COMPARATIVE ANALYSIS OF INTELLIGENCE OVERSIGHT MECHANISMS IN EAST AFRICAN COMMUNITY [EAC] STATES

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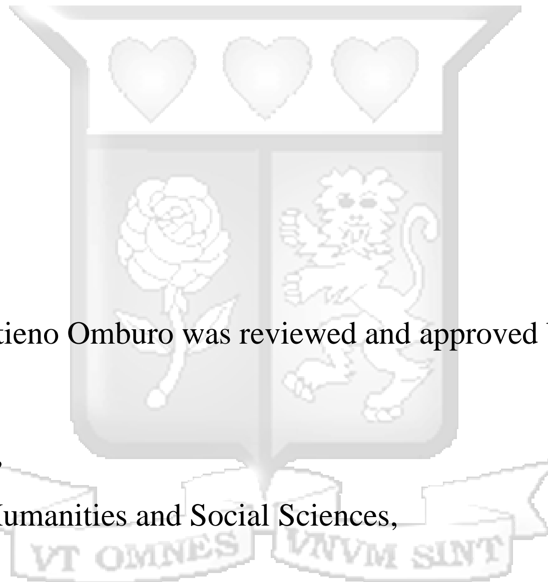

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ABSTRACT

National security intelligence agencies across East Africa have undergone many reforms from the period of decolonization, during and after the Cold War, the eras of state rebuilding in some of the post conflict states and in the current age of heightened counterterrorism campaigns. National security sector reforms in the East African Community (EAC) have largely been dependent on national socio-political circumstances. However, there are also several overarching factors which have informed national security intelligence reforms which include the drive towards making the agencies more accountable in the EAC. Despite various reforms, intelligence oversight mechanisms in the EAC are either partly or not being implemented at all. The EAC states have also undertaken several steps towards intelligence collaboration especially with the persistent threat of international terrorism. Consequently, the necessity for effective and legitimate intelligence collection among the states in such relationships has become a pertinent question in intelligence collaboration. Part of the bumpy ride towards opening up of national intelligence services for scrutiny in EAC is the perennial question of regime security especially in the post-conflict states in the region.

This study comparatively assesses different intelligence oversight regimes in the EAC states and attendant issues arising out various oversight mechanisms which are currently being implemented in the region. The study adopted a descriptive case study methodology exploiting qualitative primary and secondary data to evaluate intelligence oversight regimes in the region. The study examined universal intelligence oversight mechanisms and practices, the forms of the intelligence community in the EAC states and assessed the post-independent intelligence oversight mechanisms in the region.

The study established that different EAC states have statutorily established executive, parliamentary and judicial oversight mechanisms for their national intelligence services. However, there are contextual differences in terms of the actual practice of intelligence oversight across the EAC. These differences in intelligence oversight regimes across the region are influenced by factors including political and intelligence cultures in the EAC states.

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LIST OF ABBREVIATIONS

AU	African Union
CA	Covert Action
CCM	Chama Cha Mapinduzi
CIA-	Central Intelligence Agency
CID	Criminal Investigations Department
CNDD-FDD	National Council for the Defense of Democracy-Forces for the Defense of
CS	Cabinet Secretary
	Democracy
DG	Director General
DIS	Director of Intelligence and Security
DNI	Director of National Intelligence
EA	East Africa
EAC	East African Community
ESO	External Security Organization
FISA	Foreign Intelligence Surveillance Act
FISC	Foreign Intelligence Surveillance Court
GIB	General Intelligence Bureau
GIS	General Intelligence Service
GSU	General Service Unit
IBEAC	Imperial British East Africa Company
IC	Intelligence Community
IG	Inspector General

IR	International Relations
ISB	Internal Security Bureau
ISC	Intelligence and Security Committee
ISO	Internal Security Organization
KIC	Kenya Intelligence Committee
MDA	Ministries, Departments and Agencies
MI	Military Intelligence
MP	Member of Parliament
MPS	Metropolitan Police Service
NASA	National Security Agency
NIE	National Intelligence Estimates
NISC	National Intelligence Security Council
NISS	National Security Intelligence Service
NSC	National Security Council
NSCA	National Security Council Act
NSIS	National Security Intelligence Service
NSS	National Security Service
PSO	Police Service Organ
PSU	Public Safety Unit
RIC	Royal Irish Constabulary
RPF	Rwanda Patriotic Front
SB	Special Branch
SNR	Service National *de Renseignement* (National Intelligence Service)

SPLA Sudan People’s Liberation Army

SRB State Research Bureau

SSR Security Sector Reform

TISS Tanzania Intelligence and Security Service

TSC Technical Security Committee

UK United Kingdom

UN United Nations

UNLF Uganda National Liberation Front

UNSC United Nations Security Council

UPDF Uganda’s People Defence Force

USA United States of America

USSR Union of Soviet Socialist Republics

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DEDICATION

To my dad and mum whom I have always relied on for unreserved support

CHAPTER 1

INTRODUCTION TO THE STUDY

1.1 Background to the Study

The term National Security Intelligence refers to intelligence organizations, their missions, processes and products that they generate to policymakers to facilitate decision-making.[1] The main mission of national security intelligence is collection, analysis and dissemination of intelligence products to policymakers, counterintelligence and covert action.[2] National intelligence services are the pillars of national security intelligence. National intelligence service(s) are the organization(s) which are statutorily mandated to undertake the processes and missions of the national intelligence services. Intelligence services or agencies are generally clustered within the departments of national defense but could further be classified into those serving civilian policy making departments or national militaries.[3] Irrespective of cluster of national intelligence services, the agencies carry out their missions at the behest of the president or any other top policymaker within the executive.[4] Conventionally, the national security intelligence functions are premised on the intelligence cycle beginning with needs of the policy maker.[5]

National intelligence services support national security policy making and implementation by providing intelligence which is indispensable in understanding the national policy operational environments internally and externally. The term intelligence has also been defined as a trilogy of analyzed information, organizations which are vested with powers to perform the necessary

[1] Loch K. Johnson, "National Security Intelligence," in *The Oxoford Handbook of National Security Intelligence* (Oxford: Oxford University Press, 2017), p. 6.
[2] Ibid.
[3] Ibid., p. 7.
[4] Ibid., p. 11.
[5] Ibid.

activities to generate intelligence for national policy making and implementation.[6] National intelligence services are generally domiciled within the executive to give them latitude in decision making on issues of national interests especially those touching on foreign policy.[7] However, the autonomy that the top executive has on issues of national security intelligence is occasionally not successful or sometimes generates controversies about the role of the executive to authorize certain intelligence operations while sometimes, intelligence operations end up aggravating threats to national interests.[8] Therefore, legitimacy and efficacy of national intelligence services in executing their roles is important in the overall execution of the national security intelligence. The oversight of national intelligence services is an integral function in guarding or establishing efficacy and legitimacy of the national intelligence service activities in contributing to protection and promotion of national interests.[9] Whether perceived or real, cases of power abuses by the national intelligence services tend to weaken public trust in the institutions. National security crises may also lead to marginalization or degrading of the national intelligence services.[10]

Many countries have adopted different forms of intelligence oversight to promote legality and efficacy of their national intelligence services in their role of informing national security policy making and implementation. The East African Community (EAC) states have adopted different intelligence oversight regimes commensurate with the evolution of their intelligence services from colonialism, early independence periods, during the Cold War, during the political and constitutional reforms of the 1990s and the 2000s and the post 9/11 terrorist attack. Different historical periods in the development of national intelligence services in EAC have impacted the

[6] Ibid., pp. 12-13.

[7] Stephen Knott, "Executive Power and the Control of American Intelligence," *Intelligence and National Security* 13, no. 2 (1998), p. 175.

[8] Ibid.

[9] Njord Wegge, "Intelligence Oversight and the Security of the State," *International Journal of Intelligence and CounterIntelligence* 30, no. 4 (2017), p. 692.

[10] Ibid.

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emergence and evolution of different intelligence oversight mechanisms corresponding to security needs of either the colonial regimes, immediate post-colonial states or during and after the Cold War and during the era of heightened war on terrorism. Conversely, the efficacy and dynamics of intelligence oversight within the EAC remains understudied and there is a dearth of academic literature in the area. This dissertation critically assesses the current state of intelligence oversight in the EAC within the diverse socio-political and cultural contexts. It also appreciates the intelligence oversight regimes in the EAC in the face of budding intelligence collaboration in the region.

1.2 Statement of the Research Problem

The six EAC states all have established national intelligence services and different oversight regimes which evolved differently to serve their national security interests. Generally, there is a growing consensus that national intelligence services should be subject to oversight for purposes of legitimacy and effectiveness. The introduction of formal intelligence oversight in EAC began in earnest in the late 1980s into the 1990s and 2000s. Across the region, executive, legislative and judicial oversight of intelligence have been provided in the constitutions and other national laws of the member countries. However, these statutory requirements do not automatically translate to the actual oversight of the agencies because the states in the region are at different stages of political liberalization. Consequently, national intelligence services in the EAC may become susceptible to politicization by the executive.

Oversight of national intelligence services helps to cushion the agencies from potential political influence from the executive. Consequently, general issues of intelligence operations, financial and human resource administration and legal matters encompassing activities of intelligence services and the character of executive control have been subject of oversight in many countries. Intelligence oversight is necessary for the agencies to maintain their fidelity to national

security mandates and national security priorities.[11] In addition, robust intelligence oversight also protects the services and their officials from complying with illegal requests from the executive.[12] Intelligence agencies while critical to national security, may also pose threats to the constitution.[13] Some of these national security threats include illegal surveillance, targeted political policing, and controversial and illegal domestic and foreign intelligence activities.[14] Whenever intelligence services operate beyond their mandates, there follows a public backlash. And whenever there are national security failures, debilitating intelligence leaks become prominent.[15] Loss of legitimacy for national intelligence services may lead to loss of budgetary appropriations and reputation on short and long-term.

The backbone of national security and intelligence is premised on secrecy. This is turn makes intelligence oversight nearly impossible.[16] Consequently, legal provisions may not directly amount to acknowledgement, acceptance or implementation of intelligence oversight mechanisms. Indeed the 9/11 Commission which examined circumstances surrounding the terrorist attack concluded that congressional oversight of the American national intelligence apparatus was lethargic.[17] Generally, disconnect exists between the actual outcomes of intelligence oversight and policies or legal systems which establish the oversight practices in many countries. This is because intelligence activities are secretive and require a delicate balance between oversight and the need to know. Specific problems which may face intelligence oversight by institutions outside the

[11] Wegge, “Intelligence Oversight and the Security of the State.” op. cit., p. 693.

[12] Patrick J. Donaldson, “Infiltrating American Intelligence: Difficulties Inherent in the Congressional Oversight of Intelligence and the Joint Committee Model,” *American Intelligence Journal* 28, no. 1 (2010), p. 14.

[13] Thomas I. Emerson, “Needed: A New Cloak for Intelligence Agencies,” *Human Rights* 7, no. 2 (1978), p. 14.

[14] Ibid., p. 15.

[15] Wegge, “Intelligence Oversight and the Security of the State.”,op. cit p. 693.

[16] Donaldson, “Infiltrating American Intelligence: Difficulties Inherent in the Congressional Oversight of Intelligence and the Joint Committee Model”, op. cit.,p. 16.

[17] National Commission on Terrorist Attacks upon the United States, “The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States,” 2004,p. 105.

secrecy loop include partisan politics in the legislative assemblies, motivation of members of parliamentary intelligence committees and whether or not the executive wishes to share certain privileged information with other intelligence oversight bodies.[18]

The outcome of this critical study into intelligence oversight mechanisms in EAC could have a significant influence on the future intelligence cooperation; and the general trends toward opening up of the national intelligence services for more scrutiny in the region.

1.3 Objectives

The general objective of this study is to critically analyze intelligence oversight mechanisms in the EAC countries; Kenya, Tanzania, Uganda, Rwanda, Burundi, and South Sudan. The study specifically;

i. Examines the universal intelligence oversight mechanisms and practices and the attendant issues

ii. Examines the evolution and the current structures of the intelligence community in the EAC states

iii. Critically assesses comparative intelligence oversight mechanisms in EAC states, issues that have arisen concerning different oversight models and the gaps that exists in the understanding of the current intelligence oversight mechanisms within the EAC states

1.4 Research Questions

This study shall critically answer the following questions;

i. What are the universal intelligence oversight mechanisms and practices?

ii. What are the forms of the intelligence community in the EAC states?

[18] Sterling Marchand, "Fixing What Isn't Broken: How Congressional Oversight Has Adapted to the Unique Nature of the Intelligence Community," *American Intelligence Journal* 28, no. 1 (2010), pp. 7-8.

iii. What are the post-independent intelligence oversight mechanisms in the EAC states and their possible impacts on intelligence collaboration in the region?

1.5 Scope of the Study

The research shall assess national security intelligence oversight in EAC states with a bias to state civilian intelligence agencies. The choice of the scope is significant because national security intelligence services organs are specifically and constitutionally mandated to provide national security intelligence to policymakers to inform national security policy making and implementation.

1.6 Contributions of the Dissertation to Knowledge

Despite attracting intensified level of academic interest and inquiry globally, there is a dearth of literature on intelligence studies particularly in the EAC region. This study therefore seeks to contribute to literature in the field of intelligence studies in with the EAC region. Its appraisal of the current intelligence oversight mechanisms in the region could also have an influence on present and future relationships among EAC member states on intelligence sharing and cooperation given the complex and increasingly transnational character of national security threats. By their nature, national intelligence services operate in delicate environments that require conscientious tradeoff between secrecy and the needs for accountability. By understanding the character of oversight in various member countries, EAC may synchronize intelligence collaboration in a way that promote the legitimacy and effectiveness of such cooperation in informing national security policies and strategies.

1.7 Literature Review

This literature review captures current discussions on the concept of intelligence oversight and various oversight mechanisms which have emerged overtime. The literature review concludes with how the dissertation will contribute to the understanding of the current set up of intelligence

oversight, issues that have arisen concerning different oversight models and the gaps that exists in the understanding of the current intelligence oversight mechanisms within the EAC states and how such appreciation of current intelligence oversight regimes may impact regional intelligence cooperation among the EAC states.

1.7.1 Definitional Debates about Intelligence

Discourses about intelligence studies in broad terms have tended to emphasise the definition of the term intelligence in respect to activities and organizations that carry out such activities. Several scholars have advanced different definitions based on different theoretical constructs. Some of the fundamental theories of intelligence emerged from the works of Sherman Kent. Kent advanced a descriptive definition of intelligence hence establishing one of the earliest descriptive theories of intelligence.[19] Kent's definition of the term intelligence identified three key variables: knowledge, organization and process.[20] Intelligence has also been viewed as information relevant for the formulation and implementation of a country's national security policy.[21] Loch K. Johnson defined intelligence as the preferred foreknowledge which states use to protect their vital interests from external threats and specifically, the protection of the wellbeing of their populations.[22] Michael Warner also defined intelligence as a 'secret state activity aimed at understanding or influencing foreign entities'.[23] Peter Gill viewed intelligence as mainly secret

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[19] Sherman Kent, *Strategic Intelligence for American World Policy* (Hamden: Archon Books, 1965).
[20] Ibid.
[21] Abram N. Shulsky and Gary J. Schmitt, *Silent Warfare: Understanding the World of Intelligence* (Dulles: Potomac Books, 2002). P. 1.
[22] Loch K. Johnson, "Intelligence," in *Encyclopedia of US Foreign Relations*, ed. Thomas Patterson and Bruce W. Jentleson (Oxford: Oxford University Press, 1997), p. 365.
[23] Michael Warner, "Wanted: A Definition of 'Intelligence,'" *Studies in Intelligence* 46, no. 3 (2002).

activities targeting, collection, analysis, dissemination and action-intended to enhance security and/or maintain power relative to competitors by forewarning of threats and opportunities.[24]

While some definitions of the term intelligence emphasise the secrecy of intelligence activities above its purpose or its aim of achieving relative decision-making advantage in state policy making, some scholars have not emphasised its secrecy. One such scholar is Jennifer Sims who defines intelligence as 'the collection, analysis, and dissemination of information for decision makers who are engaged in a competitive enterprise'.[25] The competitive environments where actors interact could be in politics, sports or in the commercial spheres'.[26] For Sims, the inherently critical aspect of intelligence is its competitive edge, and not necessarily its secrecy.[27] In contrast, Michael Warner emphasizes secrecy as a core element in intelligence practice, arguing that without it, intelligence would not exist.[28] Indeed, the comparative advantage sought from intelligence in decision making would only be guaranteed if intelligence activities are conducted in secrecy irrespective of how much raw information intelligence collection obtains from open sources.[29]

From the various definitions of intelligence, certain core elements emerge including the term security, a continuum of overt and covert activities, strategic warning, relative gains versus the competitive environment in which intelligence operates, intelligence-led decision making, covert actions, and secrecy.[30]

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[24] Peter Gill, "Theories of Intelligence: Where Are We, Where Should We Go and How Might We Proceed?," in *Intelligence Theory: Key Questions and Debates*, ed. Peter Gill, Stephen Marrin, and Mark Phythian (New York: Routledge, 2009), p. 214.

[25] Jennifer E. Sims, "A Theory of Intelligence and International Politics," in *Current Research and Future Propspects*, ed. Gregory F. Treverton and Wilhelm Agrell (New York: Cambridge University Press, 2009), 58–92.

[26] Ibid.

[27] Ibid.

[28] Warner, "Wanted: A Definition of 'Intelligence.'" Op cit.

[29] Peter Gill and Mark Phythian, *Intelligence in an Insecure World*, 3rd ed. (Cambridge: Polity Press, 2018).

[30] Ibid.

The epistemology of intelligence studies spans multiple disciplines and fields. For instance, the use of intelligence as war a strategy is well documented in various classical works. Sun Tzu, a classical writer on war and strategy pointed out that good intelligence is a 'treasure of the sovereign'.[31] . But despite the huge interest in developing a theory for intelligence studies, there is yet to be a universally acclaimed and a convincing theory of the emerging field of study.[32] The field of intelligence studies involves historians, political scientists and strategists documenting history of both old and contemporary intelligence case studies which contributes to 'methodologies' and 'theories' of intelligence studies.[33]

1.7.2 Intelligence Oversight

National security intelligence plays an important role in the provision of warning, national long-range planning, supporting national policy decision-making, protection of a state's classified information, strategies, methods and means.[34] In essence, protection and promotion of national security depends on how intelligence agencies operate and provide the much needed intelligence to policymakers. Therefore, oversight is crucial in assessing how the intelligence agencies make use of public funds to fulfill national security priorities.[35] It is also aimed at assessing how intelligence services comply with the law and societal norms.[36] Some intelligence agencies may wrongly operate in politicized environments where the intelligence they produce rubberstamps

[31] Sun Tzu, *The Art of War* (New York: Oxford University Press, 1963). p. 145.

[32] Claudia Hillebrand and R. Gerald Hughes, "The Quest for a Theory of Intelligence," in *The Palgrave Handbook of Security, Risk and Intelligence*, ed. Robert Dover, Huw Dylan, and Michael S. Goodman (London: Palgrave Macmillan, 2017), p. 3.

[33] Ibid.

[34] Hans Born, "Towards Effective Democratic Oversight of Intelligence Services: Lessons Learned from Comparing National Practices," *Connections* 4, no. 3 (2004): p. 2.

[35] Marina Caparini, "Controlling and Overseeing Intelligence Services in Democratic States," in *Democratic Control of Intelliegnce Services: Containing Rogue Elephants*, ed. Hans Born and Marina Caparini (Burlington: Ashgate, 2007).

[36] Whitaker R., "Designing a Balance between Freedom and Security," in *Ideas in Action: Essays on Politics and Law in Honour of Peter Russell*, ed. Joseph F. Fletcher and Peter H. Russell (Toronto: University of Toronto Press, 1999), p. 131.

decisions already taken by policymakers.[37] Organizationally, secrecy is the most conspicuous feature of intelligence tradecraft. There is a widely accepted consensus that secrecy is a fundamental backbone of intelligence practice, but it also raises the issue of potential abuse of intelligence and the need for democratic accountability and establishment of operational moral codes.[38] This is where the discourse about intelligence oversight enters the debate about intelligence studies in relation to the promotion and protection of national security.

1.7.3 Accountability and Oversight

The concept of oversight is closely linked to accountability.[39] Accountability has been defined from a normative, functionalist and institutional perspectives. Accountability entails processes and mechanisms with which an actor explains, provides answers and accepts responsibility for actions and decisions to an overseer.[40] In a normative sense, it provides criteria for enforcing rules and sanctions whenever the actor contravenes normative obligations.[41] From a functional perspective, accountability are preconditions that an actor is required to abide by to uphold legitimate, transparent and efficient mode of operations.[42]The term oversight is a catch-all word which do not necessarily indicate any specificities of scrutiny.[43] James Baker defined oversight as:

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[37] Born, "Towards Effective Democratic Oversight of Intelligence Services:" Lessons Learned from Comparing National Practices." op. cit. p. 3.

[38] Gill and Phythian, *Intelligence in an Insecure World*. op. cit.

[39] Artur Gruszczak, *Intelligence Security in the European Union: Building a Strategic Intelligence Community*, ed. Stuart Croft (London: Palgrave Macmillan, 2016). p. 250.

[40] Mark Bovens, Deirdre Curtain, and Paul't Hart, eds., "Studying the Real World of EU Accountability: Framework and Design," in *The Real World of EU Accountability: What Deficit?* (Oxford: Oxford University Press, 2010). p. 35.

[41] Gruszczak, *Intelligence Security in the European Union: Building a Strategic Intelligence Community*. op. cit. p. 250.

[42] Robert O. Koohane, "Accountability in World Politics," *Scandinavian Political Studies* 29, no. 2 (2006): p. 76.

[43] Hans Born and Ian Leigh, *Making Intelligence Accountable: Legal Standards and Best Practices for Oversight of Intelligence Agencies* (Oslo: Publishing House of the Parliament of Norway, 2005). pp. 6-7.

> …the thorough, careful and structured scrutiny of an entity (individual, organization and network) that aims to evaluate its compliance with binding rules, principles or criteria, such as effectiveness, validity or transparency.[44]

Oversight may be formally or informally structured. Oversight may also be aimed at general or specific ends.[45] Generally, there are three distinct layers of oversight: prior to an activity (*ex ante*), after activity (*ex post*) and ongoing monitoring.[46] Intelligence oversight is a fairly recent development in intelligence practice and academic studies and thus a universally agreed definition has not emerged. Furthermore, there is a general void in public knowledge about issues being overseen because most intelligence matters are classified.[47] Intelligence oversight is a supervisory process to ensure that intelligence organizations comply with the law and uphold human rights within and outside a country.[48] Other related terms that have been used alongside the term intelligence oversight include intelligence review and control.[49] Intelligence oversight is distinct from intelligence control although some commentators choose to use the two terms interchangeably.[50] Two most common variants of intelligence control are political control which is also known as executive control and institutional or administrative control. At institutional level, heads of intelligence agencies should be vested with powers to manage day to day operations of such institutions.[51]

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[44] James A. Baker, "Intelligence Oversight," *Harvard Journal on Legislation* 45, no. 1 (2008): pp. 201-202.

[45] Aidan Willis et al., *Parliamentary Oversight of Security and Intelligence Agencies in the European Union* (Brussels: European Parliament, 2011).

[46] Njord Wegge, "Intelligence Oversight and the Security of the State," *International Journal of Intelligence and CounterIntelligence* 30, no. 4 (2017), p. 688.

[47] Ibid.

[48] Hugh Bochel, Andrew Defty, and Jane Kirkpatrick, *Watching the Watchers: Parliament and the Intelligence Services* (Hampshire: Palgrave Macmillan, 2014). p. 3.

[49] Wegge, "Intelligence Oversight and the Security of the State." op. cit. p. 688.

[50] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States." p. 8.

[51] Gill and Phythian, *Intelligence in an Insecure World*. op. cit. p. 276.

1.7.4 Overview of Emerging Arguments on Intelligence Oversight

There is not yet a well-established intelligence oversight episteme, but different writers have raised a variety of reasons why intelligence oversight is an ideal practice. The oversight ideation schisms notwithstanding, one of the most ubiquitous viewpoints informing intelligence accountability is the doctrine of separation of powers especially in a tripartite system of government.[52] The doctrine of separation of powers is traced to Aristotle's writing on governance of the Greek city states.[53] In the seventieth century, Montesquieu, the French philosopher made a case for distinct separation of powers between the legislature, executive and the judiciary.[54] However, the bulk of criticisms against the doctrine of separation of power particularly the suppositions of Montesquieu is that properly speaking, judiciary is inseparable from the executive.[55] Some of the premises of the doctrine of separation of powers are the rule of law, accountability, common interests, checks and balances and efficiency.[56] Depending on the type of political system, some countries seek to oversee intelligence services to prevent the agencies from overstepping their legal mandates or infringing on the civil liberties of their citizens.[57] Generally, oversight of intelligence services is premised on the principle of the rule of law which is one of the views espoused in the doctrine of the separation of power.

It is important to underscore the contestation around the doctrine of separation of powers in respect to national security matters where the executive is preeminent. The doctrine of separation of powers is a contested constitutional theory because the notion of 'pure' separation of

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[52] John A. Fairlie, "The Separation of Powers," *Michigan Law Review* 21, no. 4 (1923): p. 393.

[53] Ibid.

[54] Ibid., p. 396.

[55] William Bondy, *Separation of Governmental Powers in History, in Theory, and in the Constitutions* (Union, New Jersey: The Law Exchange, 1998). p. 15.

[56] William B Gwyn, "The Separation of Powers and Mordern Forms of Democratic Government," in *Separation of Powers-Does It Still Work?*, ed. Robert A. Goldwin and Art Kaufman (Washington, D.C.: American Entreprise Institute for Public Policy Research, 1986), pp. 67–70.

[57] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States." Op. cit.

powers is not tenable.[58] Some of the debates about which branch of government is apt to exercise certain governmental powers emanate from the imprecision of clear boundaries of the doctrine of separation of power in actual practice.[59] For instance, before the intelligence scandals of the 1970s, the American Congress was reluctant to involve itself into proactive and thorough oversight of American intelligence under the belief that the executive was most suitable for the role.[60]

There is also the question of theoretical frameworks on which to model intelligence oversight practice and mechanisms. There is inadequate literature on this issue. However, a few scholars have attempted to advance some theoretical models to explain how and why intelligence oversight is an indispensable but difficult task for many legislative intelligence committees. Legislative committees may opt for 'fire alarm' or 'police-patrol' strategies to oversight the executive.[61] The police-patrol strategy is analogous to real police patrols of the streets to proactively identify and disrupt any potential crime.[62] 'Fire-alarm' is diametrically the opposite of 'police-patrol' as it is reactive.[63] While Legislative oversight may use both fire-alarms and police-patrol oversight strategies concurrently, the incentive to opt for fire-alarm type of parliamentary oversight is higher because it portends high probabilities of giving legislators political credit among voters.[64] Viewed from the perspective of motivational assumptions, politicians in legislative assemblies would rather spend more time on fire-fire alarm oversight which accord them more self-preservation including chances at reelection than police-patrol. Police-patrol type

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[58] Roger Masterman, *The Separation of Powers in the Contemporary Constitution: Judicial Competence and Independence in the United Kingdom* (Cambridge: Cambridge University Press, 2010). p. 11.

