen has is no longer based upon a separation of rights and freedoms. The Constitution (1996) enforces the rights of citizens (Chapter 2, ss 7) but more so enforces the right to citizenship, Section 20 in the Bill of Rights. These rights first became rights after 1994 when a constitutional democracy replaced the system of parliamentary supremacy (Klug 2010; De Vos & Freedman 2021).

The idea of separate development in South Africa was grounded in the belief that not all people living in South Africa were equal (Simpson 2021; Giliomee et al. 2022). Separate development was a euphemism to denote the segregation of races and the confinement

of the Black South African population into areas un conducive to social development. The homelands were barren areas that could not promote or sustain any economic development to enhance social development (Simpson 2021:30-31, 40, 67, 130-131, 196, 363; Giliomee et al. 2022: 362, 364, 489, 453-460; Ngcukaitobi 2018:77-82, 259-260). The apartheid system sought to divide the wealth of South Africa in an unequal yet derogatory manner by stating that each race group should develop themselves. This was supposed to have transpired in the absence of resources being allocated to the MOM for their social development. The separation that was a physical manifestation meant that the MOM had to be responsible for developing rural areas (Currie & De Waal 2013:290-293). This study does not incorporate rural development; however, the study will argue that the development of South Africa's rural areas is underfunded and that the urbanised areas are more likely to receive attention by way of government interventions (Ngcukaitobi 2018; 2021; Cawe 2021:54-58; Mpofu-Walsh 2021; Sterpka & Robbins 2009).

The Bill of Rights stipulates sections 26 and 27, which more concisely focus on housing and basic needs such as water, food, healthcare and social security (Mbeki 2011:52-53; Cawe 2021; Mpofu-Walsh 2021:64-65). Section 28 of the Bill of Rights elaborates on the rights of children. Section 27 focuses mainly on general basic rights evidencing Section 28 – the basic rights of children. This section has illustrated that the Bill of Rights focuses on areas pertinent to social development and these are notable justiciable rights that not only obligate government to ensure these rights but also imply the role that must be played by all citizens to attain the fulfilment of their social development requirements. The inclusion of a Bill of Rights implies that the crafters had to have reflected and contemplated the injustices inflicted on a large percentage of the South African population. This study argues that while apartheid had been declared a crime against humanity (Asmal et al. 2011; Lebakeng 2023:4), during the negotiation process (CODESAs 1 and 2) there was an admission that stated that South Africans were deliberately divided due to a political economy that served to enrich and enhance the lives of an exclusive group. The implication of wilfully and knowingly committing serious human rights violations was admitted to when the Constitution (1996) was agreed to (Suttner

2015; 2015; SAHO 2017; Sachs 2017; Siegan 1994; Simon 2015; TRC 1998; 2002; Mallya 2022).

Socioeconomic rights cannot be contemplated in the absence of a recognised need to develop and fundamentally improve the lives of South Africans. The primary objective of the included first and second-generation rights in the Constitution (1996) indicates a bias toward social development and this emanates from the past segregation and denial of human rights, dignity and security to the MOM (Currie & De Waal 2013:72, 564-565). Socioeconomic rights within the South African constitutional framework present elements of dependency on the government as the custodian of resources for development. This study has steered away from elaborating on development theories such as the manipulative or mechanistic theory, imperialist theory, modernisation and dependency theories (Njoku 2004; Mills et al. 2017; Mills 2021). The study will argue that due to the historical and politicised social dynamics in South Africa, these mentioned theories – albeit elements thereof – are evident to some degree while the Bill of Rights seeks to move toward an Africanist self-reliant social development posture. The notion of “soft control” through the controlling and regulating of resources for social development by the South African government attests to the study’s argument that social development is politicised as a way of keeping a government in power. The Bill of Rights, Section 19 guarantees every citizen political rights and these rights determine the government and the developmental policies and strategies. The right to vote ultimately determines the manner in which social development progresses and, thus, exercising political power is directly related to the outcome and destiny of the citizens (Mbeki 2011:72-74, 76-81, 94-95).

### **5.6.2 Basic human needs**

Basic human needs can be described as those needs that every human being needs to stay alive and are evident in the Bill of Rights (Section 27(1)(a,b,c), 2 and 3) which are food, water and healthcare. Housing is stipulated in Section 26; this study considers housing to be a basic need and it should be tied to human security (Max-Neef et al. 1991:13-23; Njoku 2004:6, 65-67; Currie & De Waal 2013). Basic human needs are not

stagnant and should not be confined in the context of social development. As human beings develop and their surroundings and physiology morph, they will develop a different set of basic needs (Mbeki 2011:11-12; Max-Neef et al. 1991; Green 2009; Browne & Millington 2015). The need for food that is more suitable and healthier for human beings requires the development of different food production methods while also requiring the development and creation of different food sources. Human needs will continually develop concurrently with the development of human beings. The Bill of Rights had set socioeconomic rights within the barest minimum and in the absence of socioeconomic [materialistic] wants. The continual changes and developments in the South African and global environment require the constant review of these socioeconomic rights to keep pace with the development of people. While basic human needs may suffice as they stand currently, this study suggests that these needs cannot nor should they remain constant. Basic human needs are expressed as universal needs. The UN's list of basic human needs is tied to basic human rights, which are a constantly evolving and developing set of rights (Ki-Moon 2015; Tsang 2008; Mills et al. 2017).

#### **5.6.2.1 Growing human needs – a social development constraint**

Within the growing and continual development of the South African society, basic human rights are consistently evolving to keep pace with the social dynamics present in the country (Cawe 2021; Mpofu-Walsh 2021; Le Roux & Davis 2019; Maier 1987). There exists a concept within South African society termed “lawfare” that denotes the need to contest several issues through court-driven processes and litigation (Le Roux & Davis 2019; Sachs 1990; Ngcukaitobi 2018; 2021; Van Der Merwe & Olivier 1980; Olivier 2016; State Capture Report 2018). Litigation and the developing trend to challenge wrongdoing through the abuse of courts is a human right to access the courts. However, abuse of the rule of law, the Constitution (1996) enforces the right that every person should have access to a fair trial (Olivier 2016; Klug 2010; Sachs 1973; 2016; Currie & De Waal 2013; De Vos & Freedman 2021; Alberts 2009). Every citizen has guaranteed rights under the Constitution (1996) and, thus, the ever-developing definition of social development will ultimately increase the amount of basic human rights and needs (Midgley 1998; 2013; Gray 2006; Deutscher 1973; Diamond, Linz & Lipset 1988; Max-Neef et al. 1991).

### **5.6.3 Reconstruction and Development Programme 1994**

South African constitutionalism has necessitated a more assertive and structured approach to social development, placing a positive obligation on the state to redress the socio economic inequalities inherited from apartheid. The constitutional framework adopted in 1996 did not merely guarantee civil and political rights but embedded enforceable socio economic rights that require deliberate policy design, institutional capacity and accountable governance for their progressive realisation. Constitutionalism in the South African context is therefore transformative rather than merely procedural; it demands structural reconfiguration of the state in order to dismantle historically entrenched deprivation. The democratic government accordingly assumed responsibility not only for alleviating poverty but for reorienting the state apparatus toward developmental priorities consistent with constitutional values.

In 1994, the government introduced the Reconstruction and Development Programme (RDP), conceived as a collaborative framework between the state and citizens grounded in principles of social equality, redistribution and inclusive development. The RDP was structured around five key programmes: meeting basic needs; developing human resources; building the economy; democratising the state and society; and implementing the RDP through effective governance mechanisms. These pillars reflected an integrated understanding of development, recognising that housing, healthcare, education, employment, economic growth and democratic participation are mutually reinforcing components of social transformation. Its design acknowledged that poverty is a structural socio economic condition that undermines social development by restricting access to opportunity, dignity and meaningful participation. Under apartheid, the deliberate neglect of basic services for the MOM entrenched inequality, spatial marginalisation and economic exclusion; the RDP was intended as a structural corrective capable of realigning national priorities with constitutional imperatives. The five key programmes<sup>20</sup> which the RDP was supposed to address have not fully delivered any real results that are experienced in the lives of South Africans (Mbeki 2011; Mpofu Walsh 2021; Mills 2021).

---

<sup>20</sup> RDP key programmes – meeting basic needs, developing our human resources, building the economy, democratising the state and society and implementing the RDP.

Although the RDP continues to feature prominently in government discourse, the material conditions of many South Africans have not improved commensurately with the ambitions of the Programme or the substantial resources allocated to it. The objectives associated with meeting basic needs and developing human resources remain unevenly realised, while persistent unemployment and inequality suggest that the goal of building the economy in an inclusive manner has not been fully achieved. Similarly, the programme of democratising the state and society - particularly through accountable governance and effective implementation - has faced challenges related to corruption, administrative fragmentation and institutional weakness. The five key programmes which the RDP was intended to address have therefore not consistently produced outcomes that are experienced as transformative in the daily lives of citizens (Mbeki 2011; Mpofu Walsh 2021; Mills 2021). The persistence of poverty, inequality and service delivery failures raises concerns regarding implementation capacity, governance coherence and institutional accountability within the democratic state.

From an intelligence and national security perspective, the partial fulfilment of these five programmes carries broader implications. Developmental deprivation and governance weaknesses can generate instability, social unrest and diminished public trust in state institutions - conditions that intelligence services are mandated to monitor and assess. When the pillars of meeting basic needs and democratising the state remain fragile, intelligence agencies may be drawn into managing the consequences of socio economic discontent rather than contributing to a preventive and constitutionally aligned security environment. In such circumstances, intelligence risks operating within a reactive paradigm shaped by service delivery protests, corruption crises or factional contestation.

The uneven implementation of the Reconstruction and Development Programme therefore reflects a structural tension between transformative constitutionalism and institutional performance. If socio economic rights embedded within the constitutional order remain insufficiently realised, constitutional legitimacy may be weakened, thereby reshaping the security landscape within which intelligence operates. Intelligence governance cannot be conceptually separated from developmental governance: failures

in meeting basic needs, strengthening human capital, building an inclusive economy and democratising state institutions undermine both social development and national security coherence. The trajectory of the RDP thus serves as an analytical indicator of the extent to which post-apartheid institutions have aligned constitutional vision, administrative execution and intelligence accountability within a unified democratic framework.

#### **5.6.4 Vision 2030 – National Development Plan**

The National Development Plan is expressed and given life to, in the government's "vision" for 2030. The National Development Plan, Vision 2030 should have addressed poverty and inequality. Again government has set out three bold imperatives: poverty, unemployment and inequality. While several plans exist through the use of consultants, there is little evidence of government's initiatives to substantially alleviate poverty, reduce crime and ensure good clean governance (Suttner 2015; Mpofu-Walsh 2021; Mostert 1986; Mbeki 2002; 2016; Mbeki 2009; Mills 2021; Le Roux & Davis 2019; Leatt, Kneifel & Nürnberger 1986; Sachs 2017; Steinmann 2016). This study posits that while there may be initiatives by the government, there is truly little evidence to indicate that the poverty and the levels of social development in South Africa have improved to the extent that it is noticeable, particularly in the lives of the poorest South Africans. The social grant system has not substantially alleviated the poverty that besets the country but rather created distrust as money intended for the poor to improve social development has gone missing and the government appears to be 'scratching its head' as it does not know how such malfeasance could transpire. The need for proactive intelligence and vigilance within the intelligence community may present some reprieve should the condition of the intelligence agency improve commensurately with defined roles and functions in the absence of politicisation.

#### **5.7 A cursory overview of social development and intelligence**

This study posits that there exists a discernible link between the three concepts that form the theoretical framework. In Chapter 6, the study will reflect on intelligence and how this function of government should serve the entire South African nation. National security is mentioned in this study with reference to the Constitution (1996) that regulates and

governs the power entrusted to the intelligence agency (Goldman 2010; Acuff et al. 2022:3-4; 5-7, 43-47; Lebakeng 2023:5, 6-8; White Paper on Intelligence 1994; Africa & Mlombile 2001; O'Brien 2011; Putter 2024). For a nation to live in peace and harmony, safety and security are required. The study has mentioned that social development cannot thrive in uncertainty and fear. A requirement for people to live and develop is that there has to be a conducive environment; the Constitution (1996) stipulates this in the Bill of Rights and Chapter 11.

### **5.7.1 Safety and security – Chapter 11**

Chapter 11 of the Constitution (1996) refers to the security forces which must maintain internal stability and security (O'Brien 2011; Africa 2009; Cimbala 1987; Coleman 1998; Africa & Kwadjo 2009; Putter 2024; Dombroski 2006). The Constitution (1996) regulates the powers of the security and intelligence forces to avoid the abuse of power and the violation of human rights. This study argues that a nation that is governed by fear and oppression will have very little growth and social development will be stifled (Reno 1998; Nathan 2010; Africa & Kwadjo 2009; Lebakeng 2023). Each citizen should have peace of mind knowing that the security forces are capable of maintaining law and order (Lowenthal 2022:2, 8, 9; Acuff et al. 2022). Coupled with this must be the guarantee that citizens can live in safety and that no undue force will be used when citizens protest the lack of service delivery which the government is obligated to provide (Barnard 2015:58, 59, 140, 206, 208; Ndlovu-Gatsheni 2018; Currie & De Waal 2001; 2013; Davids, Theron & Maphunye 2005; De Vos & Freedman 2021). Social development requires the existence of national security and the security forces must act in such a manner that citizens are aware and can experience security and freedom in their everyday lives (Mallya 2022).

### **5.7.2 Amendments to the General Intelligence Laws Amendment Bill (GILAB) 2023**

The study posits that much information exists in the public domain and, thus, the ethical prescripts that support this study are adhered to when citing such information. The GILAB (2023) has been presented for comment and public scrutiny. This piece of legislation is particularly important as it gives powers to the intelligence agency (Carmel 2004;

Chapman 2004; Cimbala 1987; Dombroski 2006; Nathan 2010; Africa & Kwadjo 2009; Putter 2024). The fact that there are powers that may be given that impact on social freedoms and rights raises certain concerns which translate negatively to social development (Le Roux & Davis 2019; Maurer Tunstall & Keagle 1985; Mallya 2022; Duncan 2018; Max-Neef et al. 1999). The presence of NGO's that primarily are concerned with social upliftment and defending the rights of citizens now appear threatened as the intelligence agency may be given powers to vet and look into the activities of such NGO's (Nash 1997; Potgieter 2007; Williams & Lipetz 2005; Goldman 2010). This contradicts the Bill of Rights while undermining the spirit of the Constitution (1996) and the espoused constitutional principles. The Constitution (1996) and the principle of the rule of law may be negated through the intended amendments. The Judicial Commission of Inquiry into State Capture Report (2018, Part V), referred to as the State Capture Report, specifically addressed the abuse of power by the intelligence agency and the impact that this had on the South African nation. There was a breakdown of trust due to the alleged politicisation and abuse of state resources. The study suggests that laws need to be consistently monitored in relation to the impact on the rights and freedoms of society but more so the underlying motives that require certain intelligence interventions must be transparent.

### **5.7.3 Politicisation of social development**

The South African government is not a law unto itself; it is a servant of the people. The political structure that determines who governs the Republic of South Africa is based on a "party political" system. Currently, the election of leaders and the Electoral Act (1998) has come under consideration. The desire by entities in society to have this restrictive process expanded to include independent candidates gives credibility to the rule of law and the country's democracy. Political uncertainty and the lack of trust by the citizens in the political processes do little to promote vibrant social development (Barnard 2015; Shaik 2020; Moerane 2020; Esterhuysen 2012; Nathan 2010; Agrizzi 2020). The alleged involvement of the security and intelligence structures in the political arena has led civil society to question the credibility of the ruling party and the security and intelligence forces. Democratic practices are essential not only to hold the government to account; they also serve to strengthen the country's democracy. In this process, constitutionalism

is defended and the Constitution (1996) is upheld in the intended spirit of uniting the nation in its quest for social and economic development and prosperity (Asmal et al. 2011; Ellmann 2019; Mallya 2022; Friedman et al. 1997). The politicisation of social development can be linked to promises of better service delivery, poverty alleviation and the creation of a free and safe country (Mallya 2022). These promises become pronounced when the government/ruling party and other political parties and entities start their election campaigns. The study argues that such promises are mere rephrased promises that do not materialise (Mbeki 2009; 2011; Mbeki 2016; Nolutshungu 1992). As this study illustrates, a very active citizenry is required to design its own destiny. The Constitution (1996) gives citizens ample power. In fact, the citizens under a constitutional democracy must have more power than the government (Lieberman 1991; Currie & De Waal 2013; Klug 2010; Labuschagne 2004; Sachs 2016; Chaskalson 2003). Max-Neef et al. (1991) and Mbeki (2011) allude to the influence that governments exercise over citizens. This emanates from the desire for political control, which benefits those in power and those close to the political elite (Le Roux & Davis 2019; Leatt et al. 1986; Jeffery 2019; Horowitz 1991; Putter 2024; Africa & Mlombile 2001). Democracy allows citizens to be governed by elected leaders, which implicitly gives such leaders the belief that the citizens have given all power and responsibility to them (Mbeki 2011:71-97). This is a myth that social activism must contest and address to benefit society while saving power-hungry politicians from themselves (Heunis 2007; Esterhuyse 2012; Eloff 2017; Duncan 2014; Abrahamsen 2016; Medvedev 1989; Trotsky 1978;1987; Deutscher 1973; De Vos & Freeman 2021; Leggett 1986).

## **5.8 Summary**

Social development must be understood as a constitutionally mediated and security-contingent process rather than a programme of aspirational reform. It depends upon institutional integrity, civic agency and the stabilising force of the rule of law. Within this framework, citizenship operates as a unifying constitutional status, while the intelligence community plays a pivotal role in safeguarding the Constitution (1996) through strategic foresight and the mitigation of threats to national security. The Constitution (1996) structures public power, entrenches justiciable rights and enables

accountable governance through an independent judiciary. National security, when constitutionally regulated, is therefore not external to social development but foundational to it: legality, stability and accountability create the conditions within which dignity, equality and social cohesion may be realised. In advancing objectives (ii, iii and iv), this study situates intelligence firmly within the constitutional order that both authorises and constrains its mandate.

If social development is contingent upon constitutional stability and disciplined governance, the strategic orientation of intelligence becomes central to democratic consolidation. The inquiry therefore shifts to the conduct, policy design and implementation of intelligence within the democratic framework, examining how it may be aligned with - or diverge from - a strategy explicitly geared towards social development.

## **CHAPTER 6: INTELLIGENCE – CONDUCT, POLICY AND IMPLEMENTATION OF A STRATEGY GEARED TOWARDS SOCIAL DEVELOPMENT**

### **6.1 Introduction**

This chapter is written in the context of expanded public access to intelligence oversight material, notably the Judicial Commission of Inquiry into State Capture (Report: Part V) and the findings of the 2018 High-Level Review Panel on the State Security Agency, whose recommendations informed the General Intelligence Laws Amendment Bill (GILAB 2023). Drawing on open-source qualitative data in accordance with ethical standards, the analysis recognises that intelligence operations, though governed by law and policy, ultimately depend upon human agency for their implementation and integrity.

The Constitution (1996), as the supreme legal framework, regulates intelligence authority and delineates its limits. As the “law of laws”, it requires vigilance in safeguarding rights, particularly where power may be abused, and assigns the Constitutional Court a central role in preserving constitutional integrity. Intelligence is therefore constitutionally obligated to operate in accordance with South African values and the public administration principles articulated in Chapter 10, s195, advancing national security in a manner consistent with social development.

Rejecting an “overreliance on economic development” as a proxy for progress (Max-Neef et al. 1991), this chapter situates intelligence within a broader conception of social development. While recognising that identifying economic opportunities constitutes an objective of intelligence, economic growth alone cannot secure social advancement. The socioeconomic rights entrenched in the Bill of Rights underscore that development must prioritise human capability and the realisation of “quality-laden” lives. Effective national security, properly regulated under the Constitution (1996), thus emerges as a prerequisite for sustainable and constitutionally grounded social development.

## **6.2 Reflective overview of intelligence in South Africa**

South African intelligence has historically been tainted by inhumane and illegal methodologies (Putter 2024; O'Brien 2011; Africa & Mlombile 2001; Africa & Kwadjo 2009). Under apartheid, intelligence evolved into a coercive political instrument rather than functioning as a servant of the people or guardian of national security (Van Vuuren 2017; Shaik 2020; Rostron 2019; Pauw 1997; 2017; 2017; 2022; Pitney 2001; Potgieter 2007; Hutton 2007; 2009). Its institutional character became inseparable from the ideological imperatives of the regime.

The apartheid government cultivated a narrative that the state was perpetually under siege. This perceived threat served as a “plausible” alibi for the deployment of security forces and intelligence structures in the name of national security (Coleman 1998; Potgieter 2007; Africa & Mlombile 2001; Maharaj & Jordan 2021). Dissent was reframed as subversion, and those opposing apartheid laws or policies were recast as enemies of the state and, by implication, national security threats (Africa & Kwadjo 2009; Putter 2024; Dombroski 2006; Van Vuuren 2017; Mallya 2022; Hutton 2009).

Within this constructed threat environment, intelligence became a mechanism to silence opposition and suppress resistance. Its prominence intensified after 1948, as internal resistance and external pressure escalated (Asmal et al. 2011). The electoral victory of the National Party and the political ascent of Hendrik Frensch Verwoerd - who represented the NP in the Senate and rose to Cabinet level in 1950 as Minister of Native Affairs - reinforced a perception of existential danger to the state (Simpson 2021; Giliomee 2020; 2022; O'Brien 2011).

Verwoerd, widely regarded as the architect of apartheid, entrenched “separateness” as official state ideology. The dominant threat narrative suggested that decisive measures were necessary to prevent the majority of South Africans, the MOM, from overwhelming White South Africans (Simpson 2021; Giliomee et al. 2022; O'Brien 2011:3-5; Singh 2021; Putter 2024; Van Vuuren 2017). Intelligence structures were accordingly positioned as defensive instruments within an ideologically framed survival strategy.

Normatively, intelligence services are expected to safeguard the nation from adversarial states and actors whose agendas threaten constitutional democracy, including those in proximity to political power (Carmel 2004; Andrew 2019; Shaik 2020; Barnard 2015; Dombroski 2006; Mallya 2022). Such adversaries may operate both within and beyond national borders (Lowenthal 2022; Gourley 2018; Baldino 2010; Kent 1974; Hastedt 1991; Hansen 1996; Johnson 2015). In this orthodox understanding, intelligence anticipates, assesses and mitigates threats to national stability.

Andrew (2019:13-26) illustrates that intelligence has historically secured advantage over adversaries, often shaping victory or defeat (Lowenthal 2022; Bernhardt 2003; Black & Morris 1991). This reflects a predominantly tactical orientation, particularly when intelligence is reactive rather than anticipatory (Born, Leigh & Wills 2011; Shulsky & Schmitt 2002; Snow 2020; Chapman 2004; Coleman 1998; Dulles 2006).

This study distinguishes between tactical and strategic intelligence. Strategic intelligence is directed toward long-term national security objectives and systemic stability, with tactical and strategic functions operating complementarily (Akhmedov 1984; Black & Morris 1991; Born, Leigh & Wills 2011; Chapman 2004; Barnard 2015; Dulles 2006). The value of proactive intelligence was particularly evident during the world wars (WWI, 1914-1918 and WWII, 1939-1945), when allied powers relied on infiltration and penetration operations to secure strategic advantage (Andrew 2019:479, 543, 573; Giliomee et al. 2022; Simpson 2021; Jensen, McElreath & Graves 2018:19-20, 21-25, 119, 206-208; Kish 1995:142, 144-149; Dear 2013; Kent 1974; Friedman et al. 1997; Kleynhans 2021; Neiberg 2017).

Against this theoretical backdrop, South Africa's post-1948 adoption of intelligence as a counter-revolutionary instrument reflects a deliberate strategic orientation (O'Brien 2011; Africa & Mlombile 2001). The government developed a five-faceted strategy to neutralise opposition.

The first facet involved direct targeting of perceived enemies through infiltration, penetration, assassinations, disinformation and propaganda, while maintaining plausible deniability to preserve diplomatic relations and avoid international incrimination (Lowenthal 2022; O'Brien 2011).

The second facet framed South Africa as “anti-communist”, facilitating partnerships with the USA and other anti-communist states. This framing recast domestic repression as part of a broader ideological struggle (Mallya 2022; Africa & Kwadjo 2009). South Africa’s membership of the Commonwealth and Jan Smuts’ participation at the San Francisco Conference in 1945, where the UN Charter was drafted, further complicate this positioning.

The third and fourth facets were interwoven. As international sanctions intensified, intelligence mechanisms were deployed to circumvent restrictions while advancing nuclear ambitions (O'Brien 2011:6-8; Kish 1995:83-87; 114, 123, 129; Barnard 2015; Africa & Kwadjo 2009). Intelligence thus served both domestic repression and strategic state survival.

The deployment of intelligence as a politically motivated instrument rather than within constitutional and legal constraints raises a critical normative concern: such practices may undermine social development and violate both international law and domestic constitutional principles (O'Brien 2011:3-9; Pauw 1997; 2017; Goldman 2010; Africa 2009; Black & Morris 1991; Winter 1981; Barnard 2015; Lowenthal 2022; Dombroski 2006; George & Kline 2006).

The abuse of intelligence for nefarious purposes can destabilise governance, erode public trust and prejudice political stability (Duncan 2014; Abrahamsen 2016; Goldman 2010:122-124; Africa & Kwadjo [Nathan] 2009; Shulsky & Schmitt 2002; Bazzell & Carroll 2016). In the South African context, the apartheid intelligence apparatus illustrates how national security structures, when subordinated to ideology, become instruments of repression rather than guardians of democratic order.

### **6.2.1 Biblical and early recollections of intelligence and espionage**

The biblical perspective situates intelligence at the “dawn of the ages”, where curiosity about the future intersected with suspicion of threats to leadership (Barnard 2015:72-73; Andrew 2019:40-41). The below scriptural references are cited by book and chapter for illustrative and analytical purposes rather than theological exegesis, and the discussion does not depend on a specific translation. Intelligence thus emerges not as a modern or exclusively secular construct, but as an enduring feature of political organisation and statecraft - a theme resonant within South Africa’s contested socio political landscape (Booyesen 2011).

Biblical narratives provide early illustrations of reconnaissance, espionage and strategic foresight. In Numbers 13–14, Moses dispatches twelve spies to assess Canaan’s inhabitants, fortifications and resources, reflecting systematic information gathering and threat evaluation. In Joshua 2, covert agents survey Jericho prior to engagement. These accounts reveal core intelligence functions - surveillance, infiltration and the use of human sources - long before formal institutionalisation. The narrative of Joseph in Genesis 41 introduces predictive intelligence: the interpretation of Pharaoh’s dreams functions as strategic forecasting, enabling anticipatory governance during famine. Intelligence is thus shown to extend beyond immediate threat response to long term crisis anticipation (Barnard 2015; Andrew 2019; Johnson 2010; Johnson 2015; Johnson & Wirtz 2015; Lowenthal 2022).

These narratives also expose a persistent tension between knowledge, authority and moral restraint. Leaders reliant on privileged information must distinguish between loyalty and concealed hostility (Esterhuyse 2012; Barnard 2015; O’Brien 2011; Andrew 2019; Johnson 2010; Johnson 2015; Johnson & Wirtz 2015; Lowenthal 2022). Intelligence therefore occupies ethically contested terrain, where security imperatives coexist with the risk of abuse. In the South African context, marked by historically sensitive patterns of diplomacy and trust, intelligence operations carry particular political weight (Kish 1995; Esterhuyse 2012; Barnard 2015). Although inherently politicised, intelligence must strive for analytical objectivity to preserve legitimacy domestically and internationally (Shaik

2020; Maharaj & Jordan 2021; Ryan 2002; Goldman 2010; Africa 2009; Cimbala 1987; Dulles 2006; Duncan 2014; Eisenberg, Dan & Landau 1980; Africa & Kwadjo 2009; Coleman 1998; Singh 2021).

Biblical recollections illuminate the ethical ambiguity of intelligence practice. While reconnaissance and forewarning are depicted as instruments of survival, the narratives caution against fear driven governance and moral compromise. This tension persists in contemporary international relations, where intelligence intersects with legal frameworks intended to preserve stability and peace (Mallya 2022; Blake & Walters 1987:34-35; 120-123; Born et al. 2011; Buzan 1991; Kish 1995; Nathan 2010; Cimbala 1987; Hansen 1996; Hastedt 1991). Intelligence agencies have frequently disregarded such normative constraints (Kish 1995; Mallya 2022; Winter 1981; Goldman 2010; Africa & Mlombile 2001; Hall & Citrenbaum 2012; Dombroski 2006; Coleman 1998). In South Africa, the NIS's expansive reliance on Resolution No. 23 exemplified this divergence between mandate and practice (Barnard 2015; Simpson 2021; Esterhuyse 2012; Jensen et al. 2018).

Within a constitutional democracy, intelligence must be subordinated to law. The Constitution (1996) regulates public power and empowers citizens to challenge social conditions affecting their lives. Democratic resilience depends not merely on intelligence capability, but on accountability and oversight (Currie & De Waal 2013; De Vos & Freedman 2021; Sachs 1990; 2016). Biblical recollections therefore do not legitimise intelligence uncritically; they underscore its enduring moral complexity at the intersection of security, power and restraint.

### **6.2.2 Defining intelligence**

Intelligence and national security are intrinsically linked (Africa & Kwadjo 2009; Gourley 2018; Hulnick & Mattausch 1989; Hutton 2007; Levite 1987; Lebakeng 2023). National security provides the constitutional framework within which intelligence operates, while intelligence supplies the knowledge required to safeguard that framework. Security remains indispensable to stable social development, enabling citizens to shape their

developmental trajectory rather than submit to externally imposed prescripts (Max-Neef et al. 1991; Goldman 2010; Goredema & Botha 2004).

Chapter 11 ss 198 (a-d) of the Constitution (1996) provides that national security must reflect the resolve of South Africans to live as equals, in peace and harmony, free from fear and want (Africa & Mlombile 2001; Africa & Kwadjo 2009; Dombroski 2006; Singh 2021; Spitzer 2001; Steele 2000; Pitney 2001; Horton 2003). Intelligence therefore exists not to preserve political authority, but to protect democratic order and citizens' rights.

Sherman Kent's<sup>21</sup> work provides a foundational articulation of modern intelligence theory. He argued that intelligence is not merely espionage but a disciplined analytical function designed to inform decision-makers objectively (Andrew 2019:1; Kent 1974). Kent insisted on professional distance from policy and warned that the discipline lacked established doctrine and methodological rigour (Andrew 2019:1-3; Hastedt 1991; Hutton 2009; Horton 2003). His project sought to elevate intelligence into a structured evaluative enterprise rather than an instrument of ideological expediency.

Although intelligence studies may not yet constitute a fully consolidated body of knowledge (BoK), substantial scholarship has since developed to define and contextualise the field (Jensen et al. 2018:2-5; Acuff et al. 2021:1-3; Goldman 2010:3-5; Lowenthal 2022:1-2, 4, 5-7; Gwatiwa 2024; Davenport et al. 1978; Britannica 2019). Informed by this scholarship and Kent's insistence on analytical integrity, this study defines intelligence as:

*“the secret and clandestine collection, evaluation and analysis of information concerning perceived threats to governmental and societal interests, conducted for the purpose of producing actionable knowledge that enables decision-makers to safeguard national security within constitutional bounds”.*

---

<sup>21</sup> Sherman Kent is credited as the founding father of US intelligence analysis early into the cold war (12 March 1947 – 25 December 1991).

Intelligence is thus processed and contextualised knowledge rather than raw information (Acuff et al. 2021:2-3; O'Brien 2011; Esterhuyse 2012:179; Andrew 2019; Duncan 2018:xix, 5; Lowenthal 2022; Nathan 2010). It frequently relies on covert methodologies - including HUMINT, SIGINT, GEOINT, MASINT and OSINT - across political, economic, social and related domains (Acuff et al. 2021:2; Jensen et al. 2018; Lowenthal 2022; Barnard 2015; Andrew 2019; Burke 2003).

The “Kentian distinction” between intelligence and policy is particularly salient in South Africa. Prior to 1994, intelligence structures functioned within a political paradigm that fuelled fear and racial division (O'Brien 2011; Van Vuuren 2017; Abrahamsen 2016; Coleman 1998). Intelligence became an instrument of regime preservation rather than constitutional protection.

Liberation movements - notably the ANC - also employed intelligence tactics, including “necklacing” against perceived collaborators (Jeffery 2019; Maharaj & Jordan 2021:90-92). The TRC Reports 1998; 2002; Tsang 2008; Coleman 1998; Dombroski 2006 document misconduct across ideological divides, contributing to a persistent “trust deficit” between citizens and intelligence services.

The necessity of ethical conduct is therefore central to intelligence within South Africa’s post-apartheid dispensation (Jensen et al. 2018; Lowenthal 2022; Lebakeng 2023; Goldman 2010; Africa & Kwadjo 2009; Gwatiwa 2024). This understanding aligns with the Judicial Commission of Inquiry into State Capture Report, which affirms that the SSA is mandated to provide intelligence on threats to national stability, constitutional order and citizen safety (Judicial Commission of Inquiry into State Capture Report 2018:1; Jensen et al. 2018:3-5; Africa & Mlombile 2001; Dombroski 2006; Coleman 1998; Hutton 2007). A structural tension nevertheless persists: intelligence operations are inherently secretive and may involve deception and intrusion, potentially infringing constitutional principles (Goldman 2010; Kish 1995: xv-xvii, 1-4). South Africa’s experience - including apartheid-era abuses and contemporary constitutional transgressions - demonstrates that intelligence is not a neutral technical instrument. Within a constitutional democracy, it

must therefore remain professionally rigorous, legally constrained and ethically accountable.

### **6.2.3 Developing intelligence in South Africa – a contextual overview**

Throughout history, wars have been waged on the basis of religion, ideology, economic ambition and territorial contestation (Andrew 2019; Tzu 1988; Kish 1995; Prunckun 2012). Intelligence has consistently shaped strategic calculations and operational outcomes. The development of intelligence in South Africa must therefore be situated within this global tradition while recognising the country's distinctive political trajectory.

This study examines South African intelligence in terms of institutional development, operational expansion, politically biased deployment and political influence over intelligence structures (O'Brien 2011; Classen 2004; 2011; Africa & Mlombile 2001; Africa & Kwadjo 2009; Pauw 2017; 2022; Barnard 2015; Winter 1981; Williams & Lipetz 2005; Acuff et al. 2021). Two politically constructed entities shaped this trajectory: the National Party (NP) government and the African National Congress (ANC). Both employed intelligence for political objectives, though within markedly different institutional contexts.

#### British influence and the foundations of apartheid intelligence

When the NP assumed power in 1948, it faced domestic resistance and international scrutiny. South Africa initially relied on British intelligence expertise (O'Brien 2011:17), yet rising Afrikaner nationalism and the electoral defeat of British aligned interests generated tension between Pretoria and London. British authorities were reluctant to strengthen an increasingly isolationist and racially authoritarian regime (Simpson 2021; O'Brien 2011).

Such caution reflected the protective culture of intelligence services. Agencies guard operational methodologies and institutional vulnerabilities, and assistance risks exposing tradecraft and long term weaknesses (Lowenthal 2022; Faini 2021). Personnel exchanges may also create opportunities for influence or recruitment (Gwatiwa 2024; Kent 1974; Steele 2000). Intelligence cooperation is therefore strategically calculated rather than altruistic.

Cold War dynamics altered British calculations. The rise of communism reshaped intelligence diplomacy, and Britain was unwilling to see its former dominion drift toward communist influence. Engagement with the Pretoria government, particularly the South African Police (SAP), was therefore renewed under Sillitoe (O'Brien 2011:17-21; Simpson 2021:136-137; Elsdon 2009:36-41).

Apartheid South Africa positioned itself as firmly anti-communist (O'Brien 2011; Simpson 2021), aligning with Western priorities. Structural inspiration was drawn from MI5 and MI6, though Britain did not disclose the full intricacies of its intelligence architecture. Sillitoe reportedly remained cautious about empowering Afrikaner dominated SAP structures, concerned that such capacity might be used for "improper" purposes (Simpson 2021:136-137; O'Brien 2011:15-20; Acuff et al. 2022:98-99).

#### The SAP platform and the militarization of intelligence

The SAP became the foundation for domestic security intelligence. Influenced by the MI5 model of internal security, this structure evolved within an apartheid context where internal security became synonymous with regime preservation.

Intelligence was embedded within policing rather than established as an analytically autonomous civilian service. This design fused intelligence with coercive enforcement, culminating in a Security Branch characterised by limited analytical independence and significant operational reach (TRC 1998; O'Brien 2011; Gourley 2018).

Rather than reflecting Kent's conception of insulated, objective analysis, apartheid intelligence became politically controlled and operationally aggressive. The inherited British framework was transformed into a system calibrated to defend minority rule and suppress dissent (O'Brien 2011; Putter 2024; Africa & Kwadjo 2009; Van Vuuren 2017; Elsdon 2009).

This evolution underscores that intelligence structures are shaped by political context. In South Africa, a borrowed security model became an instrument of regime survival rather than democratic accountability.

#### Political control and the expansion of intelligence capacity

As resistance intensified, particularly through the mobilisation of the ANC and allied structures, the NP government expanded intelligence collection, counter subversion and covert operations. Intelligence capacity became proactive and increasingly centralised, with enhanced coordination between police, military and covert units.

Intelligence was used to infiltrate opposition movements, disrupt mobilisation and shape political narratives. The boundary between intelligence and political enforcement blurred, entrenching politicisation (O'Brien 2011; Africa & Mlombile 2001; Classen 2004; 2011; Pauw 2017; 2022; Barnard 2015; Winter 1981; Williams & Lipetz 2005; Acuff et al. 2021). Over time, intelligence became associated with repression rather than protection. The structural fusion of intelligence and policing reinforced a militarised posture prioritising threat elimination over analytical objectivity.

#### Structural consequences for post-apartheid intelligence

The legacy of apartheid intelligence shaped the democratic transition. The constitutional order inherited institutional frameworks designed for regime security rather than national security in the constitutional sense. Restructuring was therefore normative as well as administrative.

Although intelligence was repositioned within constitutional parameters, the inherited culture of secrecy, political influence and operational dominance created enduring tensions. The historical development of intelligence under apartheid continues to inform debates regarding oversight, accountability and legitimacy.

### **6.2.3.1 Reflective overview of apartheid and liberation intelligence**

This study posits that intelligence under the 1910 to 1983 constitutional dispensations was embedded within legislation governing the Union Defence Force (UDF) and the South African Police (SAP). These frameworks regulated military and policing functions: the SAP addressed internal security and insurrection, while the military defended territorial geo-space (Africa & Kwadjo 2009; Africa & Mlombile 2001). Intelligence was therefore subsumed within coercive institutions prioritising regime stability rather than functioning as an autonomous civilian service.

Although intelligence operated domestically, aspects of its development were influenced or indirectly shaped by foreign powers (O'Brien 2011; Winter 1981; Kleynhans 2021; Simpson 2021; Van Vuuren 2017; Putter 2024; Africa & Mlombile 2001). Cooperation with Britain under Sillitoe was driven by Cold War containment objectives, but also enabled British influence over apartheid intelligence architecture (O'Brien 2011; Simpson 2021:136-137; Elsdon 2009). Intelligence cooperation thus reflected strategic calculation rather than ideological alignment.

#### Apartheid intelligence: legal authority and political subordination

Intelligence is inherently political, constituted through policy and legislation defining jurisdiction and scope (Barnard 2015; Coleman 1998; Lowenthal 2022; Wheaton 2011; Dulles 2006; Pitney 2001; Hutton 2007; 2009). In apartheid South Africa, intelligence structures were institutionalised with a pronounced ideological orientation. The Department of Military Intelligence and the SAP Security Branch received extensive statutory powers, many abused at systemic and individual levels (Africa & Kwadjo 2009:179-189; O'Brien 2011:15-26, 27, 29-31; Putter 2024; Dombroski 2006; Simpson 2021:191-193, 263-264, 273-275, 315; Shaik 2020:95-97; Barnard 2015:136-143, 140; Pauw 2017; 2022; Wiener 2018; 2020).

The establishment of the Bureau for State Security (BoSS) in 1969 consolidated intelligence authority following withdrawal from the Commonwealth (O'Brien 2011). Under Van Den Bergh, BoSS operated with expansive discretion and limited oversight,

becoming an overt instrument of regime ideology (Elsdon 2009; White Paper on Intelligence 1994).

Secrecy facilitated euphemistic terminology such as “special” and “covert” operations, often obscuring unlawful conduct (Goldman 2010:19-25; Barnard 2015:101, 102, 104-111; Lebakeng 2023; Hall & Citrenbaum 2012; Singh 2021; Hansen 1996; Africa & Kwadjo 2009). Broad powers, ideological subordination and weak accountability produced a militarised apparatus insulated from meaningful oversight.

#### Liberation intelligence: adaptive, externalised and counter-subversive

In contrast, the ANC lacked legislatively grounded intelligence structures or territorial jurisdiction. Upon adopting armed struggle, it confronted a state with institutionalised intelligence capacity (Barnard 2015; Putter 2024; O'Brien 2011; Africa & Mlombile 2001). Liberation intelligence therefore developed reactively under conditions of exile, infiltration and surveillance.

Liberation intelligence may be defined as clandestine collection, analysis and counterintelligence undertaken by non-state actors to resist or overthrow a regime, often dependent on foreign training and covert networks (Jeffery 2019; Barnard 2015; O'Brien 2011; Shaik 2020; Prunckun 2012:23-24).

By the time the ANC structured counterintelligence mechanisms, apartheid forces had accumulated institutional experience and penetrative capacity (Kasrils 1993; Sukman 2018; Barnard 2015; O'Brien 2011; Africa & Kwadjo 2009:64-78). Infiltration had already undermined organisational cohesion (Barnard 2015; Shaik 2020; O'Brien 2011; Simpson 2021; Sachs 2017:6-7, 39; Kish 1995).

Apartheid counterintelligence targeted ANC structures, generating internal distrust and recurring allegations of informers (Barnard 2015; Simpson 2021; Sachs 1990; 2017; O'Brien 2011; Jeffery 2019; Africa & Kwadjo 2009). There may have been deliberate

attempts to “use the ANC against itself” (Africa & Kwadjo 2009; O’Brien 2011; Putter 2024; Simpson 2021; Asmal et al. 2011).

Engagement between NIS officials Louw and Spaarwater and ANC leaders, including the Simelane brothers, Mbeki and Zuma, illustrates the extent of penetration during early negotiations (O’Brien 2011:1-3; Barnard 2015). Resolution No. 23, reported to President F.W. de Klerk, further suggests detailed knowledge of ANC camps (Barnard 2015).

Accounts by Twala and Benard (1994) and Pauw (1997; 2017) document violence and torture within ANC camps (Tiro 2019; O’Brien 2011; TRC 1998; 2002). While internally executed, intelligence manipulation may have exacerbated suspicion and coercion, contributing to strategically “manipulated outcomes” (Twala & Benard 1994; Shulsky & Schmitt 2002).

#### External sponsorship and strategic dependency

Liberation intelligence developed within a context of international engagement. Foreign governments and movements monitored and supported the anti-apartheid struggle (Winter 1981; Africa 2009; O’Brien 2011; Elagab & Elagab 2007; Kent 1974; Africa & Kwadjo 2009; George & Kline 2006). Training in intelligence and counterintelligence was often provided, though rarely without strategic expectation (Steele 2000; Suttner 2008; Thomas 2007; Trotsky 1987; Hansen 1996; Hitz 2008; Johnson & Wirtz 2015; Nathan 2010; Spence 2008; Legget 1986).

External sponsorship facilitated operational development while embedding vulnerabilities linked to dependency and competing agendas.

#### Structural asymmetry and constitutional contrast

Apartheid-era intelligence operated under parliamentary sovereignty, which concentrated executive authority and limited judicial constraint (Currie & De Waal 2001; 2013; De Vos & Freedman 2021; South Africa Act of 1909; O’Brien 2011; Africa & Mlombile 2001). Propaganda reinforced narratives of perpetual war, legitimising militarisation and

extraordinary security measures (Carmel 2004; Tsang 2008; Thamm 2019; Deacon 1972; 1977; Dombroski 2006; Van Vuuren 2017; Coleman 1998; Singh 2021).

The post-1994 constitutional order fundamentally altered this framework. Intelligence was reconstituted under constitutional supremacy (1996), with presidential accountability for services established under Chapter 11 (ss198-210), marking a decisive departure from apartheid-era governance.

### **Salient analytical reflection**

Both apartheid and liberation intelligence were shaped by asymmetry, ideology and secrecy. The apartheid state operated with legislative authority, institutional infrastructure and coercive capacity, whereas liberation intelligence developed reactively, with external support and vulnerability to infiltration. Although the apartheid apparatus benefited from formal structure, it remained politically subordinated and susceptible to abuse. Liberation intelligence, despite its emancipatory framing, was likewise not immune to coercion, violence or counterintelligence failures.

This comparison demonstrates that intelligence - whether exercised by a state or a liberation movement - is neither inherently virtuous nor inherently abusive. Its ethical character is determined by institutional design, accountability mechanisms and political context.

### **6.2.3.2 Intelligence, negotiation and democratic transition: From CODESA to constitutional governance**

The liberation struggle culminated in a negotiated settlement rather than military victory. However, the intelligence infrastructures that sustained both apartheid rule and resistance did not dissolve; they migrated into the transitional environment, shaping trust, leverage and strategy during CODESA 1 and 2.

The apartheid state had constructed an intelligence service aligned to defend Afrikaner nationalism after 1948 (O'Brien 2011; Moorcraft 2018; Potgieter 2007; Esterhuyse

2012:276, 280, 298; Giliomee et al. 2022; Coleman 1998; Africa & Kwadjo 2009). By contrast, the ANC's intelligence developed reactively in exile. Although CODESA aimed to establish constitutional democracy and a government of national unity (Jeffery 2019:137-138, 170-172, 173-179; Asmal et al. 2011:166-172, 178-179, 181-188; De Vos & Freedman 2021:16-19; Africa & Mlombile 2001), negotiations unfolded within an environment shaped by intelligence legacies, suspicion and covert activity.

#### Intelligence during CODESA: strategic leverage and managed transition

Both the NP and the ANC entered negotiations with accumulated intelligence on leadership structures, factional dynamics and vulnerabilities (O'Brien 2011:98-117; Barnard 2015:140-144, 145, 152). Such intelligence likely informed negotiation strategy. For the apartheid state, intelligence illuminated divisions within the liberation movement and enabled calibrated engagement. For the ANC, exile networks and international alliances informed positioning. Intelligence thus functioned as a bargaining resource, influencing sequencing, confidence-building and violence management during transition. The integration of former adversaries' security structures was inherently fragile. Each had previously defined the other as an existential threat, and unresolved questions regarding penetration agents persisted (O'Brien 2011:98-117; Barnard 2015:140-144, 145, 152). Institutional amalgamation occurred without full trust, embedding structural instability within democratic intelligence governance.

#### The TRC: Disclosure, silence and intelligence accountability

The Truth and Reconciliation Commission (TRC), established in 1994, sought to expose gross human rights violations and clarify the roles of operatives serving their respective "spymasters" (Africa & Kwadjo 2009; Asmal et al. 2011; O'Brien 2011; Barnard 2015; Esterhuyse 2012). Through conditional amnesty and disclosure, it aimed to promote reconciliation (Sachs 2016:55-57, 59, 61, 65; Jeffery 2019:98-99, 183-186; SAHO 2018; TRC 1998; 2002; Thamm 2019; Maharaj & Jordan 2021:8-12, 51-61, 78-82).