[59] Ibid.

[60] Loch K Johnson, "'The Contemporary Presidency': Presidents, Lawmakers, and Spies: Intelligence Accountability in the United States," *Presidential Studies Quartely* 34, no. 4 (2004): p. 829.

[61] Mathew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms," *American Journal of Political Science* 28, no. 1 (1984): p. 166, https://doi.org/10.2307/2110792.

[62] Ibid.

[63] Ibid.

[64] Ibid., pp. 166-167.

of oversight does not offer the same level of motivation to legislators because its end results are measured against unknown political capital. Police patrol type of oversight may only end up digging out less interesting dirt that citizens are not interested about.[65] Contrary to 'fire-alarm' and 'police-patrol' oversight strategies, there is a 'shock theory' model that presupposes that legislatures often increase their intelligence oversight whenever there are real or suspected intelligence scandals.[66] For instance, legislators particularly those from opposing political parties may become more interested on matters of intelligence whenever a country experiences cases of strategic surprises which adversely affect national interests for political mileage in competitive politics.

1.7.5 Executive Control

Executive control is also known as political control.[67] Using a tri-dimensional accountability framework, Marina Caparini argued that the executive is critical in the vertical intelligence accountability dimension.[68] Vertical accountability is a hierarchical relationship where one party is senior to the other.[69] In this context, the executive represents the highest and most important legitimate political authority in a country and thus senior to intelligence agencies in terms of political power.[70] Other informal but important actors in the vertical intelligence accountability include the media, citizens and civil society organizations which may from time to time voice out or file complaints about public officials and institutions.[71] Depending on the

[65] Ibid., p. 168.

[66] Loch K. Johnson, "A Shock Theory of Congressional Accountability for Intelligence," in *Handbook of Intelligence Studies*, ed. Loch K. Johnson (London: Routledge, 2007), p. 248.

[67] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States." op. cit. p. 8.

[68] Gruszczak, *Intelligence Security in the European Union: Building a Strategic Intelligence Community*. op. cit. p. 253.

[69] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States." op. cit. p. 10.

[70] Ibid.

[71] Jelle van Buuren, "From Oversight to Undersight: The Internationalization of Intelligence," *Security and Human Rights* 24, no. 3–4 (2013): p. 250.

political system, representatives of the executive in intelligence oversight could include but not limited to the president, a minister responsible for security services and intelligence as well as the head of government.[72] The executive may control intelligence through issuance of executive orders and tasking the intelligence.[73] The executive may also make demands for information touching on vital national interests and national security from intelligence apart from being in positions of setting policy guidelines for the intelligence agencies.[74]

There is also an assumption that the executive is better placed to control any covert action conducted by the intelligence agencies. Covert action is discrete from the ordinary intelligence cycle and counterespionage activities. Covert actions may refer to a constellation of intelligence led activities which are aimed at influencing targeted audiences for purposes of realizing a foreign policy objective.[75] The executive for pragmatic reasons influence initiation of a covert operation because it is often a very highly classified operation with a foreign policy objective.[76] The top executive traditionally sets the foreign policy objectives of a country. Given the nature of covert actions that sometimes breed controversy, the executive often insists on having control over such activities. The control could be exercised through *ex ante* written presidential findings which inform the legislative intelligence oversight committees unless 'extraordinary operations' are to be undertaken, in which case, the president gives full briefing to the relevant legislative national security committee(s).[77]

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[72] Gruszczak, *Intelligence Security in the European Union: Building a Strategic Intelligence Community*. p. 254.

[73] Ibid., p. 253.

[74] Ibid., 254.

[75] William J. Daugherty, *Executive Secrets: Covert Action and the Presidency* (Lexington: University Press of Kentucky, 2004). p. 12.

[76] Born and Leigh, *Making Intelligence Accountable: Legal Standards and Best Practices for Oversight of Intelligence Agencies*. p. 60.

[77] JenniferD. Kibbe, "Covert Action and the Pentagon," *Intelligence and National Security* 22, no. 1 (2007): p. 62.

The executive occupies a privileged position to direct and task the intelligence by virtue of its political authority. However, the executive's latitude on intelligence matters could also become an injunction to the efficacy or propriety of intelligence activities and products. Little executive control may lead to rogue intelligence services which become a law unto themselves.[78] On the contrary, 'too much' executive control may lead to politicization of intelligence.[79] Politicized intelligence may work to undermine national security when parochial political interests of the executive override national values and interests.

1.7.6 Parliamentary Intelligence Oversight

Legislative oversight of intelligence in any country where it is being practiced is premised on the doctrine of separation of powers.[80] It is one of the horizontal layers of accountability.[81] Horizontal accountability involves oversight pitting entities that possess more or less similar powers[82]. However, the definition of how good or effective parliamentary oversight looks is difficult because good oversight is dependent on an individual evaluator.[83] Furthermore, there is no one universal standard of legislative oversight as parliamentary oversight processes are generally influenced by a country's political history, legal systems, constitutional regime and political structure.[84] Parliamentary oversight could either be broadly or narrowly defined.[85] Broadly defined parliamentary oversight mandates may encompass operational, legal and

[78] Ian Leigh, "More Closely Watching the Spies: Three Decades of Experiences," in *Who's Watching the Spies?*, ed. Hans Born, Loch K. Johnson, and Ian Leigh (Washington, D.C.: Potomac Books, 2005), pp. 6-7.

[79] Born, "Towards Effective Democratic Oversight of Intelligence Services: Lessons Learned from Comparing National Practices." p. 3.

[80] Amy B. Zegart, "The Domestic Politics of Irrational Intelligence Oversight," *Political Science Quarterly* 126, no. 1 (2011): p. 3, https://www.jstor.org/stable/23056912.

[81] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States." p. 13.

[82] Ibid.

[83] Zegart, "The Domestic Politics of Irrational Intelligence Oversight." p. 4.

[84] Bochel, Defty, and Kirkpatrick, *Watching the Watchers: Parliament and the Intelligence Services*. p. 3.

[85] Born, "Towards Effective Democratic Oversight of Intelligence Services: Lessons Learned from Comparing National Practices." p. 8.

efficiency issues and policy matters.[86] On the contrary, narrowly defined oversight may only focus on minor issues including approval of budgets or executive nominees.

There are no universally agreed parameters to evaluate effectiveness of either executive control, legislative or judicial intelligence oversight. However, Amy Zegart proposed a four-component framework for effective oversight of intelligence which included; the policeman, the board of directors, the coach and ambassador.[87] Foremost, the police-patrolling factor or the policeman is aimed at ensuring legality of intelligence oversight. Secondly, the board of directors strategically plan for intelligence to ensure optimal usage of allocated resources. Thirdly, the coach establishes a continuous assessment of existing intelligence practices and improving upon them. Lastly, the ambassadorial component aims at winning public support for the intelligence organizations.[88]

The most common parliamentary oversight approach to intelligence oversight is through specialized committees or subcommittees.[89] Various processes which are involved in parliamentary intelligence oversight include scrutiny of intelligence report reviews, debating issues that touch on intelligence, requesting for specific information or requesting intelligence officers to appear before parliamentary committees whenever necessary.[90] Parliaments are also critical in budgetary processes for national security and intelligence sectors.[91] Parliamentary oversight of intelligence is argued to be important in two aspects; it democratizes intelligence oversight processes as well as making such processes legitimate.[92] It is also presumed that

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[86]Ibid., p. 3.

[87] Amy B. Zegart, *Eyes on Spies: Congress and the United States Intelligence Community* (Stanford: Hoover Institution, 2011). p. 33.

[88] Ibid., p. 32.

[89] Caparini, “Controlling and Overseeing Intelligence Services in Democratic States.” p. 13.

[90] Ibid.

[91] Born and Leigh, *Making Intelligence Accountable: Legal Standards and Best Practices for Oversight of Intelligence Agencies*. p. 96.

[92] Bochel, Defty, and Kirkpatrick, *Watching the Watchers: Parliament and the Intelligence Services*. p. 4.

legislative oversight does not only enable elected politicians to oversight security agencies but also counteract or prevent potential politicization of intelligence by the executive.[93]

Parliamentary intelligence oversight is not without shortcomings for a wide range of reasons. Foremost, intelligence operations are classified hence any leakage of privileged information portends a threat which may lead to withholding of information by intelligence services from parliaments.[94] Party politics may also lead to subjective intelligence oversight in parliaments.[95] Members of the minority party in the legislature may seek to oversight intelligence to dig dirt with which to smear campaign the party forming the government while those from the majority party may choose to overlook important aspects of intelligence oversight due to party loyalty. Some parliaments also suffer insufficient knowledge and experience on intelligence work and attendant matters that need addressing.[96] As a result, the legislative and oversight powers of parliaments may not help to address pertinent issues affecting national intelligence services sufficiently.

1.7.7 Judicial Oversight

The doctrine of separation of powers gives the judiciary atypical role of monitoring and preventing the executive from using its powers subjectively.[97] In the national security domain, the judiciary also plays a role ensuring the legality of intelligence practices to protect civil liberties and legitimacy of the intelligence institutions themselves. Court judges may be required to authorize special requests for certain clandestine operations including searchers on suspects' personal properties, surveillance, and interception of communication as well as vetoing

[93] Ibid., p. 5.
[94] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States." p. 13.
[95] Baker, "Intelligence Oversight." p. 200.
[96] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States." p. 14.
[97] Ian Leigh, "The Accountability of Security and Intelligence Agencies," in *Handbook of Intelligence Studies*, ed. Loch K. Johnson (London: Routledge, 2007), pp. 75-76.

intelligence powers on actions that are deemed unconstitutional.[98] The judiciary may also be involved in litigating court cases involving the intelligence services. For some countries, the judiciary have established special courts or commissions that handle issues touching on intelligence and national security.[99] The effectiveness of judiciary in reviewing intelligence is dependent on how independent it is from other arms of the government.[100]

One of the hurdles facing judicial intelligence oversight is the traditional tendency of the judiciary to defer cases touching on national security to the executive and the legislature.[101] In some countries, the judiciary might not be fully autonomous thus ceding ground to political influence.[102] There are also practical difficulties for judges litigating intelligence related complaints due to the sensitive nature of security related cases because of classification of intelligence matters and products.[103] Some countries have tried to solve secrecy related complications by using judges that are security-cleared to handle sensitive intelligence related evidences.[104]

1.7.8 Intelligence Oversight Regimes in the EAC

The six EAC states have established more than one form of intelligence oversight regimes commensurate with their internal and external socio-political and economic experiences. Traditionally, the executive control of intelligence agencies within the EAC states has been the most predominant form of oversight having been rooted into the colonial era police Special Branch across East Africa. When police force was introduced, the colonial enterprise took control of the armed, military and paramilitary services that protected the interests of the colonialists. However,

[98] Gill and Phythian, *Intelligence in an Insecure World*.
[99] Ibid.
[100] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States." p. 14.
[101] Ibid., p. 16.
[102] Caparini.
[103] Hans Born and Ian Leigh, "Demoratic Accountability of Intelligence Services" (Geneva, 2007). p. 108.
[104] Ibid.

with subsequent reforms of the national security and defence organs after independence, Kenya introduced parliamentary and judicial intelligence oversight practices in 1998 through the National Security Intelligence Service (NSIS) Act.[105] Tanzania introduced parliamentary and judicial intelligence oversight in 1996 through the Tanzanian Intelligence and Security Services Act.[106] Uganda on the other hand introduced parliamentary and judicial oversight in 1987 through the Security Organizations Act.[107]

The 2005 Burundi constitution established the Corps of Defense and Security which became subject of the executive control, legislative and judicial oversight.[108] It also granted the Burundian parliament the prerogative to form parliamentary commissions to oversee the national security organs in the country.[109] In South Sudan, the 2011 constitution established the country's national security organs which it subordinated to civilian authority, democratic ideals, respect to human rights and fundamental freedoms.[110] On the other hand, the 2011 Constitution of Rwanda allowed its parliament to oversight the executive despite not expressly stating the exact role of parliamentarians in the intelligence oversight.[111] Despite these countries having statutorily mandated security oversight institutions, there is a scarcity of literature on the current status and the atmosphere of implementation of the intelligence oversight regimes in all the six countries under study.

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[105] Republic of Kenya, "The National Security Intelligence Service Act, 1998" (2010).

[106] United Republic of Tanzania, "The Tanzania Intelligence and Security Service Act 1996" (1996), http://www.vertic.org/media/National Legislation/Tanzania/TZ_Intelligence_Security_Services_Act.pdf.

[107] Uganda Legal Information Institute [ULII], "Security Organisations Act 1987" (1987), https://ulii.org/ug/legislation/consolidated-act/305.

[108] Constitute, "The 2005 Burundi Constitution" (2005), constituteproject.org. p. 46.

[109] Centre for International Governance Innovation, "Security Sector Reform Monitor; Burundi" (Ontario, 2010). p. 6.

[110] Constitute, "South Sudan's Constitution of 2011" (2011). p. 61.

[111] Constitute, "Rwanda's Constitution of 2003 with Amendments through 2015" (2015), constituteproject.org. p. 47.

1.7.9 Gaps in Literature

The National security intelligence systems in the EAC states is grounded in law as described in the constitutional provisions of the six member countries. However, there is a dearth of intelligence oversight literature on feasibilities of various oversight methods in the region. This comparative study shall contribute to intelligence studies literature especially the growing field of intelligence studies in Africa, specifically the region of EAC with a bias to oversight regimes and their reasonableness as per the national circumstances of the six countries.

In addition, the study findings could also influence operationalization of the existing or a review of EAC national intelligence service oversight and cooperation among member states. Regional and sub-regional intelligence cooperation in Africa has become a pertinent national security matter in the continent especially with the emergence of common transnational threats including terrorism. Efforts to improve intelligence cooperation, in Africa has generally been structured along the already existing regional economic communities (RECs).[112] While yet to specify how the EAC states would share intelligence on common threats, the Protocol on Peace and Security, is an example of initiative of the regional body towards enhancing intelligence cooperation among EAC member countries.[113] Issues of intelligence oversight are always pertinent to intelligence cooperation among countries as different states may hold different views regarding legal oversight frameworks which may be lacking or inadequate depending on national efforts towards accountability of the national security organs.[114] Furthermore, the practicality and suitability of any given intelligence oversight regime is dependent on a country's circumstances. Consequently, understanding accountability of the secretive national security organs in the EAC

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[112] Lawrence E. Cline, "African Regional Intelligence Cooperation: Problems and Prospects," *International Journal of Intelligence and CounterIntelligence* 29, no. 3 (2016), p. 450.

[113] Cline.

[114] International Network of Civil Liberties Organizations (INCLO), "Unanswered Questions: International Intelligence Sharing," 2018, p. 7.

is indispensable for regional synergy in intelligence collaboration to fight common national security threats including terrorism and organized crime.

1.8 Conceptual Framework

Generally, national security intelligence oversight aims to evaluate, establish or sustain efficacy and legality of national security intelligence practices. However, intelligence oversight could be practiced differently, depending on a county's political system, intelligence service cultures, historical development of the functional and institutional oversight mechanisms, motivation of the oversight bodies and persons assigned such responsibilities as well as the national legal landscape which establish any given type of intelligence oversight regime. Consequently, the development of the study conceptual framework is informed by the works of Maria Caparini, Hans Born and Ian Leigh, Loch K. Johnson, Amy Zegart, Peter Gill and Mark Pythian who have all described some of the moderator variables that affect executive control, parliamentary oversight, and judicial review of intelligence agencies as well as independent oversight.

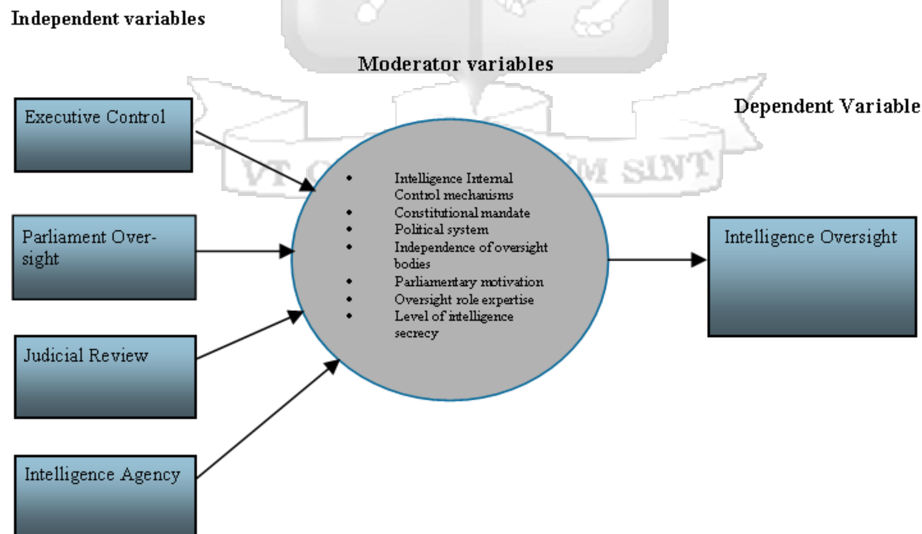
The rules of procedure of parliamentary intelligence oversight depends on how suitable a tool or procedure of oversight is to a parliament. A parliament may choose to oversight intelligence by either using police-patrol model or fire-fighting approach depending on its perception of suitability of either method or the likely political credit which may come from oversight of the intelligence, especially during intelligence scandals or incidences of intelligence failures[115]. On the other hand, tensions may occasionally arise from the character of relationship between policy makers and intelligence analysts. Sometimes the relationship between policymakers and intelligence analysts influences the latter to rubberstamp pre-existing assumptions of the former or

[115] Johnson, "A Shock Theory of Congressional Accountability for Intelligence." p. 348.

to remain sufficiently independent and objective in the analysis of threats to national security.[116] On the other hand, net political incentives often informs legislators' rationale for executive oversight. In some instances, legislators may weigh the cost-benefit of oversight over certain cases of intelligence scandals and not others.[117]

Another important aspect of parliamentary oversight is the composition of parliamentary committees to oversight various government policies and bureaucracies. Legislative oversight committees' membership should ideally be cross party and independent of the executive in its oversight role.[118] Furthermore, parliaments may still need some level of negotiation to access classified information in a manner reasonable to the limitation of access to sensitive national security materials during oversight.[119] The moderator variables in figure 1 below may affect one or more study independent variables in any given political context hence the eventual nature of intelligence oversight outcome.

Figure 1. Author's own Conceptual framework for analysis



[116] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States." pp. 7-8.
[117] Zegart, *Eyes on Spies: Congress and the United States Intelligence Community*. p. 42.
[118] Born and Leigh, *Making Intelligence Accountable: Legal Standards and Best Practices for Oversight of Intelligence Agencies*. p. 87.
[119] Gill and Phythian, *Intelligence in an Insecure World*.

The four study independent variables in figure 1 above are the main concepts that informs this conceptual framework for analysis of the intelligence oversight regimes in the EAC. Executive control, parliamentary oversight and judicial review represents trilogy of checks and balance bases which informs accountability for the national intelligence services. If the concept of power separation is practiced distinctly, the three layers of oversight should have clearly spelt oversight jurisdiction over intelligence services. However, the moderator variables in the context of this study may affect the nature of the relationship between any of the oversight mechanisms and the intelligence oversight outcomes in any country. The moderator variables include statutory mandates, political systems, motivation of the individuals sitting in various oversight bodies, independence and expertize of the oversight bodies and internal control mechanisms. For instance, a country where the executive hold unchecked sway on national security organs, oversight by other parliament and judiciary may run in conflict with the desires of the executive.

To contextualize the comparative analysis of the intelligence oversight regimes in the EAC, study primary and secondary data collection tools will focus on issues touching on the moderator variables into order to draw holistic comparisons of the various intelligence oversight regimes because the element of context of oversight is a core determiner of security sector oversight anywhere else in the world.

1.9 Study Assumptions

Based on the problem statement and study objectives, the study assumptions have been formulated as follows;

i. The executive, parliamentary and judicial intelligence oversight have evolved to become the pillars of intelligence accountability globally
ii. The evolution and structure of national intelligence services in EAC influence intelligence oversight practices and outcomes

iii. Intelligence collaboration among EAC states is subject to intelligence oversight mechanisms across the region

1.10 Methodology

This is a descriptive case study which focuses on intelligence oversight regimes in the six countries within the EAC. Descriptive researches allow researchers to describe features of a subject of study.[120] Descriptive research fitted this study because it sought to describe the current intelligence oversight regime within the EAC and the attendant issues.

1.10.1 Study Design

This is a qualitative study which employed the use of semi-structured interviews for data collection particularly on the Kenyan case of intelligence oversight. Semi-structured interviews allow room for follow up questions or prompt discussions on issues being asked.[121] A qualitative research design is suitable because it allows description of the subject of study from multifaceted perspectives and ability to evaluate effectiveness of an existing policy or practices.[122]

1.10.2 Site and Population of Study

The study was conducted in Nairobi as it was deemed to have a higher concentration of the study population. Nairobi houses the headquarters of the national assembly and the national intelligence agency. The study population included senior ranking national intelligence agencies personnel, members of the executive level national security organs oversight boards, commissions or councils, parliamentarians sitting in relevant parliamentary oversight committee, members of the judiciary sitting in national security organs' oversight bodies and persons from national independent audit bodies. The primary data collection was limited to reach of the intended sample

[120] CR Kothari and Gaurav Garg, *Research Methodology: Methods and Techniques*, 4th ed. (Bangalore: New Age International (P) Limited, Publishers, 2019). p. 35.
[121] Elia Shabani Mligo, *Introduction to Research Methods and Report Writing* (Eugene: Resource Publications, 2016). p. 87.
[122] Ibid., 50.

population given the overly secretive nature of the national intelligence services. Primary data collection through the interviews was mainly concentrated on the Kenyan case.

Sample Size and Sampling Design

The study used purposive sampling technique after careful examination of the study population. The targeted sample population was 15 study participants with relevant experience on the study subject. The small number sample research participants was informed by the secretive nature of intelligence oversight and persons with informed opinion and experience on the subject is equally small. The researcher relied on subjective judgment to gauge saturation levels where the interviews with more participants cease to yield new themes and ideas on intelligence oversight.

1.10.3 Data collection Methods

The study used semi-structured interviews to collect primary data. The objective of the interview was to obtain primary data on the current practices of intelligence oversight within the EAC states in the context of existing intelligence oversight laws and policies. Primary data collection was limited to the Kenyan case. The interviews revolved around pertinent issues of intelligence oversight and therefore sought to understand participants' level of knowledge, feelings, opinions and experiences about intelligence oversight. Semi-structured interviews allows for flexibility of digging deeper into issues that a respondent brings forth during the interview[123]. Secondary data was collected from relevant documents including declassified government documents, foreign or international organizations and local subsidiary publications, policy documents, newspapers, technical and trade journals and scholarly reports by research and institutions. The secondary data sources covered multiple areas of intelligence oversight in the

[123] Cormac McGrath, Per J. Palmgren, and Matilda Liljedahl, "Twelve Tips for Conducting Qualitative Research Interviews," *Medical Teacher*, 2018, p. 2.

EAC states and thus providing the basis of comparative analysis of the intelligence oversight regimes in the region.

1.10.4 Research Procedure

The following procedure was adopted by the researcher in conducting this study. To comply with the procedures and guidelines to conduct the research, the researcher sought for review and permission from ethical clearance committee at Strathmore University and a research permit from the National Commission for Science, Technology and Innovation (NACOSTI).

With prerequisite approvals to conduct the study, the researcher conducted a pilot study using the interview questions to test for the data collection instrument suitability. Due to the sensitive nature of the subject of study, the pre-testing of the interview questions enabled the researcher to do a prior assessment of relevance of the interview questions and receptivity of the research to the targeted study population.

1.10.5 Data Analysis

Primary data gathered from interviews was analyzed using content analysis technique foremost through preparation and organization of the interview notes and memos. Interview notes was prepared and coded for familiarization and classification of emerging themes, ideas and concepts which emerged from the respondents regarding the existing intelligence oversight practices. Subsequent step of analysis entailed coding of the data through highlighting of key words as well as phrases that reflected on the study objectives, research questions and the conceptual framework for analysis. The codes were revised and combined into thematic issues, identifying opinions, feelings, knowledge and respondents' experiences in respect to the study objectives and research questions. Identified themes, opinions and ideas emerging from coded primary data was classified under respective moderating research variables as per the conceptual framework to draw inferences on how they affect the relationship between the independent and

dependent variables of this study. Findings from the primary data analysis was augmented with analysis of existing literature on intelligence oversight with the EAC region and other relevant literature on the subject of study to compare the practice of intelligence oversight in relation to laws and existing accountability policies within the region. While the study relied on primary data and secondary data to draw inferences on intelligence oversight practices and regimes in Kenya and Uganda, secondary data was exclusively to analyze the existing intelligence oversight practices and regimes in the rest of the EAC.

1.11 Ethical Considerations

The researcher provided the descriptions of the safeguards during the study participants briefing. The entire data collection and analysis protected the rights to privacy of all the respondents with whom the interviews were conducted. Data coding and aggregation also avoided any kind of attribution and identification of the type work of the respondents due to sensitivity of the subject area and needs for privacy by the respondents. Importantly, study participants were presented with a copy of informed consent form which the researcher duly explained the purpose of the research before they signed it. None of the participants was harmed or exploited during the conduct of the study.

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1.12 Chapter Outline

The study has five chapters that are broken down as follows;

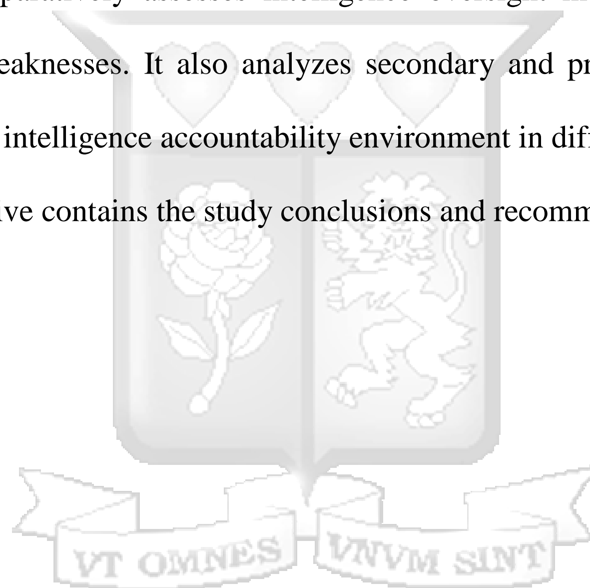
The introductory chapter gives the study background, the problem statement, the general objective and specific study objectives, research questions, study assumptions, contribution of the study to knowledge and the scope of the study, the study methodology and the ethical considerations. The chapter also carries the literature review detailing some of the emergent debates and epistemological foundation of intelligence oversight and the gaps in literature that the study seeks to fill.