While the TRC documented extensive apartheid-era abuses, its engagement with intelligence structures was necessarily partial. Secrecy, compartmentalisation and

negotiated political constraints limited full exposure (O'Brien 2011:218-219; Barnard 2015; TRC Reports 1998; 2002). Abuses within liberation camps were also not comprehensively interrogated.

The result was a transitional justice process that exposed atrocities but left elements of the intelligence ecosystem intact and insufficiently scrutinised. This incomplete reckoning proved consequential.

#### Constitutional reconstruction and the promise of democratic intelligence

The amalgamation of intelligence services occurred under the Constitution (1996), which established legality, civilian supremacy and oversight (O'Brien 2011; Barnard 2015; Maharaj & Jordan 2021). Legislative frameworks, including the White Paper on Intelligence (1994), sought to reposition intelligence as a lawful protector of national security and human rights (O'Brien 2011:200-203; Africa & Kwadjo 2009:20-22; 65, 69; White Paper on Intelligence 1994; Africa 2009; Africa & Mlombile 2001; Esterhuyse 2012). Intelligence was normatively redefined to safeguard constitutional order and support peace, economic growth and social development (Africa & Kwadjo 2009; Coleman 1998; Maharaj & Jordan 2021).

#### The central argument: Legislative reform without cultural transformation

This study argues that post-1994 legislative and policy reforms - including the Constitution (1996) and the White Paper on Intelligence (1994) - have had limited restraining effect on certain intelligence actors.

The post-apartheid period revealed continued vulnerability to political interference and factional manipulation. State capture exposed the repurposing of intelligence structures to serve narrow political and personal interests. The High-Level Review Panel on the State Security Agency documented politicisation, operational abuse and governance failures, demonstrating that constitutional subordination does not automatically transform institutional culture.

Factional deployment, selective reporting and the shielding of political elites undermine intelligence's developmental function. Intelligence diverted toward internal political contests cannot effectively anticipate economic risk, organised crime or corruption networks.

The failure is therefore structural and normative. Intelligence reconstituted under democracy retained elements of secrecy culture, loyalty networks and political proximity. Legislative frameworks may prescribe accountability, but they cannot alone dismantle entrenched patronage systems.

#### Intelligence and social development: A distorted mandate

If intelligence is to support economic growth and social development, it must operate as a neutral early-warning instrument. When entangled in political survival strategies, analytical capacity deteriorates, resources are misdirected and professional tradecraft erodes.

The High-Level Review Panel findings, alongside broader state capture revelations, demonstrate that intelligence dysfunction weakens governance, erodes public trust and obstructs developmental objectives. Intelligence that is captured cannot advance social development; it impedes it.

#### **6.2.4 The Constitution (1996) and intelligence**

When the interim Constitution (1993) was replaced by the Constitution (1996), constitutional supremacy was firmly established, rendering all law and state action subject to the Constitution (Asmal et al. 2011; Sachs 2016; De Vos & Freedman 2021; Klug 2010). The interim Constitution functioned as a transitional vehicle that enabled democratic elections and dismantled the authoritarian order (Currie & De Waal 2013:645-646; De Vos & Freedman 2021; Sachs 2017). The Constitution (1996) satisfied the Constitutional Court's certification requirements and entrenched constitutional principles and the rule of law (De Vos & Freedman 2021; Motala & Ramaphosa 2002).

The new constitutional order applied universally and imposed clear limits on governmental power. Intelligence services were required to operate within legality and to remain institutionally separated from partisan political influence (Africa & Kwadjo 2009:89-91, 155-176; Coleman 1998; Hutton 2009).

When the civilian intelligence agency was established (circa 1994), emphasis was placed on safeguarding peace. O'Brien (2011:204), citing Joe Nhlanhla (1992), highlights the interdependence between the security of the state and the security of its people. This reflects a broader principle: development cannot occur amid instability, uncertainty or insecurity (De Vos & Freedman 2021; Currie & De Waal 2013; Buzan 1991; Africa 2009; Mallya 2022).

#### **6.2.4.1 Chapter 11 and the establishment of a civilian intelligence agency**

When democratic elections were concluded, the ANC secured political authority, but political victory did not automatically translate into control over economic and institutional power (Asmal et al. 2011; Sachs 2016; 2017; Esterhuyse 2012). Gumede (2005:67) argues that although the NP was “masterfully trounced” politically, economic power remained largely concentrated within the White minority and the financial sector (Esterhuyse 2012; Asmal et al. 2011). Gumede (2005:67-73) therefore contends that while the ANC won the political battle, the NP retained structural economic advantage, leaving the ANC to pursue constitutional democracy, industrial modernisation and socioeconomic reform without substantial governing experience.

Barnard (2015:140-143) suggests that within the negotiation process, the ANC held strategic advantage once the NIS and SSC acknowledged the inevitability of negotiations, implying a relative weakening of the NP's position (Asmal et al. 2011; Esterhuyse 2012; Simpson 2021: 342-355). However, this study argues that the transition to political power may have occurred with limited foresight regarding the practical demands of governing and national development (Sachs 2016; Gumede 2005; Maharaj & Jordan 2021).

During the early 1990s negotiations, the ANC confronted significant challenges concerning its preparedness to govern a complex state apparatus (Barnard 2015; Esterhuyse 2012; O'Brien 2011; Maharaj & Jordan 2021). Although the 1992 “Ready to Govern” policy document articulated a governance vision, many members lacked administrative experience due to years of operating as a banned organisation. Internal diversity and factional variation further complicated unified strategic implementation.

The “Ready to Govern” document, developed by the ANC leadership including Mandela and Mbeki, acknowledged anticipated governance challenges such as capacity building, institutional reform, inequality and organisational cohesion. These projections underscored the structural demands of democratic governance once political authority was assumed in 1994.

Mbatha’s (2019)<sup>22</sup> fundamental argument about the ANC and the political transition in South Africa, focuses on the complexities and challenges faced by the ANC during the transition from apartheid to democracy. Mbatha critiques the ANC’s readiness to govern and suggests that while the organisation had significant support from the citizens and its international partners, it was not fully prepared for the responsibilities of governance. Mbatha (2019) also posits that the ANC’s urgency to obtain political power led to hasty decision-making and compromises during the negotiation process that undermined some of its long-term strategic goals. He highlights that this rush for power may have contributed to internal divisions and a lack of coherent policy development, which affected the ANC’s effectiveness once in government. Mbatha contends that the ANC’s eagerness – perhaps even overzealousness – for political power and control of the country, without fully addressing the intricacies of governance and internal cohesion, posed significant challenges that affected its ability to lead effectively in the new democratic era. This perspective must be considered alongside the NP’s historical governance experience, particularly the refinement that accompanied the development and use of its intelligence

---

<sup>22</sup> Thulani Mbatha’s book, *The ANC and the Politics of Transition in South Africa: From the Negotiation to the New Democracy*, was published in 2019 and explores the readiness of the ANC to govern after the transition from apartheid.

and security forces (Putter 2024; Africa & Mlombile 2001; Coleman 1998). This process evolved significantly throughout the NP's period in power, orchestrated and funded to develop machinery that would defend and protect apartheid into perpetuity.

This unpreparedness to assume governance translated into the formation of an amalgamated intelligence agency (Asmal et al. 2011; Sachs 2016; 2017; Lebakeng 2023:3-4; Simpson 2021; Gumede 2005; Maharaj & Jordan 2021:127-129). A disparity in institutional experience existed between the NP and the ANC. The NP had governed South Africa for decades, accumulating administrative and intelligence experience not available within ANC ranks. This imbalance was compounded by the "role" played by the NIS in facilitating negotiations (Asmal et al. 2011:192-223; O'Brien 2011:205; Barnard 2015:273-275; Maharaj & Jordan 2021).

Upon assuming office, Mandela moved swiftly to consolidate intelligence structures under presidential authority. This urgency reflected both historical lessons and the recognition that executive accountability would attach to security misconduct (O'Brien 2011:205). By the time he assumed the presidency, it was evident that intelligence services could influence political power balances (Barnard 2015). Intelligence agencies possess the capacity to assume political roles, shaping which governments retain power (Africa & Kwadjo 2009; Acuff et al. 2022:179-182; Barnard 2015:160; Medvedev 1989:31-35, 75-77, 346-349; Booysen 2021:102, 117, 142-145, 180-183). Mandela's engagement therefore sought to align intelligence with democratic principles rather than repression.

The National Intelligence Service (NIS) was disbanded in January 1995, leading to the creation of the National Intelligence Agency (NIA) (O'Brien 2011: 205). The Intelligence Services Act (Act 65 of 2002) provided the legal framework for the NIA and broader intelligence restructuring. Minister of Justice Dullah Omar announced the formation of a secret service aligned with democratic principles (O'Brien 2011). The South African Secret Service (SASS) was established under the Intelligence Services Act (Act 65 of 2002), which outlines mandates, powers and responsibilities of the NIA and SASS, embedding intelligence within a democratic legal framework.

Among the legislation that birthed and was intended to regulate and structure the civilian intelligence agency was the following;

- National Strategic Intelligence Act of 1994
- Intelligence Services Act (Act 65 of 2002)
- Intelligence Services Control Act/Intelligence Services Oversight Act 40 of 1994
- Inspectors-General of Intelligence Act - Inspectors-General of Intelligence Amendment Act 31 of 1995)
- Intelligence White Paper 1994

These Acts served to regulate and empower the civilian intelligence agency within a legal framework subject to the Constitution (1996) (Africa & Mlombile 2001; Putter 2024). The interim constitution (1993) remained in force at the time of enactment, situating these measures within constitutional democracy.

Chapter 11 of the Constitution (1996) provides for the establishment of civilian intelligence. Chapter 11 (ss 198-210) sets out governing principles of national security, including peaceful coexistence, adherence to domestic and international law, and the subordination of national security to the authority of Parliament and the national executive (ss 198(d)). This authority is read together with Chapter 5, Section 84 (1) (2 a-k), which outlines presidential powers, and Chapter 4 (ss 42-82), which defines Parliament's functions.

The Constitution (1996) grants the president broad authority regarding the “establishment and control of intelligence services” (Chapter 11, sections 209-210). Section 209(1) refers to “any intelligence service other than the police service or defence force”, which, on interpretation, could permit the establishment of parallel intelligence structures. This concern is raised in light of the findings of the State Capture Report (2018) Part V, Vol. 1. The existence of legislation has not necessarily deterred misconduct. Intelligence practice ultimately reflects the conduct of individuals (Goldman 2010; Africa & Kwadjo 2009; Dombroski 2006; Coleman 1998; Hutton 2007; 2009). Legal frameworks provide

guidance but cannot themselves enforce ethical behaviour. South Africa's historical intelligence experience has generated trust deficits between citizens and intelligence institutions. While conduct is human, the crafting of laws and policies remains consequential (Nathan 2010; Africa & Mlombile 2001). Ill-conceived constitutional and legislative frameworks can shape behaviour, as evidenced by the constitutions of 1910, 1961 and 1983 (De Vos & Freedman 2021; Le Roux & Davis 2019; Goldman 2010; Van Vuuren 2017:209-214; 409-413; Kish 1995).

### **6.2.5 Intelligence governance and conduct**

The preceding section illustrated the legislative framework governing intelligence within South Africa's constitutional democracy (Africa & Mlombile 2001; Coleman 2001; Nathan 2010; Lebakeng 2023; Sachs 2017). These mechanisms sought to entrench obedience to the Constitution (1996) and the rule of law. However, as this study argues, legislation, regulatory mechanisms and the White Paper on Intelligence appear to have had limited restraining effect on certain intelligence actors despite the supremacy of the Constitution (1996) (Judicial Commission of Inquiry into State Capture report, Part V 2018).

Ethics concerns the manner in which individuals act within specific environments. In this study, moral principles are inseparable from ethical conduct (Lowenthal 2022:279-280, 281; Sachs 2017:19-21; Goldman 2010: xi-xiii, 22-23; 28-30). Intelligence involves collection, processing and execution (Lowenthal 2022; Acuff et al. 2022; Classen 2004; Dulles 2006; Africa & Kwadjo 2009). Execution introduces the decisive human factor. Officers and operatives must distinguish between right and wrong within operational ambiguity (Goldman 2010; Lowenthal 2022; Eisenberg, Dan & Landau 1980; Dombroski 2006; Mallya 2022; Pitney 2001; Kent 1974; Steele 2000; Sukman 2018). Laws and policies guide such choices only where individuals internalise constitutional norms (Africa & Mlombile 2001; O'Brien 2011; Sachs 2016; 2017). Procedures structure operational practice, while policy directs intelligence production processes (Vigoda 2003; Wilenius 1998; Coleman 1998; Acuff et al. 2022:137-138, 139-142; Jensen et al. 2018: 8-10, 13).

South Africa's constitutional democracy possessed the advantage of historical reflection (Esterhuysen 2012; Maharaj & Jordan 2021). Certain elements of the past were discarded, others refined, while some were retained to facilitate a rapid transition (Asmal et al. 2011; Putter 2024; Africa & Mlombile 2001). Yet the amalgamation of intelligence structures carried entrenched subcultures into the new dispensation (Africa 2009; Lebakeng 2023; Barnard 2015; Maharaj & Jordan 2021; Booysen 2011).

The White Paper on Intelligence (1994) made it unequivocally clear that intelligence conduct must reflect the Constitution (1996) and its values. Emerging from a repressive past, the White Paper on Intelligence (1994) represented a deliberate normative rupture. It sought not merely to regulate intelligence, but to reconstruct its ethical identity within a democratic state.

The White Paper on Intelligence (1994) provided a comprehensive design for ethical conduct and emphasised demonstrable service to all South Africans. Intelligence was repositioned as a constitutionally constrained public function rather than an instrument of political power. By embedding legality, accountability and respect for fundamental rights, the White Paper on Intelligence (1994) aligned intelligence practice with transformative constitutionalism.

However, critical scrutiny is warranted. The White Paper on Intelligence (1994) presupposed that institutional culture, political leadership and oversight mechanisms would internalise its principles. This reflects a broader post-apartheid tension between normative aspiration and institutional performance. While visionary, the White Paper on Intelligence (1994) remained structurally exposed: its effectiveness depended on sustained political will and robust oversight. It anticipated the risk that intelligence could be repurposed to serve political elites and associated networks, yet its safeguards relied heavily on ethical compliance.

The authority of the Constitution (1996) lies not only in formal supremacy but in its moral substance and developmental orientation. The White Paper on Intelligence (1994)

translated these principles into governance responsibilities, emphasising civilian control, non-partisanship, legality and service to the public interest (Africa 2009; Africa & Mlombile 2001; O'Brien 2011; Dombroski 2006). It was intended as a moral compass to ensure intelligence functioned as servant of the people rather than guardian of incumbency.

Within the broader architecture of constitutionalism and governance integrity, intelligence adherence to constitutional morality reinforces legitimacy and institutional trust; deviation facilitates political instrumentalisation and systemic erosion. The White Paper on Intelligence (1994) thus operates both as a normative benchmark and as a lens through which the alignment between constitutional ethics and intelligence practice may be assessed.

The High-level Review Panel on Intelligence (2018) found five areas of concern<sup>23</sup> and subsequently provided recommendations that would potentially correct or alleviate the ails which befell the SSA. The identified five principal areas of concern within the SSA and advanced recommendations aimed at institutional stabilisation, depoliticisation and structural reform. Its findings pointed to leadership instability, blurred accountability lines, operational fragmentation and the politicisation of intelligence functions. These deficiencies suggested not merely administrative weakness, but a deterioration of professional norms and governance culture within the agency.

While the SSA's conduct appeared inconsistent with the obligations articulated in the White Paper on Intelligence (1994), this study advances a stronger constitutional claim: the cumulative effect of malfeasance, politicisation and misuse of state resources constituted a deviation from the constitutional principles enshrined in the Constitution (1996). Intelligence structures are mandated to safeguard democratic order; when instrumentalised for factional purposes, they do not merely contravene policy guidelines but undermine constitutional governance itself.

---

<sup>23</sup> Politicisation, doctrinal shift, amalgamation, secrecy and resource abuse.

The Judicial Commission of Inquiry into State Capture, whose final reports were released in June 2022, brought many of these failures into the public domain. Its findings concerning the SSA echoed those of the 2018 High-level Review Panel, revealing systemic weaknesses rather than isolated misconduct. The diversion of funds, manipulation of intelligence mandates and erosion of oversight demonstrated how formal structures were repurposed in ways misaligned with constitutional objectives.

Although the Commission marked a significant moment of transparency, disclosure alone did not restore public trust. Transparency is necessary but insufficient; institutional legitimacy depends upon demonstrable reform, accountability and visible realignment with constitutional values. The convergence between the 2018 High-level Review Panel and the 2022 State Capture Commission underscores that the crisis was structural rather than episodic.

The reports cited violations of the Constitution (1996), emphasising that the SSA bore responsibility for upholding constitutional principles. National security and forward-looking intelligence are central mandates of the SSA, yet established processes were disregarded and financial resources mismanaged. The review panel's description of the SSA as a "cash cow" for individuals within and outside the Agency illustrates the scale of abuse. Oversight mechanisms designed to prevent such conduct proved ineffective, permitting continued erosion of public trust.

This analysis does not rehearse the detailed findings of those reports but emphasises that the SSA, as a constitutional organ of state, operates within a statutory and ethical framework intended to serve the public interest. The White Paper on Intelligence (1994), conceived as a durable governance framework, may warrant review in light of evolving political dynamics and demonstrated vulnerabilities. Normative design cannot remain static where institutional circumvention has been evidenced.

The GILAB<sup>24</sup> of 2023 is currently under consideration, alongside legislation governing the SSA's functions and powers, reflecting recognition that recalibration is necessary. However, legal frameworks alone cannot guarantee constitutional compliance. Intelligence governance depends equally on organisational culture, leadership ethics and the internalisation of constitutional values.

Findings from both the Commission into State Capture and the High-level Review Panel reveal systemic and existential deficiencies within the SSA. The primary failure did not arise from the absence of legislation, but from the interpretation, application and deliberate circumvention of existing frameworks by political principals and intelligence leadership. The formal architecture of accountability proved fragile when oversight mechanisms were weakened or co-opted.

This tension between normative sufficiency and practical compliance exposes a structural vulnerability within democratic intelligence governance. Legislation may prescribe mandates and safeguards, but it cannot substitute for ethical restraint. Regulatory frameworks presuppose good-faith adherence; where constitutional morality is not embedded in institutional culture, even comprehensive regimes become permeable.

The trajectory of the SSA thus reflects a broader constitutional dilemma: the durability of reform depends not only on refined laws but on alignment between legal architecture, political discipline and institutional ethos. Intelligence governance operates as a barometer of constitutional health. Where intelligence is distorted, democratic accountability is weakened. The imperative therefore extends beyond regulatory adjustment to the restoration and entrenchment of principled adherence to the constitutional values articulated in the White Paper on Intelligence (1994).

---

<sup>24</sup> The General Intelligence Laws Amendment Bill (GILAB), initially introduced in 2023, was subsequently assented to and signed into law in 2025. This development post-dates the primary period of analysis but confirms the trajectory of legislative recalibration referenced in the text.

#### **6.2.5.1 The implications of human vulnerability for intelligence**

Ethical behaviour and moral restraint are traits expected of individuals who respect the rule of law (Fanon 1963; 2014; Rodney 1972; O'Brien 2011; Asmal et al. 2011; Sachs 2016; Klug 2010; Suttner 2015; Currie & De Waal 2013; Goldman 2010; Nkrumah 1963). Reports detailing malfeasance within the SSA (2018) reveal a recurring denominator: human agency. Although the entity underwent name changes, this study refers to it as the SSA in alignment with the Judicial Commission of Enquiry into State Capture (2018), while acknowledging its historical continuity.

Human agency has long shaped South Africa's political trajectory. Under apartheid, power was vested in White nationalist leaders such as H.F. Verwoerd, D.F. Malan and J.B. Vorster, supported by parliamentary supremacy (Simpson 2021; Giliomee et al. 2022; O'Brien 2011). Human beings have historically enabled both oppression and constitutional transformation. The High-level Review Panel on Intelligence underscores this reality by affirming that no intelligence personnel shall accept any order that is unlawful or unconstitutional (2.7.7 On Illegal Orders). The existence of a supreme law does not extinguish greed, contempt for legality or self-serving conduct (Bundy 2015:22-23, 25, 104-106; Chaskalson 2003; Ellmann 2019; Sachs 2016:39, 55-57, 201-205; Rodney 2019; Olivier 2016; Steinmann 2016; Van Rensburg 2020). While some individuals demonstrate moral courage, others depart from the ethical cadreship envisioned by the forbearers of the ANC's moral tradition (Bundy 2015; Suttner 2015; Fanon 1963; 2014; Sesanti 2021).

Both the High-level Review Panel on Intelligence Report and the State Capture Report (2018) recommend criminal charges against transgressors. The Constitution (1996) embodies restorative and social justice principles, seeking to harmonise accountability with equity and social development. Charging offenders upholds the rule of law and affirms victims' rights, while judicial processes evaluate circumstances to determine appropriate remedies, whether restorative or punitive. This integrated approach aims to promote healing, deter wrongdoing and reinforce constitutional order.

The Commission into State Capture Report (2018) highlights systemic disregard for the Constitution (1996), laws and oversight mechanisms. Political appointees and individuals aligned with the political elite manipulated authority, diverted state resources for personal gain and eroded public trust. Such conduct prioritised narrow interests over constitutional obligations and contributed to broader social harm. The Commission called for charges against implicated SSA officials, while affirming that all accused retain the right to a fair trial grounded in constitutional protections.

Although prosecution is necessary, the Constitution (1996) guarantees rights even to those accused of undermining it. The potential abuse of judicial processes and the phenomenon of “lawfare” may enable charged individuals to exploit procedural safeguards, risking further strain on public confidence in the rule of law. The Commission of Inquiry into State Capture (2018) documented how SSA officials operated beyond legal bounds, diverting resources for personal benefit (State Capture Report, 2018 – released 2022). Such actions not only violated statutory obligations but compromised constitutional governance itself.

Intelligence, as a governmental function, must operate within the prescripts of the Constitution (1996) and applicable laws. Its conduct reflects human decision-making within structures of power (Mallya 2022; Africa 2009; Olivier 2016; Esterhuyse 2012; Coleman 1998; Pauw 2022; Dombroski 2006; Asmal et al. 2011). Where individuals disregard constitutional constraints, governance integrity is weakened. Restoring public trust therefore requires not only legal enforcement but the reassertion of ethical responsibility within intelligence leadership and practice (Duncan 2018; Le Roux & Davis 2019; Pauw 2017).

### **6.3 Contextualisation of intelligence and social development**

The relationship between intelligence and social development is examined through the Bill of Rights, which reflects a normative bias toward human development. Social development is understood as enhancing individuals’ capacities to lead meaningful lives, resisting the reduction of human worth to monetary value (Max-Neef et al. 1991; Mallya

2022). Within this holistic framework, material accumulation is not the primary determinant of progress. Although economic intelligence is necessary to identify opportunities that improve living conditions, it should not be conflated with the ultimate objective of development or the fulfilment of socioeconomic rights (Mills 2021; Mbeki 2011; Mallya 2022; Gray 2006; Midgley 2001; 2013; Reno 1998).

The Constitution (1996) recognises South Africa's diversity and situates social cohesion within the Preamble and the founding principles in Chapter 1. Social development therefore operates as a constitutional imperative aimed at dignity, equality and mutual respect. Following the peaceful transition in 1994, the democratically elected government introduced policies and legislative measures designed to improve quality of life and reduce poverty (Mandela 1994; Marais et al. 2001; Gray 2006; Steinmann 2016; Sachs 2016; 2017; Simpson 2021; Giliomee et al. 2022; Njoku 2004). Chapter 5 of this study has detailed these initiatives and their developmental orientation.

Within this constitutional framework, intelligence institutions are obligated to support social development. The White Paper on Intelligence (1994) explicitly situates intelligence within national developmental strategy and affirms its role in safeguarding both security and opportunity. Section 9 of the White Paper on Intelligence (1994) states:

*“Intelligence has a critical role to play in identifying threats, potential threats as well as opportunities for the democratic dispensation in South Africa. The transformation of the intelligence community is a process already underway and must be encouraged to allow the intelligence community to play its rightful role in meeting our national goals, particularly those set out in the RDP. Ultimately, it is through the approach to security outlined in the RDP the meeting of the basic needs of the people through development, sustained economic growth and mass participation in the building of a new South Africa - that the cherished goals of peace and stability will be reached”* (White Paper on Intelligence 1994:10).

This articulation demonstrates that intelligence was conceived not merely as a security apparatus but as a contributor to developmental security grounded in the Reconstruction and Development Programme (RDP).

Government institutions are obligated to advance the constitutional democracy project. While policy documents do not carry the force of law, they inform legislative development and institutional direction (Currie & De Waal 2013:8-9, 566-567, 568; Lebakeng 2023:1-2; De Vos & Freedman 2021:43, 397-398; Klug 2010:132-135; Mallya 2022). Laws, in turn, establish standards and procedures that safeguard equality before the law (De Vos & Freedman 2021:79-81, 215, 605-606). Where violations occur, prosecution must follow in accordance with the rule of law (Le Roux & Davis, 2019; State Capture Report, 2018). The Constitution (1996) permits no discrimination and affirms that no individual stands above the law.

### **6.3.1 The intelligence process**

This chapter argues that intelligence must operate within the constitutional principles of the Constitution (1996), which protect and empower citizens. Intelligence conduct must therefore be exemplary, and the authority vested in senior officers may not be abused (see 6.2.5). Intelligence production is a multifaceted process requiring a coherent philosophical and strategic framework suited to South Africa's constitutional order.

In the South African context, intelligence serves defined clients, with the president as the primary intelligence client. Proclamation No. 13 of 2020, issued in terms of section 101(1) of the Constitution of the Republic of South Africa, 1996, established the National Security Council (NSC). A comparable structure existed under apartheid in the form of the State Security Council (SSC) under the Security Intelligence and State Security Council Act of 1972 (O'Brien 2011:25-33). These councils guide intelligence estimation and prioritisation processes.

Intelligence requirements originate from client needs and culminate in a National Intelligence Estimate (NIE), which informs operationalisation and the determination of

National Intelligence Priorities (NIP) (Lowenthal 2022; Africa & Kwadjo 2009; Dombroski 2006). Once approved, operational plans are developed to address these priorities. The NSC, comprising ministers within the security cluster, advises the president, while the South African National Security Secretariat provides coordinating and administrative support (Proclamation No. 13 of 2020 (ss 3)). The National Intelligence Coordinating Committee (NICOC) coordinates the NIE and reports to the president (White Paper on Intelligence 1994). Ideally, the drafting of the NIE should occur under the authority of the NSC following consultation with intelligence agencies and relevant clients.

The NIE typically addresses events, risks and opportunities affecting national security. Effective estimation requires substantive expertise within the NSC to assess threats and strategic developments (Goldman 2010; Jensen et al. 2018; Johnson 2010; 2015; Krueger 2007; Lake 2000; Laqueur 1985; Maier 1987; Africa & Kwadjo 2009). Intelligence, however, is a continuum requiring constant qualitative reassessment. Analytical error remains possible, and collection processes may be subject to bias or misinterpretation (Lowenthal 2022:80-83; 208-211; Jensen et al. 2018; Acuff et al. 2022:257-261).

This study does not purport to be an exposé of intelligence methodologies or tradecraft (Lowenthal 2022; Africa 2009; Africa & Kwadjo 2009). Rather, it emphasises that once the NIE is justified and adopted, operational processes flow from established policies and procedures within the SSA. Analytical products informing the NIE must be continuously monitored and reviewed in light of evolving global dynamics (Acuff et al. 2022; Africa 2009; White Paper on Intelligence 1994; Bazzell 2015; Bernhardt 2003; Blackstock 1966; Chapman 2004; Nathan 2010).

#### **6.3.1.1 Intelligence cycle**

To meet client requirements, most countries employ a process that begins and ends with analysis, guiding collection and operational activity. The intelligence cycle entails the “organisation, reviewing, vetting and validating” of information concerning specific targets and client requirements (Jensen et al. 2018:151-153; Lowenthal 2022:74-79; Wheaton

2011; Barnard 2015; Esterhuyse 2012). Although variations exist across states and agencies, the cycle generally comprises between five and seven phases (Johnson & Wirtz, 2015; Duvenhage, 2010). A common seven-phase formulation includes “identifying requirements, collection, processing and exploitation, analysis and production, dissemination, client consumption, feedback” (Lowenthal 2022:73; Bottom & Gallati 1984; Classen 2004; Friedman et al. 1997; Goldman 2010:42-51; Jensen et al. 2018:152-162). Originally developed to organise wartime intelligence production (Wheaton 2011), the cycle reflects an industrial-era logic of structured inputs and outputs. Although criticized as dated in an age of accelerated information flows (Carmel 2004), Lowenthal (2022:84–86) maintains that it remains functionally useful: policymakers articulate requirements and a structured sequence produces an intelligence product. Yet this factory-like analogy risks presenting intelligence as linear, mechanistic and internally coherent, obscuring its epistemological complexity and political embeddedness.

The findings of the Commission into State Capture and the High-level Review Panel on Intelligence invite a deeper interrogation of the model’s adequacy. Structural weaknesses may not lie solely in individual misconduct but also in institutional design. By centralising analytic authority and depicting intelligence as progressing seamlessly from tasking to dissemination, the traditional cycle may insufficiently accommodate contestation, peer review and independent oversight. Concentrated interpretive authority increases susceptibility to bias, politicisation and selective framing.

The White Paper on Intelligence (1994: Section 4 – Basic Principles of Intelligence) foregrounds legality, objectivity and accountability, recognising that intelligence secrecy and informational asymmetry require heightened constitutional restraint. However, if the cycle is treated as self-contained and sequentially validated, insufficient scrutiny may be applied to the normative legitimacy of tasking, evidentiary thresholds in analysis or the integrity of dissemination.

Lowenthal underscores these conceptual limitations, arguing that “the intelligence cycle representation misrepresents some aspects and misses many others” and describing it

as overly simple, with an end-to-end completeness that obscures the vagaries inherent in intelligence work (Lowenthal 2022:84). The model is further criticised as unidimensional: a policymaker poses a question and receives an answer after a sequence of steps. “There is no feedback and the diagram does not convey the possibility that the process might not be completed in one cycle” (Lowenthal 2022:84). In practice, intelligence is iterative, recursive and shaped by inter-agency contestation, shifting priorities and incomplete information. The schematic clarity of the cycle may therefore generate an illusion of coherence inconsistent with institutional reality.

Beyond conceptual concerns, the cycle’s open-ended and continuous framing carries material implications. Without defined termination criteria, performance benchmarks or independent evaluative checkpoints, resource allocation may become elastic. Where oversight mechanisms are weakened, such elasticity can enable misuse. The State Capture Report (2018) illustrates how intelligence operations may persist under formally legitimate mandates while diverting funds and resources from constitutionally sanctioned objectives. Indefinitely renewable tasking risks detachment from measurable national security priorities and developmental goals.

The critique of the intelligence cycle thus extends beyond pedagogical dissatisfaction. It implicates constitutional principles of accountability, proportionality and fiscal responsibility. A model that centralises analysis, minimises feedback and permits open-ended operationalisation may weaken alignment with the ethical architecture articulated in the White Paper on Intelligence (1994). Reconsideration of the cycle is therefore not merely technical but constitutional.

Institutional processes are neither neutral nor self-executing. Their integrity depends on dispersed analytic authority, meaningful feedback, rigorous oversight and adherence to constitutional commitments. The experience reflected in the State Capture Report (2018) and the High-level Review Panel demonstrates that procedural form does not guarantee substantive integrity. The intelligence cycle is not inherently defective; its reliability is conditional. Where ethical commitment and oversight weaken, structural simplicity may

facilitate politicisation and fiscal misuse rather than prevent it. Safeguarding democratic intelligence governance thus requires continuous critical reflection on how institutional design interacts with political context, human agency and constitutional accountability.

#### **6.4 Summary**

This chapter has critically situated the SSA within South Africa's constitutional, developmental and governance architecture, arguing that intelligence is not merely an instrument of state security but a constitutionally constrained institution whose legitimacy derives from fidelity to the rule of law, accountability and the protection of rights. The findings of the Commission into State Capture and the High-Level Review Panel on Intelligence reveal that the crisis confronting the SSA did not stem from legislative deficiency, but from the erosion of institutional integrity and ethical leadership. The resulting disjunction between constitutional design and operational practice exposed vulnerabilities through which intelligence structures undermined public trust and, paradoxically, the constitutional order they were mandated to safeguard.

The continued reliance on the traditional intelligence cycle was interrogated not as a technical flaw, but as a structural arrangement susceptible to politicisation, analytic centralisation and opaque operational continuity. Reform, therefore, is not procedural but constitutional in character. While secrecy remains intrinsic to intelligence work, it must be balanced by rigorous oversight, methodological discipline and analytic contestability to prevent misuse. Ultimately, this chapter has demonstrated that intelligence governance is contingent upon human agency: no legislative framework can compensate for the absence of ethical commitment and constitutional culture. Intelligence, social development and democratic accountability emerge as interdependent pillars of resilience. The preceding analysis provides the foundation for a systematic consolidation of the study's principal arguments, findings and their implications for constitutional governance and social development, which are developed in the final chapter.

## **CHAPTER 7: CONCLUSION, BRIEF OVERVIEW, FINDINGS, RECOMMENDATIONS AND THE LIMITATIONS OF THE STUDY**

### **7.1 Introduction**

This, the final chapter consolidates the analytical findings of the study and presents contextually grounded, practicable recommendations directed primarily at the identified stakeholder community, while remaining accessible to broader scholarly and policy audiences. It also acknowledges the study's limitations, identifies areas requiring further scholarly interrogation, and provides a concise integrative conclusion. Any repetition of key concepts, including headings and subheadings, is deliberate and reflects the structured interdependence of the study's analytical framework. Such reiteration reinforces the study's conceptual framework, ensuring that the findings and recommendations are systematically aligned with and articulated through the three core concepts underpinning the analysis. The chapter is therefore organised in alignment with the objectives and research questions set out in Chapter 1, ensuring internal consistency and analytical continuity across the study.

### **7.2 Analytical discussion of the study**

This study examined South Africa's constitutional evolution across the Union (1910), Republic (1961), tricameral (1983) and democratic (1996) constitutional eras to assess the interrelationship between constitutionalism, intelligence and social development. While constitutional forms existed prior to 1996, the findings demonstrate that the apartheid-era constitutions lacked substantive constitutional principles, particularly equality, accountability and inclusivity. These instruments functioned as mechanisms of exclusion rather than as frameworks for democratic governance.

The analysis reveals that constitutional form alone does not equate to constitutionalism. Under apartheid, intelligence structures operated within legally sanctioned but normatively deficient constitutional orders, enabling the preservation of racial hierarchy, economic exclusion and authoritarian control. Intelligence was therefore instrumentalised to protect regime survival rather than national security in a developmental sense.

The study further demonstrates that systemic land dispossession, political exclusion and economic marginalisation entrenched disparate social development. Intelligence and security structures reinforced this model through surveillance, coercion and suppression of dissent. In this regard, intelligence was embedded within a broader architecture of racialised governance that subordinated the MOM, majority population.

The transition to democracy marked a structural reorientation. Intelligence played a role in facilitating negotiation and settlement, contributing to the establishment of a constitutional order premised on human dignity, equality and accountability. However, the findings suggest that while the constitutional framework has transformed, the alignment between intelligence practice, constitutional values and social development remains uneven.

The central analytical insight of this study is that intelligence, when detached from substantive constitutionalism and developmental objectives, risks reverting to regime-protective behaviour. Conversely, when anchored within constitutional principles and developmental commitments, intelligence can contribute to democratic consolidation and social well-being.

Under apartheid and its policy of separate development, the majority of the population (MOM) was systematically disadvantaged, and social development cannot be regarded as inclusive or substantively developmental (Marais et al. 2001; Midgley 1998). The certification and adoption of the Constitution (1996) therefore carried significant implications for the intelligence structures inherited from the apartheid regime. As argued in earlier chapters, Niel Barnard's efforts to professionalise the National Intelligence Service positioned it for institutional transition, even as intelligence remained embedded within a securitised political order (O'Brien 2011; Esterhuysen 2012).

The democratic transition required that intelligence governance be reoriented toward legality, accountability and constitutional supremacy. The White Paper on Intelligence (1994) marked a formal departure from militarised intelligence practices and sought to

embed intelligence within a rights-based framework. The disbandment of the NIS and the creation of the South African Secret Service (SASS) and the National Intelligence Agency (NIA) reflected this structural reconfiguration (White Paper on Intelligence 1994; Africa & Mlombile 2001).

However, the study finds that the amalgamation of former adversaries into a unified civilian intelligence architecture introduced deep institutional complexities. Integrating apartheid-era operatives with members of the ANC's intelligence structures created a "melting pot" of divergent operational cultures, loyalties and professional norms (O'Brien 2011). While constitutionally necessary, this integration generated internal tensions that at times undermined institutional coherence and professional stability.

Over time, concerns regarding governance failures, political interference and declining effectiveness intensified, culminating in the establishment of the High-Level Review Panel on the State Security Agency in 2018. The Panel's 2019 report identified serious structural weaknesses, accountability deficits and institutional dysfunction within the intelligence community. These findings reinforce this study's central contention that intelligence, when insufficiently anchored in constitutionalism and insulated from partisan manipulation, becomes the "weak link" in democratic governance.

The High-Level Review Panel on the State Security Agency (2018) identified systemic governance failures within the SSA, including mismanagement, weak oversight, political interference and resource misallocation. The Panel recommended comprehensive structural reforms aimed at restoring accountability, professional integrity and operational effectiveness. However, the persistence of institutional instability suggests that these recommendations, while normatively sound, have not translated into sustained structural renewal.

Similarly, the Judicial Commission of Inquiry into State Capture (2018) exposed the instrumentalisation of intelligence structures for factional and partisan purposes. Rather than functioning as a constitutionally anchored safeguard of national security, elements

within the agency became entangled in political power struggles, eroding professionalism and public trust (Lebakeng 2023; Putter 2024). These findings reinforce this study's contention that post-1994 intelligence reform has been impeded less by the absence of policy frameworks than by deficiencies in implementation, institutional culture and political insulation (O'Brien 2011; Africa 2009).

The democratic Constitution (1996) establishes a transformative vision grounded in equality, accountability and the progressive realisation of socioeconomic rights. Its normative architecture presupposes the existence of state institutions capable of safeguarding constitutional supremacy and creating conditions conducive to inclusive social development. However, the effectiveness of social, economic and national security governance is contingent upon a professional and constitutionally compliant intelligence service. Where intelligence governance is weakened by political interference and administrative dysfunction, broader constitutional objectives - including the realisation of housing, education and healthcare rights - are indirectly undermined.

This study therefore argues that intelligence dysfunction constitutes not merely a sectoral failure, but a structural vulnerability within South Africa's constitutional democracy. While significant reform initiatives have been undertaken, including the White Paper framework, the High-Level Review Panel and the State Capture Commission, their impact has been constrained by recurring governance instability. In this regard, intelligence remains a critical - yet fragile - link in the constitutional project of equitable social development (High-Level Review Panel 2018; Judicial Commission of Inquiry into State Capture 2018).

### **7.3 Findings**

The findings of this study align closely with the stated objectives and research questions, situated within the South African constitutional context. The research demonstrates that constitutionalism, social development and intelligence governance are structurally interconnected, and that deficiencies in any one of these domains undermine the effectiveness of the others.

First, the study finds that the existence of a written constitution does not, in itself, guarantee substantive constitutionalism. Historical analysis reveals that apartheid-era constitutional frameworks functioned as instruments of exclusion, thereby distorting intelligence practice and entrenching unequal social development.

Second, the research establishes that post-1994 intelligence reform has been normatively robust but institutionally uneven. While legislative and policy frameworks reflect constitutional commitments to accountability and legality, implementation has been compromised by political interference, governance instability and institutional fragmentation.

Third, the study finds that effective intelligence governance is a necessary - though often overlooked - condition for the realisation of socioeconomic rights. National security, domestic stability and inclusive social development are mutually reinforcing objectives. Where intelligence institutions fail to operate professionally and constitutionally, broader developmental outcomes are indirectly weakened.

Importantly, these findings confirm principles widely recognised within constitutional democracies, but their empirical examination within the South African intelligence environment provides specific scholarly contribution. The study does not claim novelty in principle; rather, it advances knowledge by demonstrating how constitutional accountability operates - or fails to operate - within the practical realities of intelligence governance.

In this respect, the research strengthens the evidentiary foundation for understanding intelligence as a central, rather than peripheral, component of constitutional democracy and equitable social development.

### **7.3.1 Comparing intelligence conduct in relation to social development before and after the Constitution (1996)**

The study finds that intelligence conduct prior to 1996 was structurally aligned with an exclusionary constitutional order that subordinated the majority of South Africans. Intelligence institutions operated primarily to preserve regime stability through surveillance, suppression and coercive control, reinforcing racially structured social inequality (Ngcukaitobi 2018; Africa 2009). Even later professionalisation under the National Intelligence Service did not alter this regime-protective orientation (O'Brien 2011).

In contrast, the Constitution (1996) redefined the normative mandate of intelligence within a framework grounded in human dignity, equality and accountability. Intelligence was repositioned as an instrument of constitutional governance rather than authoritarian preservation. However, the study finds that while the formal mandate transformed, institutional practice has remained uneven, constrained by political interference and governance instability.

The comparison demonstrates that intelligence conduct is fundamentally shaped by its constitutional environment: under exclusionary constitutionalism it reinforces hierarchy, whereas under democratic constitutionalism it is normatively directed toward accountability and inclusive social development - though not automatically or without structural challenge.

#### **Conduct of apartheid intelligence**

The study finds that apartheid-era intelligence conduct was structurally aligned with an authoritarian constitutional order and directed toward regime preservation rather than public security. Intelligence operations were shaped by ideological imperatives and parliamentary sovereignty, prioritising state control over constitutional accountability (Coleman 1998; De Vos & Freedman 2021). Operational practice centred on surveillance, suppression of dissent, propaganda and the strategic fragmentation of opposition movements (Africa 2009; O'Brien 2011).

Intelligence was therefore not a neutral security instrument but an enforcement mechanism of racial hierarchy. Its conduct reinforced systemic exclusion and was fundamentally incompatible with inclusive social development.

### **7.3.2 Intelligence conduct and the impact on social development**

The study finds that apartheid-era intelligence conduct directly undermined social development for the majority of the population (MOM). Embedded within exclusionary constitutional frameworks, intelligence structures adopted a militarised posture that prioritised regime security over public welfare (O'Brien 2011; Africa 2009). Intelligence operations reinforced racially discriminatory laws and legitimised systemic repression.

Rather than functioning as a neutral national security mechanism, intelligence became an instrument of ideological enforcement. Its activities curtailed political participation, restricted access to resources and entrenched structural inequality, thereby impeding inclusive socioeconomic advancement.

#### Suppressing political participation – Assassinations, imprisonment and torture

The study finds that the systematic suppression of dissent through surveillance, detention and coercion silenced political representation for the MOM (Suttner 2017; Pauw 2017). By eliminating or intimidating opposition voices, intelligence structures obstructed policy development that could have addressed socioeconomic deprivation. Political exclusion thus translated directly into developmental stagnation.

#### Restricting access to resources – Separate amenities (education, health, housing)

Intelligence prioritised regime preservation over developmental allocation. Resources were disproportionately channelled toward sustaining the security apparatus rather than improving education, healthcare or infrastructure for the MOM (Ngcukaitobi 2018; Simpson 2021). The protection of racial hierarchy took precedence over equitable service delivery, reinforcing material deprivation.

### Perpetuating inequality (racial, ethnic and economic divisions)

Operating within an autocratic and racially stratified order, intelligence practices contributed to a climate of fear that entrenched systemic inequality (Africa 2009; O'Brien 2011). Barriers to education, mobility and economic participation were not incidental but structurally reinforced through security governance aligned with minority rule.

### Fragmentation of communities, values and identities

The study finds that intelligence tactics deliberately fragmented communities through infiltration and mistrust, undermining collective organisation. This erosion of social cohesion weakened resistance and further constrained social development. The “divide and rule” dynamic functioned not merely as political strategy but as a developmental impediment.

### Apartheid intelligence ideology

Apartheid intelligence was ideologically anchored in the preservation of white minority dominance. Operating under successive apartheid constitutions, intelligence agencies enforced racial hierarchy through surveillance, detention and coercive control (Coleman 1998; Asmal et al. 2011). The existence of constitutional frameworks did not constrain abuse; rather, those frameworks legitimised it.

The study therefore concludes that apartheid-era intelligence conduct was structurally incompatible with inclusive social development. Intelligence did not merely fail to promote development - it actively obstructed it.

### **7.3.3 Comparing the apartheid and democratic constitutions and intelligence**

The study finds that apartheid constitutionalism and democratic constitutionalism represent fundamentally different normative orders, and that intelligence conduct reflects the character of each.

Under apartheid, parliamentary supremacy enabled authoritarian governance in which courts could not meaningfully constrain legislative power (Currie & De Waal 2013; De Vos

& Freedman 2021). Intelligence structures operated within this framework to protect racial hierarchy and suppress political participation, thereby entrenching socioeconomic exclusion (Africa 2009). Constitutional form existed, but it lacked substantive commitment to equality, accountability and human rights.

By contrast, the Constitution (1996) establishes constitutional supremacy, judicial independence and a justiciable Bill of Rights. It embeds intelligence within a democratic order grounded in legality, accountability and the protection of human dignity. Normatively, intelligence is repositioned from regime protection to constitutional protection.

The study therefore finds a clear formal rupture between apartheid and democratic constitutionalism: from parliamentary supremacy to constitutional supremacy; from exclusion to universal rights; from authoritarian control to accountable governance.

However, the research also identifies areas of institutional continuity. Despite the transformative constitutional framework, post-1994 intelligence governance has, at times, exhibited practices inconsistent with constitutional principles, including political interference and weak accountability mechanisms. This reveals that constitutional transformation does not automatically guarantee institutional compliance.

#### Oppressive authoritarian rule and constitutional democracy

The comparison demonstrates that apartheid constitutionalism concentrated power in an unchecked legislature, enabling intelligence to operate without meaningful judicial constraint. Democratic constitutionalism, in contrast, subjects intelligence to constitutional supremacy and oversight mechanisms.

The key distinction is therefore not the existence of a constitution, but the nature of constitutionalism itself. Whereas apartheid constitutions legitimised exclusion, the Constitution (1996) is designed to limit power and protect rights.

### The democratic era (post-1994)

The study finds that democratic South Africa inherited deep socioeconomic inequality and institutional fragility. While the constitutional framework provides a robust normative foundation for inclusive development, implementation has been uneven. Intelligence reform has occurred within a broader environment marked by developmental pressures and governance challenges.

### The Constitution (1996) – Empowering the citizens of South Africa

The Constitution (1996) establishes universal rights, equality before the law and judicial review as foundational principles. It redefines national security as subject to democratic accountability and legal constraint. In contrast to apartheid constitutionalism, it aspires to align security governance with social justice and human dignity.

### The abuse of the rule of law and the Constitution (1996)

The study finds that while the democratic constitutional framework is substantively legitimate, vulnerabilities arise when constitutional processes are manipulated for factional or self-interested purposes. Intelligence agencies operating within such conditions risk reproducing patterns of politicisation reminiscent of authoritarian governance.

This does not suggest equivalence between apartheid and democratic orders; rather, it demonstrates that constitutional supremacy requires active enforcement. The durability of democratic intelligence governance depends not only on constitutional design, but on institutional integrity and political restraint.