Chapter Two focusses on the evolution and concepts of intelligence oversight mechanisms. The chapter scrutinizes universal intelligence oversight mechanisms and practices, issues arising and the weaknesses and strengths of different intelligence oversight mechanisms.

Chapter Three examines the evolution of intelligence community in the EAC states. It explores the forms and structures of intelligence community in EAC, their development, roles in national security and the existing intelligence oversight mechanisms in the region.

Chapter Four discusses post-independence intelligence oversight mechanisms in the EAC states. The chapter comparatively assesses intelligence oversight mechanisms in EAC, their relative strengths and weaknesses. It also analyzes secondary and primary data in relation to intelligence policy, laws, intelligence accountability environment in different EAC states.

Lastly, Chapter Five contains the study conclusions and recommendations.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CHAPTER 2

EVOLUTION AND CONCEPT OF INTELLIGENCE OVERSIGHT MECHANISM

2.1 Introduction

The previous chapter laid the foundation for this study by identifying issues including the study problem, research questions and objectives, study assumptions and the research methodology which is adopted for this comparative study. This chapter focuses on intelligence oversight mechanisms globally and their attendant issues. The chapter highlights on some of the events that heralded the eras of introspection on the needs for intelligence oversight and how early intelligence oversight reforms have progressively gained traction. Some of the key events leading to the global evolution of intelligence oversight include during and after Cold War and the post 9/11. However, countries like the USA and some other western democracies embraced intelligence oversight much earlier.

There is no universally accepted definition of the term intelligence oversight. This is because of the ongoing debates about its normativity, procedures and instruments.[1] The practice of intelligence oversight varies in different countries depending on factors including constitutional system, political history and culture.[2] However, a number of scholars and intelligence service practitioners have come up with different conceptualizations of the term. Oversight is a structured and a careful analysis whose objective is to evaluate adherence to rules, criteria or principles by an entity.[3] Intelligence oversight can be done on a continuous basis, *ex ante* scrutiny, *post ante*

[1] Artur Gruszczak, *Intelligence Security in the European Union: Building a Strategic Intelligence Community*, ed. Stuart Croft (London: Palgrave Macmillan, 2016), p. 149.

[2] Hugh Bochel and Andrew Defty, "Parliamentary Oversight Og Intelligence Agencies: Lessons from Westminister," in *Security in a Small Nation*, ed. Andrew W Neal (Cambridge: Open Bok Publishers, 2017), p. 105.

[3] James A. Baker, "Intelligence Oversight," *Harvard Journal on Legislation* 45, no. 1 (2008), pp. 201-202.

review or through investigation aiming at specific ends.[4] Intelligence oversight can either be formal, informal, specified or a detailed process which cover wholesomely or partially, security and intelligence matters.[5] Elsewhere, intelligence oversight has been defined as a supervisory process with specified aims.[6] It is not uncommon to find some authors using the term intelligence oversight together with other related terms including accountability, review and control.[7] Historically, the executive is responsible for supervising and controlling national security intelligence.[8] However, other security sector and intelligence overseers have entered the scene. They include parliaments, the judiciary, non-state actors, the public and media as well as international actors including foreign governments.[9]

Marina Caparini classified intelligence oversight aims into two clusters: propriety and efficacy.[10] Efficacy oversight assesses how the intelligence services are prudent with allocated resources in identifying national security threats, capabilities and how sound their analysis are to policy making.[11] Propriety overseers primarily focus on legal and ethical compliance by the intelligence agencies in their work.[12]

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[4] Hans Born and Gabriel Geisler Mesevage, "Introducing Intelligence Oversight," in *Overseeing Intelligence Services: A Toolkit*, ed. Hans Born and Aidan Wills (Geneva: DCAF, Geneva, 2012), p. 6.

[5] Aidan Wills and Mathias Vermeulen, *Parliamentary Oversight of Security and Intelligence Agencies in the European Union* (Brussels: European Parliament, 2011), p. 41.

[6] Hugh Bochel, Andrew Defty, and Jane Kirkpatrick, *Watching the Watchers: Parliament and the Intelligence Services* (Hampshire: Palgrave Macmillan, 2014), p. 3.

[7] Njord Wegge, "Intelligence Oversight and the Security of the State," *International Journal of Intelligence and CounterIntelligence* 30, no. 4 (2017), p. 688.

[8] Wolfgang Krieger, "Oversight of Intelligence: A Comparative Approach," in *National Intelligence Systems: Current Research and Future Prospects*, eds. Gregory F. Treverton and Wilhelm Agrell (Cambridge: Cambridge University Press, 2009), p. 210.

[9] Bochel and Defty, "Parliamentary Oversight Og Intelligence Agencies: Lessons from Westminister.", p. 106.

[10] Marina Caparini, "Controlling and Overseeing Intelligence Services in Democratic States," in *Democratic Control of Intelliegnce Services: Containing Rogue Elephants*, ed. Hans Born and Marina Caparini (Burlington: Ashgate, 2007), p. 9.

[11] Ibid.

[12] Mark M. Lowenthal, *Intelligence: From Secrets to Policy*, 7th Ed. (London: Sage Publishers, 2017), p. 133.

2.2 Emergence of Security Intelligence Oversight

The emergence and evolution of intelligence oversight occurred at different paces and was influenced by multiple factors in different countries. However, there are certain overarching factors across different countries which explain why some countries adopted intelligence oversight much earlier than others and why intelligence oversight across many countries have witnessed periodic benignity particularly by parliaments and the judiciary. In the western world, some of the formative literature on statutorily mandated intelligence oversight is premised on the American congressional oversight which arose after the enactment of the country's National Security Act of 1947, formally creating the foundation for congressional intelligence oversight through relevant sub-committees.[13] Despite this statutory requirement for congressional oversight, the American congressional intelligence oversight remained sporadic, unsystematic and informal for close to three decades after 1947.[14] A significant wave leading to establishment of a regularized intelligence oversight in the USA and the rest of the world emerged from the 1970s as reports began to emerge of American intelligence abusing its powers domestically and outside of the USA.[15]

On the other hand, the British parliament enacted intelligence oversight Acts, towards the end of the 1980s and early in the 1990s.[16] Some of these intelligence oversight waves of the 1970s onwards aimed to constrain intelligence agencies from abusing their powers. Historically, intelligence services in many countries operated under direct control of the executive. The executive developed and implemented intelligence policy and the national security intelligence

[13] Marvin C. Ott, "International Journal of Intelligence and CounterIntelligence," *International Journal of Intelligence and CounterIntelligence* 16, no. 1 (2003), p. 73.

[14] Ibid., p. 74.

[15] Ibid.

[16] Andrew Defty, "Educating Parliamentarians about Intelligence: The Role of the British Intelligence and Security Committee," *Parliamentary Affairs* 61, no. 4 (2008), p. 622.

agencies worked to inform and support the policy directions.[17] Primarily, intelligence agencies work for the executive and the latter remains the principal consumer of intelligence products.[18] The relationship between the Intelligence Community (IC) and the executive occasionally becomes problematic whenever it raises issues of politicization of the former hence the necessity of oversight for legitimacy and accountability of the national intelligence services. [19]

There was a remarked increase of the culture of intelligence organizations' accountability in the post-Cold War across the world.[20] Some of the new national security threats which prominently emerged post-Cold War included terrorism, transitional organized crime and nuclear proliferation.[21] The 9/11 terrorist attack also prompted a rethink of the intelligence capability across many countries. For instance, in the US, Congress and the executive sought to reinvent and revitalize the IC post 9/11 to combat the growing problem of international terrorism.[22] Post 9/11 Attack also saw accretion of powers by the executive and the national security organs across most of the western world.[23] In the US for instance, cabinet level post of the Director of National Intelligence (DNI) was created to oversee the IC and advice the executive and the country's NSC on matters of the country's IC in the face of overarching threat of terrorism.[24] The DNI was also

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[17] Steven C. Boraz, "Executive Privilege: Inteligence Oversight in the United States," in *Reforming Intelligence*, ed. Thomas C. Bruneau and Steven C. Boraz (Austin: University of Texas, 2007), p. 27.

[18] Ibid.

[19] Gruszczak, *Intelligence Security in the European Union: Building a Strategic Intelligence Community,* p 252.

[20] Hans Born, "Towards Effective Democratic Oversight of Intelligence Services: Lessons Learned from Comparing National Practices," *Connections* 4, no. 3 (2004), p. 20.

[21] Richard J. Aldrich, Rory Cormac, and Michael S. Goodman, *Spying on the World* (Edinburgh: Edinburgh University Press, 2013), pp. 381-382.

[22] James Lewis and Mary DeRosa, "Intelligence," in *Five Years after 9/11: An Assessment of America's War on Terror*, ed. Julianne Smith and Thomas Sanderson (Washington, D.C.: Center for Strategic and International Studies, 2006), p. 26.

[23] Robert Gerald Livingston, "Legislatures and Intelligence Services: A Dark Spot in Executive Oversight?," *Zeitschrift Für Parlamentsfragen* 36, no. 3 (2005), p. 700.

[24] Lauren C. Clark, "Statutory Struggles of Administrative Agencies: The Director of National Intelligence and the CIA in a Post-9/11 World," *Administrative Law Review* 62, no. 2 (2010), p. 546.

aimed at overcoming compartmentalization of the American IC in the build up to 9/11 attack.[25] At operational level, national intelligence services generally acquired more powers for mass surveillance post 9/11 terrorist attack on the US.[26] The 9/11 terrorist attack also meant that states began heightened non-conventional war against terror which made legislative oversight of certain operational decisions difficult.[27] The war against terrorism is non-conventional and implied that quick and pragmatic policy choices would have to be made by the executive.

Accountability refers to the relational dynamics between actors in which actions and decisions are made commensurate with identified objectives or standards that have been set to guide such relationships.[28] The end of the Cold War also saw the rise of the security sector governance policy agenda at national and international levels. The concept of security sector governance although lacking a universally agreed definition, entails public sector institutions which have the command of effecting coercive power.[29] While there are multiple conceptualizations of the term security sector, on one hand, it includes public sector institutions bestowed with the responsibility of protecting the state and its population.[30] Some of the security sector governance policy agenda which became popular after Cold War included the heightened call for accountability, participation and transparency of the national security sector.[31] While the West and the East provided assistance to their client states especially in their areas of influence

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[25] Ibid., p. 547.

[26] Aidan Kirby, “Considering the Creation of a Domestic Intelligence Agency in the United States,” in *Considering the Creation of a Domestic Intelligence Agency in the United States*, ed. Brian A. Jackson (Santa Monica: RAND Corporation, 2009), p. 158.

[27] Livingston, “Legislatures and Intelligence Services: A Dark Spot in Executive Oversight?”, p. 701.

[28] Damien Van Puyvelde, *Outsourcing US Intelligence* (Edinburgh: Edinburgh University Press, 2019), p. 18.

[29] Heiner Hänggi and Fred Tanner, “Promoting Security Sector Governance in the EU’s Neighbourhood” (Paris, 2005), p. 13.

[30] Stéphane Jean, “Security-Sector Reform and Development: An African Perspective,” *Security Dialogue* 36, no. 2 (2005), p. 249.

[31] Hänggi and Tanner, “Promoting Security Sector Governance in the EU’s Neighbourhood.”, p. 13.

during the Cold war, emergence security sector reforms (SSR) in the early 1990s became a core public policy reform agenda.[32] SSR is not only a recent concept, but also continuously contested.[33] Several countries including those in the Balkans, Eastern and Central Europe, the Middle East, Africa, Latin America, Oceania and Asia have instituted various SSR initiatives all with various objectives and outcomes.[34]While there are various definitions of SSR, the United Nations (UN) 2008 Report of Secretary General defined SSR as a national authorities led process of assessment, review, implementation, monitoring and evaluation with the goal of improving effectiveness and accountability of the security sector in provision of state and human security with respect to the rule of law and human rights.[35] In some countries, SSR are initiated and funded by external actors while in others such reforms are exclusively domestic initiatives.[36] African Union (AU) SSR policy framework covers multi-layered security sector oversight and control by the executive, legislative, judicial oversight and by independent bodies[37] Generally, SSR objectives include restructuring national security sector institutions and strengthening their oversight and control mechanisms.[38] This explains the reason why most of the SSRs programmes in EAC have included opening up of the national intelligence services for scrutiny by multiple oversight institutions.

Between the late 1900s and the 2000s, reformation of the national security intelligence sector to improve accountability and oversight gained currency globally.[39] In some African countries, the national intelligence reforms occurred in the era of post-conflict state building or in

[32] Jean, “Security-Sector Reform and Development: An African Perspective.”, p. 250.

[33] Francesco Mancini, “What Is Security Sector Reform?” (New York, 2005), p. 36.

[34] Ibid., pp. 37-38.

[35] United Nations, “Securing Peace and Development: The Role of the United Nations in Supporting Security Sector Reform” (New York, 2008), p. 6.

[36] Mancini, “What Is Security Sector Reform?”, pp. 37-38.

[37] African Union Commission, “A Policy Framework on Security Sector Reform” (Addis Ababa, 2013), p. 34, https://www.peaceau.org/uploads/au-policy-framework-on-security-sector-reform-ae-ssr.pdf.

[38] Hänggi and Tanner, “Promoting Security Sector Governance in the EU’s Neighbourhood.”, p. 20.

[39] Lauren Hutton, “Intelligence and Accountability in Africa” (Pretoria: Institute fot Security Studies (ISS), 2009), p. 2.

relatively stable polities which were transitioning from one-party authoritarianism to political liberalization.[40]

The term IC is functionally and structurally not well defined.[41] In many states the establishment of IC and its structure largely depend on a country's national security needs which often dependent on factors including the character and magnitude of national interests. This explains why a country like the US has a complex and many national security intelligence bodies comparative to other countries. The term IC gained currency in the USA in the late 1940s after the enactment of the country's National Security Act (NSA) of 1947.[42] In many countries, the constitution of IC reflects the diverse nature of national security and national interest matters including military, political and economic issues.[43] Generally, IC constitutes security intelligence agencies, military intelligence organizations and departmental intelligence units.[44]

Intelligence is a tool of statecraft in two broad ways. On one hand, as an activity it involves collection, synthesis and application of analyzed information in exercise of national power to protect and pursue of national interests.[45] Secondly, intelligence activities also include covert political actions, deception, and psychological warfare.[46] Covert action which some authors have referred to as direct action or active missions falls outside the conventional information collection and analysis.[47] State intelligence activities target internal and external operational environments in

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[40] Hänggi and Tanner, "Promoting Security Sector Governance in the EU's Neighbourhood.", p. 18.
[41] Russell J. Bruemmer, "Intelligence Community Reorganization: Declining the Invitation to Struggle," *The Yale Law Journal* 101, no. 4 (1992), p. 871.
[42] Ibid.
[43] Ibid., p. 872.
[44] Jeffrey T. Richelson, *The US Intelligence Community*, 7th ed. (Boulder: Westview Press, 2016), p. 28.
[45] Carnes Lord, *The Mordern Prince* (Harrisonburg: Yale University Press, 2003), p. 170.
[46] Ibid.
[47] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States."

order to help states gain comparative advantage over other states on matters of national security interests.[48]

The utility of intelligence products in formulation and implementation of national policies lies in its elucidation of past and present contexts in which states operate and interact in pursuit of their national interests.[49] Illumination of the operational environments is complex and intelligence agencies have adapted their activities proportionate with their operational environment. Consequently, intelligence activities continue to broaden beyond threats to physical state survival especially in the post-Cold War.[50] Some of the emergent threats post-Cold War include transnational organized crimes, cybersecurity threats and terrorism.[51] Furthermore, exponential growth of information and communication technologies post-Cold War have expanded the scope of bulk surveillance domestically and externally.[52] As a special activity area, national intelligence services are oriented to secretive operations because both its internal and external operational environments are permeated by inimical activities to national interests.[53] Additionally, intelligence agencies conduct counterintelligence to protect state secrets from hostile intelligence actors both internally and externally.[54] Secrecy is a legitimate condition for intelligence activities in order to protect the intelligence tradecraft. However, secrecy has generally raised debates about potential impacts of illegal intelligence activities on civil liberties especially in democratic countries.[55] Secretive nature of intelligence organizations implies that the public generally do not understand

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[48] Ibid.

[49] Lord, *The Mordern Prince*, p. 174.

[50] Fairlie Chappuis, "The Place of Intelligence in the State's Monopoly on the Legitimate Use of Force" (Berlin, n.d.), p. 4.

[51] Ibid.

[52] Ibid.

[53] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States.", p. 5.

[54] Ibid.

[55] Puyvelde, *Outsourcing US Intelligence* p. 22.

or have little knowledge of what such entities do to protect them and the state.[56] On the contrary, intelligence agencies originated as one of the tools supporting executive decision-making. Depending on a political system, intelligence agencies operating in weak states may assume undue powers that reduce their effectiveness while in stronger states, chances of politicization of intelligence work by the execute increases.[57]

The veil of secrecy which is paramount for intelligence operations has been a subject of accountability debate. One of the arguments for robust intelligence oversight is that it makes public officials including the executive and intelligence officials accountable for their actions and decisions.[58] The executive's preeminence over control of national intelligence services spans issues including the defining the scope and conduct of state national security policy and strategies. For instance, in presidential systems, the president sets national security priorities, tasks the intelligence agencies, consumes intelligence products and provides feedback which may occasionally redirect intelligence operations.[59] Furthermore, historically, many independent civilian intelligence agencies have operated within the confines of political authorities in power largely unbeknown to both the wider government and the public and without sound legal foundations in many countries.[60] Generally, national intelligence services pursue their mandates concomitant with the executive directives and requests hence the need for scrutiny.[61]

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[56] Ibid.

[57] Mark Pythian, "Cultures of National Intelligence," in *Routledge Companion to Intelligence Studies*, ed. Dover Robert, Michael S. Goodman, and Claudia Hillebrand (London: Routledge, 2013), p. 38.

[58] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States.", p. 9.

[59] Puyvelde, *Outsourcing US Intelligence*, p. 27.

[60] Chappuis, "The Place of Intelligence in the State's Monopoly on the Legitimate Use of Force.", p. 5.

[61] Fred Schreier, "The Need for Efficient and Legitimate Intelligence," in *Democratic Control of Intelligence Services: Containing Rogue Elephants*, ed. Hans Born and Marina Caparini (Hampshire: Ashgate Publishing Limited, 2007), p. 39.

2.3 Intelligence Oversight Mechanisms

Systems to establish and exercise intelligence oversight vary across political systems. Irrespective of whether a political system is premised on fusion or separation of political power, intelligence oversight generally involves statutory actors including the executive, legislature and the judiciary.[62] In some countries, other non-statutory intelligence oversight actors may include the citizens, media and the civil society.[63] Internal control of intelligence agencies also constitutes part of the oversight mechanisms at the agency level.[64] Other formal external intelligence oversight actors may include independent state audit institutions.[65] Some countries have also established independent institutions including the Inspector General (IG), expert bodies including permanent review or oversight commissions.[66] Countries determine the legal mandate for different actors which are involved in intelligence oversight.[67]

2.4 Executive Control of Intelligence

Executive control of intelligence differs from legislative oversight because of political and statutory powers which may be bestowed on the institutions of policy making within the executive. In many of the countries that have practiced intelligence oversight longer, the enduring debate on competing constitutional power claims has occasionally pitted the executive against the legislative assemblies particularly on issues of national security.[68] Nevertheless, the executive has a major role of shaping the structure of the IC, budget and operational mechanisms at any given time.[69]

[62] Chappuis, "The Place of Intelligence in the State's Monopoly on the Legitimate Use of Force.", pp. 5-7.

[63] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States.", p. 12.

[64] Boraz, "Executive Privilege: Inteligence Oversight in the United States.", p. 27.

[65] Born and Mesevage, "Introducing Intelligence Oversight.", p. 8.

[66] Stuart Farson, "Establishing Effective Intelligence Oversight Systems," in *Overseeing Intelligence Services: A Toolkit*, ed. Hans Born and Aisan Willis (Geneva: DCAF, Geneva, 2012), p. 28-36.

[67] Monica den Boer, "Conducting Oversight," in *Overseeing Intelligence Services: A Toolkit*, ed. Hans Born and Aidan Willis (Geneva: DCAF, 2012), p. 72.

[68] David Everett Colton, "Speaking Truth to Power: Intelligence Oversight in an Imperfect World," *University of Pennsylvania Law Review* 137, no. 2 (1988), p. 587.

[69] Samuel J. Rascoff, "Presidential Intelligence," *Harvard Law Review* 129, no. 3 (2016),p. 648.

Preeminence of the top executive control on intelligence is premised on its primacy on issues of formulation and implementation of national security policies, strategies and foreign policies.[70] However, parliaments often have a role in approving certain foreign policies including deployment of armed forces.[71] The main aim of the executive control of intelligence is to ensure that the agencies are tasked to collect prioritized information and provides feedback which generally serves the decision-maker's information needs.[72] For practical purposes, some governments establish oversight boards, expert committees or IGs to oversight intelligence. Such oversight boards directly report to the top executive because the executive may not give full attention to the activities of intelligence agencies due to busy work schedules.[73]

The extent of the executive involvement in day to day management of the intelligence agencies differs from country to country depending on the political system. Generally, the executive appoints senior administrators of the intelligence agencies, reports activities of the intelligence services to legislature, budgetary appropriation and monitoring of the expenditures, authorization of the use of special powers, international cooperation as well as approving external special intelligence operations.[74]

One of the major weaknesses of executive control of national intelligence services is that it may lead to politicization of intelligence with potentially adverse consequences on national security and civil liberties of citizens. There is no theoretical model to explain how the intelligence services should interact with policymakers and this lacuna of knowledge has created challenges to executive control mechanisms. Politicization of intelligence occurs when the executive exerts

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[70] Alix Julia Boucher, "National Security Policies and Strategies: A Note on Current Practice," 2009, p. 4.
[71] Ibid.
[72] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States.", p. 39.
[73] Ibid.
[74] Born and Mesevage, "Introducing Intelligence Oversight."

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undue influence on the intelligence work.[75] Some hypotheses identify organizational dependence of intelligence services on the executive for direction, organizational proximity of intelligence services to the policy making bureaucracy and personal proximity between policymakers and intelligence officials as some of the causes of politicization of intelligence.[76] Politicization could either be direct or subtle. In the former scenario, policymakers make direct input on what and how National Intelligence Estimates (NIEs) should look like while in the latter, they may give implied signals as to what they expect of intelligence estimates or analyses.[77] Sometimes, the executive may wrongly use national intelligence services for domestic political leverage by unduly targeting political opponents.[78]

Closely connected to politicization is the general difficulty of the executive's unwillingness to reveal failures of intelligence operations whenever they occur because of the potential problem of public condemnation. Executives may also wish to sidestep elaborate parliamentary and/or judicial scrutiny into declared cases of intelligence failures and thus may arbitrarily declare intelligence issues under inquest as privileged information. It is for these reasons that parliament and judiciary or any other independent oversight body might not trust executive control of intelligence agencies to strike a balance between human and state security.[79] To counter some of the weaknesses of the executive control, some countries have adopted a mixed method of legislative and judicial oversight of national intelligence services to check and balance executive control of the intelligence services.[80] The legislature may also help to reduce intelligence

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[75] Ibid., p. 11.

[76] Joshua Rovner, *Fixing the Facts:National Security and the Politics of Intelligence* (London: Cornell University Press, 2011), p. 8-11.

[77] Ibid., p.5.

[78] Ian Leigh, "Accountability of Security and Intelligence in the United Kingdom," in *Whos's Watching the Spies? Establishing Intelligence Accountability*, ed. Hans Born, Loch K Johnson, and Ian Leigh (Washington, D.C.: Potomac Books, 2005), p. 84.

[79] Born and Mesevage, "Introducing Intelligence Oversight.", p. 10.

[80] Leigh, "Accountability of Security and Intelligence in the United Kingdom.", p. 7.

dependence on the executive by establishing secure tenure of office for intelligence executives to lessen or prevent undue executive influence on the agencies while executing their duties.[81] In cases where the executive has the exclusive prerogative over such matters, the executive may become partisan in appointing intelligence services managers.

2.5 Internal Control of Intelligence Services

Senior executives within national intelligence services are also charged with the duty of ensuring propriety and efficacy of the intelligence services. Internal control is a traditionally well-established intelligence accountability mechanism which precede the emergence of the other statutory intelligence oversight bodies.[82] Intelligence services executives generally direct and implement organizational policies and activities. Whenever internal control gets lax, external oversight mechanisms potentially experience hurdles in achieving their oversight or control objectives.[83] Intelligence executives are usually involved in overseeing intelligence operations within the confines of the rule of law, review intelligence operations and grant authority for use of special powers and continuous monitoring of the intelligence officials to ensure compliance with internal controls and restraints in execution of the mandate of the agencies.[84] The executive is also in charge of personnel training on intelligence tradecraft, ethical issues, legal norms as well as values of integrity in the intelligence organizations.[85]

Internal control can potentially suffer because the intelligence cycle and tradecraft operate in an inevitable environment of politics. Senior management may unduly politicize intelligence work internally hence creating an environment of mirror imaging by intelligence analysts. Internal politicization of intelligence analysis erodes objectivity of the analysis processes hence

[81] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States.", p. 11.
[82]Ibid.
[83] Born and Mesevage, "Introducing Intelligence Oversight.", p. 9.
[84] Ibid., p. 8.
[85] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States.", p. 12.

predisposing national interests to threats or inclining intelligence towards partisan and non-national security issues.[86] On the other hand, countries that are emerging from autocratic regimes are highly likely to experience politicization of internal intelligence control because intelligence services in such countries may tend to be socialized into serving specific regimes in power rather than national interests.[87]

In some countries, legislative assemblies have established special executive level oversight bodies with several control functions over the national intelligence services. For instance, the Intelligence Reform and Terrorism and Terrorism Prevention Act of 2004 (IRTPA) created the position of DNI for a centralized access and oversight of IC in the USA post 9/11.[88] A centralized control of a state with many national intelligence services is necessary for intelligence synergy and hence effectiveness to policymakers. However, one of the pitfalls of establishing such bodies as DNI may lead to overlap of statutory mandates leading to negative bureaucratic competition. For instance, the DNI and the Director of Central Intelligence Agency (DCI) and the DNI have clashed repeatedly over oversight roles in circumstances where rules are not clearly defined.