### **7.3.4 The effect of the Constitution (1996) on the conduct of intelligence towards social development**

The study finds that the Constitution (1996) fundamentally reoriented the normative mandate of intelligence in South Africa. Unlike apartheid constitutionalism, which authorised repression, the democratic Constitution embeds intelligence within a

framework of constitutional supremacy, accountability and respect for human rights (Currie & De Waal 2013; Klug 2010).

The Constitution requires that intelligence services operate in support of democratic governance and the public good. In principle, this shifts intelligence from regime preservation to constitutional protection, aligning national security with social development objectives.

However, the research also finds that constitutional design alone does not ensure developmental impact. The translation of constitutional imperatives into operational intelligence practice remains uneven.

#### The Bill of Rights and social development

The Bill of Rights introduces justiciable socioeconomic rights, including housing, healthcare, education and social security. These provisions impose positive obligations on the state and establish a constitutional foundation for inclusive development (De Vos & Freedman 2021).

For intelligence governance, this framework redefines national security to include the protection of human dignity and social stability. Intelligence, in a democratic order, must therefore support conditions conducive to the progressive realisation of these rights rather than undermine them.

#### The efficacy of the Bill of Rights as a conduit for social development

The study finds that the developmental potential of the Bill of Rights depends on effective institutional implementation. Intelligence services play a critical role in generating strategic assessments that inform policy responses to social risk, inequality and instability (White Paper on Intelligence 1994; High-Level Review Panel 2018).

Where intelligence is aligned with constitutional objectives, it can contribute indirectly to social development by supporting informed governance. Where it is politicised or mismanaged, constitutional aspirations remain abstract.

#### The intelligence service's role in social development within a democratic framework

Democratic intelligence services are mandated to balance national security with constitutional rights. This represents a decisive break from apartheid-era repression.

However, the study identifies persistent governance challenges, including allegations of political interference and resource misallocation (State Capture Report 2018; High-Level Review Panel 2018). Such weaknesses undermine the developmental mandate envisioned by the Constitution (1996).

The key finding is that intelligence reform is not secured merely by constitutional text, but by institutional integrity and oversight effectiveness.

#### The Constitution (1996) as the supreme law

The Constitution establishes binding legal and ethical constraints on intelligence conduct. Constitutional supremacy, judicial review and oversight mechanisms are designed to prevent abuses characteristic of authoritarian governance.

Yet the research demonstrates that human factors - leadership quality, organisational culture and accountability deficits - remain decisive. Where these are weak, constitutional principles are vulnerable to erosion.

Accordingly, the study concludes that the Constitution (1996) provides a robust normative foundation for aligning intelligence with social development. Its effectiveness, however, depends on sustained institutional commitment to constitutionalism in practice.

### **7.3.5 Democratic intelligence processes and practices**

The study finds that democratic intelligence governance is normatively anchored in constitutional supremacy, accountability and respect for human rights. In contrast to authoritarian intelligence models, democratic processes require legality, proportionality, civilian oversight and alignment with the public interest (Lowenthal 2022; White Paper on Intelligence 1994).

In principle, democratic intelligence must balance secrecy with transparency, and national security with constitutional rights. Its legitimacy derives not only from operational effectiveness but from fidelity to democratic values.

However, the research indicates that institutional practice has not always matched constitutional design.

#### The White Paper on Intelligence (1994)

The White Paper on Intelligence (1994) established the normative blueprint for post-apartheid intelligence reform. It emphasised civilian control, integration of fragmented services, accountability mechanisms and adherence to constitutional principles.

Together with the Constitution (1996), it redefined intelligence as a service to democratic governance rather than regime protection. These instruments created a framework intended to prevent the abuses characteristic of apartheid-era intelligence.

Yet subsequent reviews have demonstrated gaps between policy intent and operational reality.

#### An indictment of the civilian intelligence agency - Post-democracy

The study finds that the very standards articulated in the White Paper (1994) and the Constitution (1996) have become benchmarks against which the civilian intelligence agency is critically assessed.

Findings of politicisation, misuse of resources, weakened oversight and internal factionalism - particularly as identified by the High-Level Review Panel (2018) and the Commission into State Capture (2022) - suggest deviations from constitutional mandates. These developments raise concerns about institutional accountability and governance integrity.

The issue is therefore not constitutional inadequacy, but failures in compliance and enforcement.

#### A review of similarities between apartheid intelligence and the democratic civilian intelligence agency

The research identifies structural continuities in institutional vulnerability rather than ideological equivalence.

Under apartheid, intelligence operated with concentrated authority, secrecy and minimal oversight in service of regime preservation. In the democratic era, although the constitutional mandate shifted toward legality and accountability, similar operational distortions have emerged under conditions of weak constraint.

The similarity lies in the risk inherent in secrecy without effective supervision. Where oversight mechanisms - parliamentary committees, inspectorate structures and executive controls - are weakened, secrecy can facilitate political instrumentalisation.

The recurrence of such patterns underscores a central finding: constitutional transformation does not automatically secure institutional transformation. Democratic intelligence governance depends not only on legislative design but on robust oversight, ethical leadership and the internalisation of constitutional norms.

### **7.3.6 Summation of the most pertinent findings**

This summation condenses the findings of the study in relation to its objectives, research questions and central problem statement. The findings are presented comparatively and

emphasise structural contrasts between apartheid constitutionalism and democratic constitutionalism, as well as between authoritarian and democratic intelligence governance.

## **Constitutionalism**

### **Human Rights**

The Constitution (1996) enshrines universal and justiciable rights applicable to all citizens. By contrast, apartheid constitutions systematically excluded and denied fundamental rights to the majority of the population (MOM), institutionalising racial hierarchy through law.

### **Inclusivity**

The democratic constitutional framework promotes equal political participation and formal representational inclusivity. The apartheid framework, in contrast, entrenched racial exclusion and concentrated political power within the White minority.

### **The Rule of Law**

The Constitution (1996) establishes constitutional supremacy and binds all persons and institutions to the law. Apartheid governance relied on parliamentary supremacy and racially discriminatory legislation, enabling arbitrary enforcement and legalised inequality.

### **Separation of Powers**

Democratic governance institutionalises separation of powers, judicial review and constitutional checks and balances. Under apartheid, power was concentrated within the ruling party, judicial independence was constrained and parliamentary sovereignty insulated legislation from substantive review.

### **Access to Justice**

The Constitution (1996) guarantees equality before the law and access to courts. Under apartheid, legal protections were structurally limited for the MOM, and equality before the law was not substantively realised.

### Social Justice

The democratic constitutional order explicitly prioritises equality, redress and social justice. Apartheid constitutionalism entrenched structural inequality and prohibited redistributive justice.

### **Intelligence and social development**

Under apartheid, intelligence services functioned primarily to preserve regime security and suppress political dissent. Their mandate was aligned with maintaining racial domination rather than societal development.

In the democratic era, intelligence was formally reoriented toward safeguarding national security within a human rights framework and supporting democratic governance. The mandate shifted from regime protection to constitutional protection.

### Accountability and oversight

Apartheid intelligence operated with minimal external oversight, facilitating abuse and impunity.

Democratic reform introduced civilian oversight structures, parliamentary supervision and inspectorate mechanisms intended to enhance accountability. However, the study finds that the effectiveness of these mechanisms has varied in practice.

### Operational transparency

Under apartheid, secrecy was instrumentalised to conceal repression and manipulate information flows.

In the democratic framework, secrecy is constitutionally bounded and subject to oversight. Transparency, though necessarily limited in intelligence operations, is structured through reporting obligations and review mechanisms designed to prevent abuse.

### A human rights culture

Apartheid intelligence actively violated human rights under legal frameworks designed to legitimise discrimination.

Democratic intelligence is constitutionally required to operate within a human rights culture. However, the realisation of this obligation depends on institutional integrity and effective oversight.

### Social development

The study finds that democratic intelligence has the potential to contribute indirectly to social development by supporting evidence-based policymaking, identifying security risks to stability and safeguarding national resources.

Where intelligence is politicised or mismanaged, however, its developmental contribution is diminished.

### Countering discrimination

The democratic constitutional framework mandates the identification and correction of systemic inequalities. Intelligence, when aligned with constitutional principles, can support this objective by monitoring threats to social cohesion and constitutional order.

### Building trust

Public trust in intelligence institutions depends on demonstrable legality, accountability and restraint. Under apartheid, intelligence contributed to public fear and distrust. In the democratic era, legitimacy is contingent upon consistent adherence to constitutional norms.

## **7.4 Recommendations**

This study has examined the interrelationship between constitutionalism, intelligence governance and social development, and finds that their effective realisation depends not only on constitutional design but on institutional culture and the conduct of those entrusted

with authority. Although the Constitution (1996) provides a robust framework grounded in constitutional supremacy, accountability and human rights, its efficacy ultimately depends on ethical leadership, professional discipline and enforceable oversight.

The recommendations that follow are directed at intelligence practitioners and leadership, the National Security Council (NSC), elected authorities, the Judiciary and the broader citizenry. In a constitutional democracy, national security derives its legitimacy from fidelity to constitutional mandates and the rule of law - not from secrecy, expediency or partisan interest.

While various reform and constitutional awareness initiatives have been undertaken across government departments - including education, justice and public service institutions - these programmes, though well-intentioned, may not be uniformly accessible across socioeconomic contexts. Participation in specialised initiatives, such as moot court programmes or structured civic engagements, often presupposes institutional access, educational opportunity and material stability, which are not equally available to all citizens. As a result, the diffusion of constitutional culture may remain uneven unless reforms are designed with broader accessibility and participatory inclusion in mind.

Despite reform initiatives undertaken since 1994, the findings indicate that politicisation, uneven oversight enforcement and entrenched patronage dynamics continue to impede the full internalisation of constitutional principles within intelligence governance. The recommendations below are therefore reform-oriented and aimed at strengthening existing institutional mechanisms, reinforcing accountability and enhancing resilience within the current constitutional architecture.

These proposals flow directly from the study's analytical conclusions and are grounded in the cumulative theoretical and empirical engagement undertaken throughout this research.

### **7.4.1 Constitutionalism**

#### Promoting constitutionalism – Institutional coordination

The promotion of constitutionalism in South Africa requires structured institutional coordination rather than rhetorical affirmation. Government should establish a formal inter-institutional framework involving the Executive, Judiciary, Chapter 9 institutions, constitutional scholars and civil society to develop a National Constitutionalism Action Framework with defined objectives and periodic review mechanisms.

Annual constitutional compliance reporting to Parliament would enhance accountability, while structured judicial outreach initiatives could strengthen public understanding of constitutional jurisprudence. Complementary civic programmes - supported through coordinated national initiatives and accessible digital platforms - should prioritise broad-based participation to ensure that constitutional literacy does not remain confined to those with institutional access. Through this integrated approach, constitutionalism becomes both operational within governance and embedded within society.

#### Safeguarding parliament – Protecting institutional integrity

Parliament's constitutional role requires enforceable ethical safeguards. Strengthened parliamentary ethics oversight, supported by independent advisory participation and mandatory ethics orientation for Members of Parliament, would reinforce accountability. Where judicial findings implicate parliamentary conduct, structured institutional review procedures should be triggered to preserve constitutional integrity. These measures ensure that Parliament functions as a guardian of constitutional governance rather than a protective barrier against scrutiny.

#### Embedding constitutional literacy in education

Sustainable constitutionalism requires early civic formation. Constitutional literacy should be systematically integrated within existing educational curricula, supported by educator training to ensure substantive engagement.

Experiential learning initiatives - such as debates and mock parliamentary exercises - can translate constitutional principles into lived civic understanding. Monitoring literacy outcomes at key educational stages would ensure that such initiatives move beyond symbolic inclusion toward measurable impact.

#### Institutionalising constitutional values in the public service

The internalisation of constitutional values within the public service requires structural integration into administrative practice. Mandatory constitutional induction for public servants and political appointees, reinforced through periodic refresher programmes, would strengthen professional accountability.

Embedding constitutional compliance indicators within performance management systems and reinforcing whistleblower protections would shift constitutionalism from aspirational commitment to operational obligation.

#### National cohesion and civic engagement

The constitutional commitment to unity in diversity necessitates sustained and measurable civic programming. Coordinated national civic engagement initiatives, supported by community dialogue platforms and public education campaigns, can foster inclusive constitutional identity.

Periodic social cohesion assessments would provide evaluative feedback to ensure that such initiatives produce substantive rather than symbolic outcomes.

#### Criminal justice and legislative review

Periodic independent review of key criminal justice legislation should be institutionalised to assess practical effectiveness and constitutional alignment. Such reviews should incorporate empirical analysis and stakeholder engagement, culminating in publicly accessible reform recommendations.

Concurrent community-based legal awareness initiatives would reinforce public understanding of constitutional rights and responsibilities within the justice system.

#### Expanding legal access and community-centred justice

Legal literacy and access to justice remain foundational to constitutional democracy. Expanded outreach mechanisms - particularly in underserved communities - alongside strengthened university-community legal partnerships, would enhance access while promoting experiential civic education.

Structured community safety compacts between law enforcement, municipalities and civil society, supported by transparent reporting and measurable trust indicators, would reinforce collaborative governance within constitutional parameters.

### **7.4.2 Social development**

#### In pursuit of a better life: Structured civic activism and national pride

Social development within a constitutional democracy seeks to enhance the quality of life of all citizens. However, this objective cannot be realised through policy instruments alone; it requires the cultivation of an active civic ethos grounded in dignity, responsibility and lawful engagement. Civic participation must therefore be institutionalised through structured and continuous platforms rather than episodic mobilisation.

Municipalities, in partnership with civil society organisations, should formalise Community Civic Forums to facilitate structured dialogue on development priorities and service delivery challenges. To avoid symbolic engagement, the outcomes of these forums should be integrated into municipal planning processes, including Integrated Development Plans (IDPs). In this manner, civic activism becomes a recognised channel of policy input rather than reactive protest.

National pride and shared responsibility likewise require deliberate reinforcement. Coordinated civic responsibility initiatives should emphasise constitutional values, lawful

conduct and collective accountability, shifting public discourse from entitlement-centred narratives toward reciprocal citizenship.

#### Partnerships for social development – Reframing wealth and collective responsibility

Sustainable social development depends on institutionalised collaboration between government, communities and the private sector. Formalised Social Development Compacts at provincial and municipal levels could define shared commitments in areas such as poverty reduction, skills development and community safety, supported by periodic public reporting.

Participatory budgeting pilots in selected municipalities would enhance transparency and foster community ownership of development priorities. Through structured collaboration, development becomes a shared governance endeavour rather than a unilateral state function.

#### Engagement beyond elections – Institutionalising community agency

Democratic participation must extend beyond electoral cycles. Regular public accountability engagements at constituency level would reinforce continuous oversight of elected representatives. Complementary digital transparency tools providing accessible information on legislative performance and ethics compliance would strengthen informed civic engagement.

Structured support for independent civil society oversight initiatives would ensure that constitutional institutions remain subject to lawful scrutiny. In this way, community vigilance is institutionalised rather than episodic.

#### Empowerment, self-respect and dignity

Sustainable social development requires the internalisation of dignity at both individual and community levels. Values-based civic education linked to constitutional principles should be systematically reinforced within schools and youth development programmes.

Educator development initiatives and community mentorship partnerships can strengthen this effort. Measurable behavioural indicators - such as youth civic participation and reductions in school-based violence - should be used to evaluate impact, ensuring that value formation is substantive rather than symbolic.

#### Self-Respect, work ethic and youth development

The cultivation of work ethic and productive citizenship must be embedded within youth development strategies. Expanded experiential learning, apprenticeships and community service components should link education to tangible socioeconomic opportunity.

Strengthened partnerships between vocational institutions, municipalities and private enterprises can create structured employment pathways, supported by monitoring mechanisms to ensure meaningful employment absorption.

#### South Africanism and a national imbizo for social renewal

A structured national dialogue process may provide an opportunity to recalibrate collective priorities around social cohesion, economic inclusion and institutional accountability. Any such initiative should emphasise inclusive representation, defined thematic focus areas and measurable implementation outcomes to avoid declaratory symbolism.

By grounding national renewal efforts in constitutional values, South African identity can be reinforced as a shared civic commitment rooted in dignity, accountability and social solidarity.

### **7.4.3 Intelligence**

#### Enhancing integrity – Institutionalising continuous vetting and monitoring

The integrity of national security institutions rests fundamentally on the reliability of those entrusted with sensitive responsibilities. While formal vetting mechanisms exist within the State Security Agency (SSA), integrity assurance should evolve toward a structured system of continuous evaluation rather than periodic clearance alone.

A Continuous Integrity Assessment Framework, incorporating lawful financial disclosure requirements, risk-triggered re-vetting and structured internal counterintelligence monitoring, would strengthen institutional resilience. Oversight of these processes should be insulated from political interference and linked to independent supervisory authorities. Such systemic monitoring would serve both deterrent and corrective functions, reducing vulnerability to internal compromise.

#### A customised legal framework – Ensuring enforceability and constitutional alignment

The legislative framework governing intelligence services requires clarity, coherence and enforceable constitutional alignment. Ongoing legislative reform processes provide an opportunity to harmonise intelligence legislation with constitutional supremacy while preserving operational effectiveness.

The legal status of SSA personnel, including labour protections and grievance mechanisms, should be clearly codified to ensure procedural fairness without compromising confidentiality. Access to judicial review must remain intact. Regular structured legal refresher training for intelligence personnel would reinforce constitutional literacy as an operational imperative rather than an administrative formality.

#### Cultivating ethical leadership – Reforming organisational culture

Institutional reform is unsustainable without ethical leadership. Leadership development initiatives focused on democratic intelligence governance and civilian oversight principles should be institutionalised, beginning at senior management level.

Independent internal ethics mechanisms, supported by enforceable disciplinary standards and integrity-linked performance evaluations, would help address patronage practices, factionalism and managerial misconduct. Embedding accountability within leadership assessment systems transforms cultural reform into measurable practice.

### Defining professional excellence – Merit, ethics and constitutional loyalty

Professional standards within the SSA should be anchored in merit, competence and constitutional loyalty. Recruitment and promotion processes must prioritise demonstrable analytical capability, integrity and psychological suitability, subject to transparent internal criteria and independent review safeguards.

While demographic representivity remains a constitutional objective, recruitment frameworks must balance representivity with operational competence. A diversity approach grounded in constitutional equality rather than rigid quotas would better safeguard institutional effectiveness.

Continuous professional development and structured competency evaluations should reinforce analytical rigour and non-partisan service culture.

### Addressing factionalism (cliquism) and strengthening oversight

Factionalism, here conceptualised as *cliquism*<sup>25</sup>, and internal patronage networks undermine operational integrity. In this study, cliquism refers to the formation of exclusionary intra-institutional groups that consolidate influence, prioritise loyalty over merit, and distort decision-making processes within intelligence structures. Such dynamics rarely go unnoticed within organisations and may generate perceptions of partiality and unfair advantage among personnel. Over time, this can weaken professional cohesion, diminish morale and adversely affect the effectiveness of intelligence officers. Clear codification of prohibited conduct, supported by procedurally fair but decisive disciplinary mechanisms, would deter internal politicisation.

---

<sup>25</sup> Cliquism refers to factional alignment within political or institutional structures in which informal networks of loyalty and patronage influence decision-making. Within South Africa's intelligence architecture, the entrenchment of such dynamics can permeate all organisational levels, shaping leadership selection, normalising network-based advancement and distorting resource allocation and oversight, thereby weakening institutional integrity and constitutional accountability.

Oversight bodies, including the Inspector General of Intelligence and relevant parliamentary structures, should be strengthened through enhanced investigative capacity and structured public reporting on systemic failures, subject to necessary classification safeguards.

#### Institutional resilience and counter-infiltration

Given persistent risks of infiltration and political interference, periodic counterintelligence audits should assess institutional vulnerability. Operational compartmentalisation must be balanced with oversight safeguards to prevent unaccountable silos.

Post-operation reviews evaluating procedural compliance, ethical conduct and resource utilisation would reinforce accountability within operational practice.

#### Revisiting the intelligence cycle – Contextual redesign

A doctrinal review of the intelligence cycle may be warranted to ensure contextual responsiveness to South Africa's socio-political environment. Such review should emphasise analytical independence, clear tasking authority, peer evaluation of intelligence outputs and post-operation accountability.

Continuous professional training in emerging methodologies and technological developments should be institutionalised, supported by periodic competency assessments.

#### Transparency, trust and sensitive disclosures

Contentious matters involving alleged intelligence irregularities should be addressed through structured, law-governed review mechanisms rather than political contestation. Where full disclosure is not feasible due to national security risks, independent verification processes may provide a balanced transparency alternative.

By addressing sensitive issues (alluding to the spy lists) through lawful review, institutional credibility may gradually be restored.

### Rebuilding public trust and institutional legitimacy

Public confidence in intelligence institutions ultimately depends on demonstrable constitutional adherence. Periodic public accountability reporting, within classification limits, would signal reform progress.

A doctrine of constitutional loyalty, reinforced through merit-based advancement, continuous vetting and independent oversight, can reposition the SSA as a professional and non-partisan guardian of the Republic.

#### **7.4.4 Consolidated recommendations**

The recommendations advanced in this study are deliberately structured to move beyond normative aspiration toward institutional implementation. Their central contribution lies in translating constitutional principles into enforceable governance mechanisms across constitutional administration, social development and intelligence reform. Rather than advancing abstract ideals, the study identifies practical institutional pathways through which constitutional democracy may be strengthened in practice.

At the constitutional level, the proposals embed accountability through measurable compliance frameworks, strengthened oversight mechanisms and structured civic constitutional literacy initiatives. Constitutional supremacy is thus repositioned as a governance standard capable of evaluation and enforcement, rather than remaining a declaratory commitment.

Within the sphere of social development, the recommendations reconceptualise citizenship as participatory rather than passive. Civic forums, participatory planning processes, youth development pipelines and structured national dialogue mechanisms are designed to integrate community agency into municipal and national planning systems. This approach strengthens social cohesion while reinforcing democratic responsibility.

In the intelligence domain, the recommendations shift from critique to institutional redesign. Continuous vetting systems, leadership accountability measures, merit-based recruitment standards, ethical enforcement mechanisms and doctrinal review processes provide structured instruments for professionalising the State Security Agency. By firmly aligning intelligence governance with constitutional principles, the study demonstrates that national security and democratic accountability are complementary rather than competing objectives.

Collectively, these recommendations are grounded in existing constitutional architecture and supported by identifiable implementation pathways and monitoring mechanisms. They emphasise the alignment of ethical leadership, civic participation and institutional integrity as mutually reinforcing pillars of democratic consolidation.

Taken together, the proposals form an integrated reform framework aimed at strengthening governance capacity, restoring public trust and safeguarding constitutional democracy. The central contention of this study is therefore affirmed: sustainable democratic consolidation depends not on the creation of new constitutional promises, but on disciplined, accountable implementation of existing constitutional commitments through coherent institutional design.

## **7.5 Limitations of the study**

### **Methodological constraints**

This study was conducted as a qualitative desktop analysis grounded in the systematic examination of primary and secondary documentary sources. The breadth of literature relating to constitutionalism, intelligence governance and social development required careful delimitation to maintain analytical coherence and alignment with the research objectives.

The research design did not include primary empirical methods such as ethnographic inquiry or surveys. While such approaches may yield valuable insights into institutional culture or lived experience, they were beyond the doctrinal and documentary scope of

this study. The analysis is therefore confined to publicly accessible legislation, oversight reports, judicial decisions and scholarly literature. In the intelligence context, restricted access to classified material further limits direct insight into internal operational dynamics.

As with all qualitative documentary research, interpretive subjectivity remains a potential constraint. This was mitigated through systematic source triangulation and sustained engagement with established constitutional doctrine, including relevant comparative constitutional jurisprudence where appropriate.

The findings and recommendations should accordingly be understood within the parameters of publicly available information and doctrinal analysis rather than as empirical assessments of classified institutional practice.

#### Geographical setting/scope

The research was confined to the South African context. While it included references to foreign intelligence services, these were made judiciously and strictly within the South African framework. This limitation may affect the generalisability of the findings to other contexts.