2.6 Parliamentary Oversight of Intelligence

Parliament plays one of the most crucial security sector accountability roles especially in democracies.[89] On the minimal, parliaments subject issues concerning intelligence activities to parliamentary debate and its decisions are done within parameters of the constitution, any other existing legal systems and parliamentary rules of procedure.[90] Some of the overarching objectives of parliamentary oversight of the executive include; protection of civil and national security sector

[86] Caparini., p. 12.
[87] Hans Born and Ian Leigh, "Demoratic Accountability of Intelligence Services" (Geneva, 2007)p, 5.
[88] Clark, "Statutory Struggles of Administrative Agencies: The Director of National Intelligence and the CIA in a Post-9/11 World.", p. 546.
[89] Bochel and Defty, "Parliamentary Oversight Og Intelligence Agencies: Lessons from Westminister.", p. 106.
[90] Bochel and Defty.

relations, legislating and approving resources to finance government policies and strategies, monitoring and evaluation of government programmes, provision of feedback and overseeing whether or not, the government is meeting its domestic and international obligations.[91] Factors that affect parliamentary intelligence oversight which are adopted by different countries depend on constitutional dispensation and legal systems.[92]Additionally, the nature of parliamentary independence from the executive also determines the extent to which a parliament can independently oversight intelligence agency. Legislature is the core of representation in any democratic political system. Parliament legislate laws and provide a systematized forum for discussions of policies that affect a country and its national interests including national security issues.

Parliamentary oversight is primarily aimed at streamlining intelligence work to ensure compliance with the law or propriety and to leverage on the power of legislation to support intelligence reforms which are aimed at efficiency and propriety. Parliaments also monitor intelligence services expenditures against national security priorities as set out in national security policies and strategies.[93] However, the political system in which parliamentary intelligence oversight takes place substantively determines the extent of oversight powers of the legislature.

Legislative intelligence oversight committees in countries that have constitutionally enshrined the doctrine of separation of powers for the executive, legislature and the judiciary tend to have more autonomy in calling for whatever information or testimony it deems important for oversight from the intelligence agencies.[94] In parliamentary systems, the executive tend to have

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[91] Hironori Yamamoto, "Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments" (Geneva, 2007), p. 13.

[92] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States.", p. 40.

[93] Ibid., p. 28.

[94] Ibid., p. 29.

greater influence on gatekeeping information and thus limiting whatever information the legislative oversight can access from the intelligence agencies.[95] A country's political system is a fundamental factor which determines the nature of oversight that legislature conducts especially on secretive executive level agencies like the intelligence services.

2.7 Strengths of Parliamentary Oversight

The practice of parliamentary intelligence oversight is ubiquitous and varies from country to country in terms of powers vested in the legislative supervision of intelligence activities. Generally, legislature oversights intelligence services through the use of specialized committees or through special inquiry task forces or commissions.[96] Other general parliamentary committees including those focusing on national security, budgetary and foreign affairs may also have roles that overlap into intelligence overnight.[97]

Parliamentary oversight offers one of the most robust mechanisms to counter or prevent politicization of intelligence activities. Political partisanship within the executive may lead to abuse to intelligence through skewed tasking to the intelligence services hence endangering a country's national interests. Traditionally, stealth operations which may include stealth destruction of terrorists' cells before or during a military operation is a question of executive prerogative but subject to some form of external oversight from parliament.[98] Such kind of special powers may end up being abused by the executive to the overall harm of a country's national interests if unchecked. To guard against abuse of the traditional military activities, some legislatures have enacted laws that require documented executive briefs that explain the necessity for use of traditional military activities, covert action and clandestine activities and that the heads of relevant

[95] Ibid.
[96] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States.", p. 13
[97] Born and Mesevage, "Introducing Intelligence Oversight.", p. 11.
[98] Ibid., p. 472

national security sector oversight committees in the legislature must be informed of such decisions beforehand.[99]

Legislative oversight of intelligence also bridges the representation of the electorate in overseeing national security organs since it is presumed that legislators protect and promote electorate's interests. Compared to either the executive control or judicial oversight of intelligence services, parliamentary oversight is reasonably open and accessible which is important in establishing the public's trust in the work of intelligence services.[100] In the process it helps to establish positive relations between the citizens and the intelligence institutions.

In execution of parliamentary intelligence oversight, issues of propriety find a lot of significance especially in regards to lawful conduct of intelligence services in collection of information. As an assembly representing the people's interests, parliamentary oversight is also the layer of oversight that provides ground for substantive debates on human rights versus unlawful intelligence practices.[101] In recent times particularly in the western world, media leaks about bulk surveillance by intelligence services have become pertinent issues in public discourse regarding human and state security. As a consequence, issues of human rights and civil liberties versus national security have gained traction in parliamentary intelligence oversight. On one hand, this debate downplays real or imagined flaws of bulk surveillance and on the other hand, some commentators hold the view that in the face of nontraditional threats to the state, bulk surveillance is inevitable for proactive identification of threats to national security.

[99] Ibid., pp. 469-468.

[100] Hugh Bochel and Andrew Defty, "Parliamentary Oversight Og Intelligence Agencies: Lessons from Westminister," in *Security in a Small Nation*, ed. Andrew W Neal (Cambridge: Open Bok Publishers, 2017), p. 106.

[101] Born, "Towards Effective Democratic Oversight of Intelligence Services: Lessons Learned from Comparing National Practices.", p. 5.

2.8 Shortcomings of Parliamentary Intelligence Oversight

Parliamentary oversight of intelligence suffers from inherent challenges that range from personal to organizational problems. Personal problems generally emanate from personal convictions and attitudes of persons sitting in the parliamentary oversight committees. For instance, in some countries, members of parliamentary oversight may be unwilling to sit for hearings or legislating intelligence oversight issues for varied reasons. Some legislators do not understand their oversight roles and some would rather play advocacy than probe the real issues behind occasional intelligence scandals or power abuses.[102] In some cases, parliamentary oversight committees become lethargic in committing to detailed inquiries from intelligence agencies perhaps in belief that intelligence services directors and the executives have the best grasp of a country's national security interests.[103] Such political deference may get more pronounced in parliamentary systems where because of party discipline, some members of oversight committees tend to identify with party loyalty rather than standout for being firmly objective in assessing the national intelligence services.[104] Similarly, some lawmakers tend to shy off indulging into sensitive intelligence operations lest they fail and entangle themselves into culpability for intelligence mishaps in cases where such events end up occurring.[105]

Some authors have argued that parliamentary intelligence oversight retraction may happen because of parliamentarians' lack of knowledge on intelligence relative to intelligence practitioners. Bureaucrats by virtue of their positions and experience, develop a better understanding of national security issues than some of the elected representatives hence creating a

[102] Loch K. Johnson, "Accountability and America's Secret Foreign Policy: Keeping a Legislative Eye on the Central Intelligence Agency," *Foreign Policy Analysis* 1, no. 1 (2005): p. 112, https://doi.org/10.1111/j.1743-8594.2005.00005.x.

[103] Ibid., p. 113.

[104] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States.", p. 14.

[105] Johnson, "Accountability and America's Secret Foreign Policy: Keeping a Legislative Eye on the Central Intelligence Agency.", p. 113.

lacuna of knowledge between overseers and the overseen.[106] As a result, insufficiently knowledgeable legislators may not ask the right inquiry questions into intelligence services *modus operandi*, policies or justifications even if intelligence activities are potentially controversial and inimical to national interests.[107]

In order to build capacities and expertise in intelligence oversight, some legislatures have established rules that allow some members of the intelligence oversight committees to serve unlimited terms to gain experience and develop better institutional memory.[108] In some countries, legislatures have set up expert legislative intelligence oversight committees to oversee the intelligence. For instance, in the United Kingdom (UK), parliament has set a set up the Intelligence and Security Committee (ISC), a statutory committee whose membership is drawn from the House of Lords and House of Commons from where the Prime Minister nominate persons with experience on issues of national security to sit in the intelligence oversight committee.[109]

Another root cause of weakness in legislative intelligence oversight is the likelihood of leakage of otherwise classified information from intelligence oversight committees. The dilemma of intelligence accountability emanates from the real danger of classified national security secrets finding its way into mainstream media from political partisanship in parliaments. Leakages may also happen when some members of oversight decide to leak information in false belief that they are checking on the executive's privilege to secrecy.[110] In cases where political biases over contentious issues of national security arise, some members of intelligence committees may opt to

[106] Amy B. Zegart, "The Domestic Politics of Irrational Intelligence Oversight," *Political Science Quarterly* 126, no. 1 (2011): p. 9., https://www.jstor.org/stable/23056912.
[107] Ibid., p. 9.
[108] Ibid., p. 10.
[109] Bochel and Defty, "Parliamentary Oversight Og Intelligence Agencies: Lessons from Westminister.", p. 117.
[110] Stephen Knott, "Executive Power and the Control of American Intelligence," *Intelligence and National Security* 13, no. 2 (1998): p. 174 .

leak classified information for political mileage.[111] Leakages of such sensitive information inevitably damages cooperation between intelligence services and the legislature.[112] Any form of breach of confidentiality which is required to preserve classified information may endanger not only intelligence tradecraft, but also pursuance of national interests. The anxiety of eroding national security at the expense of accountability has made some governments to restrict legislative oversight to only permissible information.[113]

Furthermore, the power of the purse mantra that legislatures proclaim as their ultimate source of control, in reality, may not be effective to hold intelligence services accountable in entirety. Intelligence services expenditures are often deeply embedded into a government's budget than a parliamentary committee on intelligence oversight can reasonably scrutinize.[114] Furthermore, some intelligence operations including highly sensitive covert actions may not be revealed to legislative oversight committees hence putting further limitations on financial scrutiny of how the services spend their money. In some countries, parliamentary intelligence oversight does not have any jurisdiction over intelligence service budgets.[115]

A cooperative rather than confrontational relationship between legislature and the executive arm of the government remains one of the most critical determinants of legislative intelligence oversight success. Very few countries have perfect cooperative environments for oversight of intelligence.[116] The problem is manifested in restriction of legislative oversight access to firsthand testimonies from senior intelligence officials whenever scandals or intelligence

[111] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States.", p. 13.
[112] Ibid.
[113] Greg Hanna, Kevin A. O'Brien, and Andre Rathmell, "Intelligence and Security Legislation for Security Sector Reform" (Santa Monica, 2005), p. 13.
[114] Michael E. DeVine, "Intelligence Community Spending: Trends and Issues," 2019., p. 5.
[115] Born, "Towards Effective Democratic Oversight of Intelligence Services: Lessons Learned from Comparing National Practices.", p. 9.
[116] Johnson, "Accountability and America's Secret Foreign Policy: Keeping a Legislative Eye on the Central Intelligence Agency.", p. 113.

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failures occur. It is also not uncommon that in some countries, inquiries into alleged intelligence abuses run into headwinds of flat lies and machinations of the legislative inquiry committees by the intelligence officials.[117]

It is also significant to note that the exercise of presumed executive privilege to withhold certain information from legislature, judiciary as well as the public also inhibits parliamentary oversight of intelligence services.[118] Depending on the frequency and nature of use of this controversial power by the executive, intelligence review and oversight by other statutory bodies may become ineffective. There are disagreements on the constitutionality and the scope of executive privilege powers but there is consensus that presidential systems are never short of the executives invoking the privilege occasionally. There is a general legal void surrounding the definition and any agreed parameters of the executive privilege.[119] In the USA for instance, normative practice limit the use of executive powers to concerns of protection of national security and confidential discussions at the top level organs within the presidency.[120] For instance, secretive communication surveillance in the immediate post 9/11 was kept undisclosed by President Bush administration until the media leaked it.[121] Despite the noble intent of the privilege powers, some executives may callously and arbitrarily invoke this privilege to certain information even when grounds of doing so do not have substantive impacts on national security.

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[117] Ibid., p. 114.

[118] Mark J. Rozell, "'The Law': Executive Privilege: Definition and Standards of Application," *Presidential Studies Quartely* 29, no. 4 (1999):p. 918.

[119] Ibid., p. 920.

[120] William G Weaver and Robert M. Pallitto, "State Secrets and Executive Power," *Political Science Quarterly* 120, no. 1 (2005): p.88 .

[121] James P. Pfiffner, "'The Law': Executive Privilege: Definition and Standards of Application," *Public Administration Review* 71, no. 71 (2011): S115.

2.9 Judicial Oversight of Intelligence Services

The judiciary plays an important role on issues of national security just like the other two arms of government. The national intelligence services despite operating largely in secrecy, are created and bounded by political systems in countries in which they operate. Primarily, judicial intelligence oversight is aimed at protecting activities of the services, the executive decisions and protection of civil liberties.[122] Protection of civil liberties and security of the state prompts the dilemma of tradeoffs between the legitimacy of some intelligence activities versus security of the state. This is necessary because, sometimes intelligence services often use special powers to collect information. Despite the inherent difficulties in a achieving a balance between human and state security, judicial oversight is necessary. Intelligence services may become subject of myriad litigations especially when individual citizens, wider societies and even the intelligence officials themselves feel aggrieved and file court cases against the services. To protect the legality of certain intelligence services' activities including communication surveillance, some countries have established specialized courts which are mandated to grant certain electronic surveillance warrants to cushion the agencies from lawsuits.[123]

Evolution of intelligence services law is a fairly recent phenomenon.[124] One of the main reasons for the emergence of the intelligence law was to streamline and define the scope of activities of the intelligence organizations.[125] Generally, legal parameters for intelligence agencies cover matters of authorizations and limitation of intelligence operations.[126] The premise of judicial

[122] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States.", p. 15.
[123] Puyvelde, *Outsourcing US Intelligence,* p. 32.
[124] Benjamin R. Civiletti, "Intelligence Gathering and the Law: Conflict or Compatibility?," in *The John F. Sonnett Memorial Lectures at Fordham University School of Law: A Half-Century of Advocacy and Judicial Perspectives*, ed. Dennis J. Kenny and Joel E. Davidson (New York: Fordham University Press, 2018), p. 162.
[125] Ibid.
[126] Ibid.

oversight is dependent on the type of intelligence service laws and constitutional provisions for the establishment of judicial review mechanisms for intelligence agencies.

At the interface of judicial oversight and national security lies the complex issue of classification of intelligence documents against the practice of open jurisprudence of most court processes. Consequently, competing interests in litigating matters that touch on legality of actions taken by the national intelligence services and national security issues present unique challenges to judicial oversight of national intelligence services across the world. Judicial oversight of intelligence requires conscientious trade-offs of national security, classification of secret documents and information and human rights. Judicial review of intelligence may also aim to authorize *ex ante* and/or review *post ante*, the use of intelligence special powers. Some of these special powers include surveillance, intrusive searches on individuals and their properties and any other intelligence led investigations.[127] Legal regimes in many countries do not allow for arbitrary surveillance of persons and organizations and therefore have mandated the judiciary to authorize such acts whenever intelligence agencies apply for operational warrants. Such authorizations by the courts are aimed at mitigating impacts of surveillance scandals or any other mishaps of special operations whose revelations may derail reputation of intelligence agency.

2.9.1 Strengths of Judicial Review

The judiciary provides a system of checks and balances to the executive to avoid intelligence services infringing on the civil liberties of the citizenry as well as protecting reputation of intelligence agencies. In the process, the judiciary helps in guarding the rule of law and promoting accountability and efficiency in the intelligence work by helping intelligence services to take appropriate decisions while using their special powers.[128] Independent judicial review of

[127]Ibid.
[128]Ibid.

executive actions is also beneficial in settling any conflicts that arise from national security claims by intelligence services versus protection of human rights.[129] Some countries have created special courts that handle civil rights and national security issues as part of removing hurdles that mainstream courts may experience in handling intelligence services related litigation. In the US for example, Foreign Intelligence Surveillance Court (FISC) and the Foreign Intelligence Surveillance Act (FISA) have given the DNI and the country's attorney general powers to jointly authorize surveillance by the intelligence agencies.[130] Judicial oversight also helps to set a balance between appropriate uses of intelligence in relation to national security interests and values. Some of the national values which the judiciary might seek to balance the intelligence activities against include civil liberties and individual rights to privacy.[131]

2.9.2 Shortcomings of Judicial Oversight

There are inherent problems in judicial oversight of intelligence service in context of national security interests. Irrespective of political system in which national intelligence service operates, the executive may assert the principle of state privilege and thus denying the courts evidence in ligating matters touching on civil rights and national security issues.[132] Many courts when faced with the dilemma of national security and civil rights choose the most logically viable option of judicial deference to avoid political responsibility which may emerge as a consequence of might national emergencies.[133] This problem gets exacerbated by the fact that the concept of national security is extremely elastic and therefore the executive could claim privilege of secrecy

[129] Ibid., p. 16.

[130] Dephna Renan, "The FISC's Stealth Administrative Law," in *Global Intelligence Oversight: Governing Security in the 21st Century*, ed. Zachary K Goldman and Samuel K Rascoff (New York: Oxford University Press, 2016), p. 123.

[131] Hans Born and Ian Leigh, *Making Intelligence Accountable: Legal Standards and Best Practices for Oversight of Intelligence Agencies* (Oslo: Publishing House of the Parliament of Norway, 2005), pp. 37-42.

[132] Shirin Sinnar, "Procedural Experimentation and National Security in the Courts," *California Law Review* 106, no. 4 (2018), p. 998.

[133] Ibid.

in virtually every issue that is presented for litigation to the judiciary. Some scholars believe that judicial deference to the executive or the military is sensibly viable because courts are presumed to be somewhat novices on matters of national security.[134]

Another important hurdle in judicial oversight is lack of judicial and parliamentary independence from the executive in some countries due to the inherent problems of separation of powers among the three arms of government. In parliamentary systems, the executive and the legislature tend to be more united unlike in the presidential systems.[135] The fusion or discreteness of state powers among the executive, parliament and legislature my cause or exacerbate conflicts of interests within the three arms of government.

Some judges may fall prey to executive influence and thus may not exercise independent oversight of executive actions and decisions including those of intelligence agencies.[136] In addition, courts rely heavily on the legislature and the executive in order to implement some of its rulings. In some countries, the executive or even members of the legislature may use underhand means to influence litigation that touch on the executive and the national intelligence agencies. Countries with special courts like the FISC in the USA, judges working in such courts may also fall prey to executive machinations by virtue of their close working relations with intelligence services and the executive.[137]

Moreover, judicial review is generally a reactive mechanism and may not provide a holistic intelligence oversight. Courts review of intelligence related matters is in many cases limited to propriety but in the intelligence cycle, there are several other activities that might occur outside

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[134] Geoffrey R. Stone, "National Security v. Civil Liberties," *California Law Review* 95, no. 6 (227AD):pp. 2203-2204.

[135] Thomas O. Sargentich, "The Presidential and Parliamentary Models of National Government," *American University International Law Review* 2, no. 8 (1993), p. 580.

[136] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States.", p. 16.

[137] Kent Roach, "Permanent Accountability Gaps and Partial Remedies," in *Law, Privacy and Surveillance in Canada in the Post-Snowden Era*, ed. Michael Geist (Ottawa: University of Ottawa Press, 2015), 163–203., 190.

the purview of the courts.[138] Furthermore, the courts have limited jurisdictions of review of cases to only to those that have been filed before them. The judicial intelligence review *modus operandi* resolves issues that have already happened with a few occasional *ex ante* special power authorizations. Very few countries have tried expanding the scope of issues that judiciary could oversight about intelligence services. For instance, much of the judicial oversight of intelligence is about authorizations of warrants for searchers. Expanding the scope of judicial review of intelligence would be one better way of ensuring that courts become more holistic in fostering accountability of the intelligence services.

2.10 Conclusions

Across the wider spectrum of different political systems globally, many states have established various intelligence oversight mechanisms to check the plenary powers that national security organs once enjoyed across many countries. State intelligence agencies evolved as secretive executive functions and were once obscure from independent scrutiny since they were deemed to act in the 'best' interests of national security. However, cases of strategic failures and evolving national security especially in the aftermath of Cold War and the 9/11 Attack heralded eras of heightened public discourse about national security intelligence and how suitable they are adapting their tradecraft to fluid threats to national security. Generally, some of the well-established intelligence oversight institutions include the executive, parliaments, judiciary, independent expert bodies and national independent audit institutions. Globally, the overarching factors that catapulted matters of intelligence oversight into public debate include cases of misuse of intelligence oversight especially in some of major western powers. Significantly, the end of Cold War marked a significant shift on security intelligence focus from the high stake external

[138] Raphael Bitton, "In Law We Trust: The Israeli Case of Overseeing Intelligence," ed. Zachary K Goldman and Samuel J Rascoff (Oxford: Oxford University Press, 2016), p. 156.

military threats to emerging nontraditional military threats, some of which emanated from non-state actors. As a consequence, public discourse on national security began to straddle manifold national security threats which led to gradual opening up of the once overly secretive state intelligence agencies.

Additionally, Western political ideologies of liberalism began to have a huge influence on some of the SSRs both in some of the former Soviet Union countries, Latin America and some African states at the end of Cold War. Political liberalization in some these countries in the post-Cold War invigorated the efforts towards democratic governance which included transition from overly executive control of national security organs to multiplicity of actors involved in security sector oversight.

Globally, parliamentary and judicial oversight and executive control of state civilian ICs have attained ubiquity. Different countries by virtue of their unique experiences, national security threat environment, the extent of political pluralism and democratic security oversight have established statutory parliamentary committees to oversight the national security sector. In addition, in some countries, parliamentary oversight of intelligence services is only limited to issues of budgetary and personnel approval while the executive retains the bulk of managerial oversight and intelligence policy, strategy and doctrine formulation and implementation. Furthermore, many countries have established NSC whose roles include overseeing ICs and advising the executive.

CHAPTER 3

EVOLUTION OF THE INTELLIGENCE COMMUNITY IN EAC STATES

3.1 Introduction

The previous chapter discussed the general intelligence oversight mechanisms, their strengths and weaknesses and the concept of separation of powers and why it is an important determiner of outcomes of potential conflicts or synergy among the executive, legislature and the judiciary in national security intelligence services oversight.

This chapter examines national security IC establishments within the EAC states, their origins and evolution, roles in national security and the current oversight regimes. The present national security intelligence agencies across EAC are a product of gradual transformation from nucleus colonial police intelligence to modern national security organs whose roles and foundation is based on national constitutions and statutes, national security policies and national defense strategies. Some of the reforms that have produced the current national security intelligence services in the EAC have been inspired by political, economic and social changes spanning back to the 1960s when the wave of decolonization led to Africanization of national bureaucracies including the state security organs. In examining the organization of the current IC in EAC, emphasis is given to historical evolution of the colonial police force intelligence which would later provide the foundation for the current national intelligence bodies in the region. In this context, the chapter emphasizes five significant historical epochs in national security intelligence development and reforms: the advent of colonialism to independence; the collapse of political pluralism; the return of multiparty politics in the 1990s; the post-Cold War national security intelligence within the EAC and the post 9/11 terrorist attack on the US. The five periods portray a significant shift in national intelligence *modus operandi* from repressive colonial self-

preservation tools to national security organs operating on protecting and promoting national security interests of the states under study.

3.2 Emergence of Colonial Era Intelligence

The current national intelligence systems in the EAC arose from the colonial police forces. The colonial police was one of the tools of imperialism with which the British in Uganda and Kenya and the Germans in Tanzania claimed authority over native subjects. The police force with its intelligence agents were deployed in paramilitary roles to subdue any subversive activity by the native communities in East Africa (EA) by the colonial regimes. Consequently, the topic of European colonial policing becomes pertinent in attempting to understand the founding philosophies of colonial intelligence apparatus within the EAC states. By 1829, Britain established the first civil police service called the Metropolitan Police.[1] The Metropolitan Police Service (MPS) partly emerged out of social and economic changes brought by industrialization and urbanization in Britain. MPS was remarkably different from Royal Irish Constabulary (RIC) model of policing which the British established to deal with Irish nationalism in the early nineteenth century.[2] Much of the current policing models in the western world were built on the British MPS model.[3] Depending on security situation in cities and towns within colonies, European powers adopted different models of policing strategies for pragmatic reasons.[4] The RIC police were semi-militarized in its operations and organization unlike the MPS.[5] The RIC performed roles that included counterinsurgency, gathering political intelligence, civil service, military roles and law

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[1] Peter Villiers, *Police and Policing: An Introduction* (Hampshire: Waterside Press, 2009), p. 95.
[2] Ibid.
[3] Robert T. Sigler and David J. King, "Colonial Policing and Control of Movements for Independence," *An International Journal of Research and Policy* 3, no. 1 (2010): p. 14.
[4] Ibid., p. 13.
[5] Ibid., p 15.

enforcement, prosecution and detective work.[6] This foundation of the colonial policing provided the basis of organization of police force and intelligence in East Africa during and after colonization.

The colonial policing in British East Africa began with establishment of the colonial rule in the region. The British East Africa referred to the British areas of influence which included territories of Kenya, Uganda and Tanzania as well as the islands of Zanzibar and Pemba.[7] The Imperial British East African Company (IBEAC) founded in 1888 administered the British East Africa up to 1895.[8] Uganda became a British protectorate in 1894.[9] British administered Tanzania as a mandated territory from 1918 after the Versailles Treaty ripped Germany of the territory.[10] In 1920, the East African protectorate became known as the Kenyan colony under the administration of the British Colonial Office which administered the British sphere of influence in East Africa from 1895.[11]

The British colonial rule introduced administrative structures and systems which included judicial officers, administrators and police officers who were mostly British.[12] In Kenya, IBEAC created rudimentary police force in 1887 at the Mombasa Island to protect the company's business interests which included the railroad construction from Mombasa to Uganda.[13] In the Ugandan protectorate, the IBEAC established railway police around the same period under the leadership

[6] Elizabeth Malcolm, "Investigating the 'Machinery of Murder': Irish Detectives and Agrarian Outrages, 1847-70," *New Hibernia Review* 6, no. 3 (2002): p. 73.

[7] Franklin Parker, "British East Africa," *The Negro History Bulletin* XXV, no. 4 (1962): p. 74.

[8] Ton Dietz, "Kenya: Imperiall British East Africa Company: 1890-1995" (Leiden, 2017)., p. 5.

[9] Foreign Office, *Partition of Africa* (London: H.M. Stationery Office, 1920)., p. 34.

[10] Ibid., p. 78.

[11] Dietz, "Kenya: Imperiall British East Africa Company: 1890-1995.", p. 6.

[12] David Killingray, "The Maintainance of Law and Order in British Colonial Africa," *African Affairs* 85, no. 340 (1986): p. 413.

[13] James B. Wolf, "Asian and African Recruitment in the Kenya Police, 1920-1950," *The International Journal of African Historical Studies* 6, no. 3 (1973): p. 404.

of commissioned British administrators.[14] On the other hand, the Germans introduced initial policing units in Tanganyika in the 1890s.[15] One of the overarching features of the initial colonial policing in the region was the lack of distinction between the roles the police force and the military.[16] Police force in the colonial East Africa could be deployed in military and civil roles hence straddling the RIC and MPS policing models. This was for practical reasons given the limited number of trained, experienced and commissioned colonial officers and the African rank and file in the budding police.

The British began professionalization of police forces in East Africa from early 1900s although many African recruits into the colonial police received little or no training at all. They introduced the nucleus Tanganyika territorial police force in 1918 which constituted of European officers and only a small number of African rank and file.[17] The British East African Protectorate Police was renamed the Kenya Police when the protectorate became a colony in 1920.[18]

The colonial British regimes in East Africa created the police forces primarily to protect the colonial establishments. The role of the police forces which included keeping law and order also extended to countering threats to the colonial regimes, collection of taxes, patrolling borders, controlling movements of the native populations, supervising social welfare activities like sanitation and breaking illegal workers' strikes.[19] The emerging police forces in East Africa also performed intelligence functions right from onset although the colonial administration would not

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[14] Christopher Lawrence Hiscox, *The Dawn Stand-to : The Life of I.V.B. (Peter) Mills, QPM, CPM* (Lulu.com, 2007)., p. 61.

[15] Wilbert B.L. Kapinga, "The Police Force and Human Rights in Tanzania," *Third World Legal Studies* 9, no. 2 (1990): p. 42.

[16] Ibid.

[17] Andrew Burton, "'Brothers by Day': Colonial Policing in Dar Es Salaam under British Rule, 1919-61," *Urban History* 30, no. 1 (2003): p. 67.

[18] Ibid.

[19] Killingray, "The Maintainance of Law and Order in British Colonial Africa.", p. 426.

set up formal intelligence gathering machinery until much later on.[20] Given the intelligence role of the colonial police forces, some authors have described some of these early police forces as being the 'ears and eyes' of the white colonial administration in Africa.[21] Developments of European intelligence function in colonial police forces was not an exclusive experience in the region. East Africa, like the rest of pre-colonial African continent had some form of intelligence practice albeit unstructured.[22]

The first distinct security intelligence structuring within the colonial police force in Kenya emerged in 1926 when the Criminal Investigations Department (CID) was established.[23] The CID had a specialized intelligence component called the Director of Civil Intelligence which was later renamed the Director of Intelligence and Security.[24] Increasing African nationalistic activities by the Kenyan natives prompted reorganization of the intelligence machinery leading to the establishment of an independent intelligence unit within the Kenya Police force called Special Branch (SB) in 1945.[25]

In Uganda, the British established the CID in 1906 in order to deal with serious crime including sedition, keeping criminal records, collection of intelligence and finger printing.[26] In 1923, the Ugandan CID became an independent entity within the police force.[27] Similarly, the Tanzanian CID also partly performed intelligence work, including during the World War II

[20] Wilson Boinett, "The Origins of the Intelligence System of Kenya," in *Changing Intelligence Dynamics in Africa*, ed. Sandy Africa and Johnny Kwadjo (Birmingham: GFN-SSR, 2009), p. 21.
[21] Killingray, "The Maintainance of Law and Order in British Colonial Africa.", p. 425.
[22] Boinett, "The Origins of the Intelligence System of Kenya.", p. 17.
[23] Ibid., p. 23.
[24] Ibid., p. 24.
[25] David A. Percox, "Mau Mau & Nationhood: Arms, Authority & Narration," in *Mau Mau & the Arming of the State*, ed. Atieno Odhiambo and John Lonsdale (Oxford: Ohio University Press, 2003), p. 126.
[26] Georgina Sinclair, "'Hard-Headed, Hard-Bitten, Hard-Hitting and Courageous Men of Innate Detectives...' From Criminal Investigates to Political and Security Policing at End of Empire, 1945-1950," in *Police Detective in History, 1750-1950*, ed. Clive Emsley and Haia Shpayer-Mokov (Burlington: Ashgate, 2006), p. 128.
[27] Ibid.

(WWII). The emerging Tanzanian intelligence unit of the CID was later renamed the Department of Intelligence and Security.[28]

The colonial administration increased the sizes of the SBs and advanced training for SB officers in East Africa after the WWII as African political activities increased.[29] One of the most conspicuous threats to colonial regimes in the aftermath of WWII was the anti-colonial sentiments and movements hence the increase in political policing within the colonial territories from 1945 onwards.[30] Furthermore, the Foreign and Colonial Office in London after 1945 became more interested in communist threat into the British colonial Empire hence necessitating the expansion of the SBs across its colonial possessions.[31]

The growing importance of the SB in East Africa was particularly notable in Kenya where in 1950, the colonial government reorganized the structure and *modus operandi* of the SB to fight the growing Mau Mau insurgency.[32] The colony's SB agency was expanded to provinces, districts and divisional levels to gather intelligence throughout the whole colony.[33] In the 1950s, security intelligence continued to gain prominence in protection of the colonial regime and the colony. The British in Kenya in the 1950s established the 'Internal Security Scheme (Nairobi/Mombasa)' with which it categorized potential sources of threats to the colony which included; interracial conflicts and tensions, religious, political and economic disputes, subversion and tribal conflicts.[34] The

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[28] Michael J Macoun, *Wrong Place, Right Time : Policing the End of Empire* (New York: Radcliffe Press, 1996)., p. 17.
[29] Ibid.
[30] Ibid., p. 426.
[31] Sinclair, "'Hard-Headed, Hard-Bitten, Hard-Hitting and Courageous Men of Innate Detectives...' From Criminal Investigates to Political and Security Policing at End of Empire, 1945-1950.", p. 207.
[32] Boinett, "The Origins of the Intelligence System of Kenya.", p. 25.
[33] Ibid.
[34] Percox, "Mau Mau & Nationhood: Arms, Authority & Narration.", p. 128.

Internal Security Scheme was a weekly intelligence assessment activity which facilitated security planning and response by the colonial regime to threats to the colonial regime within the colony.[35]

The colonial administration established intelligence control hierarchy which ensured that colonial era intelligence apparatus remained under tight control of the white colonial administrators. For instance, the colonial governors were the single most important consumers of colonial era intelligence.[36] Additionally, the colonial regime established an advisory body called the Kenya Intelligence Committee (KIC) during the 1950s. The colonial government also created the position of the Director of Intelligence and Security (DIS) whose major role was to analyze and target potential internal security threats to the colony.[37] KIC played an advisory role to the head of the colonial executive on issues of politics within the colony.[38] KIC worked closely with provincial and district level intelligence committees to file intelligence reports from the provincial administration across the colony.[39]

Intermittent deployment of SB officers for paramilitary duties portrayed the lack of statutory foundation with which the intelligence operations were conducted during the colonial period in East Africa. Unlike in Tanzania and Uganda, emergence of Mau Mau insurgency in the 1950s in Kenya undeniably accelerated colonial security apparatus reforms which informed colonial era professionalization of Kenya's colonial intelligence apparatus. For example, in 1952, Kenya's SB was professionally reorganized and placed under the control of the commissioner of police with the primary intent of gathering intelligence on the Mau Mau movement.[40]

[35] Ibid., 147.
[36] Boinett, "The Origins of the Intelligence System of Kenya.", p. 25.
[37] Percox, "Mau Mau & Nationhood: Arms, Authority & Narration.", pp. 127-128.
[38] Boinett, "The Origins of the Intelligence System of Kenya.", p. 25.
[39] Ibid., p. 26.
[40] Bart Joseph Kibati, *Memoirs of a Kenyan Spymaster* (Nairobi: Nairobi Academic Press, 2016)., p. 44-46.

Unlike the British East Africa, the two kingdoms of Urundi-Ruanda, present day Burundi and Rwanda were only marginally administered by the Germans from 1899 to 1916 from Berlin and through the German colonial regime in Dar-es-Salaam.[41] The Germans had preferred using the pre-existing monarchial governance structures in Burundi and Rwanda.[42] In monarchical traditions of Rwanda, the kings had a council of secret advisors.[43] In 1916, Belgians took over the administration of Rwanda and Burundi as mandated territories and later under trusteeship.[44] Centralization of the monarchical bureaucracy in Rwanda was more prominent than in Burundi. However, colonial era monarchies in Burundi and Rwanda had multilayers of local administration headed by chiefs and sub-chiefs.[45] Apart from the day to day administrative work as defined by the kings, the hierarchy of provincial and district administrators provided the royals with intelligence required for monarchial administration and survival. For a significant part of the colonial administration of the two kingdoms, the Belgians relied on these centralized indigenous monarchial bureaucracies for indirect administration.[46] Unlike the British in East Africa, the trajectory of colonial political policing administration which gave birth to SB in the British East Africa, the Belgians relied more on indigenous administrative structures to police the colonial territories in Rwanda and Burundi.

3.3 Political Context of Post-Colonial Intelligence Community in East Africa

East Africa at independence retained much of the national security intelligence agencies in the frame of the colonial contexts and experiences. For example, the use of force by state

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[41] Tor Sellstrom et al., "The International Response to Conflict and Genocide: Lessons from the Rwandan Experience" (Uppsala, Sweden, n.d.)., p. 26.

[42] Ibid.

[43] Office of the President, "The Unity of Rwandans-before the Colonial Period and under the Colonial Rule-under the First Republic" (Kigali, 1999)., p. 29.

[44] Viret Emmanuel, "Rwanda-A Chronology (1867-119)," SciencesPo, 2010.

[45] Stephen B. Isabirye and Kooros M. Mahmoudi, "Ethnic Studies Review Volume 23 Rwanda, Burundi, and Their 'Ethnic' Conflicts," *Ethnic Studies Review* 23 (n.d.)., pp. 64-65.

[46] Ibid.

intelligence agencies on dissenting populations remained for much of the first few decades of independence in the region. However, for the first time, Kenya, Tanzania and Uganda embraced political pluralism which in itself would later impact the reorganization of state security organs including the post independent intelligence agencies.

Kenya embraced a short-lived multiparty, parliamentary and federal system which lasted between 1963 and 1964.[47] Unlike Kenya, Uganda was a unitary parliamentary multiparty system with a legislative body that had limited powers over the Ugandan traditional kingdoms.[48] The political autonomy of the Buganda kingdom in Uganda intertwined into political conflicts witnessed in the country in the immediate aftermath of independence, a development which significantly impacted post-independence state security organs in Uganda for a longtime.[49] Tanzania like Kenya began as a multiparty polity with an executive presidential system.[50] However, Tanzania became a *de jure* one party state through an amendment of the 1962 Republican Constitution in 1965.[51] Uganda became a complex quasi federal state with no actual federal government.[52] In 1975, Tanzania introduced Act 18 to amend Article 3 of the 1965 Interim Constitution which brought all political activities in the country under the ruling political party.[53] The three countries experienced post-colonial turbulence arising from military mutinies in January 1964. Uganda experienced military rebellion in January 1964 over grievances, key of which was

[47] C. Odhiambo-Mbai, "Public Service Accountability and Governance in Kenya Since Independence," *African Journal of Political Science* 8, no. 1 (2003): p. 120.

[48] G.N. Uzoigwe, "Uganda and Parliamentary Government," *The Journal of Modern Africa Studies*, no. 21 (1983): p. 255.

[49] Ibid., p. 258.

[50] Mohabe Nyirabu, "The Multiparty Reform Process in Tanzania : The Dominance of the Ruling Party," *African Journal of Political Science* 7, no. 2 (2002): p. 100.

[51] Ibid., p. 101.

[52] Phares Mukasa Mutibwa, *Uganda since Independence: A Story of Unfulfilled Hopes* (Trenton: Africa World Press, 1992)., p. 24.

[53] Nyirabu, "The Multiparty Reform Process in Tanzania : The Dominance of the Ruling Party.", p. 101.

poor pay and an urgent need for Africanization of the security sector.[54] In the same month, Tanzanian army mutinied over poor conditions of service, conflicts of interests over the Africanization process and poor payment terms for army officials.[55] Kenyan army mutineers also demanded better terms of payment and Africanization of the army's senior ranks.[56] Fractious history of colonial rule posed challenges to creating cohesive states out of the culturally heterogeneous communities in the three East African in the 1960s.[57] State intelligence agencies thus became instrumental in entrenching and keeping individuals' power and ensuring that security of the post-colonial state and the post independent regimes was guaranteed.

Kenya, Tanzania and Uganda inherited the colonial administration structure from the British colonial system with little changes of the public administrative structures. Independent Kenya had wanted to retain the British support to help it in steadying the formative African administration.[58] Kenya's independence Republican Constitution of 1963 empowered provincial and district administrations to form regional level multiagency security committees which included regional SB offices and military representatives.[59]

The national intelligence services in independent Kenya, Tanzania and Uganda in the 1960s reflected the type of political systems that had developed immediately after independence of the three countries. The states concentrated powers in the hands of their unitary presidential or quasi federal systems and thus the immediate African administrations consolidated state security organs under the executive. Regime security in the immediate aftermath of independence was a vital

[54] Uzoigwe, "Uganda and Parliamentary Government.", p. 260.

[55] William Tordoff, "Politics in Tanzania," *The World Today* 21, no. 8 (1965): pp. 353-353.

[56] Timothy Parsons, "The Lanet Incident, 2-25 January 1964: Unrest and National Amnesia in Kenya," *International Journal of African Historical Studies* 40, no. 1 (2007): p. 51.

[57] Ibid., p. 52.

[58] Daniel Branch, *Kenya: Between Hope and Despair; 1963-2011* (New Haven: Yale University Press, 2011), pp. 36-39.

[59] Boinett, "The Origins of the Intelligence System of Kenya.", pp. 26-27.

national security issue in the three East African states as depicted in national security organs reforms.

In Tanzania, Julius Nyerere's administration completely rebuilt the national army after the 1964 mutiny to deepen its loyalty to the ruling party, the Tanganyika African Union (TANU).[60] Tanzania also shifted from selection for conscription of youth into army from physical fitness to loyalty and political affiliation to the ruling party.[61] Tanzania's military and police were allowed membership into TANU from 1964 and the party introduced party cells, each consisting of at least ten people, across Tanzania for the sake of easy administration and security information collection and dissemination.[62] Politicization of national security agencies by the state of Tanzania then, was aimed at regime survival following the 1964 army mutiny. It also meant that the executive had unchecked prerogative over the national security agencies. Infusing party politics with issues of national security and regime survival meant ideological orientation of the national security agencies towards support of the presidency and TANU's post independent thoughts.

In Kenya, in 1969, operations of the SB were legalized by the post-colonial government and its operations shifted from the Office of the Vice President and Home Affairs Ministry to the Office of the President in 1969 through a Presidential Order.[63] This move was aimed at having the intelligence apparatus brought under direct control of the President. The presidency had also become anxious of possible communist penetration of post-colonial Kenya through the Office of the Vice President and therefore had wanted to specifically task the intelligence to check on communist entry and expansion into the county.[64]

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[60] J.R. Kibwana, "The Millitary Balance in East Africa: A Kenyan View," *Naval War College Review* 30, no. 2 (1977), p. 100.

[61] Tordoff, "Politics in Tanzania.", p. 353.

[62] Henry Bienen, "National Security in Tanganyika after the Mutiny," *Transition*, no. 21 (1965), p. 45-46.

[63] Kibati, *Memoirs of a Kenyan Spymaster*, p. 49-50.

[64] Christopher Andrew, *The Defence of the Realm: The Authorized History of MI5*, 1st ed. (New York: Vintage Books, 2010), pp.472-73.

National Security Intelligence despite remaining largely intertwined with the police force after independence became one of the power bases for the emerging African led administrations across East Africa. While the trajectories of political developments in the three countries shared a few similarities, the most common feature of post-independence security intelligence services in East Africa was their principal focus on political policing, a character which emerged during the colonial period. For instance, in Kenya, the independence government used SB in the 1960s for political policing especially on politicians whose loyalty to the state and the ruling party was doubted by the ruling elites.[65] In Uganda, Milton Obote other than relying on the SB inherited from British colonial regime also established the GSU to police politics and repress any suspected political dissent in Uganda.[66] The post independent SBs in the three East African countries were also used to collect intelligence on many potential internal sources of threats including any subversive activities, economic crimes and any social unrests.[67] The SB apparatus was also used to collect intelligence on other security entities like the army because of mistrust of the military following the mutinies of the 1964 in Tanzania, Kenya and Uganda a few years into independence.

3.4 Military Takeovers and State Security intelligence in Uganda: 1971-1986

A series of military regimes alternating with unstable civilian led governments had far reaching consequences on the trajectory of the post-independent national security intelligence in Uganda. The patterns of structuring national security intelligence in Uganda between the decades of 1971 and 1987 was out of a strong inclination of the executive towards regime survival, political suppression of opposition and countering subversive activities both from within and externally.

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[65] Ibid., p. 27.

[66] A.B.K Kasozi, Nakanyike Musisi, and James Mukooza Sijjengo, *The Social Origins of Violence in Uganda, 1964-1985* (Montreal: McGill-Queen's University Press, 1995)., p. 89.

[67] James Francis Hanlon, "Amin: His Seizure and Rule in Uganda" (University of Massachusetts, 1974)., p. 25.

State intelligence agencies serving partisan political interests of the ruling elites in Uganda became an endemic feature in the country up to the late 1980s.[68] The overriding statecraft under Idi Amin was militarization and politicization of the whole civil service leading to insubordination of the whole state bureaucracy to whims of Amin.[69] The military regime of Amin created five state surveillance agencies that helped his regime gather socio-economic and political intelligence. They included the State Research Bureau (SRB) which replaced Obote's GSU but retained the same *modus operandi* of the latter under Obote's administration. Amin also established Public Safety Unit (PSU) in 1972 which he used to monitor perceived enemies of his regime under the guise of countering violent robberies in the country and expanding Obote's military Police which was used for political assassinations.[70]

After disposing Amin in 1979, the Uganda National Liberation Front (UNLF) that barely lasted a year established the National Security Services (NSS) through decree and it only lasted up to Obote's second return to power through the disputed elections of 1980.[71] During the spell of UNLF in power, it chose Yusuf Lule as the President who was later replaced by Godfrey Binaisa.[72] The two leaders did not affect significant changes in Uganda's post-colonial intelligence other than attempting to populate the army and other state security agencies with their tribesmen.[73] Obote's second administration established through decree, the National Security Agency (NASA), a counter insurgency intelligence unit which Obote's second regime used to respond to the growing

[68] Elijah Dickens Mushemeza, "In the Service of the Regime: Exploring the Relationship between Intelligence and the State in Uganda," *International Journal of Research in Humanities and Social Studies* 3, no. 6 (2016).,p 28.

[69] Ibid., p. 77.

[70] Kasozi, Musisi, and Sijjengo, *The Social Origins of Violence in Uganda, 1964-1985*., pp. 112-113.

[71] Solomon Asiimwe, *Challenges of Intelligence Oversight in Transitional Democracies: A Case of Uganda 1987-2011* (Saarbrucken: LAP LAMBERT Academic Publishing GmbH $ Co. KG, 2011)., p. 23.

[72] Stefan Lindemann, "Exlusionary Elite Bargains and Civil War Onset: The Case of Uganda," Crisis States Working Papers Series (London, 2010), pp. 27-28.

[73] Ibid.

insurgency war that broke in 1980 in Uganda.[74] NASA retained similar repressive mode of operation like all the earlier intelligence agencies that had been created by different regimes to protect interests of different regimes in Uganda.[75] Like Idi Amin, Obote's second regime heightened executive control over the intelligence and national army to suppress political dissent and for survival. Despite all the measures to protect the regime, Obote's second government ended in a military coup which brought Tito Okello to power in July 1986.[76] Okello's regime together with all other rebel groups in Uganda signed a peace deal that would see representation of all the groups in a Military Council.[77] In as much as Okello's regime did not actualize major national security reforms, it laid the foundation for eventual intelligence service and national army reforms targeting all the partisan state security agencies that had earlier been formed in Uganda.[78]

3.5 From Monarchies to Republics: Post-Independent Intelligence in Rwanda and Burundi

There is a dearth of literature on the state post-colonial intelligence apparatus in Burundi and Rwanda in the immediate aftermath of independence. However, the two countries experienced cyclic intra-state and inter-state conflicts arising from the complex socio-economic and political relations between the Hutus and Tutsis who live in the two countries.[79] Rwanda and Burundi achieved their independence from Belgium in 1962.[80] Subsequent control of the state defense and security organs has always oscillated depending on which ethnic group controls the state from the period independence. Post-colonial colonial Burundi has experienced three military dictatorships

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[74] Andrew Agaba, "Intelligence Sector Reform in Uganda: Dynamics, Aspects and Prospects," in *Changing Intelligence Dynamics in Africa*, ed. Sandy Africa and Johnny Kwadjo (Birmingham: GFN-SSR and ASSN, 2009), pp. 48-49.

[75] Ibid., p. 49.

[76] Lindemann, "Exlusionary Elite Bargains and Civil War Onset: The Case of Uganda.", p. 2.

[77] Ibid., p. 31.

[78] "The Uganda Peace Talks Agreement for the Restoration of Peace to the Sovereign State of the Republic of Uganda," 1985, https://peacemaker.un.org/sites/peacemaker.un.org/files/UG_851217_The Uganda Peace Talks Agreement.pdf, p. 11.

[79] Isabirye and Mahmoudi, "Rwanda, Burundi, and Their 'Ethnic' Conflicts.", p. 67.

[80] Ibid.

under Tutsi presidents all of which barely lasted a year.[81] From the early periods of independence, Tutsi-led government in Burundi dominated all sectors of the economy and the national defense and security agencies.[82] The concentration of the post-independent regimes in the hands of the regime in power in Burundi was aimed at self-preservation and survival.[83] In a tensed environment of political competition in Burundi, socio-political and economic reforms became lethargic to a point of almost becoming non-existent as national security organs were primarily being used for political repression.[84] Rwanda also experienced multiple clashes between the Hutus and Tutsis over state control towards independence and many decades into self-rule. The state institutions became tools of socio-economic and political dominance for whichever ethnic group that managed to capture the state power between the decades of late the 1950s and the mid-1990s.[85] Endemic conflicts meant that state security agencies were predominantly used and controlled by the regime in power for survival and suppression of any form of political dissent.

3.5 Aftermath of Cold War and the Intelligence Community in Eastern Africa

Although state intelligence agencies evolved at different paces and under different intra-state political circumstances, the overarching Cold War which coincided with the processes of decolonization in Africa also affected their operational, structural reforms and liaison with the colonial capitals. Decolonizing Africa despite being at the periphery of Cold War bore the brunt of a plethora of external and internal threats which were exacerbated by varying levels of support by the warring superpowers depending on the ideological inclination of the formative African

[81] Janvier D. Nkurunziza and Floribert Ngaruko, “Why Has Burundi Grown so Slowly?,” 2005, p. 6.

[82] Janvier D. Nkurunziza, “The Origin and Persistence of State Fragility in Burundi” (London, n.d.), pp. 6-7.

[83] Ibid., p. 8.

[84] Nkurunziza, “The Origin and Persistence of State Fragility in Burundi.”, p. 9.

[85] Frederick Golooba-Mutebi, “Collapse, War and Reconstruction in Rwanda: An Analytical Narrative on State-Making,” Crisis States Working Papers Series, 2008, pp. 2-3.

leaders of the independent African countries.[86] There are several geopolitical interests which were pertinent to the interests of communists and the west in the Horn of Africa during the Cold War. As a result, western foreign policy orientation towards the Horn of Africa was much informed by the west-east ideological polarity during Cold War.[87] Both the communists and the west aspired for access and control of the Gulf of Aden and the sea route on Red Sea linking the oil-rich Arabian Peninsula.[88] America had also wanted to check the spread of communism in Africa.[89]

Different countries within eastern Africa directly or indirectly experienced Cold War on differing scales. Notably, in January 1964 communists supported a successful revolution in Zanzibar.[90] Other significant events that coincided with Cold War in the region included seizures of power in Sudan and Somalia in 1969 and Ethiopia in 1974 by communist leaning military officers.[91] The east-west Cold War conundrum also enmeshed the 1977-78 Ogaden War in which communists supported Ethiopia and US and its allies including Egypt and Saudi Arabia supported Somalia.[92] Cold War also saw Somalia rapidly expanding its national army and paramilitary courtesy of aid from communist states with which it established diplomatic relations after the 1974 coup.[93] America's military aid to Ethiopia from 1953 to 1974 was estimated at US dollar 200 million.[94] On the other hand, Somalia used some of the Soviet supplied arms to support the *shifta*

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86 Jeffrey James Byrne, "The Cold War in Africa," in *The Routledge Handbook of the Cold War*, ed. Artery M Kalinovsky and Craig Daigle (New York: Routledge, 2014), p. 149.

87 Peter J. Schraeder, "The End of the Cold War and U.S. Foreign Policy toward the Horn of Africa in the Immediate Post-Siyaad and Post-Mengistu Eras," *Northeast African Studies* 1, no. 1 (1994), p. 91.

88 Atomic Heritage Foundation, "Proxy Wars during the Cold War: Africa," 2018, https://www.atomicheritage.org/history/proxy-wars-during-cold-war-africa.

89 Ian Speller, "An African Cuba? Britain and the ZanzibarRevolution, 1964," *Journal of Imperial and Commonwealth History* 35, no. 2 (2007), p. 290.

90 Ethan Sanders, "Conceiving the Tanganyika-Zanzibar Union in the Midst of the Cold War: Internal and International Factors," *African Review* 41, no. 1 (2014), p. 37.

91 John Markakis, "Radical Military Regimes in the Horn of Africa," *Journal of Communist Studies* 1 (1985), p. 14.

92 Schraeder, "The End of the Cold War and U.S. Foreign Policy toward the Horn of Africa in the Immediate Post-Siyaad and Post-Mengistu Eras.", p. 103.

93 Markakis, "Radical Military Regimes in the Horn of Africa.", p. 26.

94 Peter Schwab, "Cold War on the Horn of Africa," *African Affairs* 77, no. 306 (1978), p. 12.

insurgents in the Northern Frontier District (NFD) who had sought to secede from Kenya to join Somalia.[95] The Cold War added to the dynamics of external threats which eastern African countries faced in the first few decades of independence. It also fueled the need to improve the capacity of post independent intelligence in order to be able to cope with the highly volatile Cold War scenarios which were unfolding in the region.

In the midst of the superpower contest, arms race and quest for regional influence among the newly independent eastern Africa states during the Cold War, pressure was inarguably increasing on the emerging national security intelligence to contribute to national security policy making as balance of power among the superpowers and their allies in the region became pertinent. Superiority of the superpowers in establishing listening posts, naval bases and strategic ports for intelligence collections and other security logistics meant that some of their client states across the region established some form of security intelligence liaison immediately after independence. For example, some of the previous senior British colonial administrators retained senior positions in the national security and defense organs in post-independence Kenya. British Richard Catling remained Kenya's Inspector General (IG) of police and was later succeeded by his deputy, Lewis Mitchell in 1965.[96] One of the common enemies for American, British and the Kenyan intelligence during Cold War was any form of external and internal threats directly or indirectly supported by the communists within or from outside the country.[97] For instance, the British Security Service (MI5) at some point collaborated with former officials of the Kenyan colonial SB to launch surveillance on suspected communists' agents in Kenya.[98]

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[95] Daniel Branch, "Freedom and Suffering, 1963-69," in *Kenya* (New Haven: Yale University Press, 2011), p. 31.