#### Reliability of sources

The study relied on open-source information, which allowed for a comprehensive exploration of available data while adhering to ethical considerations. However, the researcher was cautious in using journalistic sources, recognising that they might present subjective views. To mitigate this, the study specifically verified information derived from these sources and found that the selected materials were largely reliable and credible.

#### Conceptual clarity

Initially, the interrelationships among the core concepts required further analytical refinement to clarify their structural alignment within the study. Once the conceptual framework was more explicitly articulated, the analysis yielded greater coherence and

theoretical integration. This refinement strengthened the depth and consistency of subsequent sections.

#### Focusing on the interconnectedness of concepts

While the study illuminated the relationships between the concepts, it primarily provided a fresh perspective on individual concepts rather than an exhaustive exploration of their interconnectedness. This focus may limit the understanding of how these concepts interact in broader contexts.

These limitations highlight areas for future research and emphasise the need for continued exploration and examination of the relationships between the concepts discussed in the study.

### **7.6 Areas identified for further study**

#### **The Constitution (1996) and societal engagement**

##### *Understanding societal embrace of constitutional principles*

Despite the centrality of the Constitution (1996), public engagement with its principles remains uneven. Further empirical research could examine barriers to constitutional literacy, including educational limitations, historical legacies and political influences shaping public perception. Such inquiry may assist in identifying strategies to strengthen societal understanding and practical utilisation of constitutional rights.

#### **Intelligence as a government function**

##### *Deconstructing intelligence: risks and solutions*

Intelligence should be examined as a governmental function subject to constitutional and administrative scrutiny. Future research could analyse institutional structures, operational processes and personnel dynamics to identify systemic vulnerabilities. Empirical and historical case-based studies may contribute to more refined accountability and risk-mitigation frameworks.

## **Enhancing national security through intelligence**

### **Enhancing intelligence capabilities for national security**

Given the evolving security environment, further study is warranted on the adaptation of intelligence capabilities, including analytical methodologies, technological innovation and inter-agency coordination. Comparative and interdisciplinary approaches may assist in identifying best practices that remain consistent with constitutional safeguards and democratic oversight.

## **Social development and constitutional empowerment**

### **Harnessing the Constitution (1996) for community development**

Further socio-legal research could examine how constitutional rights, particularly socioeconomic rights, are operationalised at community level. Studies focusing on grassroots mobilisation, litigation strategies and participatory governance mechanisms may provide insight into strengthening constitutional empowerment in practice.

## **Influence on the South African Security Agency**

### **Investigating influences on intelligence conduct**

The conduct of intelligence officials may be shaped by political pressures, institutional hierarchies and organisational culture. Empirical research, including interviews or ethnographic inquiry, could deepen understanding of these influences and their implications for ethical decision-making and operational integrity within the SSA.

## **Review of intelligence legislation and regulations**

### **Evaluating legislative safeguards against abuse**

As intelligence legislation evolves, continued doctrinal and comparative analysis is required to assess whether safeguards adequately prevent abuse of power. Future research may evaluate the effectiveness of oversight mechanisms and propose refinements to strengthen accountability within constitutional limits.

## **7.7 Overall conclusion**

This study examined the relationship between the Constitution (1996), intelligence governance and social development, with particular reference to sections 209 and 210. A comparative analysis of the 1910, 1961 and 1983 constitutional orders demonstrated that apartheid-era intelligence operated within legal frameworks designed to entrench racial exclusion and prioritise regime preservation over equitable socioeconomic development. Intelligence conduct reflected the discriminatory constitutional systems within which it functioned.

The Constitution (1996) marks a structural departure from this history. Anchored in constitutional supremacy, accountability and equality, it situates intelligence within the rule of law and subjects it to regulation through national legislation. Intelligence is therefore conceived not as an instrument of political control, but as a national security function operating in support of democratic governance and social stability.

The findings indicate, however, that post-1994 intelligence practice has not consistently fulfilled this constitutional mandate. Leadership weaknesses, politicisation of priorities, resource misuse and ineffective oversight have undermined institutional integrity and constrained intelligence's contribution to social development. These deficiencies arise not from constitutional design, but from failures of implementation and institutional accountability.

The central conclusion is thus clear: the Constitution (1996) provides an adequate legal foundation for democratic intelligence governance. Where dysfunction occurs, its origins lie in human agency and institutional culture rather than constitutional limitation. The sustainability of intelligence governance in a constitutional democracy depends not on reconstructing the legal framework, but on ensuring that intelligence authority is exercised lawfully, ethically and in faithful service of the constitutional order it exists to protect.

## LIST OF REFERENCES

- Abrahamsen, R. 2016. Review of the rise of the securocrats: The case of South Africa by Jane Duncan. *African Studies Review*, 59(2) pp 253-254. Available at: <https://www.muse.jhu.edu/article/629869>. [Accessed on 05 April 2022).
- Acuff, J., Craft, L., Ferrero, C., Fitsanakis, J., Kilroy, R. & Smith, J. 2022. *Introduction to Intelligence: Institutions, Operations and Analysis*. Washington, USA: CQ Press, A Division of Sage.
- Africa, S. & Kwadjo, J. (Eds.). 2009. *Changing Intelligence Dynamics in Africa*. South Africa: GFN-SSR and ASSN.
- Africa, S. & Mlombile, S. 2001. Transforming the intelligence services: Some reflections on the South African experience. Available at: <http://www.harvard.edu/programs/criminal-justice/south africa.pdf>. [Accessed on 21 July 2023).
- Africa, S. 2009. The South African intelligence services: A historical perspective. Available at: [https://www.academia.edu/2097947/The\\_South\\_African\\_Intelligence\\_Services\\_A\\_Historical\\_Perspective](https://www.academia.edu/2097947/The_South_African_Intelligence_Services_A_Historical_Perspective). [Accessed on 14 July 2023).
- Agee, P. & Wolf, L. (Eds.). 1978. *Dirty Work*. New Jersey, USA: Lyle Stuart Inc.
- Agrizzi, A. 2020. *Inside the Belly of the Beast: The Real Bosasa Story*. Cape Town, South Africa: Truth Be Told Publishing.
- Akhmedov, I. 1984. *In and out of Stalin's GRU: A Tartar's Escape from Red Army Intelligence*. USA: University Publications of America.

- Alberts, S. 2009. How constitutions constrain. *Comparative Politics*. Available at: <https://www.jstor.org/stable/40599206>. [Accessed on 24 February 2023].
- Aliyu, A.A., Adamu, H., Singhry, I.M. & Abubakar, M. 2015. Conference: Proceedings of The Academic Conference: Mediterranean Publications & Research International on New Direction and Uncommon, 2(1). 22 December 2015 – University of Agric, Abekuta, Abekuta, Ogun State, Nigeria. Available at: [https://www.researchgate.net/publication/318721927\\_ontology\\_epistemology\\_and\\_axiology\\_in\\_quantitative\\_and\\_qualitative\\_research\\_elucidation\\_of\\_the\\_research\\_philosophical\\_misconception](https://www.researchgate.net/publication/318721927_ontology_epistemology_and_axiology_in_quantitative_and_qualitative_research_elucidation_of_the_research_philosophical_misconception). [Accessed on 24 April 2022].
- Ancer, J. 2019. *Betrayal: The Secret Lives of Apartheid Spies*. Cape Town, South Africa: Tafelberg, NB Publishers.
- Anderson, A.M., Dodd, A. & Roos, M.C. 2016. *Everyone's Guide to South African Law*. 4th edition. Cape Town, South Africa: Zebra Press, Penguin Random House.
- Andrew, C. 2018. *The Secret World: A History of Intelligence*. Britain, UK: Penguin Books, Penguin Random House.
- Asmal, K., Hadland, A. & Levy, M. 2011. *Politics is in My Blood: A Memoir*. South Africa: Jacana Media.
- Baird, M. 2007. Why did the United Party lose the 1948 general election? München, GRIN Verlag. Available from: <https://www.grin.com/document/203302>. [Accessed on 19 January 2023].
- Baldino, D. (Ed.). 2010. *Democratic Oversight of Intelligence Services*. Sydney: The Federation Press.

- Barnard, N. 2015. *Secret Revolution: Memoirs of a Spy Boss*. Cape Town, South Africa: Tafelberg, NB Publishers.
- Bazzell, M. & Carroll, J. 2016. *The Complete Privacy & Security Desk Reference*. Volume 1: Digital. Britain, UK: Michael Bazzell & Justin Carroll.
- Bazzell, M. 2015. *Open-Source Intelligence Techniques: Resources for Searching and Analysing Online Information*. 4th edition. USA: Library of Congress Cataloguing – In Publication Data.
- Benyon, J.A. (Ed.). 1978. *Constitutional Change in South Africa*. Pietermaritzburg, South Africa: University of Natal Press.
- Berger, R. 2018. Here's what's wrong with Bloom's taxonomy: A deeper learning perspective. Available at: <https://www.edweek.org/education/opinion-heres-whats-wrong-with-blooms-taxonomy-a-deeper-learning-perspective/2018/03> [Accessed on 15 May 2022].
- Bernhardt, W. 2003. A qualitative conceptual framework for conducting risk and threat assessment in the South African domestic intelligence environment. Thesis for the degree of Doctor Philosophy, Department of Political Sciences, University of Pretoria, South Africa.
- Biermann, H.H.H. (Ed.). 1963. *The Case for South Africa: Statements of EH Louw*. USA: Macfadden Books.
- Biko, S. 2017. *I Write what I Like*. 40th anniversary edition. Johannesburg, South Africa: Picador Africa, Pan Macmillan.
- Black, I. & Morris, B. 1991. *Israel's Secret Wars: The Untold History of Israeli Intelligence*. England, UK: Penguin Group, Penguin Books.

- Blackstock, P.W. (Appendix by Kennan, G.F.). 1966. *Agents of Deceit: Frauds, Forgeries and Political Intrigue Among Nations*. Chicago, USA: Quadrangle Books.
- Blake, R. & Walters, R. 1987. *The Politics of Global Economic Relations*. 3rd edition. USA: Simon & Schuster, Prentice Hall.
- Blum, Y.Z. 1993. *Eroding the United Nations Charter*. USA, Brill Academic Publications.
- Bookchin, M. 1970. A discussion on "Listen Marxist". Available from: <https://www.Marxists.org/archive/Bookchin/1970/discussion.htm>. [Accessed on 25 February 2023].
- Booyesen, S. 2011. *The African National Congress and the Regeneration of Political Power*. Braamfontein, South Africa, Wits University Press.
- Booyesen, S. 2021. *Precarious Power: Compliance and Discontent Under Ramaphosa's ANC*. Braamfontein, South Africa: Wits University Press.
- Born, H., Leigh, I. & Wills, A (Eds.). 2011. *International Intelligence Cooperation and Accountability*. New York, USA: Routledge, Taylor Francis Group.
- Bosman, H.C. 1969. *Mafeking Road*. 1st edition. Cape Town, South Africa: Human & Rousseau Publishers.
- Bottom, N.R. & Gallati, R.R.J. 1984. *Industrial Espionage: Intelligence Techniques and Countermeasures*. MA, USA: Butterworth Publishers.
- Bouma, G. & Atkinson, G. 1995. *A Handbook of Social Science Research: A Comprehensive and Practical Guide for Students*. 2nd edition. Oxford, UK: Oxford University Press.

- Brown, J. 2015. *South Africa's Insurgent Citizens: On Dissent and the Possibility of Politics*. Johannesburg, South Africa: Jacana Media.
- Browne, E. & Millington, K.A. 2015. Social development and human development. Available at: <https://gsdrc.org/topic-guides/social-development-and-human-development/> [Accessed on 18 September 2022].
- Bryman, A. 2007. The research question in social research: What is its role? *International Journal of Social Research Methodology* 10, pp 5-20.
- Bulmer, E.W. 2014. What is a constitution? Principles and concepts. Available at: <https://www.coursehero.com/file/29139795/Constitutional-Theory-Points-III-2015pdf/>. [Accessed on 18 October 2022].
- Bundy, C. 2015. *Nelson Mandela: A Jacana Pocket Biography*. Auckland Park, South Africa: Jacana Media.
- Burke, J. 2003. *Al-Qaeda: Casting a Shadow of Terror*. London, UK: I. B. Tauris & Co.
- Buzan, B. 1991. *Is international security possible?* In: Booth, K. (ed.). *New thinking about strategy and international security*. London: Routledge.
- Bwisa, H. 2018. The basics of writing a statement of the problem for your research proposal. Available at: <https://www.editage.com/insights/the-basics-of-writing-a-statement-of-the-problem-for-your-research-proposal#:~:text=A%20research%20problem%20may%20be.for%20further%20understanding%20and%20investigation.&test=Writing%20a%20statement%20of%20the%20problem%20should%20help%20you%20clearly,research%20project%20you%20will%20propose>. [Accessed on 22 September 2022].

- Callinicos, A. (Ed.). 1992. *Between Apartheid and Capitalism: Conversations with South African Socialists*. London, UK: Bookmarks.
- Callinicos, L. 2021. *Oliver Tambo: His Life and Legacy, 1917-1993*. 3rd edition. Johannesburg, South Africa: Real African Publishers.
- Carmel, H. (Ed.). 2004. *Intelligence for Peace: The Role of Intelligence in Times of Peace*. Abington, Oxon, UK: Routledge Curzon.
- Carmody, P. 2016. *The New Scramble for Africa*. Cambridge, UK: Polity Press.
- Case, R. 2013. The unfortunate consequences of Bloom's taxonomy. Available at: [https://tc2.ca/uploads/PDFs/Critical%20Discussions/unfortunate\\_consequences\\_blooms\\_taxonomy.pdf](https://tc2.ca/uploads/PDFs/Critical%20Discussions/unfortunate_consequences_blooms_taxonomy.pdf) [Accessed on 15 May 2022].
- Cawe, A. 2021. *The Economy on Your Doorstep*. Johannesburg, South Africa: Tracey McDonald Publishers.
- Chapman, B. 2004. *Researching National Security and Intelligence Policy*. Washington, D.C, USA: CQ Press.
- Chaskalson, A. 2003. From wickedness to equality: The moral transformation of South African law. Available at: <https://academic.oup.com/icon/article-pdf/1/4/590/2352955/010590.pdf>. [Accessed on 24 February 2023].
- Chikane, F. 2017. *Eight Days in September: The Removal of Thabo Mbeki*. Picador Africa, Johannesburg, South Africa.
- Cilliers, J. (2003). Africa and terrorism: Joining the global campaign. *African Security Review*, 12(4), 91–103. [Accessed 27 March 2022].

Cimbala, S. (Ed.). 1987. *Intelligence and Intelligence Policy in a Democratic Society*. New York, USA: Transnational Publishers, Inc.

Classen, J.S. 2004. Intelligence production with special reference to the production of “current intelligence”. Mmabatho, South Africa: Intelligence Research Institute (IRI).

Classen, J.S. 2011. The craft of intelligence analysis and assessment: A training manual for intelligence analysts. South Africa.

Coleman, M. (Ed.). 1998. Covert operations: A crime against humanity – Analysing the repression of the Apartheid State. Available at:  
<https://www.sahistory.org.za/archive/covert-operations> [Accessed on 21 October 2022].

Commonwealth Secretariat. 1991. *Beyond Apartheid: Human Resources in a New South Africa*. Claremont, Cape Town, South Africa: Davis, Philip Publisher.

Congress of the People, ANC, 1955. Freedom Charter. Available at:  
<http://www.africaspeaks.com/reasoning/index.php?topic=8838.0;wap2>.  
[Accessed on 23 February 2023].

Constitution of the Republic of South Africa, Act 108 of 1996. Pretoria: Department of Justice and Constitutional Development.

Coovadia, I. 2021. *The Poisoners: On South Africa's Toxic Past*. Cape Town, South Africa: Umlazi, an imprint of Penguin Random House.

Corbett, T.R. 2010. *An Ordinary Day*. Cape Town, South Africa: Umuzi, Random House Struik.

- Cronje, F. 2020. *The Rise or Fall of South Africa*. Cape Town, South Africa: Tafelberg, NB Publishers.
- Currie, I. & De Waal, J. 2001. *The New Constitution and Administrative Law*. 2001. Cape Town, South Africa: Juta Law.
- Currie, I. & De Waal, J. 2013. *The Bill of Rights Handbook*. 6th edition. Cape Town, South Africa: Juta.
- Davenport, E., Eddy, P. & Gillman, P. 1978. *The Plumbat Affair*. New York, USA: J.B. Lippincott Company.
- Davids, I., Theron, F. & Maphunye, K.J. 2005. *Participatory Development in South Africa: A Development Management Perspective*. Hatfield, Pretoria, South Africa: Van Schaik Publishers.
- Davis, S.M. 1987. *Apartheid's Rebels: Inside South Africa's Hidden War*. UK: Yale University Press.
- De Vos, P. & Freedman, W. (Eds); Brand, D., Gevers, C., Govender, K., Lenaghan, P., Mailula, D., Ntlama, N. & Sibanda, S. 2021. *South African Constitutional Law in Context*. 2nd edition. Cape Town, South Africa: Oxford University Press.
- Deacon, R. 1972. *A History of the Russian Secret Service*. New York, USA: Taplinger Publishing Co.
- Deacon, R. 1977. *The Israeli Secret Service*. Great Britain, UK: Hamish Hamilton.
- Deane, M. 2010. *Academic Research, Writing & Referencing*. London, UK: Pearson Education.

- Dear, I. 2013. *Spy and Counterspy: Secret Agents and Double Agents from the Second World War to the Cold War*. Gloucestershire, UK: The History Press.
- Deleuze, G. & Guattari, F. 1994. *What is Philosophy?* Translated by H. Tomlinson and G. Burchell. Originally published as *Qu'est-ce que la philosophie?* Paris: Les Editions de Minuit, 1991. New York: Columbia University Press.
- Denzin, N.K. & Lincoln, Y.S. (Eds.). 1994. *Handbook of Qualitative Research*. California, USA: Sage Publications, Inc.
- Department of Social Development. Social Security Agency Act, 2004 (Act 9 of 2004). Available from: <http://www.dsd.gov.za/index.php/about/legislative-mandate>. [Accessed on 24 February 2024].
- Deutscher, I. 1973. *The Age of Permanent Revolution: A Trotsky Anthology*. USA: Dell Publishing Co.
- Devenish, G.E. 2012. The Republican Constitution of 1961 revisited: A re-evaluation after fifty years. *Acta Juridica*, 2012, 1–23. [Accessed 2 October 2022].
- Diamond, L., Linz, J.J. & Lipset, S.M. (Eds.). 1988. *Democracy in Developing Countries. Volume 2*. Colorado, USA: Lynne Rienner Publishers.
- Dingake, M. 1987. *My Fight Against Apartheid*. London, UK: Kliptown Books.
- Dlodlo, A. 2018. Public Service Commission launches values and principles, including the Batho Pele Principles, to build a values-driven Public Service. Available from: [www.gov.za/inculcating constitutional values and principles](http://www.gov.za/inculcating-constitutional-values-and-principles), including Batho Pele principles. [Accessed on 16 February 2023].

- Dombroski, K.R. 2006. Reforming intelligence: South Africa after Apartheid. *Journal of Democracy*, 17(3), July 2006. Available at: <https://calhoun.nps.edu/handle/10945/43135> [Accessed on 21 October 2022].
- Du Toit, P. 2021. *The Stellenbosch Mafia: Inside the Billionaires' Club*. Johannesburg, South Africa: Jonathan Ball Publishers.
- Dugard, J. 2018. *Confronting Apartheid: A Personal History of South Africa, Namibia and Palestine*. Johannesburg, South Africa: Jacana Media.
- Dulles, A.W. 2006. *The Craft of Intelligence*. Connecticut, USA: The Lyons Press.
- Duncan, J. 2014. *Rise of the Securocrats: The Case of South Africa*. Auckland Park, South Africa: Jacana Media.
- Duncan, J. 2018. *Stopping the Spies: Constructing and Resisting the Surveillance State in South Africa*. Johannesburg, South Africa: Wits University Press.
- Duvenage, P.C. 2010. Open-source environmental scanning and risk assessment in the statutory counterespionage milieu. Thesis submitted for the degree of Doctor of Philosophy (Political Science). Pretoria, South Africa.
- Eisenberg, D., Dan, U. & Landau, E. 1980. *The Mossad: Israel's Secret Intelligence Service – The Explosive Inside Story*. Corgi edition. London, UK: Corgi Books, Transworld Publishers.
- Elagab, O. & Elagab, J. 2007. *International Law Documents Relating to Terrorism*. 3rd edition. New York, USA: Routledge – Cavendish.
- Ellison, C. 2010. *McGraw-Hill's Concise Guide to Writing Research Papers*. USA: McGraw-Hill Education Europe.

Ellmann, S. 2019. *Arthur Chaskalson: A Life Dedicated to Justice for All*. Johannesburg, South Africa: Picador Africa, Pan Macmillan.

Eloff, T. 2017. *Turning Point: South Africa at a Crossroads*. Cape Town, South Africa: Tafelberg, NB Publishers.

Elsdon, A.D. 2009. *The Tall Assassin: The Darkest Political Murders of the Old South Africa*. Cape Town, South Africa: Umuzi, Random House Struik.

Encyclopaedia Britannica. 2019. Mossad. Available at:  
<https://www.britannica.com/topic/Mossad>. [Accessed on 20 September 2023].

Esterhuyse, W. 2012. *Endgame: Secret Talks and the End of Apartheid*. Cape Town, South Africa: Tafelberg, NB Publishers.

Faini, M. 2021. *Spies and their Masters – Intelligence-policy Relations in Democratic Countries*. New York, USA: Routledge, Taylor & Francis Group.

Fanon, F. 1963. *The Wretched of the Earth*. Available at: <http://abahlali.org/wp-content/uploads/2011/04/Frantz-Fanon,-The-Wretched-of-the-Earth-1965.pdf>. [Accessed on 15 April 2024].

Fanon, F. 2014. *Voices of Liberation*. Compiled by Leo Zeilig. Cape Town, South Africa: Human Sciences Research Council.

Field Manual 2-22.3 (FM 34-52). 2006. *Human Intelligence Collector Operations*. Washington, DC, USA: Department of the Army, Headquarters, Washington, DC.

Federation of American Scientists (FAS). N/d. *The Intelligence Cycle*. Available at: <https://irp.fas.org/cia/product/facttell/intcycle.htm> [Accessed on 1 August 2023].

- Fedorowich, K. 2005. *German espionage and British counter-intelligence in South Africa and Mozambique, 1939–1944*. The Historical Journal, 48(1), pp. 209–230.  
Available at: <https://www.jstor.org/stable/4091684> [Accessed 14 July 2023].
- Fischler, A.S. 2017. From problem statement to research questions. Available at:  
[https://education.nova.edu/Resources/uploads/app/35/files/arc\\_doc/from\\_problem\\_statement\\_to\\_research\\_question.pdf](https://education.nova.edu/Resources/uploads/app/35/files/arc_doc/from_problem_statement_to_research_question.pdf). [Accessed on 20 September 2023].
- Fisher, S. (Ed.). 2004. *Archival Information: How to Find It, How to Use It*. Westport, USA: Greenwood Press.
- Fombad, C.M. 2010. The Constitution as a source of accountability: The role of constitutionalism. Available at:  
[https://repository.up.ac/bitstream/handle/2263/Fombad\\_Constitution%282010%29.pdf?](https://repository.up.ac/bitstream/handle/2263/Fombad_Constitution%282010%29.pdf?) [Accessed on 24 February 2023].
- Freedom Charter. N.d. Available at: <http://www.anc.org.za/show.php?id=72>. [Accessed on 11 April 2024].
- Friedman, G, Friedman, M., Chapman, C. and Baker, J.S. 1997. *The Intelligence Edge*. USA: Crown Publishers, Random House.
- Gaille, B. 2018. 25 Advantages and disadvantages of qualitative research. Available at:  
<https://brandongaille.com/25-advantages-disadvantages-qualitative-research/>  
[Accessed on 18 September 2022].
- Garbers, J. (Ed.). 1996. *Effective Research in the Human Sciences: Research Management for Researchers, Supervisors and Master's and Doctoral Candidates*. South Africa: Van Schaik Publishers.