[96] Ibid., p. 39.

[97] Ibid., p. 40.

[98] Shaffer, "Following in Footsteps: The Transformation of Kenya's Intelli-Gence Services Since the Colonial Era.", p. 27.

The emerging post-independence intelligence in EAC also engaged in counterintelligence activities as inter-state relations occasionally shifted between friendship and hostility especially between Kenya and Uganda in the 1970s and 1980s and the long-decades of ideological polarity between Kenya and Tanzania.[99] Furthermore, there was also a gradual leftist encroachment into Uganda and Sudan around the same period.[100] The Cold War dynamics and the quest for regional influence and power balance among Kenya, Tanzania and Uganda was not only a focus of the intelligence agencies in respective countries, but also the core external operational environment threats which influenced intelligence tradecraft and post-independence foreign policies issues of the three neighbors. Relative importance of regime survival in the immediate aftermath of independence also meant that the state intelligence agencies remained an exclusive prerogative of the executive because of high stakes of the Cold War.[101]

3.5.1 Post-Cold War: Restructuring of Security Intelligence Services in EAC

The end of Cold War heightened debates within and between different schools of international and national security studies. The end of political-military threats which pervaded Cold War brought the traditionalists and wideners into the debates about national security and what it meant going forward.[102] For instance, after the Cold War, idealists argued for the establishment of common international laws and norms which they believed would subdue intrastate and interstate conflicts.[103] On the other hand, the post-Cold War neo-realists opined that the international system became more unstable following the bi-polar ideological demise which

[99] Godfrey P. Okoth, "Intermittent Tensions in Uganda-Relations: Historical Perpectives," *Transafrican Journal of History* 21 (1992), p. 70.
[100] Ibid., p. 71.
[101] Roger Hilsman, "After the Cold War: The Need for Intelligence," in *National Insecurity*, ed. Craign Eisendrath (Philadelphia: Temple University Press, 2000), p. 9.
[102] Barry Buzan, "Rethinking Security after the Cold War," *Cooperation and Conflict* 32, no. 5 (1997), p. 8.
[103] Robert G. Patman, "Security in a Post-Cold War Context," in *Security in a Post-Cold War World*, ed. Robert G. Patman (London: Macmillan Press, 1999), p. 4.

characterized the Cold War.[104] Consequently, the advent of new threats in the international system necessitated the restructuring of the ICs globally. The demise of Soviet Union meant that subject of intelligence operations and tradecraft had to be reorganized commensurate with the new operational environment both in the former communist states as well as in the west. During Cold War, national security intelligence agencies of the USSR and the USA with their allies prioritized surveillance of the strategic military position and propagation of political ideologies from either side.[105] However, prioritization of military threats waned with the end of the Cold War and instead, a review of national intelligence policies in many countries in relation to changes in both internal and international environments occurred post-Cold War.

The aftermath of the Cold War was marked with a significant increase in Islamic terrorism and transnational crimes which required intelligence agency restructuring to cope with the changes in the operational environment. For instance, from late 1960s to the early 1990s, acts of terrorism which were predominant in the western world and propagated mainly by leftist groups declined with the demise of communism.[106] However, a quantitative shift in the numbers of sub-national terror actors and state sponsored terrorism which tended towards mass killing in the aftermath began gaining significance in international and national security after Cold War.[107]. In the post-Cold war, ethno-religious and nationalists' inspired terrorism and mass casualty attacks increased ominously.[108] Some of the ethno-religious fundamental terrorists groups in the post-Cold War have been keen on targeting the western world and their allies globally going by the New York Trade

[104] Simon Duke, *The New European Security Disoder* (London: Palgrave Macmillan, 1994), p. 17.

[105] Stephen H. Camphell, "Intelligence in the Post-Cold War Period," *Journal of U.S. Intelligence Studies* 19, no. 3 (2013), p. 46.

[106] James M. Lutz and Brenda J. Lutz, *Terrorism: Origins and Evolution* (New York: Palgrave Macmillan, 2005), p. 99.

[107] Peter Chalk, *Non-Military Security and Global Order: The Impact of Extremism, Violence and Chaos on National and International Security* (London: Macmillan Press, 2000), p. 16.

[108] Ibid.

Center attack of 1993, Jewish community center attack in Argentina in 1994, Khobar Towers attack in 1996, Luxor attack in Egypt in 1997 and the twin bombing of American embassies in Kenya and Tanzania in 1998.[109] These significance growths of the terror threat meant that intelligence agencies globally shifted their *modus operandi* to counter the threat of terrorism at global and national levels. It also meant the building of intelligence collaboration among state as the new post-Cold War threats were more dynamic and transnational.

The post-Cold War era also heightened the tempo of globalization as former communist states integrated into the world economy. The developments in international linkages mainly provided impetus for the revolutions in communication and transport technologies and international agreements.[110] The term globalization is a subject of ongoing debate and there is no universal definition of the term. It is a composite term that entails transnational flow of culture, economics and politics through 'technoscape' (global technologies), 'ideoscape' (manifold ideas), 'ethnoscape' (human movement), 'mediaspace' (popular culture and media) and 'financescape' (financial flow and investments).[111] Benefits of globalization notwithstanding, globalization has directly and indirectly contributed to growth of international and national security threats including organized crimes, counterfeits and weapons proliferations.[112]

Globally, there is a general consensus that Post-Cold War international environment is highly fluid, complex and unpredictable and thus intelligence agencies must adapt to changing nature of security threats that have come with it.[113] Transnational nature of the emergent threats

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[109] Chalk, *Non-Military Security and Global Order: The Impact of Extremism, Violence and Chaos on National and International Security,* p. 20.

[110] Hyung-Gu Lynn, "Globalization and the Cold War," in *The Oxford Handbook of the Cold War*, ed. Richard H. Immerman and Petra Goedde (Oxford: Oxford University Press, 2013), p. 2.

[111] Arjun Appadurai, "Disjuncture and Difference in the Global Cultural Economy," *Theory Culture Society* 7 (1990), pp. 297-300.

[112] Zakia Shiraz, "Globalization and Intelligence," in *Palgrave Handbook of Security, Risk and Intelligence*, n.d, p. 267.

[113] Ibid., p. 273.

has also prompted cooperation between Global North and South on matters including training, sharing of intelligence and security operations.[114] Covert actions by intelligence agencies have also increasingly came under public debates with subsequent calls for more oversight post-Cold War.[115] Expansion of intelligence role in the Post-Cold War has also necessitated accountability especially in democracies.[116] Such developments was writ large especially across Europe in the 1990s when most European States obliged national institutions to observe Conventions of Human Rights.[117]

Intelligence agencies in the EAC were not exempt from some of the post-Cold War security sector reforms which were witnessed in some of the Western countries and those in some of the former Soviet Union states. Reforms in national security services in Africa post-Cold were influenced to different extents by the waves of globalization. The end of the Cold War heralded a new wave of democratization and national SSRs which were partly supported by the western states across many countries in the Global South and in some of the former Soviet Union countries.[118] Increased need for intelligence cooperation in the post-Cold War to combat emergent threats also propelled western countries to support national security and defense sector reforms especially in the Global South.[119] In these contexts, many African countries also began to consider security sector reforms some of which included introduction of accountability mechanisms for national security agencies.

National security intelligence sector democratization reforms include establishment of civilian oversight and control standards and procedures, developing capacities and skills to support intelligence oversight mechanisms and intelligence organizational reforms which included

[114] Ibid., p. 275.
[115] Ibid., p. 276.
[116] Ibid., p. 277.
[117] Ibid.
[118] Matei Florina Cristiana, "Intelligence Reform in New Democracies: Factors Supporting or Arresting Progress," *Democratization* 18, no. 3 (2011), p. 617.
[119] Ibid., p. 618.

reorientation and reorganization of the intelligence agencies to meet the threshold of the post-Cold War and elimination of the corrosive legacies.[120] For much of the Cold War period from the early 1960s, many African states including those in the eastern Africa remained one party states with limited accountability. However, the wave of liberalization and democratization which swept across Africa and other regions post-Cold War heralded the era of growing political accountability in much of Sub-Saharan Africa.[121]

Ethno-nationalism which took root during the colonial experience in Africa established the nuclei of Post-Cold War structural conflicts which would later be witnessed in regions like the Great Lakes and the Horn of Africa.[122] Some cycles of conflicts in Burundi, Rwanda and Sudan impacted national security intelligence reforms especially as the states attempted rebuilding post conflict. In Sudan, the post-colonial cultural identity between the predominantly Arab north and African south led to prolonged conflicts as the latter challenged the legitimacy of the independent Sudan.[123] On the other hand, Rwanda attempted a short-lived political liberalization process in the early 1990s with the adoption of a new Constitution in June of 1991 until the genocide began in April 1994.[124] Some of these conflicts either became a stumbling block for the SSRs or accelerated the reforms to make national security sector more accountable.

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Factors that influenced intelligence reforms in Burundi and Rwanda after 1989 included the end of the Cold War and the cycles of intra and inter-state conflicts. From 1994, Rwandan Patriotic Front (RPF) regime reformed the previously existing intelligence units creating NIS

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[120] Timothy Edmunds, "Intelligence Agencies and Democratisation: Continuity and Change in Serbia after Milošević," *Europe-Asia Studies* 60, no. 1 (2008), pp. 37-38.

[121] Mark Robinson, "Aid, Democracy and Political Conditionality in Sub-Saharan Africa," *The European Journal of Development Research* 5, no. 1 (1993), pp. 87-88.

[122] Munene Macharia, "Conflict and Postcolonial Identities in East/the Horn of Africa," in *The Crises of Postcoloniality in Africa*, ed. Kenneth Omeje (Dakar: CODESRIA, 2015), p. 127.

[123] Macharia., p. 128.

[124] Anastase Shyaka, "Understanding the Conflicts in the Great Lakes Region: An Overview," *Journal of African Conflicts and Peace Studies* 1, no. 1 (2008): 5–12., pp. 9-10.

through decree.[125] The post genocide NIS of Rwanda has several directorates commensurate with the country's national security threats.[126] Later in 2013, Rwanda gazetted the establishment of its National Security Intelligence Service (NISS).[127] In Burundi, the Act of parliament established *Service national de renseignement* (SNR) in 2006 with threats from rebels being one of its major focus areas.[128] While South Sudan through the Act of Parliament in 2015 established its maiden National Security Service (NSS).[129]

Fledging South Sudanese NSS was created in 2011 following secession of the country from Khartoum based National Intelligence and Security Service (NISS).[130]The history of NISS is interlinked with social and structural violence which have rocked Sudan post 1956. Advent of the second wave of civil war in Sudan marked the emergence of formative intelligence unit called the combat intelligence which was formed by the Sudan People's Liberation Army (SPLA) in 1983.[131] The combat intelligence unit was later renamed the General Intelligence Service (GIS).[132] The evolution of the roles of the Combat Intelligence Unit depended in part, the expansion of territories under control of the SPLA movement in South Sudan. In the mid-1990s, SPLA established more intelligence apparatuses which included the Public Service Organ (PSO) and the Military Intelligence (MI) which were in charge of civil security matters in the liberated areas and the

[125] Andrew Agaba and David Pulkol, "The General Performance and Systems of Intelligence Bodies in the Great Lakes Region," in *Changing Intelligence Dynamics in Africa*, ed. Sandy Africa and Johnny Kwadjo (Pretoria: GFN-SSR, 2009), p. 138.

[126] Ibid., p. 139.

[127] Republic of Rwanda, "Law N° 73/2013 of 11/9/2013 Determining the Powers, Mission, Organisation and Functioning of the National Intelligence and Security Service," Pub. L. No. n° 73/2013 of 11/9/2013 (2013).

[128] Agaba and Pulkol, "The General Performance and Systems of Intelligence Bodies in the Great Lakes Region.", p. 142.

[129] Republic of South Sudan, "National Security Service Act, 2014," Pub. L. No. Act 10 (2014).

[130] John A. Snowden, "Work in Progress: Security Force Development in South Sudan through February 2012" (Geneva, 2012), p. 6.

[131] Brian Adeba, "Oversight Mechanisms, Regime Security, and Intelligence Service Autonomy in South Sudan," *Intelligence and National Security*, 2020, p. 4, https://doi.org/https://doi.org/10.1080/02684527.2020.1756624.

[132] Ibid.

military affairs respectively.[133] Acrimonious relationship between South and North Sudan after the Comprehensive Peace Agreement of 2005 saw the NISS opening branches in the South Sudan and training recruits from the region between 2006 and 2011.[134] The interim period between 2006 and 2011 also saw the South Sudanese policymakers establishing a counter intelligence entity called the Special Branch staffed by personal drawn from the SPLA's military intelligence.[135]

Reforms in the national intelligence services in Kenya and Tanzania began in earnest in the 1990s and the in late 1980s in Uganda. Tanzania established the Tanzanian Intelligence and Security Service (TISS) in 1996 following the parliamentary enactment of the TISS Act, 1996. The Act established TISS within the presidency under the management of a Director General (DG) who is appointed by the president.[136] The Act established both internal and external intelligence collection functions of TISS. The 1996 Act also designated TISS as the foremost national security advisory body to the presidency and the whole government of Tanzania[137]. In 2010, Tanzanian parliament enacted its National Security Council Act which established the country's National Security Council (NSC) whose secretariat is partly constituted by the TISS. Tanzanian's NSC is the principal national security organ playing an advisory role to the president.[138] These reforms in the Tanzanian national security intelligence underscored the critical role that the intelligence increasingly played in promotion and defense of Tanzanian national security.

Kenya's post independent SB had been renamed several times between 1963 and 1998. It was known as the Directorate of Security Intelligence (DSI) in 1986 up to 1998 when DSI was

[133] Ibid.
[134] Ibid.
[135] Ibid.
[136] United Republic of Tanzania, The Tanzania Intelligence and Security Service Act 1996.
[137] United Republic of Tanzania.
[138] United Republic of Tanzania.

renamed the National Security Intelligence Service (NSIS).[139] Through parliamentary NSIS Act of 1998, police functions of NSIS were eliminated.[140] NSIS became an advisory body to the state on matters of national security.[141] The 1998 Act for the first time also introduced a formal complaint mechanism for members of the public whenever they would feel aggrieved by the actions of the agency. The 1998 Act also established statutory power structures of the NSIS and its oversight and control mechanisms to bring it into compliance with the Kenyan constitution. It also formally founded both internal and external divisions of the NSIS to facilitate intelligence collection internally and externally.

Following the 2010 promulgation of the 2010 Constitution, NSIS became NIS, Kenya's constitutionally recognized principal national security intelligence organ with specialties in internal, external and counterintelligence.[142] For the first time, appointment of NIS Director-General became subject of parliamentary approval.[143] Commensurate with the new non-traditional military threats to national security, NIS was divided into eight divisions.[144] For instance, counterterrorism and technical services division were established to deal with the threats of terrorism and cyber security respectively.

In Uganda, the 1987 Security Organizations Act established two intelligence entities, the Internal Security Organization (ISO) and External Security Organization (ESO) which are the internal and external state intelligence agencies respectively.[145] ISO and ESO like in Kenya and Tanzania are aimed at advising the presidency or any other relevant offices or state officials as

[139] Shaffer, "Following in Footsteps: The Transformation of Kenya's Intelli-Gence Services Since the Colonial Era.", p. 30-32.
[140] Republic of Kenya, The National security intelligence service Act, 1998.
[141] Shaffer, "Following in Footsteps: The Transformation of Kenya's Intelli-Gence Services Since the Colonial Era.", p. 33.
[142] Ibid.
[143] Ibid.
[144] Ibid.
[145] Agaba, "Intelligence Sector Reform in Uganda: Dynamics, Aspects and Prospects.", p. 51.

directed by the president on matters of national security of the country. ISO and ESO are headed by DGs who are appointed by the president.[146] The appointment of ISO and ESO employees is also done by the presidency on advice of the DG of the respective agencies[147]. The Act also created a quasi-joint intelligence council which the President chairs.[148] Among the roles of the council include overseeing the creation or recommendation of rules and regulations for officers working in the two security intelligence agencies.[149]

The end of the Cold War saw nascent intelligence sector reforms in the EAC part of which was the introduction of parliamentary legislation to streamline the works of national security intelligence sectors to serve national security interests, enhance their capacities, training and streamlining their operations commensurate with emerging post-Cold War threats. The legislative processes for the national security sector within the region was the most significant attempt by the EAC states to inculcate the culture of intelligence accountability. Many decades of the SSRs in the EAC states have had different effects in terms of laws, national policies and practices of intelligence oversight.

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Transnational terrorism made inroads into East Africa and the Horn of Africa regions from the early 1990s when Al-Qaeda made forays into Sudan. The wave of terror activities between the period and the late 1990s was unclear until the twin bombing of the American embassies in Kenya and Tanzania in 1998.[150] In 2002, Somalia based Al-Shabaab emerged and orchestrated terrorism in and outside Somalia.[151] In addition, the 9/11 Attack on the US by Al-Qaeda thrust into the limelight, the role of intelligence and its preparedness to protect national security in the face of

[146] Uganda Legal Information Institute [ULII], Security Organisations Act 1987.
[147] Ibid.
[148] Ibid.
[149] Ibid.
[150] Matt Bryden and Premdeep Bahra, "East Africa's Terrorist Triple Helix: The Dusit Hotel Attack and the Historical Evolution of the Jihadi Threat," *CTC Sentinel* 12, no. 6 (2019), pp. 1-2.
[151] Ibid., p. 4.

global terrorism. Several countries in East Africa introduced laws which would directly or indirectly contribute to intelligence oversight in the fight against terrorism post 9/11 attack on the US. Enactment of anti-terror national counterterrorism legislation was based on several United Nations Security Council (UNSC) resolutions including resolution 1373 which required member states of the UN to institute national counterterrorism laws and measures.[152] For instance, Tanzania established the Prevention of Terrorism Act in 2002 which became the basis of the country's legal counterterrorism mechanisms.[153] Uganda's Anti-Terrorism Act in 2002 and amended in 2017 defined terror related offenses, state surveillance of terror suspects and penalties tied to them upon conviction.[154]. Kenya has also established several national laws including anti-money laundering and terror financing laws and terrorism prevention laws combat terror. The national counterterrorism laws in EAC straddle a number of issues including surveillance, terror offenses, penalties and trial modalities.

Historical setting of the intelligence meant that they only served the colonial regimes across the whole of East Africa until when the countries attained their independence. The colonial security entities transitioned into independence with a gradual Africanization of their rank and file. Regime security of the newly independent African states was a foremost security agencies' focus. However, with regional and global affairs gaining gradual prominence, state intelligence agencies became central to national decision making and interaction within and outside the EAC states. The necessity to institute oversight of intelligence agencies in the EAC arose from the need to have

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[152] Jolyon Ford, "African Counter-Terrorism Legal Frameworks a Decade after 2001" ((Pretoria, 2011), p. 11.

[153] Lillian Dang, "Violent Extremism and Community Policing in Tanzania" (Washington, D.C., 2019), p. 5.

[154] Republic of Uganda, "Anti-Terrorism Act, 2002" (2002).

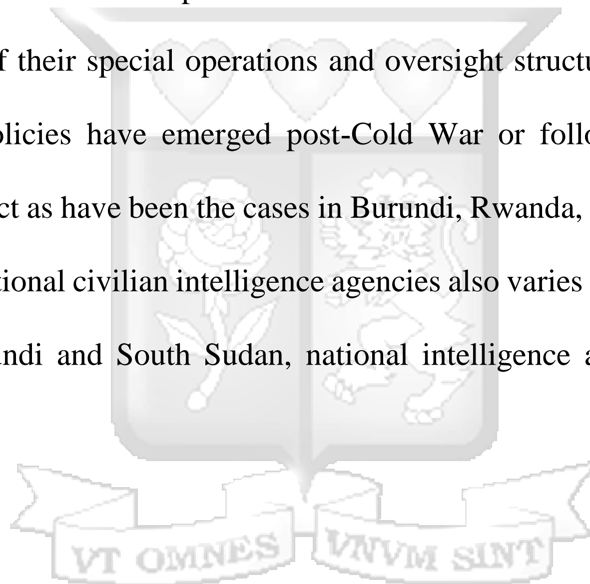
effective national security intelligence services commensurate with evolving national security threats both internally and externally.

3.6 Conclusions

This chapter examines the multiplicity of factors that have determined the SSRs from the 1960s in East Africa. The colonial regimes in East Africa through various ordinances established nucleus police force out of which colonial intelligence which provided the foundation for modern national intelligence services emerged. The post-colonial regimes across East Africa in the 1960s inherited the colonial security enterprise wholesomely or with minor reforms which mainly focused on Africanization of the inherited colonial administration. Quick transformation of the post independent multiparty politics into one-party states in the 1960s in East Africa eroded opportunities for Kenya, Tanzania and Uganda to establish effective checks and balances for the immediate post independent national security sectors. Some of the intelligence reforms that were undertaken were primarily aimed at regime security for the budding post-colonial administrations. However, political reforms from the 1980s within the region catapulted SSRs into prominence in the EAC in the in the 1990s and 2000s. Kenya, Tanzania and Uganda reformed their intelligence through parliamentary acts to enhance their capacities in advising the state on national security interests and threats and improve their accountability. Most the parliamentary acts defined the constitutional roles of intelligence agencies in national security. For the first time, the acts also defined the legal parameters within which the reformed national intelligence services operated. The legal reforms that changed the nature and structure of intelligence agencies of the countries in this study in the 1990s also heralded an era of intelligence accountability which represented a break from the politicized intelligence agencies of 1960s through to the late 1980s.

All the EAC states except South Sudan have established civilian ICs under their constitutions and legal systems. South Sudan NSS is militarized but it is constitutionally

subordinated to a minister who should be a civilian. The evolution towards intelligence oversight within the EAC states has been influenced by many factors including colonialism and decolonization, Cold War and its aftermath and the global wave of intelligence oversight reforms post-Cold War. Most of the EAC countries have formed their civilian IC as single entities with several divisions or directorates which have been created commensurate with national security interests and threats. Unlike other EAC states, Uganda has constitutionally established two principal civilian IC systems focusing on external and internal environments. EAC countries have also established national IC laws and policies which define the mandates of their intelligence agencies, authorization of their special operations and oversight structures. Most of the national intelligence laws and policies have emerged post-Cold War or following implementation of national SSRs post conflict as have been the cases in Burundi, Rwanda, Uganda and South Sudan. Operational model for national civilian intelligence agencies also varies across the region. In some countries including Burundi and South Sudan, national intelligence agencies still have police powers.



CHAPTER FOUR

POST-INDEPENDENCE INTELLIGENCE OVERSIGHT MECHANISMS IN THE EAC COUNTRIES

4.1 Introduction

The previous chapter revealed that formative intelligence units which emerged during the colonial era police force in the EAC founded the post-colonial state intelligence agencies. The post independent national intelligence agencies in EAC have evolved corresponding to national and international developments including the advent of colonialism to independence; the collapse of political pluralism; the return of multiparty politics in the 1990s; during and after the Cold War and the post 9/11 Attack. These periods significantly influenced the emergence and development of intelligence oversight mechanisms in the region. This chapter presents the analysis of the general national security intelligence oversight mechanisms and attendant issues, organization of the IC within the EAC and a comparison of intelligence oversight mechanisms in the region concomitant with the study objectives and assumptions. To these ends, examination of the oversight mechanisms is done with emphasis on the existing statutory institutions and their intelligence oversight functions and practices in the EAC and the emerging epistemologies of the national security intelligence oversight practices globally. The analysis is done in reference to the existing legal and national policy frameworks guiding national security intelligence oversight across the EAC states and the primary data collected from the interviews. The chapter also highlights political contexts within the EAC which is inarguably instructive on the way accountability in governance has prospered in the domain of national security in the EAC states.

4.2 Response Rate

The study purposively sampled 15 respondents, 6 of whom were senior and currently serving Kenyan intelligence officers, 1 senior retired Ugandan intelligence officer and 1 senior

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officer from the office of the auditor general of Kenya whose work involve auditing the budgets of the national security organs of Kenya. Other responds were 7 currently serving Kenyan Members of Parliament (MPs), 4 of whom are current members of the parliamentary defence and foreign relations committee while the other 3 members of the budget and appropriations committee.

4.3 Parliamentary Oversight of the Security Sector

Parliamentary oversight of the executive is crucial in offering checks and balances where the executive accounts for national policies and strategies. Some of the overarching objectives of parliamentary oversight of the executive include; protection of civil and national security sector relations, legislating and approving resources to finance government policies and strategies, monitoring and evaluation of government programmes, provision of feedback as well as overseeing whether or not, a government is meeting its domestic and international obligations.[1] Intelligence oversight by the executive raises the issue of power relations between the executive and parliaments because intelligence agencies are often domiciled within the executive and primarily perform tasking from the top policymakers within the executive. This implies that the extent of parliamentary scrutiny of a wide range of governance issues and executive functions may vary considerably commensurate with discrete functions of various arms of government. While the word power may substantially have different meanings, in the context of parliamentary oversight, power straddles three fundamental oversight determiners which include; statutory mandates which establish oversight functions and the available resources which include organizational, human capacities and finances.[2] The second most important factor in parliamentary

[1] Hironori Yamamoto, "Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments" (Geneva, 2007), p. 13.

[2] Ibid.

oversight is the nature of independence of parliament from the executive.[3] Lastly, parliamentary oversight is influenced by relational power between parties that constitute a parliament especially in multi-party political systems where different parties are represented in the legislature.[4]

Parliamentary intelligence oversight may tend to be more diffuse depending the aspects of security sector oversight that a parliament chooses to focus more on for pragmatic reasons or depending on legal mandate. Some of the overarching aspects of national security sector oversight include the national security policies, internal administration and personnel, budgets, security operations and acquisition of equipment and weapons systems.[5] However, a parliament may choose to oversight general or specific aspects of the security sector depending on what it finds practical in its operational context.[6] In every country, evolution of intelligence oversight is entirely dependent on a country's history, cultural factors and socio-economic determinants which may solely or interdependently affect how security sector is scrutinized by different oversight bodies.[7]

Security sector oversight by parliaments may be domiciled in parliamentary committees but this is not exclusive as parliaments may also use other tools and mechanisms of oversight depending on the national policy or the type of government agency or department under scrutiny. Parliamentary committees may take different forms including permanent, specialized, ad-hoc, committees of the whole or joint in cases of bi-cameral parliaments.[8] In some countries, legislatively established parliamentary statutory committees which operate within the fringes of

[3] Ibid.
[4] Ibid.

[5] Hans Born, "Learning from Best Practices of Parliamentary Oversight of the Security Sector," in *Overight and Guidance: The Relevance of Parliamentary Oversight for the Security Sector and Its Reform: A Collection of Articles on Foundational Apsects of Parliamentary Oversight of the Security Sector*, eds. Hans Born, Philipp H. Fluri, and Simon Lunn (Brussels: DCAF, 2003), p. 39.
[6] Ibid., p. 40.
[7] Dick Toornstra and Marc Bentinck, "Parliamentary Oversight of the Security Sector" (Brussels, 2013)., p. 23.
[8] Yamamoto, "Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments.", p. 15.

secrecy may also have some intelligence oversight functions as is the case in the United Kingdom (UK).[9] Both general parliamentary committees and specialized committees may provide varying degrees of intelligence oversight in various jurisdictions[10]. Committees charged with broad mandates like those responsible for foreign affairs and defense are usually classified as general committees and they also have some overlapping roles on intelligence oversight.[11] Defense and foreign affairs parliamentary committees are among some of the parliamentary committees whose roles straddles across various security sector oversight.[12] Specialized committees on the hand, focus on specific and narrow policy areas or discrete government departments. The powers and functions of various parliamentary committees are established through the constitutions or parliamentary acts.[13] The committee system in parliaments do not only facilitate the development of expertise in oversight role, but also allows for a detailed scrutiny of various sectors of the government including the often complex national security sector.[14]

The committee systems in oversight of national security issues has been one of the strategies that many parliaments have adopted to develop expertise and establish holistic understanding of issues of national security and thus improve parliamentary oversight of national security agencies.[15] However, it is imperative to note that the national security sector is often a complex bureaucracy characterized by the requirement for secrecy and high level security clearance especially for sensitive national security plans and operations. As a consequence,

[9] Stuart Farson, "Establishing Effective Intelligence Oversight Systems," in *Overseeing Intelligence Services: A Toolkit*, ed. Hans Born and Aisan Willis (Geneva: DCAF, Geneva, 2012), p. 30.

[10] Hans Born and Gabriel Geisler Mesevage, "Introducing Intelligence Oversight," in *Overseeing Intelligence Services: A Toolkit*, ed. Hans Born and Aidan Wills (Geneva: DCAF, Geneva, 2012), p. 11.

[11]Ibid.

[12] Toornstra and Bentinck, "Parliamentary Oversight of the Security Sector.", p. 28.

[13] Yamamoto, "Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments.", p. 15.

[14] Born, "Learning from Best Practices of Parliamentary Oversight of the Security Sector.", p. 53.

[15] Born., p. 43.

parliaments while providing accountability of the national security organs may in turn become an impediment to operational effectiveness for the secretive national security agencies.

Parliaments utilize different tools to oversight national security sectors which may include; legislation, budgetary control and direct oversight.[16] However, it is fundamentally important to note that reasonable scope of deployment of various security sector oversight tools by parliament could be limited depending on the political system. The legislative function of parliament cannot be delinked from oversight roles because as parliaments engage in statutory legislation, legislative assemblies or parliamentary committees of inquiries my reveal flaws on draft legislation or existing laws which are already being implemented.[17] Through reviews of fidelity of the government on implementing various policies including those touching on the national security sector, a parliament may change a law on the bases of existing or anticipated inefficiencies which the oversight process reveals.[18]

Parliaments are part of the formal institutions which are involved in oversight of budgets and expenditures of the national security sector and the other public entities. Traditionally, parliaments have powers to raise government revenue via taxes, approve and oversee national budgets and expenditure.[19] Parliaments and parliamentary committees are also involved in a wide range of national budgets and expenditure processes. In the security sector, parliaments and relevant committees establish statutory requirements for financial accountability for all national security sector organs, approving and monitoring security sector expenditures.[20] Parliamentary

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[16] Toornstra and Bentinck, "Parliamentary Oversight of the Security Sector.", p. 25.

[17] Inter-Parliamentary Union and United Nations Development Programme, "Parliamentary Oversight: Parliament's Power to Hold Government to Account," 2017, pp. 17-18.

[18] Ibid., p. 30.

[19] Ibid., p. 62.

[20] Nicolas Masson, Lena Andersson, and Mohammed Salah Aldin, *Guidebook: Strengthening Financial Oversight in the Security Sector*, ed. John McAndrew (Geneva: Geneva Center for the Democratic Control of Armed Forces (DCAF), 2012)., p. 21.

plenary may also be involved in discussions and amendments of budgetary proposals by the executive for the national security sector by examining national security threats and the prevailing financial situations.[21]

To inform substantive debates and oversight of the national security sector, many parliaments use multiple parliamentary committees with expertise on issues of national finances, defense and national security.[22] The parliamentary committees focusing on national finances are essential in advising legislative plenary on prudent utilization of public resources in financing national budgets and the pragmatics of the laws and decisions on public expenditures.[23] On the other hand, the parliamentary committees on defense and security advises parliamentarians on issues of national security including laws and decisions which may affect national finances.[24] While many parliaments are involved in review of the executive pre-budget reports at the budget preparations stages, the extent to which parliamentary plenary or special committees may amend the final budget report from the executive depends on the level of constitutional restriction on a parliament to do so.[25] Parliaments and parliamentary committees may also use or rely on independent audit reports by national independent audit offices on the security sector to inform its debates and legislation on the national security sector.[26]

Parliaments are also involved in direct oversight of the national security sector at various levels and under different circumstances. These oversights can happen through parliamentary involvement in crucial decision making including in the appointment of the executive officers of the national security organs, working in collaboration with independent oversight bodies and

[21] Ibid., p. 18.
[22] Ibid., p. 19.
[23] Ibid.
[24] Ibid.
[25] Ibid.
[26] Willem van Eekelen, "The Parliamentary Dimension of Security Sector Reform," *Security and Peace* 23, no. 3 (2005): 126–31., p. 129.

engagement in special hearings and investigative capacities. Some parliaments must approve the appointment of the executives who have been nominated for top positions in the national defense and security organs.[27] However, the parliamentary prerogative of vetting and approving executive appointees in the security sector is not ubiquitous in all parliaments because of the real threat of parliaments politicizing such appointments.[28] On the account of oversight of administration of the national security sector, parliaments or relevant parliamentary committee may consider annual reports of the national security agencies.[29] Like other organs of the state, national intelligence services are supposed to file annual reports to parliaments on their budgetary utilization and general information on threats to national security and any other information relevant to parliamentar for accountability purposes.[30]

Parliamentary oversight of the national security is not without weaknesses, some of which are overarching while others are dependent on national contexts. Political systems with stringent party discipline where the executive take preeminence on issues of intelligence oversight may lead to oversight activities becoming constrained derailing any substantive parliamentary oversight.[31] Sometimes, political partisanship may become pronounced in political parties that dominate parliament and control the executive thus affecting oversight by parliament.[32]

Parliaments may also encounter the dilemma of balance of confidentiality of information from intelligence services and the need for openness in national security sector governance and oversight. There are no universal hard and fast rules on how to strike the balance between secrecy

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[27] Toornstra and Bentinck, “Parliamentary Oversight of the Security Sector.”, p. 30.
[28] Ibid.
[29] Eekelen, “The Parliamentary Dimension of Security Sector Reform.”, p. 129.
[30] Laurie Nathan, “Ntelligence Transparency, Secrecy, and Oversight in a Democracy,” in *Overseeing Intelligence Services: A Toolkit*, ed. Hans Born and Aidan Willis (Geneva: DCAF, 2012), p. 57.
[31] Toornstra and Bentinck, “Parliamentary Oversight of the Security Sector.”, p. 60.
[32] Hans Born, Philipp Fluri, and Simon Lunn, *Oversight and Guidance: The Relevance of Parliamentary Oversight for the Security Sector* (Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2010), p. 41.

and openness in national security organs oversight by parliaments.[33] Different countries may adopt unique approaches on how to balance between what national security information to share publicly with oversight bodies and those that may be restricted to persons that qualify to have such information.[34]

In a survey of report of more than 120 parliaments globally, parliamentarians revealed manifold and interlinked challenges to oversight of the executive which included; political environment, oversight resources, and parliamentary power to oversight the executive and the political will.[35] Political environments which are transition from one party politics to political pluralism may experience lingering or intermittent tendency where parliaments may be used by the executive as a rubber-stamping tool.[36] In such contexts, parliaments may not enjoy sufficient independence to substantively oversight the secretive intelligence services. Party politics may also dictate the substance of parliamentary oversight debates whereby as a way of party conformity, political parties which control parliament and the executive may not be keen to stringently oversight the government of the day for fear of reprisal by the executive.[37] Existing political environment in which a parliament operates at any given time is either a consequence of circumstantial or structural factors. Structural factors unlike circumstantial may not change significantly overtime.[38] Structural factors may include the extent of democratic practices, media freedom and the nature of political stability.[39] The survey report also indicated that inadequate resources to parliaments and its oversight committees is one of the widely spread parliamentary

[33] Toornstra and Bentinck, "Parliamentary Oversight of the Security Sector.", p. 31.
[34] Ibid.
[35] Inter-Parliamentary Union and United Nations Development Programme, "Parliamentary Oversight: Parliament's Power to Hold Government to Account.", p. 25.
[36]Ibid.
[37] Ibid., p. 26.
[38] Vanesa Weyrauch, Leandro Echt, and Shahenda Suliman, "Knowledge into Policy: Going beyond 'Contwxt Matters'" (Oxford, 2016), p. 26.
[39] Ibid.

oversight challenges globally and the problem is even more acute within the African continent.[40] Lastly, members of parliament could have statutory powers to oversight the executive, but this may not happen because there are no straight jacket approaches to parliamentary oversight roles.[41] Parliamentarians' incentive, political will, resources and skills affect a parliament's competency to substantively play the oversight role.[42] Some of these general weaknesses of parliamentary oversight of intelligence implies that statutory requirement for intelligence oversight is not solely sufficient to inculcate the practice in many countries. Laws may exists which define parameters of oversight, but in practice, the oversight taking place may be far from being substantive.

4.4 Executive Control of National Security Sector

The executive is centrally placed at the control of the national security sector. The executive branch include the president, premier or a minister in charge of the national security sector, commands of the national defense and the police as well as intelligence chiefs.[43] The extent and nature of the executive control of the national intelligence service vary from one country to the next.[44] The executive sets strategic vision for national security policy as well as national security strategies which in some states are subject to parliamentary approval.[45] The executive may also involve itself in streamlining and coordinating line ministries and chairing the national Security Council (NSC) meetings.[46] The executive by naturally being at the highest level of political authority in any country has the ultimate control prerogative over the national security apparatus. In addition, the executive is also involved in tasking the national security intelligence

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[40] Inter-Parliamentary Union and United Nations Development Programme, "Parliamentary Oversight: Parliament's Power to Hold Government to Account.", p. 26.

[41] Inter-Parliamentary Union and United Nations Development Programme, p. 27.

[42] Ibid.

[43] Toornstra and Bentinck, "Parliamentary Oversight of the Security Sector.", p. 14.

[44] Born and Mesevage, "Introducing Intelligence Oversight.", p. 10.

[45] Eden Cole, Thomas Shanahan, and Phlipp Fluri, "Enhancing Security Sector Governance in the Pacific Region: A Strategic Framework" (Suva, 2010), p. 42.

[46] Ibid., p. 44.

and proving strategic direction.[47] The executive may also give directives on policy frameworks to the national intelligence services. It also has budgetary control powers, investigatory authority over abuses or scandals and appointing personnel to executive positions in national security organs.[48] In some countries, the executive may occasionally form senior-level taskforces or use the NSC to coordinate tasking of different national security actors.[49]

The executive control of intelligence has potential pitfalls in the form of the executive politicizing the intelligence and other state security organs. The operational environment for the executive is often complicated, ambiguous and highly sensitive.[50] As a result, there is always a natural tendency of the executive to incline more towards intelligence which support its preexisting assumptions and beliefs leading to politicization of the intelligence processes.[51] The subject of intelligence politicization is not the matter of this study. However, the character of proximity of the national security intelligence agencies to policymakers plays a role in oversight outcomes. A too close relationship might compromise intelligence analysis process especially when policymakers attempt to exert either implicit or explicit pressures on the intelligence analysis to bend it towards certain outcomes.[52] On the contrary, when the intelligence community is too detached from the intelligence, the intelligence produced might become irrelevant to the requirements of the intelligence consumers.[53] The debate about proximity between national

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[47] Marina Caparini, "Controlling and Overseeing Intelligence Services in Democratic States," in *Democratic Control of Intelliegnce Services: Containing Rogue Elephants*, ed. Hans Born and Marina Caparini (Burlington: Ashgate, 2007), p. 11.

[48] Organisation for Economic Co-operation and Development (OECD), *The OECD DAC Handbook on Security System Reform (SSR)* (Paris: OECD, 2007), p. 113.

[49] Ibid., p. 114.

[50] Wyland F. Leadbetter and Stephen J. Bury, "Prelude to Desert Storm: The Politicization of Intelligence," *International Journal of Intelligence and CounterIntelligence* 6, no. 1 (2008), p 43.

[51] Ibid.

[52] Philip H. J. Davies, "All in Good Faith? Proximity, Politicization, and Malaysia's External Intelligence Organization," *International Journal of Intelligence and CounterIntelligence* 32, no. 4 (2019), p. 693.

[53] Ibid.

security intelligence and the policymakers notwithstanding, the reasonableness of the distance between the national security intelligence and the policymakers is contingent upon national security organs' accountability cultures.

4.5 Mechanisms of Judicial Intelligence Oversight

Globally, the practice of courts examining the conduct of government agencies and officials in instances where such agencies or persons working in such organizations become subject of litigation are not uncommon. This is because national security organs are founded on law. Judicial oversight of the national security sector is inevitable in enforcing compliance with the law.[54] The role of courts in security sector oversight is diverse and they include upholding the rule of the law, resolving issues of human rights that interlink with issues of national security, supervision of the use of special powers by the security agencies, evaluation of national security policies and considering their constitutionality.[55] The extent of involvement of the judiciary in issues of intelligence oversight are quite divergent across different countries with some countries having little or no involvement of the judiciary in intelligence oversight.[56]

There are several ways in which the judiciary has been involved in intelligence oversight in different countries. First, authorization of warrants for use of special powers of the intelligence services. Notably, surveillance being one of the most common national intelligence service *modus operandi* for collection of information is subject to judicial review or oversight in many jurisdictions[57] Secondly, judges who specialize on issues of national security may oversee certain

[54] Madeline L. England, "Security Sector Governance and Oversight: A Note on Current Practice" (Washington, D.C., 2009), p. 24.

[55] Organisation for Economic Co-operation and Development (OECD), *The OECD DAC Handbook on Security System Reform (SSR)*, p. 113.

[56] Cat Barker et al., "Oversight of Intelligence Agencies: A Comparison of the 'Five Eyes' Nations" (Canberra, 2017), p. 53.

[57] Born and Mesevage, "Introducing Intelligence Oversight.", p. 23.

intelligence agency assignments or investigate processes of security intelligence agencies.[58] Lastly, a judge may chair an *ad hoc* commission of inquiry into scandals touching on national intelligence services or sit on statutory intelligence oversight commissions or boards.[59] Furthermore, some countries have special courts or tribunals that review national intelligence services while others have created offices of commissioners which review requests for use of special powers by the national intelligence services.[60]

Judicial intelligence oversight faces myriad challenges at different levels. For example, macro factors including political systems and political accountability cultures could either impair or facilitate judicial review of the intelligence services. Inarguably, courts operating in political systems which constrict independence of the judiciary may not meaningfully oversight the executive. For instance, post-conflict scenarios could inhibit the functioning of the judicial oversight.[61] Additionally, because constitutions and laws governing national security sectors tend to give the executive preeminence on national security, many court my incline more to deference of cases touching national security to the executive.[62]

4.6 Organization of the Intelligence Community in the EAC States

The IC is well established as part of the national security sector in the EAC states. Important actors in national security sector oversight in EAC include the executive, legislature, ministries of internal and foreign affairs, defense, national financial audit bodies and civil societies as per the laws establishing such bodies in the region.

[58] Ibid., p. 13.
[59] Ibid.
[60] Barker et al., "Oversight of Intelligence Agencies: A Comparison of the 'Five Eyes' Nations."
[61] England, "Security Sector Governance and Oversight: A Note on Current Practice.", p. 26.
[62] Born and Mesevage, "Introducing Intelligence Oversight.", p. 13.

The national IC are independent and executive level agencies that provide intelligence to the executive to inform national security policy decision-making.[63] The size, structure, organization and oversight of the IC is entirely dependent on the contexts the countries operate in. While EAC state security sector trace its origin to the colonial era, different waves of security sector reforms (SSRs) have led to restructuring of the sector in ways commensurate with state and human security needs. While the aims and objectives of the SSRs may be specific to different countries, there are certain commonalities which straddle the SSRs in several EAC states. Some of the SSRs aims and objectives within the region have included increasing efficiency of national security organs to the state and the citizens, facilitation of observance of the rule of law and accountability of the national security sector to the state and citizens.[64] In addition, some states have reformed their security sector as part of right-sizing, post conflict reconstruction, enhancing oversight and to make security sector more legitimate.[65]

EAC states have reformed or are in the process of reforming their national security sectors. Kenya and Tanzania began reforming their national IC in the 1990s. Through an Act of parliament, Tanzania established TISS in 1996.[66] In Kenya, the 1998 Act established the NSIS.[67] Uganda's parliamentary Act of 1987 established internal and external security services, ISO and ESO.[68] Rwanda's constitution provided for the establishment of the country's National Intelligence and Security Services (NISS) in 2003.[69] Similarly, the constitution of Burundi of 2005 provided for the creation of the country's NIS as part of the Corps of Defense and Security.[70] On the other hand,

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[63] Office of the Director of National Intelligence, "What Is Intelligence," 2020.
[64] Nicole Ball, "Lesson from Burundi's Security Sector Reform Process" (Washington, D.C., 2014), p. 2.
[65] Susanna Bearne et al., "National Security Decision-Making Structures and Security Sector Reform" (Santa Monica, 2005), p. 1.
[66] United Republic of Tanzania, The Tanzania Intelligence and Security Service Act 1996.
[67] Republic of Kenya, The National security intelligence service Act, 1998.
[68] Uganda Legal Information Institute [ULII], Security Organisations Act 1987.
[69] Constitute, Rwanda's Constitution of 2003 with amendments through 2015.
[70] Constitute, The 2005 Burundi Constitution.

the South Sudan constitution of 2011 provided for the creation of the country's National Security Service (NSS) but with two operational organs; the Internal Security Bureau (ISB) and the General Intelligence Bureau (GIB).[71] South Sudan NSS Act 2015 created the NSS specifying its organization and the legal parameters within which to carry out of its mandate.[72] While South Sudan at its independence aspired for a liberal polity, NSS began as a militarized apparatus, operating in a similar manner as its predecessor, the Sudanese National Intelligence and Security Service (NISS).[73]

4.7 Intelligence Oversight Mechanisms within the EAC States

Constitutional foundation of the IC within the EAC states significantly introduced the era of statutory oversight of intelligence within the region despite the disparities in powers and nature of oversight practices of different national intelligence oversight entities within the region. Table 1 below shows the distribution of various national intelligence oversight regimes across the EAC countries as established by respective constitutions and/or parliamentary acts establishing corresponding ICs.

Table 1. Intelligence oversight regime in the EAC

Intelligence Oversight Regimes Within the EAC States

Country	Executive Control	Internal Control	Parliamentary Oversight	Judicial Oversight/Review
Burundi	✓	✓	✓	✓
Kenya	✓	✓	✓	✓
Rwanda	✓	✓	✓	✓
South Sudan	✓	✓	✓	✓
Tanzania	✓	✓	✓	✓
Uganda	✓	✓	✓	✓

[71] Constitute, South Sudan's Constitution of 2011.

[72] Republic of South Sudan, National Security Service Act, 2014.

[73] Brian Adeba, "Oversight Mechanisms, Regime Security, and Intelligence Service Autonomy in South Sudan," *Intelligence and National Security*, 2020, p. 3. https://doi.org/https://doi.org/10.1080/02684527.2020.1756624.

The findings from the analysis of the constitutional provisions and the other national laws which have established the legal foundation of national intelligence services in the six respective countries EAC countries show that various national intelligence service oversight mechanisms are uniformly distributed and are either explicitly or implicitly stated in their constitutions or parliamentary acts which have established the intelligence services. However, the extent to which various intelligence oversight mechanisms is being practiced across the EAC countries vary from one country to another. A Kenyan parliamentary respondent in this study stated that '*not all countries in the region are implementing their legal provisions for intelligence oversight despite having such legal provisions in their national laws'*.[74] There are various reasons for the varied nature of intelligence oversight in the region including political instability in some EAC countries and internal politics.

Analysis of oversight regimes in the EAC states indicates that there is a gradual trend whereby the EAC countries are opening up their national security intelligence services for formal and informal scrutiny by various players including parliament, the courts, the civil society and the media. These trends correspond with global developments where multilayered national security intelligence oversight have become a regimented characteristic of security sector accountability in many countries globally. However, it is imperative to note that the national security intelligence being one of the secretive executive level agencies, the rate of incremental changes and adoption of the national security intelligence oversight laws vary across the six EAC countries. Some countries began SSRs towards intelligence oversight in the late 1980s and mid 1990s while others only began such reforms in the 2000s.

[74] Interview with a Kenyan Member of Parliament (MP), Nairobi, June 24, 2020.

On the basis of national legal regimes spelling out multiple layers of intelligence oversight, EAC countries have established various legal provisions for various layers of national security intelligence oversight. These laws include parliamentary acts which established reformed national security intelligence across different historical epochs during the evolution of intelligence agencies in the region.

4.7.1 Executive and Internal Control of the National Intelligence Agencies in EAC States

Executive and internal control of the national intelligence services as a mechanism of oversight is spread across all the six EAC countries. In all the six countries, all the national security organs are subordinated to the civilian authority making the executive the ultimate vertical source of political power over the intelligence services. The executive plays a controlling role over the intelligence services across the six EAC countries in manners that reflect some of the general global trends in executive control of the national security intelligence. As provided in respective constitutions of the six countries, the executive generally oversee solely or consultatively, the formulation of national security and intelligence policies, strategies, plans, coordinate national security functions, tasks and appoints the executives of the national security intelligence agencies. However, there are several peculiarities of the extent to which executive control of intelligence agencies is exercised across the region.

In Rwanda, law N° 73/2013 of 11/9/2013 of the NISS gives the President preeminence on intelligence control.[75] The President has powers of appointing top executives of the NISS through a Presidential Order although the country's constitution also provides for the Senate to approve such executive appointees.[76] In addition, the Presidential Order influences internal organization of

[75] Republic of Rwanda, Law n° 73/2013 of 11/9/2013 determining the powers, mission, organisation and functioning of the national intelligence and security service.

[76] Constitute, Rwanda's Constitution of 2003 with amendments through 2015.

the NISS. Presidential order specifically determines the number of NISS directorates and departments and responsibilities of the topmost management cadre of the organization.[77] The President through a Presidential Order may also limit the extent of external audit of NISS through classification of information held by the agency.[78]

In Tanzania, TISS Act of 1996 gives the President the prerogative of appointing the DG of the intelligence agency but does not explicitly state any requirement for parliamentary approval of the Presidential nominees into the executive positions at the agency.[79] In Uganda, the National Security Organizations Act of 1987 established the two national intelligence agencies the ISO and ESO whose respective DGs are appointed by the president.[80] The 1987 Act also gives the executive control authority relative to other arms of the government.[81] The law further empowers the President to either partake in day to day running of ISO and ESO or through a delegated minister who answers to the President directly.

In Kenya, South Sudan and Burundi, respective parliamentary Acts which establishes national security intelligence services are explicit on parliamentary powers of approving persons nominated by the executive to head the agencies. From majority of Kenyan respondents during the study interviews, Kenya has remained steadfast in subjecting Presidential appointments to the post of DG of the NIS to parliamentary vetting and approval.[82] One Kenyan parliamentarian respondent said that the '*approval process by parliament ensures that candidates that are nominated by the President are vetted for their suitability for such roles'*.[83]

[77] Republic of Rwanda, Law n° 73/2013 of 11/9/2013 determining the powers, mission, organisation and functioning of the national intelligence and security service.
[78] Republic of Rwanda.
[79] United Republic of Tanzania, The Tanzania Intelligence and Security Service Act 1996.
[80] Uganda Legal Information Institute [ULII], Security Organisations Act 1987.
[81] Uganda Legal Information Institute [ULII].
[82] Republic of Kenya, "The National Intelligence Service Act, 2012" (n.d.).
[83] Interview with a Kenyan Member of Parliament (MP), Nairobi, June 25, 2020.

Across the six countries, internal control of the intelligence agencies is a well-established practice but with several similarities and differences depending on the extent of powers that the Constitutions and/or parliamentary acts establishing the intelligence agencies bestow on several layers of the institutions involved in the oversight. The DG of TISS is responsible to the minister under whose docket, the agency falls. Subject to the power of the executive control, the DG has powers of command, controlling, giving direction as well as general superintendence and managerial duties on all matters concerning TISS.[84] The DG also consults with the minister on national intelligence operational policies or any other matter that requires such consultations.[85] On the basis of oversight powers bestowed on the minister in charge of issues of national security in Tanzania, the minister has significant controlling powers on TISS subject to directions and approval from the President. Under such arrangements given the general problems of politicization of intelligence when the executive is too close to the agency, there could be a real danger of politicization if the minister in charge of security agencies becomes more of an influencing factor on overall operational decisions and analysis of the agency especially when parliamentary oversight becomes moribund.