- Gass, T. 2014. Development must centre on people, realization of social rights, third committee told at the opening of the session. United Nations General Assembly, 69th Session, 1st & 2nd Meetings. Available at: <https://www.un.org/press/en/2014/gashc4097.doc.htm>. [Accessed on 25 February 2023].
- Gathitu, K.A. 2016. Separation of powers under the 2010 Constitution: An analysis of the emerging tensions between parliament and the judiciary. Kenya: University of Nairobi Law School.
- George, R.Z. & Kline, R.D. (Eds.). 2006. *Intelligence and the National Security Strategist: Enduring Issues and Challenges*. Maryland, USA: Rowman & Littlefield Publishers, Inc.
- Giliomee, H., Mbenga, B. & Nasson, B. 2022. *New History of South Africa*. Cape Town, South Africa: Tafelberg Publishers.
- Giliomee, H. 2020. *Maverick Africans: The Shaping of the Afrikaners*. Cape Town, South Africa: Tafelberg Publishers.
- Godson, R. 2001. *Dirty Tricks or Trump Cards: U.S. Covert Action & Counterintelligence*. New Jersey, USA: Transaction Publishers.
- Goldman, J. (Ed.). 2010. *Ethics of Spying: A Reader for the Intelligence Professional. Volume 2*. Maryland, USA: Scarecrow Press.
- Gordon, L.R. 2005. Fanon and development. Available at: <https://www.codesria.org/IMG/4-3>. Pdf. [Accessed on 28 March 2022].

- Goredema, C. & Botha, A. 2004. African commitments to combating organized crime and terrorism. A review of eight NEPAD countries. South Africa: African Human Security Initiative, New Partnership for Africa's Development.
- Gourley, B. 2018. Security Intelligence at strategic, operational and tactical levels. Available at: <https://securityintelligence.com/security-intelligence-at-the-strategic-operational-and-tactical-levels/> [Accessed on 1 August 2023].
- Gray, M. (ed.). 2016. *The Handbook of Social Work and Social Development in Africa*. 1st edn. London: Routledge.
- Gray, M. 2006. The progress of social development in South Africa. *International Journal of Social Welfare*, 15 (Suppl. 1) S53-64.
- Green, D. 2009. *From Poverty to Power: How Active Citizens and Effective States Can Change the World*. Auckland Park, South Africa: Oxfam International – Jacana Media.
- Grimm, D. 2012. *The Oxford Handbook of Comparative Constitutional Law*. Available at: <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199578610.001.0001/oxfordhb-9780199578610-e-6>. [Accessed on 24 February 2023].
- Grizold, A. 1994. The concept of national security in the contemporary world. *International Journal on World Peace*, 11(3), pp 37-53. Available at: <http://www.jstor.org/stable/20751984>. [Accessed on 04 June 2023].
- Guba, E.G. & Lincoln, Y.S. Denzin, N.K. & Yvonna S. Lincoln, Y.S. (Eds.). 1994. Competing Paradigms in Qualitative Research. *Handbook of Qualitative Research*. USA: Sage.

- Guest, R. 2004. *The Shackled Continent: Africa's Past, Present and Future*. London, UK: Pan Macmillan.
- Gumede, W.M. 2005. *Thabo Mbeki and the Battle for the Soul of the ANC*. Cape Town, South Africa: Zebra Press.
- Gwatiwa, T. (Ed.). 2024. *Contemporary Intelligence in Africa*. Abingdon, UK: Routledge, Taylor Francis Group.
- Habib, A. 2019. *Rebels and Rage: Reflecting on #FEESMUSTFALL*. Johannesburg, South Africa: Jonathan Ball Publishers.
- Hall, W.M. & Citrenbaum, G. 2012. *Intelligence Collection: How to Plan and Execute Intelligence Collection in Complex Environments*. California, USA: Praeger, an imprint of ABC-CLIO.
- Hansen, J.H. 1996. *Japanese Intelligence: The Competitive Edge*. Washington, DC, USA: NIBC Press, National Intelligence Book Centre.
- Harber, A. 2020. *So, For the Record: Behind the Headlines in an Era of State Capture*. Johannesburg, South Africa: Jonathan Ball Publishers.
- Harding, L. 2021. *Mafia State: How One Reporter Became an Enemy of the Brutal New Russia*. London, UK: Guardian Faber, Faber & Faber.
- Hassan, N.A. & Hijazi, R. 2018. *Open-Source Intelligence Methods and Tools*. New York, USA: Apress Media.
- Hastedt, G.P. (Ed.). 1991. *Controlling Intelligence*. London, UK: Frank Cass & Co.

- Haule, J.J. 1984. Old paradigm and new order in the African context: Toward an appropriate model of communication and national development. *Gazette*, 33(1), 5–16.
- Heunis, J. 2007. *Die Binnekring: Terugblikke op die Laaste Dae van Blanke Regering*. Johannesburg, South Africa: Jonathan Ball Publishers.
- Hickson, J. 1991. Childshock: The effects of apartheid on the mental health of South Africa's children. Available from: <https://link.springer.com/article/10.1007/BF00117733>. [Accessed on 23 February 2023].
- High-level Review Panel on Intelligence. 2018. *High-level Review Panel on Intelligence Report on the State Security Agency*. Government of South Africa, Pretoria.
- History.com Editors. 2009. Causes of the French Revolution. Available from: <https://www.history.com/topics/france/french-revolution>. [Accessed on 23 February 2023].
- History.com Editors. 2009. Nazi Party: Definition, Hitler & facts. Available from: <https://www.history.com/topics/world-war-ii/nazi-party>. [Accessed on 23 February 2023].
- History.com Editors. 2010. Apartheid. Available from: <https://www.history.com/topics/africa/apartheid>. [Accessed on 23 February 2023].
- History.com Editors. 2009. Available from: <https://www.history.com/topics/world-war-i/treaty-of-versailles-1>. [Accessed on 28 May 2022].

- Hitz, F.P. 2008. *WHY SPY? Espionage in an Age of Uncertainty*. New York, USA: Thomas Dunne Books, St. Martin's Press.
- Hooper, J. 2012. *KOEVOET! Experiencing South Africa's Deadly Bush War*. Warwickshire, UK: GC Books.
- Horowitz, D.L. 1991. *A Democratic South Africa? Constitutional Engineering in a Divided Society*. California, USA: University of California Press.
- Horton, M.L. 2003. *Agent of Influence*. NE, USA: Mystery and Suspense Press, iUniverse.
- Howard, M. (Ed.). 1979. *Restraints on War: Studies in the Limitation of Armed Conflict*. Oxford, UK: Oxford University Press.
- Hughes-Wilson, J. 2016. *On Intelligence: The History of Espionage and the Secret World*. London, UK: Constable – Little Brown, Book Group.
- Hulnick, A. & Mattausch, D.W. 1989. Ethics and Morality in United States Secret Intelligence. *Harvard Journal of Law & Public Policy*, 12(2) pp 509-522.
- Hunt, P.M.A. 1990. *South African Criminal Law and Procedure, Volume II*. Revised 2nd edition by J.R.L. Milton. Cape Town, South Africa: Juta & Co.
- Hutton, J.B. 1971. *Women Spies*. Essex, London: W.H. Allen & Co.
- Hutton, L. 2007. Looking beneath the cloak: an analysis of intelligence governance in South Africa. Available at:  
[https://www.academia.edu/67165974/Looking\\_beneath\\_the\\_cloak\\_an\\_analysis\\_of\\_intelligence\\_governance\\_in\\_South\\_Africa](https://www.academia.edu/67165974/Looking_beneath_the_cloak_an_analysis_of_intelligence_governance_in_South_Africa). [Accessed on 2 April 2024].

Hutton, L. (Ed.). 2009. To spy or not to spy? Intelligence and democracy in South Africa. Available at: <https://www.files.ethz.ch/isn/103502/MONO157FULL.PDF> [Accessed on 20 September 2022].

International Commission of Jurists (Ed.). 1975. *The Trial of Beyers Naudé*. London, UK: Search Press Ltd.

Jansen, D. & Warren, K. 2020. What (exactly) is research methodology? A plain-language explanation & definition (with examples). Available at: <https://gradcoach.com/what-is-research-methodology/> [Accessed on 14 May 2022].

Jeffery, A.J. 2019. *People's War: New Light on the Struggle for South Africa*. Johannesburg, South Africa: Jonathan Ball Publishers.

Jensen, C.J., McElreath, D.H. & Graves, M. 2018. *Introduction to Intelligence Studies*. Boca Raton, USA: CRC Press – Taylor & Francis Group. .

Johns, S. & Davis, R.H. (Eds.). 1991. *Mandela, Tambo and the African National Congress: The Struggle Against Apartheid, 1948 – 1990, a Documentary Survey*. Cape Town, South Africa: Oxford University Press.

Johnson, L.K. & Wirtz, J.J. (Eds.). 2015. *Intelligence: The Secret World of Spies, An Anthology*. 4th edition. USA: Oxford University Press.

Johnson, LK (Ed.). 2010. *The Oxford Handbook of National Security Intelligence*. Available at: <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780195375886.001.0001/oxfordhb-9780195375886-e-0001> [Accessed on 22 September 2022].

Johnson, L.K. (Ed.). 2015. *Essentials of Strategic Intelligence*. California, USA: Praeger – Praeger Security International.

*Judicial Commission of Inquiry into State Capture Report*. 2018. State Security Agency and Crime Intelligence: Part V, Vol. 1. Republic of South Africa.

Kasrils, R. 1993. *Armed and Dangerous: My Undercover Struggle Against Apartheid*. Botswana: Heinemann Educational Books.

Kawulich, B. 2004. Qualitative data analysis techniques. Available at: <https://www.researchgate.net/publication/258110388>. [Accessed on 15 August 2022].

Kent, G. 1974. *Espionage*. London, UK: B. T. Batsford.

Ki-moon, B. 2015. General Assembly debate on the maintenance of international peace and security. Available from: <https://www.un.org/un70/en/content/history/index.html>. [Accessed on 23 February 2023].

Kish, J. (Turns, D., Ed.). 1995. *International Law and Espionage*. The Hague, Netherlands: Kluwer Law International.

Kleynhans, E. 2021. *Hitler's Spies: Secret Agents and the Intelligence War in South Africa*. Johannesburg, South Africa: Jonathan Ball Publishers.

Klug, H. 2010. *The Constitution of South Africa: A Contextual Analysis*. Portland, USA: Hart Publishing.

Koorts, L. 2014. *DF Malan en die Opkoms van Afrikaner-nasionalisme*. Cape Town, South Africa: Tafelberg, NB Publishers.

- Krueger, A.B. 2007. *What Makes a TERRORIST: Economics and the Roots of Terrorism*. New Jersey, USA: Princeton University Press.
- Kuhn, T.S. 1970. *The Structure of Scientific Revolutions*. 2nd ed. Chicago: University of Chicago Press.
- Labaree, R.V. 2009. Available at: <https://libguides.usc.edu/writingguide/literaturereview>. [Accessed on 16 February 2024].
- Labuschagne, P. 2004. The doctrine of the separation of powers and its application in South Africa. Sabinet. Available at: [http://scholar.google.co.za/scholar\\_url?url=https://www.ingentaconnect.com/content/sabinet/polit/2004/00000023/00000003/art00006&hl=en&sa=X&scisig=AAGBfm2fDbawvgkAnsZ6uctMcWY6xC8DEw&nossl=1&oi=scholar](http://scholar.google.co.za/scholar_url?url=https://www.ingentaconnect.com/content/sabinet/polit/2004/00000023/00000003/art00006&hl=en&sa=X&scisig=AAGBfm2fDbawvgkAnsZ6uctMcWY6xC8DEw&nossl=1&oi=scholar). [Accessed on 09 May 2023].
- Lake, A. 2000. *Six Nightmares: Real Threats in a Dangerous World and How America Can Meet Them*. USA: Little Brown & Co.
- Lambley, P. 1980. *The Psychology of Apartheid*. Georgia, Athens: The University of Georgia Press.
- Lamola, 2022. Rule of law not destroyed – Lamola steps up to bat for Constitution in SONA debate. Available at: <https://www.news24.com/news24/SouthAfrica/News/rule-of-law-not-destroyed-lamola-steps-up-to-bat-for-constitution-in-sona-debate-20220216> [Accessed on 28 March 2022].
- Laqueur, W. 1985. *A World of Secrets – The Uses and Limits of Intelligence*. New York, USA: Basic Books Inc.

- Lass, H.R. 1975. Die grondleggers van rewolusionêre oorlogvoering. Potchefstroom, Suid-Afrika: Sentrum vir Internasionale Politiek. *Potchefstroom Herald*.
- Lebakeng, T.J. 2023. The nature and issues in intelligence, with reference to the South African civilian intelligence services. *African Security Review*, 32(1), 1–15.
- Le Roux, M. & Davis, D. 2019. *Lawfare, Judging Politics in South Africa*. Jeppestown, South Africa: Jonathan Ball Publishers.
- Leatt, J., Kneifel, T. & Nürnberger, K. (Eds.). 1986. *Contending Ideologies in South Africa*. Claremont, Cape Town, South Africa: David Phillip Publisher.
- Lederman, N.G. & Lederman, J.S. 2015. What is a theoretical framework? A practical answer. Illinois, USA: *Journal of Science Teacher Education*, 26, pp 593-598.
- Lee, E. 1986. *To the Bitter End: A Photographic History of the Boer War 1899 – 1902*. Harmondsworth, Middlesex, England: Penguin Books Ltd.
- Leedy, P.D. & Ormrod, J.E. 2019. *Practical Research Planning and Design*. 12th edition. New York, USA: Pearson Education.
- Leggett, G. 1986. *The Cheka: Lenin's Political Police*. Oxford, UK: Oxford University Press.
- Lempriere, M. 2019. How to structure a PhD Thesis. Available at:  
<https://www.thephdproofreaders.com/structuring-a-thesis/how-to-structure-a-phd-thesis/> [Accessed on 10 October 2022].

- Levering, B. 2002. Concept analysis as empirical method. *International Journal of Qualitative Methods*, 1(1). Available from:  
[https://www.researchgate.net/publication/242097815\\_Concept\\_Analysis\\_as\\_Empirical\\_Method](https://www.researchgate.net/publication/242097815_Concept_Analysis_as_Empirical_Method) [Accessed on 14 May 2023].
- Levite, A. 1987. *Intelligence and Strategic Surprises*. New York, USA: Columbia University Press.
- Libguides. 2020. The research problem/question – Organising your social science research paper. Available at:  
<https://libguides.usc.edu/writingguide/introduction/researchproblem>. [Accessed on 21 September 2022].
- Lieberman, J.K. 1999. *A Practical Companion to the Constitution: How the Supreme Court Ruled on Cases from Abortion to Zoning*. Berkeley, USA: University of California.
- Lodge, T. 1983. *Black Politics in South Africa since 1945*. London, UK: Longman.
- Lowenthal, M.M. 2022. *Intelligence: From Secrets to Policy*. 9th edition. California, USA: Sage.
- Lutz, J.M. & Lutz, B.J. 2005. *Terrorism: Origins and Evolution*. England, UK: Palgrave Macmillan.
- Lynch, T. 2014. Writing up your PhD (qualitative research). Available at:  
[https://www.ed.ac.uk/files/atoms/files/writing\\_up\\_your\\_phd\\_qualitative\\_research.pdf](https://www.ed.ac.uk/files/atoms/files/writing_up_your_phd_qualitative_research.pdf) [Accessed on 26 October 2022].
- Madlingozi, T. 2017. Social justice in a time of neo-apartheid constitutionalism. South Africa: *Stellenbosch Law Review*, 28.

- Mafeje, A. 1986. South Africa: The dynamics of a beleaguered state. *African Journal of Political Economy/Revue Africaine D'Economie Politique*, 1(1), 95-119.
- Maharaj, M. & Jordan, P. 2021. *Breakthrough: The Struggles and Secret Talks that Brought Apartheid South Africa to the Negotiating Table*. Cape Town, South Africa: Penguin Books, Penguin Random House.
- Maier, C. (Ed.). 1987. *Changing Boundaries of the Political: Essays on the Evolving Balance Between the State and Society, Public and Private Europe*. Cambridge, UK: Cambridge University Press.
- Mallya, E. 2022. Unleashing the potential for promoting socioeconomic development in Africa: The role of intelligence services. *Gnosi: An Interdisciplinary Journal of Human Theory and Praxis*, 5(2). July – December 2022 (ISSN – online: 27142485).
- Maluleke, R. 2019. Inequality trends in South Africa: A multidimensional diagnostic of inequality/Statistics South Africa. Published by Statistics South Africa, *Statistician-General Report No. 03-10-19 ii*.
- Mandela, R. 1994. Inauguration speech. Statement of the President of the African National Congress, Nelson Mandela, at his inauguration as president of the democratic Republic of South Africa, Union Buildings, Pretoria, 10 May 1994. Available at: <http://www.gov.za/services/services-residents>. [Accessed on 30 April 2022].
- Marais, H.C., Muthien, Y., Jansen van Rensburg, N.S., Maaga, M.P., De Wet, G.F. & Coetzee, C.J. (Eds.). 2001. *Sustainable Social Development: Critical Issues*. South Africa Network Publishers.
- Marx, K. 2010. *Das Kapital*. Madison Park, USA: Pacific Publishing Studio

- Maurer, A.C., Tunstall, M.D. & Keagle, J.M. (Eds.). 1985. *Intelligence, Policy and Process*. Colorado, USA: Westview Press.
- Max-Neef, M.A., Elizade, A. & Hopenhayn, M. 1991. *Human Scale Development: Conception, Application and Further Reflections*. New York, USA: The Apex Press.
- Mbeki, M. (Ed.). 2011. *Advocates for Change: How to Overcome Africa's Challenges*. Johannesburg, South Africa: Picador Africa, Pan Macmillan.
- Mbeki, M. 2009. *Architects of Poverty*. Johannesburg, South Africa: Picador Africa.
- Mbeki, T. 2002. *Africa: Define Yourself*. Cape Town, South Africa: Tafelberg/Mafube Publishers.
- Mbeki, T. 2016. Behind the narrative of the abuse of state power was a larger goal. Available at: <https://www.sahistory.org.za/archive/behind-narrative-abuse-state-power-was-larger-goal-thabo-Mbeki,-8-february-2016>. [Accessed on 23 February 2023].
- Medvedev, R. 1989. *Let History Judge: The Origins and Consequences of Stalinism*. USA: Columbia University Press.
- Meiring, J. (Ed.). 2017. *South Africa's Constitution at Twenty-One*. Cape Town, South Africa: Penguin Books.
- Mellet, P.T. 2020. *The Lie of 1652: A Decolonised History of the Land*. Cape Town, South Africa: Tafelberg, NB Publishers.
- Midgley, J. 1998. Social development and social welfare: South Africa in an international context. *Social Work/Maatskaplike Werk*, 34(1), 90-98.

- Midgley, J. 2001. The critical perspective in social development. *Social Development Issues*, 23(1), 42-50.
- Midgley, J. 2013. *Social Development: Theory and Practice*. Online: Sage Publications
- Miles, M.B. & Huberman, A.M. 1994. *Qualitative Data Analysis*. 2nd edition. California, USA: Sage Publications.
- Mills, G., Obasanjo, O., Herbst, J. & Davis, D. 2017. *Making Africa Work: A Handbook for Economic Success*. Cape Town, South Africa: Tafelberg, NB Publishers.
- Mills, G. 2021. *Expensive Poverty: Why Aid Fails and How it Can Work*. Johannesburg, South Africa: Pan Macmillan.
- Mistry, K. & Gurman, H. (Eds.). 2020. *Whistleblowing Nation: The History of Security Disclosures and the Cult of State Secrecy*. New York, USA: Columbia University Press.
- Moerane, P. 2020. *Moe Shaik, The ANC Spy Bible: Surviving Across Enemy Lines* (Book review). Available at: <https://repository.nwu.ac.za/handle/10394/35496> [Accessed on 11 April 2022].
- Mojapelo, J.M.P. 2013. The doctrine of separation of powers (a South African perspective). Available at: <https://www.sabar.co.za/law-journals/2013/april/2013-april-vol026-no1-pp37-46.pdf>. [Accessed on 24 February 2023].
- Montesquieu, C., Louis de Secondat. 1748. Separation of powers. Available from: <https://oll.libertyfund.org-pages-montesquieu-and-the-separation-of-powers>. [Accessed on 24 February 2022].

- Montesquieu, C., Louis de Secondat. 1748. Spirit of laws. Available from:  
<https://socialsciences.mcmaster.ca/econ/ugcm/montesquieu/spiritoflaws>.  
[Accessed on 02 March 2023].
- Moorcraft, P. 2018. *Total Onslaught: War and Revolution in Southern Africa Since 1945*.  
Yorkshire, UK: Pen & Sword Books.
- Morris, D. & McGann, E. 2017. *Rogue Spooks: The Intelligence War on Donald Trump*.  
New York, USA: St. Martin's Press.
- Mostert, J.P.C. (Ed.). 1986. *Die Suid-Afrikaanse Krisis: Perspektiewe op die  
Grondwetlike Bestel*. Bloemfontein, Suid-Afrika: Instituut vir Eietydse  
Geskiedenis.
- Motala, Z. & Ramaphosa, C. 2002. *Constitutional Law: Analysis and Cases*. South  
Africa: Oxford University Press.
- Mpofu-Walsh, S. 2021. *The New Apartheid: Apartheid Did Not Die; It Was Privatised*.  
Cape Town, South Africa: NB Publishers.
- Muller, C.F.J. (Ed.). 1981. *Five Hundred Years: A History of South Africa*. 3rd edition.  
South Africa: Academica.
- Mweru, G. 2015. Constitutional theory points – III – Introduction to and the meaning of  
the Constitution and Constitutional Law. Available at:  
[https://www.coursehero.com/file/29139795/Constitutional-Theory-Points-III-  
2015](https://www.coursehero.com/file/29139795/Constitutional-Theory-Points-III-2015). [Accessed on 18 October 2023].

- N'Zue, F. 2010. Towards a new development paradigm for African economies in the aftermath of the financial meltdown. *SSRN Electronic Journal*.
- Naresh, D. 2021. Strengths and limitations of qualitative research. Available at: <https://invoke.com/blog/strengths-and-limitations-of-qualitative-research>. [Accessed on 18 September 2022].
- Nash, J.R. 1997. *Spies: A Narrative Encyclopaedia of Dirty Deeds & Double Dealing from Biblical Times to Today*. New York, USA: Evans and Company.
- Nasson, W.R. & John, J.M. 1985. Abraham Esau: A Calvinia martyr in the Anglo-Boer War. *Social Dynamics*, 1(11).
- Nathan, L. 2010. International Affairs (Royal Institute of International Affairs 1944-) Vol. 86, No. 1 (Jan. 2010), pp. 195-210 (16 pages): Oxford University Press Intelligence Bound: The South African Constitution and Intelligence Services. Available at: <https://www.jstor.org/stable/40389094> [Accessed on 1 August 2023].
- Ndlovu-Gatsheni, S.J. 2018. The African idea of development. In: Binns, T., Lynch, K. and Nel, E. (eds). *The Routledge Handbook of African Development*. London: Routledge, 36–47.
- Ndulu, B.J. 2007. The evolution of global development paradigms and their influence on African economic growth. In: Ndulu, B.J., O'Connell, S.A., Bates, R.H., Collier, P. and Soludo, C.C. (eds). *The Political Economy of Economic Growth in Africa, 1960–2000*. Cambridge: Cambridge University Press, 315–347.

- Neiberg, M. 2017. *The Treaty of Versailles: A concise history*. ("The Treaty of Versailles: An Uneasy Peace"). Available from: [WBUR.org](http://WBUR.org) (excerpt from Michael Neiberg, *The Treaty of Versailles: A Concise History*). [Accessed on 24 February 2023].
- Neuman, W.L. 2011. *Social Research Methods: Qualitative and Quantitative Approaches*. 7th edition. USA: Pearson Education, publishing as Allyn & Bacon.
- News 24. 13 April 2022. War crime, crime against humanity, genocide: What's the difference? Available at: <https://www.news24.com/news24/world/news/war-crime-crime-against-humanity-genocide-whats-the-difference-20220413>. [Accessed on 13 April 2022].
- Ngcukaitobi, T. 2018. *The Land is Ours: South Africa's First Black Lawyers and the Birth of Constitutionalism*. Cape Town, South Africa: Penguin Books, Penguin Random House.
- Ngcukaitobi, T. 2021. *Land Matters: South Africa's Failed Land Reforms and the Road Ahead*. Cape Town, South Africa: Penguin Books, Penguin Random House.
- Njoku, F.O.C. 2004. *Development and African Philosophy: A Theoretical Reconstruction of African Socio-Political Economy*. Lincoln, USA: iUniverse.
- Nkrumah, K. 1963. *Africa Must Unite*. New York, USA: Frederick A. Praeger.
- Nolutshungu, S.C. 1992. Reflections on national unity in South Africa: A comparative approach. *Third World Quarterly*, 13(4), pp 607-625.
- O'Brien, K. 2011. *The South African Intelligence Services: From Apartheid to Democracy, 1948–2005*. New York, USA: Routledge, Taylor & Francis Group.

- Odendaal, A. 2013. *The Founders: The Origins of the ANC and the Struggle for Democracy in South Africa*. USA: University Press of Kentucky.
- Olivier, P. 2016. Abuse of law under the rule of law. Available at:  
<https://hsf.org.za/publications/hsf-briefs/abuse-of-law-under-the-rule-of-law>.  
 [Accessed on 23 February 2022].
- Onyeani, C. 2006. *Capitalist Nigger: The Road to Success – A Spider-web Doctrine*. Johannesburg, South Africa: Jonathan Ball Publishers.
- Onyeani, C. 2015. *Roar of the African Lion*. Johannesburg, South Africa: Jonathan Ball Publishers.
- Pampallis, J. & Bailey, M. 2021. *A Brief History of South Africa: From the Earliest Times to the Mandela Presidency*. Auckland Park, South Africa: Jacana Media.
- Parsons, R. 2013. *Zumanomics – Revisited*. Auckland Park, South Africa: Jacana Media.
- Pauw, J. 1997. *Into the Heart of Darkness: Confessions of Apartheid's Assassins*. Johannesburg, South Africa: Jonathan Ball Publishers.
- Pauw, J. 2017. *The President's Keepers*. Cape Town, South Africa: Tafelberg, NB Publishers.
- Pauw, J. 2017. *In the Heart of the Whore*. Johannesburg, South Africa: Jonathan Ball Publishers.
- Pauw, J. 2022. *Our Poisoned Land: Living in the Shadows of Zuma's Keepers*. Cape Town, South Africa: Tafelberg, NB Publishers.

- Piegl, P. & Newman, S. 2013. *Glenn Agliotti: A Biography*. Johannesburg, South Africa: Penguin Books.
- Pitney, J.J. 2001. *The Art of Political Warfare*. Available at: <https://docero.net/doc/john-jr-pitney,-the-art-of-political-warfare-2001-xv3lmlq2ow>. [Accessed on 26 April 2022].
- Plaatjie, S. 2020. “Rural development” and the search for an African development paradigm. In: Singh, S., Leitch, A. and others (eds). *African Perspectives on Reshaping Rural Development*. Hershey, PA: IGI Global, 1–18.
- Potgieter, D. 2007. *Total Onslaught: Apartheid’s Dirty Tricks Exposed*. South Africa: Zebra Press, Holland Publishing.
- Prunckun, H. 2012. *Counterintelligence Theory and Practice*. Plymouth, UK: Rowman & Littlefield Publishers.
- Putter, D. 2024. The rise and fall of South Africa’s intelligence community during Apartheid. *International Journal of Intelligence and CounterIntelligence*, 37(2), 395–414.
- Quinn, R. 2017. *An Analysis of Frantz Fanon’s: The Wretched of the Earth*. London, UK: Macat International.
- Rainbow Nation. N.d. Available from: [https://en.m.wikipedia.org/wiki/Desmond Tutu](https://en.m.wikipedia.org/wiki/Desmond_Tutu). [Accessed on 19 February 2023].
- Raj, T.V.A. 2013. Originality is nothing but judicious imitation – Voltaire. Available from: <https://tvaraj.com/2013/09/12/originality-is-nothing-but-judicious-imitation-voltaire>. [Accessed on 24 February 2023].

- Rapatsa, M. 2014. Transformative constitutionalism in South Africa: 20 years of democracy. *Mediterranean Journal of Social Sciences*, 5(27), 887–895.
- Rautenbach, I.M. 2014. Proportionality and the limitation clauses of the South African Bill of Rights. *Potchefstroom Electronic Law Journal*, 17(6), 2229–2267.
- Reich, W. (Ed.). 1990. *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind*. New York, USA: Woodrow Wilson International Center for Scholars, the Press Syndicate of the University of Cambridge.
- Reno, W. 1998. *Warlord Politics and African States*. Colorado, USA: Lynne Rienner Publishers.
- Revel, I.A. 2017. *Apartheid: A History of Apartheid*. USA: Amazon Digital Services LLC – Kdp Print.
- Rodney, W. 1972. *How Europe Underdeveloped Africa*. Tanzania: Bogle-L'Ouverture Publications, UK and Tanzanian Publishing House.
- Rodney, W. 2019. *The Groundings with My Brothers*. New York, USA: Verso, New Left Books.
- Rooney, D. 1988. *Kwame Nkrumah: The Political Kingdom in the Third World*. London, UK: I.B. Tauris & Co.
- Rostron, B. 2019. *Robert McBride – The Struggle Continues*. Cape Town, South Africa: Tafelberg, NB Publishers.
- Ryan, J. 2002. *One Man's Africa*. Johannesburg, South Africa: Jonathan Ball Publishers.

- Sachs, A. 1973. *Justice in South Africa*. Berkeley and Los Angeles, USA: University of California Press.
- Sachs, A. 1990. *Protecting Human Rights in a New South Africa*. Cape Town, South Africa: Oxford University Press.
- Sachs, A. 1990. *The Soft Vengeance of a Freedom Fighter*. South Africa: David Phillip Publishers.
- Sachs, A. 2016. *We, the People: Insights of an Activist Judge*. Johannesburg, South Africa: Wits University Press.
- Sachs, A. 2017 (*Series editor A. Odendaal*). *Oliver Tambo's Dream – Four Lectures*. Cape Town, South Africa: African Lives.
- Samuel, A. 2009. The design of Montesquieu's 'The Spirit of the Laws': The triumph of freedom over determinism. Available from: <https://www.jstor.org/stable/27798503>. [Accessed on 24 February 2022].
- Sesanti, S. 2021. Why it's important to remember Lumumba and Fanon. City Press 23 December 2021. Available at: <https://www.news24.com/citypress/voices/why-its-important-to-remember-lumumba-and-fanon,-20211223> [Accessed on 24 December 2022].
- Shai, K.B. 2017. South African state capture: A symbiotic affair between business and state going bad? *Strategic Analysis*, 41(1), 1–12.
- Shaik, M. 2020. *The ANC Spy Bible: Surviving Across Enemy Lines*. Cape Town, South Africa, Tafelberg, NB Publishers.

- Shaw, M. 1994. *The Intelligence White Paper: Spooks in the new South Africa*. Johannesburg: Centre for Policy Studies.
- Shillinglaw, N. & Thomas, W. 1988. *The Information Society*. South Africa: A.D Donker.
- Shulsky, A.N. & Schmitt, G.J. 2002. *Silent Warfare: Understanding the World of Intelligence*. 3rd edition. Virginia, USA, Potomac Books.
- Siegan, B.H. 1994. *Drafting a Constitution for a Nation or Republic Emerging into Freedom*. 2nd edition. USA: George Mason University Press.
- Simon, R. 1982. *Gramsci's Political Thought: An Introduction*. London: Lawrence & Wishart. The Camelot Press, Cambridge, UK.
- Simon, R. 2015. Concept and meaning of social development. Available at: <https://www.slideshare.net/richiSimon,/concept-and-meaning-of-social-development>. [Accessed on 23 February 2022].
- Simpson, T. 2021. *History of South Africa from 1902 to the Present*. Cape Town, South Africa: Penguin Random House.
- Sinclair, A. 2003. *Anatomy of Terror: A History of Terrorism*. London, UK: Macmillan Publishers.
- Singh, M. 2021. South Africa's intelligence services – A transition from Apartheid to democracy. Available at: <https://missSingh,.medium.com/the-south-african-intelligence-services-from-apartheid-to-democracy-d7fbeb4cd041>. [Accessed on 19 September 2022].
- Smith, A. 2003. *The Wealth of Nations*. New York, USA: Bantam Dell, a division of Random House.

- Smith, M. 2019. *The Anatomy of a Spy: A History of Espionage and Betrayal*. Gloucestershire, UK: The History Press.
- Smith, M. 2022. *The Real Special Relationship: The True Story of How the British and US Secret Services Work Together*. London, UK: Simon, & Schuster.
- Snow, D.M. 2020. *National Security*. 7th edition. New York, USA: Routledge, Taylor & Francis Group.
- Snyckers, T. 2020. *Dirty Tobacco: Spies, Lies and Mega-Profits*. Cape Town, South Africa: Tafelberg, NB Publishers.
- South African History Online (SAHO). 2011. South Africa withdraws from the Commonwealth: 15 March 1961. Available from: <https://www.sahistory.org.za/dated-event/south-africa-withdraws-commonwealth>. [Accessed on 25 May 2023].
- South African History Online (SAHO). 2011. The effects of World War 2 in Africa. Available from: <https://www.sahistory.org.za/article/effects-ww2-africa>. [Accessed on 28 May 2023].
- South African History Online (SAHO). 2017. CODESA. Available at: <https://www.sahistory.org.za/article/convention-democratic-south-africa-codesa>. [Accessed on 04 February 2023].
- South African History Online (SAHO). 2018. Truth and Reconciliation Commission (TRC). Available at: <https://www.sahistory.org.za/article/truth-and-reconciliation-commission-trc-0#:~:text=Findings%20The%20commission%20brought%20forth,out%20into%20the%20open%20otherwise>. [Accessed on 20 March 2022].

South African History Online (SAHO). 2019. A history of the South African Constitution 1910–1996. Available at: <https://www.sahistory.org.za/article/history-south-african-constitution-1910-1996>. [Accessed on 23 February 2023].

South African History Online (SAHO). 2019. Apartheid legislation 1850s to 1970s. Available from: <https://www.sahistory.org.za/article/apartheid-legislation-1850s-1970s>. [Accessed on 23 February 2023].

South African History Online (SAHO). 2022. Hendrik Frensch Verwoerd. Available at: <https://www.sahistory.org.za/people/hendrik-frensch-verwoerd>. [Accessed on 07 July 2023].

South African History Online (SAHO). 2011. Coleman, M (Ed.). A crime against humanity – Analysing the repression of the Apartheid state. Available at: <https://www.sahistory.org.za/archive/crime-against-humanity-analysing-repression-apartheid-state-edited-max-Coleman>. [Accessed on 31 March 2024].

South African Press Association (SAPA). 1997. ANC hands TRC secret list of agents. Available at: <https://www.justice.gov.za/trc/media/1997/9705/s970512l.htm>. [Accessed on 11 April 2022].

Spence, R.B. 2008. Hidden agendas: Spies, lies and intrigue surrounding Trotsky's American visit of January–April 1917. *Revolutionary Russia*, 21(1), 33–55.

Spitzer, R.J. 2001. The art of political warfare (review of the book). *Rhetoric & Public Affairs*, 4(2), 324–325.

Steele, R.D. 2000. *On Intelligence – Spies and Secrecy in an Open World*. USA: AFCEA International Press.

- Steinberg, C. 1991. Albie Sachs: Our Shakespearian Fool on JSTOR. Available at: [https://www.pulp.up.ac.za/images/pulp/books/legal\\_dialogues/making\\_the\\_road\\_by\\_walking/Chapter%207%20Making%20the%20Road.pdf](https://www.pulp.up.ac.za/images/pulp/books/legal_dialogues/making_the_road_by_walking/Chapter%207%20Making%20the%20Road.pdf). [Accessed on 28 March 2022].
- Steinmann, A.C. 2016. The legal significance of human dignity. Thesis, Potchefstroom, North-West University.
- Sterpka, M. & Robbins, R. 2009. The prospect of perpetual growth in the post-American world. *International Review of Modern Sociology*, 35(2), pp 205-230. Available from: <https://www.jstor.org/stable/41421354>. [Accessed on 24 February 2023].
- Strauss, A. & Corbin, J. 1990. *Basics of Qualitative Research: Grounded Theory, Procedures and Techniques*. California, USA: Sage Publications.
- Sukman, D. 2018. Levels of intelligence – The decisive point. Available at: <https://www.thedecisivepoint.org/news/2018/4/18/levels-of-intelligence> [Accessed on 1 August 2023].
- Suttner, R. 2008. *ANC Underground in South Africa*. Auckland Park, South Africa: Jacana Media.
- Suttner, R. 2015. *Recovering Democracy in South Africa*. Auckland Park, South Africa: Jacana Media.
- Suttner, R. 2015. The Freedom Charter at 60: Rethinking its democratic qualities. *Historia*, 60(2), 1–23.
- Suttner, R. 2017. *Inside Apartheid's Prison*. Johannesburg, South Africa: Jacana Media.

- Tambe Endoh, F. 2015. Democratic constitutionalism in post-apartheid South Africa. *Contemporary Politics*, 21(3), 334–350.
- Tansey, R. (Ed.). 2018. Corporate capture in Europe: When big business dominates policy-making and threatens our rights. Bruxelles, Belgium: ALTER-EU, Alliance for Lobbying Transparency and Ethics Regulation, Rue d'Edimbourg.
- Terreblanche, S. 2002. *A History of Inequality in South Africa (1652–2002)*. South Africa: University of Natal Press.
- Thamm, M. 2019. Spy hunter: Author tracks apartheid's spies and their malevolent legacy. *Daily Maverick*. Available at: <https://www.dailymaverick.co.za/article/2019-08-12-spy-hunter-author-tracks-apartheids-spies-and-their-malevolent-legacy/> [Accessed on 11 April 2022].
- Thomas, G. 2007. *Gideon's Spies: The Secret History of the Mossad*. New York, USA: Thomas, Dunne Books, St. Martin's Press.
- Tiro, G. 2019. *Parcel of Death; the Biography of Onkgopotse Abram Tiro*. Johannesburg, South Africa: Picador Africa, an imprint of Pan Macmillan.
- Tiryakian, E. 1960. Apartheid and politics in South Africa. *The Journal of Politics*, 22(4), pp 682-697.
- Tribe, L. 2000. *American Constitutional Law*. 3rd edition. Mineola, New York, USA: Foundation Press.
- Trilsch, M. 2009. What's the use of socio-economic rights in a constitution? Taking a look at the South African experience. Available from: [www.jstor.org/stable/43239540](http://www.jstor.org/stable/43239540). [Accessed on 23 February 2023].

- Trobbiani, R. 2013. How should national security and human security relate to each other? Available at: <https://www.e-ir.info/2013/04/26/how-should-national-security-and-human-security-relate-to-each-other/> [Accessed on 20 September 2022].
- Trotsky, L. 1978. *The Permanent Revolution & Results and Prospects*. USA: Pathfinder Press.
- Trotsky, L. 1987. *The Revolution Betrayed, What is the Soviet Union and Where is it Going?* USA: Pathfinder Press.
- Truth and Reconciliation Commission of South Africa. 1998. *Report, Volume 3*. Cape Town, South Africa: Juta & Co.
- Truth and Reconciliation Commission of South Africa. 2002. *TRC Report, Volume 7*. Cape Town, South Africa: Juta & Co.
- Tsang, S. (Ed.). 2008. *Intelligence and Human Rights in the Era of Global Terrorism*. California, USA: Stanford University Press.
- Twala, M. & Benard, E.D. 1994. *MBOKODO, Inside MK: Mwezi Twala – A Soldier's Story*. Johannesburg, South Africa: Jonathan Ball Publishers.
- Tzu, S. 1988. *The Art of War*. (Translated by T. Cleary). Boston, USA: Shambhala Publications.
- Ulum, Ö.G. 2016. A descriptive content analysis of the extent of Bloom's taxonomy in the reading comprehension questions of the course book *Q: Skills for Success 4 Reading and Writing*. *The Qualitative Report*, 21(9), 1674–1683.

United Nations. Org. N.d. Basic human needs. Available from:  
<https://www.un.org/content/history>. [Accessed on 04 April 2022].

United Nations Conference On Trade And Development (UNCTAD). 2021. *Economic Development in Africa Report 2021. Reaping the Potential Benefits of the African Continental Free Trade Area for Inclusive Growth*. New York, USA: United Nations Publications.

United Nations. 1997. What is good governance? Economic and Social Commission for Asia and the Pacific. Available at: <https://www.unescap.org/resources/what-good-governance> 2009. [Accessed on 27 August 2022].

United Nations. N.d. Social development. Available from: <https://www.un.org/press/gashc4097.doc.htm>. [Accessed on 25 February 2023].

United Nations. 2010. Minority rights: International standards and guidance for implementation. Geneva and New York: UN Office of the High Commissioner for Human Rights, HR/PUB/10/3. Available at:  
<https://www.refworld.org/docid/4db80ca52.html> [Accessed 25 September 2023].

United Press International (UPI). 2021. Claims Trotsky was a British spy. UPI Archives. Available at: <https://www.upi.com/Archives/1938/03/05/Claims-Trotsky,-was-British-spy/4410751313819/> [Accessed on 2 October 2022].

United States Senate. 2020. Constitution Day. Available at:  
<https://www.senate.gov/artandhistory/history/common/generic/ConstitutionDay.htm#:~:text=Written%20in%201787%2C%20ratified%20in,surviving%20written%20charter%20of%20government> [Accessed on 7 October 2022].

University of Southern California. (N/D). Draft your purpose of the study – Navigating the dissertation. Available at: <http://dissertationedd.usc.edu/draft-your-purpose-of-the-study.html#:~:text=The%20Purpose%20of%20the%20Study,of%20comparisons%20you%20will%20make>. [Accessed on 2 April 2022].

University of Wolverhampton. 2018. *Skills for learning: Guide to writing a literature review for doctoral students*. Available at: <<http://www.wlv.ac.uk/skills>>. Wolverhampton: [Accessed on 14 July 2023].

Vale, P. 2019. The white people who spied during apartheid. *The Conversation*. 27 August 2019: 3.42 pm. Available at: <https://theconversation.com/the-white-people-who-spied-during-apartheid-122327> [Accessed on 20 September 2022].

Van den Berg, M.A. 2018. Intelligence practices in South Africa as a hybrid political regime – A meta-theoretical and theoretical analysis. Thesis submitted for the degree Doctor of Philosophy in Political Science at the North-West University, South Africa (orcid.org/0000-0001-8896-3167).

Van den Bergh, G.N. 2012. The British scorched earth and concentration camp policies in the Potchefstroom region, 1899-1902. South Africa: *Scientia Militaria, South African Journal of Military Studies*, 40(2), pp 72-88.

Van Der Merwe, N.J & Olivier, P.J.J. 1980. *Die Onregmatige Daad in die Suid-Afrikaanse Reg*. 4th edition. Pretoria, South Africa: JP van der Walt and Sons.

Van der Westhuizen, M. 2015. The struggle against poverty, unemployment and social injustice in present-day South Africa: Exploring the involvement of the Dutch Reformed Church at congregational level. Available from: [http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S2413-94672015000200037](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2413-94672015000200037). [Accessed on 23 February 2023].

Van Rensburg, D. 2020. *VBS: A Dream Defrauded*. Cape Town, South Africa: Penguin Books.

Van Vollenhoven, W.J. 2015. The right to freedom of expression: The mother of our democracy. Available at:  
[http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S1727-37812015000600009](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812015000600009). [Accessed on 24 February 2023].

Van Vuuren, H. 2017. *Apartheid: A tale of profit, Guns and Money*. Johannesburg, South Africa: Jacana Media.

Van Wyk, D., Dugard, J., De Villiers, B. & Davis, D. (Eds.). 1994. *Rights and Constitutionalism: The New South African Legal Order*. Cape Town, South Africa: Juta & Co.

Van Zyl Slabbert, F. 2006. *The Other Side of History*. Johannesburg South Africa: Jonathan Ball Publishers.

Vigoda, E. 2003. From responsiveness to collaboration: Governance, citizens and the next generation of public administration. *Public Administration Review*, 62(5), 527–540.

Vuk'uzenzele (GCIS). 2013. Values of the Constitution. Available at:  
<https://www.vukuzenzele.gov.za/constitution-foundation-our-democracy>. [Accessed on 19 January 2023].

- Wagh, S. 2021. *Public Health Research Guide: Primary & Secondary Data Definitions*. Benedictine University Library. Available at:  
<https://researchguides.ben.edu/c.php?g=282050&p=4036581#:~:text=Primary%20data%20refers%20to%20the,collecte%20by%20someone%20else%20earli%20er.&text=Surveys%2C%20observations%2C%20experiments%2C%20questionnaire,journal%20articles%2C%20internal%20records%20etc> [Accessed on 18 September 2022].
- Walker, C., Bohlin, A., Hall, R. & Kepe, T. 2011. *Land, Memory, Reconstruction and Justice: Perspectives on Land Claims in South Africa*. South Africa: University of KwaZulu-Natal Press.
- Weideman, A. 2004. *Academic Literacy: Prepare to Learn*. Pretoria, South Africa: Van Schaik Publishers.
- Welsh, D. 2009. *The Rise and Fall of Apartheid*. Johannesburg, South Africa: Jonathan Ball Publishers.
- Wheaton, K.J. 2011. Who invented the intelligence cycle? Available at:  
<https://sourcesandmethods.blogspot.com/2011/01/rfi-who-invented-intelligence-cycle.html?m=1> [Accessed on 20 September 2022].
- Wiener, M. 2011. *Killing Kebble: An Underworld Exposed*. Johannesburg, South Africa: Pan Macmillan.
- Wiener, M. 2018. *Ministry of Crime: An Underworld Explored*. Johannesburg, South Africa: Pan Macmillan.
- Wiener, M. 2020. *The Whistleblowers*. Johannesburg, South Africa: Pan Macmillan.

- Wilenius, M. 1998. A new globe in the making: Manuel Castells on the Information Age. Available from <http://www.jstor.org/stable/4201086>, *Acta Sociologica*, 41(3), pp 269-276. [Accessed on 9 June 2022].
- Williams, A. 2021. *Deep Collusion – Bain and the Capture of South Africa*. Cape Town, South Africa: Tafelberg, an imprint of NB Publishers.
- Williams, R.V. & Lipetz, B. (Eds.). 2005. *Covert and Overt: Recollecting and Connecting Intelligence Service and Information Science*. New Jersey, USA: Information Today.
- Wilson Center. 2017. Spies in South Africa. Available at: <https://www.wilsoncenter.org/blog-post/spies-south-africa> [Accessed on 16 July 2023].
- Winter, G. 1981. *Inside Boss: South Africa's Secret Police*. England, UK: Penguin Books, Middlesex.
- Wolpe, H. 1972. Economy and society – UKZN Centre for Civil Society. Available at: <http://ccs.ukzn.ac.za/files/Wolpe,%20Economy%20&%20Society%201972.pdf>. [Accessed on 23 February 2023].
- Wolpe, H. 1988. *Race, Class & the Apartheid State*. Paris: UNESCO.
- Woodford, M. 2017. *True Apartheid – Nelson Mandela and Apartheid*. USA: IC Gtesting.
- Young, C. 1982. *Ideology and Development in Africa*. Binghamton, NY, USA: The Vail-Ballou Press.