In Kenya, both the NSIS Act 1998 and NIS Act 2012 empower both internal and external independence oversight of the agency. The DG of the NIS oversee overall management and operations of the whole agency and he or she is answerable to the President, the NSC as well as the Cabinet Secretary (CS) in charge.[86] The DG also ensures that agency executes its mandate in compliance with the constitution, parliamentary acts and any other written law of the country specific to the NIS.[87] The DG also represents the organization at the executive level control body

[84] United Republic of Tanzania, The Tanzania Intelligence and Security Service Act 1996.
[85] United Republic of Tanzania.
[86] Republic of Kenya, The National Intelligence Service Act, 2012.
[87] Ibid.

which is known as the National Intelligence Service Council (NISC).[88] Senior level management respondents from the NIS of Kenya agreed that the service regularly meets the NISC body to account for its activities and administration as advised by the body. NISC is the executive level body that advises the agency on issues of national intelligence polices, strategies, administration and expenditures.[89] NISC is composed of CSs who are responsible for issues of foreign affairs and finance, Attorney General of the Republic and the DG of the NIS. The NIS Act 2012 allows the council to co-opt functional committees on the basis expertise and skills it requires at any given moment.[90] A senior Kenya's NIS respondent said '*NISC continues to establish a culture of oversight of the institution at the executive level and that the body regularly meets to discuss a range of critical issues including intelligence policy*'.[91]

In Uganda, the roles of the DGs of ISO and ESO are not explicitly stated in the 1987 Act which established the two agencies.[92] However, the President of the Republic Uganda is empowered by the Act on the advice of NSC to decide on internal regulations of ISO and ESO affecting among other matters, code of conduct for the officers of the two agencies, conditions of service and disciplinary measures.[93] The Ugandan NSC plays a significant role in oversight and control of ISO and ESO at the executive level and advises the President accordingly.[94]

Burundi also uses its NSC which was established by an act of Parliament in 2008 to monitor its defense and national security organs.[95] All the NSC members in Burundi are presidential appointees whose consultative roles with the presidency cut across all matters of national security

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[88] Ibid.
[89] Ibid.
[90] Ibid.
[91] Interview with a senior Kenya NIS officer, Nairobi, June 13, 2020.
[92] Uganda Legal Information Institute [ULII], Security Organisations Act 1987.
[93] Ibid.
[94] Ibid.
[95] Ibid.

and defense policies, strategies as well as law and order during crisis.[96] The council also oversees the coordination and unity among the Burundi national defense and security organs[97]. Burundi's NSC is composed of seventeen members who are appointed by the President who is the chair of the council.[98] Among other members include; two vice-presidents, ministers in charge of National Defense sector, Interior, Justice, Foreign Affairs, Public Security and International Cooperation, two women representatives as well as two bishops.[99]

Internal control of Rwanda's NISS is legally delegated to the Secretary General below whom are the Deputy Secretary General and DGs of the various Directorates of the national intelligence agency.[100] The NISS executive is in charge of day to day management of the affairs, administration and operational matters of the agency. However, the overall supervision role of the agency lies with the Office of the President.[101]

In South Sudan, the NSS is organized as a militarized force under the control of a minister who is responsible to the President.[102] Like the other countries within the EAC, South Sudan has a NSC that oversee and sets the national defense and security policies, plans and strategies as well as coordinating all the national defense and security organs.[103] Membership of the South Sudan NSC include the President who is the Chairperson, Vice President, ministers responsible for defense, foreign affairs, justice, finance, interior and the NSS.[104] Other than the NSC, South Sudan also has a Technical Security Committee (TSC) which is chaired by the minister and is responsible

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[96] North-South Institute, "Security Sector Refom Monitor: Burundi" (Ontario, 2010).
[97] Ibid., p. 3.
[98] Ibid.
[99] Ibid.
[100] Republic of Rwanda, Law n° 73/2013 of 11/9/2013 determining the powers, mission, organisation and functioning of the national intelligence and security service.
[101] Ibid.
[102] Republic of South Sudan, National Security Service Act, 2014.
[103] Ibid.
[104] Ibid.

for coordination of security plans of various security agencies as directed by the NSC, studying security plans developed by various security agencies before submitting to the NSC for approval and preparation and submission of annual national security reports, performance and administration of the key national security organs.[105] The NSS DG oversee operational functions and human resource and financial administrations of their divisions.[106] In addition, they oversee the executions of tasking to their divisions from minister or the NSC.[107]

4.7.2 Parliamentary Oversight of Intelligence in the EAC States

The nature of parliamentary involvement in national security intelligence oversight in EAC states varies depending on the extent of powers bestowed on parliament, culture of accountability, the culture of the intelligence services themselves, expertise of the parliamentary bodies, classification of certain national security issues and motivation of individual parliamentarians to oversight the national security sector. Mark Phythian described intelligence culture as those acquired behaviors of the IC which underlie its operational ideas and responses within its operational environment.[108]

Across all the six countries, requirement for parliamentary approval of budgets and scrutiny of utilization of such budgets by the national security intelligence agencies is common based on broad constitutional provisions in respective countries. However, the extent of parliamentary involvement in intelligence oversight is partly dependent on the national intelligence cultures in the region. A Kenyan member of parliament and a respondent in this study noted that '*Kenya's NIS is gradually shifting away from total obscurity to a culture where the organization is now beginning to embrace accountability as being shown by annual reports by the agency to*

[105] Ibid.
[106] Ibid.
[107] Ibid.
[108] Mark Pythian, "Cultures of National Intelligence," in *Routledge Companion to Intelligence Studies*, ed. Robert Dover, Michael S. Goodman, and Claudia Hillebrand (London: Routledge, 2013), p.34.

institutions like parliament'.[109] Parliaments in the EAC are empowered to form committees or commissions to execute oversight on the executive. The Tanzanian constitution identifies its parliament as the principal organ to oversee, legislate and advise the government in discharge of its responsibilities. However, Tanzanian President also has legislative powers and form part of the country's Parliament.[110] Practically, enactment of legislative proposal in the country is subject to involvement and consent of the President as per Article 62(3) of the constitution of Tanzania. However, parliamentary powers in Tanzania do not provide for the legislative approval of persons appointed by the President to different state security organs, departments or agencies. This effectively means that the presidency may exclusively determine persons that occupy executive positions in key national defense and security organs including TISS at any given moment without legislative approval. TISS Act of 1996 also does not provide for parliamentary involvement in the selection and appointment process of the executives of TISS or even scrutiny of the national intelligence agency.[111]

In South Sudan, the constitution under Article 55(1) empowers the bicameral national legislature to oversee the executive and all the government ministries, departments and agencies (MDAs). It also empowers the national legislative assembly to approve plans, policies and programmes of the national government as well as all the Presidential appointees.[112] The minister in charge of NSS is also required to submit annual NSS report on its performance to the national legislature[113]. In Uganda, the constitution 1995 under Article 79 provides for powers of law making to parliament on matters of development, peace, order and good governance as well as

[109] Interview with Kenyan Member of Parliament, Nairobi, June 24, 2020.
[110] United Republic of Tanzania, The Tanzania Intelligence and Security Service Act 1996.
[111] Ibid.
[112] Constitute, South Sudan's Constitution of 2011.
[113] Republic of South Sudan, National Security Service Act, 2014.

protection of democratic governance.[114] In addition, the Ugandan parliament has powers to oversee the executive and may form parliamentary committees to improve its efficiency.[115] While the Ugandan constitution under Article 218 provides for parliamentary powers to enact laws determining the establishment of intelligence services in the country, it is not explicit on subsequent parliamentary role(s) in oversight of such agencies.

In Rwanda, law N° 73/2013 of 2013 which established and determined the organization, missions and powers of the NISS does not specify any oversight role for the country's bicameral parliament over the national intelligence agency.[116] However, organic law N°06/2006 establishing rules of procedure for the Chamber of Deputies of Rwanda establish oversight roles for the chamber over the executive. It empowers the Chamber of Deputies to form various oversight committees.[117] The chamber's committee on Security and territorial integrity has open-ended oversight functions on matters of organization of intelligence services, immigration and emigration, the military and the police.[118] On the other hand, the country's senate has powers of voting on national defense and security laws.[119]

In Burundi, the bicameral parliament is empowered to oversight general matters of governance and public administration. Article 187 of the country's constitution provides the Senate with powers to approve presidential appointments to executives of the Corps of National Defense and Security.[120] To this end, the senate has powers to approve persons nominated to executive

[114] Republic of Uganda, "The Constitution of the Republic of Uganda" (1995), https://washington.mofa.go.ug/data-smenu-71-The-Constitution-of-Uganda.html.

[115] Inter-Parliamentary Union and United Nations Development Programme, "Parliamentary Oversight: Parliament's Power to Hold Government to Account.", p. 97.

[116] Republic of Rwanda, Law n° 73/2013 of 11/9/2013 determining the powers, mission, organisation and functioning of the national intelligence and security service.

[117] Republic of Rwanda, "Organic Law N°06/2006 of 15/02/2006 Establishing Internal Rules of Procedure of the Chamber of Deputies in the Parliament," Pub. L. No. N°06/2006 OF 15/02/2006 (2006).

[118] Ibid.

[119] Constitute, Rwanda's Constitution of 2003 with amendments through 2015.

[120] Constitute, The 2005 Burundi Constitution.

positions in key organs of the national defense and intelligence. The law also allows Burundi's parliament to form specialized and/or commissions to oversight specific issues on government action.[121] Article 242 of the constitution further empowers parliament to have authority of control over the maintenance of national security and defense.[122] The constitution specifically points out parliamentary commission in charge of overseeing the Corps of National Defense and Security.[123] The country has established the Defence and Security Commission to oversee the key national defense and security organs.[124]

Lastly, Kenya's constitution 2010 provides for parliamentary powers to oversight the national security sector one of which is the NIS. Under Article 239 (6), the constitution 2010 of Kenya provides that parliament has powers to determine the establishment, functions as well as administration of national security organs.[125] Article 132(2) of the constitution further empowers parliament to approve presidential nominees to executive positions of the NIS. Under the principles of Kenya's national security in Article 238, the supreme law empowers parliament to have diverse oversight functions on all the organs of national security with respect to observance of the rule of law, respect to democracy, human rights and fundamental freedoms and respect to Kenya's diverse cultures and communities and reflecting the population diversity in recruitment into the agency.[126] NIS Act 2012 gives parliament power to form specialized or any other relevant committees oversight of the NIS.[127] A senior NIS official interviewee in this study indicated that currently, '*parliamentary oversight of NIS is majorly trained on budgetary allocation and*

[121] Ibid.
[122] Ibid.
[123] Ibid.
[124] Center for International Governance Innovation, "Security Sector Reform Monitor" (Ontario, Burundi, 2010), p. 6.
[125] Kenya Law, "The Constitution of Kenya," 2020, http://kenyalaw.org/kl/index.php?id=398.
[126] Ibid.
[127] Republic of Kenya, The National Intelligence Service Act, 2012.

utilization'.[128] This he added, is in keeping with '*the conventional practices of parliamentary oversight of the security sector where secrecy is important for intelligence agencies to operate and protect certain national security operations from undue leakages'.*[129] A NIS executive also indicated that, '*the practice of parliamentary oversight over the intelligence body is still in its formative stages and therefore will likely improve and expand in scope with time as relevant parliamentary oversight committees increases its capacity and expertise on issues of intelligence and national security'*.[130]

Despite the existence of the law backing legislative oversight over national security sector within the EAC states, the actual practice of parliamentary oversight over the national intelligence services reveals fundamental incongruities in respective countries. One of the reasons for this is that in these political systems that could fall anywhere between autocratic and liberal societies, likelihoods of state inclination towards either more or less security sector oversight depends on real and perceived threats domestically.[131] Generally, national security intelligence oversight bestrides among other matters, national security policies, personnel and general internal administration, weapon and equipment procurement, budgets and security operations.[132] The parliaments in the EAC states operate both inside and outside the secrecy loop of the national security landscape and therefore matters they oversight about intelligence is generally limited to budget, top personnel recruitment and scrutiny of annual reports by the intelligence agencies in respective countries. In particular, from the majority of research respondents from Kenya, operational domain of the NIS is largely controlled internally because of the fear of any potential

[128] Interview with a NIS official, Nairobi, June 22, 2020.
[129] Ibid.
[130] Interview with an administrative executive at NIS, Nairobi, June 26, 2020.
[131] Adeba, "Oversight Mechanisms, Regime Security, and Intelligence Service Autonomy in South Sudan.", p. 3.
[132] Born, "Learning from Best Practices of Parliamentary Oversight of the Security Sector.", p. 39.

leaks of intelligence. Furthermore, the respondents raised the issue of operational intelligence oversight still being a grey area which requires some background experience and skills by legislators to oversight adequately. This sentiment is concordant with assertion that effectiveness of parliamentary intelligence oversight is dependent on the level of expertise and experience of committees allocated the oversight roles.[133] Further, the composition of the national security secrecy loop is restricted to top government executives and the national security organs in all the EAC states. There is a widely accepted consensus that potential compromise of national security could be heightened if intelligence is leaked by parliamentarians that become privy to it happens, creating a hurdle for parliamentary intelligence oversight.[134] EAC states are not an exception to these notions in regard to their parliamentary intelligence oversight. These assertions were confirmed by one of Kenyan member of parliament interviewees in this study who intimated that *'partisan politics in parliaments may sometimes hamper oversight of the intelligence agency due to personal motivation of some politicians to dig dirt about a regime in power or national security institutions rather than carrying out objective oversight'*[135]. Political partisanship in parliamentary oversight of the national intelligence services is well documented in literature especially in the western democracies which have practiced parliamentary oversight of the intelligence agencies for a long time.

At present, the EAC national parliaments do not have specialized committees but only those with broad mandates on the general issues of national security and defense. Some of the general legislative oversight committees across the region include; Security and Territorial Integrity Committee in Rwanda, Defence and Security Commission in Burundi, Foreign Affairs,

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[133] Born and Mesevage, "Introducing Intelligence Oversight.", p. 11.
[134] Caparini, "Controlling and Overseeing Intelligence Services in Democratic States.", p. 13.
[135] Interview with a Kenyan Member of Parliament (MP) and a member of Parliamentary committee on Defense and Foreign Relations, Nairobi, June 16, 2020.

Defense and Security Committee in Tanzania, Defense and Internal Affairs in Uganda, Security, Defence and Public Order in South Sudan and Kenya's Defense and Foreign Relations. Such Parliamentary committees with broad oversight mandates focus on general issues of national security and how effective they are in such roles depend on their of access for classified information. Despite the popularity of these general committees in the region, the more structured and narrowly focused parliamentary committees tend to be more effective as they develop expertise and a deeper understanding of matters of national security.[136] A Kenyan Member of Parliament and respondent in this study opined that *'parliament may need to develop better expertise at oversight of intelligence by establishing a specific and narrow focused committee which may work independently and jointly with other relevant committees to improve its oversight role of the agency'*.[137]

There are organizational and functional challenges to parliamentary intelligence oversight within the EAC owing to party politics in parliaments across the region. While all the six countries practice multiparty politics, composition of their parliamentary national security and defense oversight committees have a bearing on the actual outcomes of intelligence oversight. The organizational characteristic of parliamentary committees which is of interest to this study include party affiliation of the chairpersons, opposition party representation in the committees, and the numbers of members whose parties form the government in power. A large body of literature has shown that each of these organizational characteristic affect parliamentary oversight output.[138] For instance, in Uganda, between 2018 and 2019, the Defence and Internal Affairs committee had 22 members out of which 14 were drawn from the ruling party. The Ugandan National Resistance

[136] Born and Mesevage, "Introducing Intelligence Oversight.", p. 11.
[137] Interview with a Kenya Member of Parliament (MP) and member of the Parliamentary Budget and Appropriation Committee, Nairobi, June 18, 2020
[138] Farson, "Establishing Effective Intelligence Oversight Systems.", pp. 27-28.

Movement has repeatedly held positions of chairperson and vice chairperson in the committees.[139] Currently, Tanzania's Defense and Security Committee has 31 members out of which 26 are drawn from the ruling party, Chama Cha Mapinduzi (CCM).[140] In Burundi, Defence and Security Commission has also consistently been dominated by the ruling party.[141] However, in Kenya, Parliamentary Defence and Foreign Relations committee has a total of 19 members, with the ruling party having ten slots while the other parties and independent parliamentarians share 9 slots.[142] The composition of Kenya's Defence and Foreign Relations committee is relatively balanced to provide it with a robust ground for scrutiny of the national security sector because no single party has explicit controlling majority. In South Sudan, the parliament does not enjoy full oversight mandate over the executive for lack of authority of a fully elected legislature. Some members of parliament in South Sudan were appointed by the political parties directly in 2011 following the country's independence and again in 2016 which has derailed oversight role of the parliament over the executive and especially issues of national security.[143] Furthermore, the President of South Sudan has powers to prorogue parliament making the legislative to function susceptible to executive influence.[144]

The proportion of political parties' composition of the parliamentary oversight provide a double-edged incentive for either a thorough scrutiny of the executive or a tepid supervision. Ruling parties that represent the majority in oversight committees may have little incentive or low motivation within its members to oversight the executive because of fear of rebuttal from top

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[139] Republic of Uganda, "Parliament of the Republic of Uganda," accessed April 9, 2020, https://www.parliament.go.ug/page/committees-parliament.

[140] United Republic of Tanzania, "Parliament of Tanzania," 2020, https://www.bunge.go.tz/polis/committees/35.

[141] Center for International Governance Innovation, "Security Sector Reform Monitor.", p. 6.

[142] Republic of Kenya, "The National Assembly of the Republic of Kenya," n.d.

[143] Adeba, "Oversight Mechanisms, Regime Security, and Intelligence Service Autonomy in South Sudan.", p. 3.

[144] Ibid., p. 4.

political party organs and/or strict adherence to political party ideologies. In Burundi for instance, the Defence and Security Commission has suffered endemic problem of low motivation among some of its members that are drawn from the ruling party, the National Council for the Defense of Democracy-Forces for the Defense of Democracy (CNDD-FDD) and even the opposition parties to oversight the national security sector.[145]

Intricate connection between political party politics and key national security organs in some of the EAC states may also hamper or facilitate effective parliamentary oversight of the security sector. In Burundi, Uganda and South Sudan there is a significant level of national security organs' close associations with the ruling party politics respectively. The Sudan People's Liberation Army (SPLA) in South Sudan has close connections with the national uniformed or militarized forces and the NSS.[146] Over the years, SPLA has maintained a close relationship with the ruling political party, the Sudan People's Liberation Movement (SPLM) and some of the military officers partake in the country's civil matters.[147] In Uganda, the national security establishment since the return of multiparty politics from around the mid-2000s has inclined towards the ruling party, National Resistance Movement (NRM).[148] In addition, Uganda's People Defence Force (UPDF) has 10 reserved parliamentary seats.[149] UPDF also has a slot in the parliamentary Defence and Internal Affairs committee.[150] A senior retired Ugandan intelligence officer pointed out that '*allocation of parliamentary membership slots to UPDF implies that parliamentary oversight of Uganda's national security is vulnerable to influence from the*

[145] Center for International Governance Innovation, "Security Sector Reform Monitor.", p. 9.
[146] Kuol Deim Kuol, "Report Part Title: Confronting the Challenges of South Sudan's Security Sector: A Practitioner's Perspective," 2018, p. 41.
[147] Ibid., p. 41.
[148] Sabiti Makara, "Deepening Democracy through Multipartyism: The Bumpy Road to Uganda's 2011 Elections," *African Spectrum* 45, no. 2 (2020), p. 86.
[149] Republic of Uganda, The Constitution of the Republic of Uganda.
[150] Republic of Uganda, "Parliament of the Republic of Uganda."

executive and the national security agencies'.[151] In Burundi, the post-conflict state building has been characterized by nexuses of entanglements between the ruling party, CNDD-FDD's ex-combatants and rebel generals who occupy strategic positions in state institutions including in the national defense and security organs and holding sway in the ruling political party structures both at the national level and at the grassroots.[152]

The relationship between the national security organs and ruling parties which inarguably have controlling majorities in their parliaments have divergent impacts on parliamentary oversight of the security organs. For instance, in Burundi, some of the CNDD-FDD members of the Defence and Security Commission have decidedly refrained from security sector oversight for fear causing cracks in a party which they share with some of their counterparts in key positions in the national defense and security organs.[153] In political systems characterized by a disciplined partisan majority in parliament, parliamentary oversight role is likely to become a rubber stamping tool than a thorough scrutiny of the executive.[154]

All parliaments in EAC through relevant parliamentary committees perform some budgetary scrutiny and approval for the national intelligence agencies or the ministries under which such institutions fall. However, the constitutions and other national laws establishing such bodies in EAC do not specify the extent to which parliamentary scrutiny of national intelligence services budgets are undertaken. This is reflective of the general trends of parliamentary scrutiny and approval of budgets to national security organs globally where secrecy is indispensable. In respect to approval of the executive appointees to the national intelligences service, the laws of

[151] Interview with a senior retired Ugandan intelligence agency, Nairobi, June 19, 2020.
[152] Tomas Van Acker, "Understanding Burundi's Predicament" (Brussels, Belgium, 2015), p. 7.
[153] Center for International Governance Innovation, "Security Sector Reform Monitor.", pp. 7-9.
[154] Vibeke Wang, "The Accountability Function of Parliament in New Democracies: Tanzanian Perspectives" (Bergen, 2005), p. 11.

Kenya, South Sudan and Burundi are explicit. Table 2 below summaries some of the pertinent parliamentary intelligence oversight issues in the EAC states.

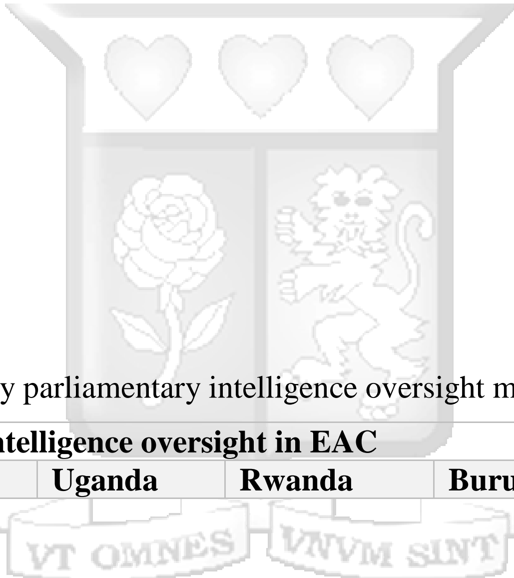
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Table 2. Statutory parliamentary intelligence oversight mandates in EAC

Issues of Parliamentary Intelligence oversight in EAC					
Kenya	**Tanzania**	**Uganda**	**Rwanda**	**Burundi**	**South Sudan**

- Internal administration of NIS including recruitment of staff and budget -Approval of Presidential DG nominees -Oversight of NIS functions in respect to the rule of law, human rights and fundamental freedoms -Budgetary scrutiny and approval	-Scrutinizes and approves budgets of the Ministry of Defence, National Service and Internal Affairs	-Enactment of laws establishing state intelligence services -Annual budgetary approval	-Senate votes on national defense and security laws -Chamber of Deputies oversee the organization of intelligence, immigration, emigration, the military and security laws	-Approving presidential appointees to the executive positions in the Corp of national defense and security -Oversight of governance and public administration -Scrutiny of specific issues on government action from time to time	-Approval of governmental plans, policies and programmes and appointees to state institutions -Scrutiny of annual report of NSS

4.7.3 Judicial oversight intelligence oversight within the EAC States

There are no specialized courts that handle issues of national security intelligence oversight across all the EAC states. However, all the six countries have constitutionally mandated all their national defense and security organs to comply with the provisions of their constitutions and other existing laws as well as respecting the rule of law, basic human rights and fundamental freedoms in addition to respecting societal diversities and democracy. These provisions are the principal statutory foundations for judicial oversight of national intelligence services across the EAC states.

The jurisdiction of the courts in national security intelligence oversight in the EAC include issuance of special warrants, adjudicating cases involving the agencies on matters of administration, constitution or civil cases. Kenya and South Sudan in their respective constitutions have provided for creation of specialized intelligence oversight boards whose membership is partly constituted by judicial officers.

In Rwanda, a public prosecutor who is authorized by the minister for justice is legally allowed to issue a warrant for communication interception to national defense and security organs upon request.[155] In Tanzania, legal provisions require communications service providers to comply with the law enforcement agencies but do not specify whether or not, judicial warrants are preconditions for such compliance.[156] In Uganda, a designated judge can issue a warrant for communication interception to the DG of ESO and ISO or to any other chief of the national security organs or their nominees.[157] In Burundi, there are a raft of laws regulating public communication. However, in 2018 the government of Burundi established public law No. 1/09 of May 11, 2018 which permitted the national security agencies to intercept communication subject to a warrant issued by a public prosecutor.[158]

Unlike all the other countries in EAC, South Sudan NSS has police powers of arrest so long as it has reasonable belief that a subject is about to commit a crime, has committed or committing such acts.[159] However, NSS is legally required to seek for a warrant from a high court judge when it reasonably believes that such warrant would facilitate its work.[160] Similarly, in Kenya, NIS Act 2012 legally requires the DG to apply for a warrant from a judge of the high court if there is a reasonable belief that such would facilitate the work of the agency.[161]

All the six EAC countries have had different historical trajectories and are at different stages in inculcating the culture of accountability of the government bureaucracy. There are

[155] Republic of Rwanda, "N° 60/2013 of 22/08/2013 Law Regulating the Interception of Communications," Pub. L. No. N° 60/2013 of 22/08/2013 (2010).

[156] Republic of Tanzania, "The Electronic and Postal Communications (Online) Regulations 2018," Pub. L. No. Government Notice No. 33 (2018).

[157] Republic of Uganda, "Regulation of Interception of Communication Act, 2010," Pub. L. No. Supplement no. 7 (2010).

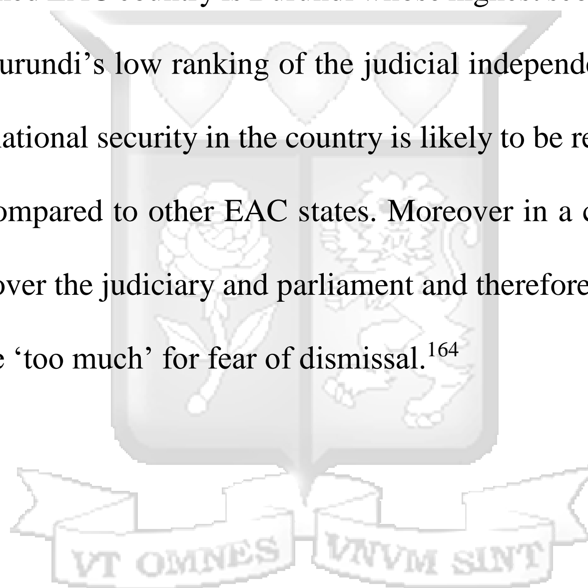
[158] Collaboration on International ICT Policy for East and Southern Africa (CIPESA), "A New Interception Law and Blocked Websites: The Deteriorating State of Internet Freedom in Burundi," 2018.

[159] Republic of South Sudan, National Security Service Act, 2014.

[160] Republic of South Sudan.

[161] Republic of Kenya, The National Intelligence Service Act, 2012.

variances in the actual powers and the constitutionally spelled judicial oversight powers over the national intelligence services in the EAC. Executive influence on matters of national security overly affects judicial oversight of the national security agencies. In the World Bank's judicial independence ranking on a scale of 1 to 7 with 1 representing heavy influence and 7 entirely independent, the five EAC states have had fairly ranked independence of the judiciary with the exception of South Sudan.[162] With fairly good score on judicial independence, prospects of judicial oversight of national security organs within the region could stand better chances of impartiality over time. The lowest ranked EAC country is Burundi whose highest score between 2007 and 2017 was 2.26 in 2017.[163] If Burundi's low ranking of the judicial independence is anything to go by, judicial oversight of the national security in the country is likely to be relatively more constrained by executive influence compared to other EAC states. Moreover in a country like South Sudan, the executive hold sway over the judiciary and parliament and therefore, the two oversight bodies cannot push the executive 'too much' for fear of dismissal.[164]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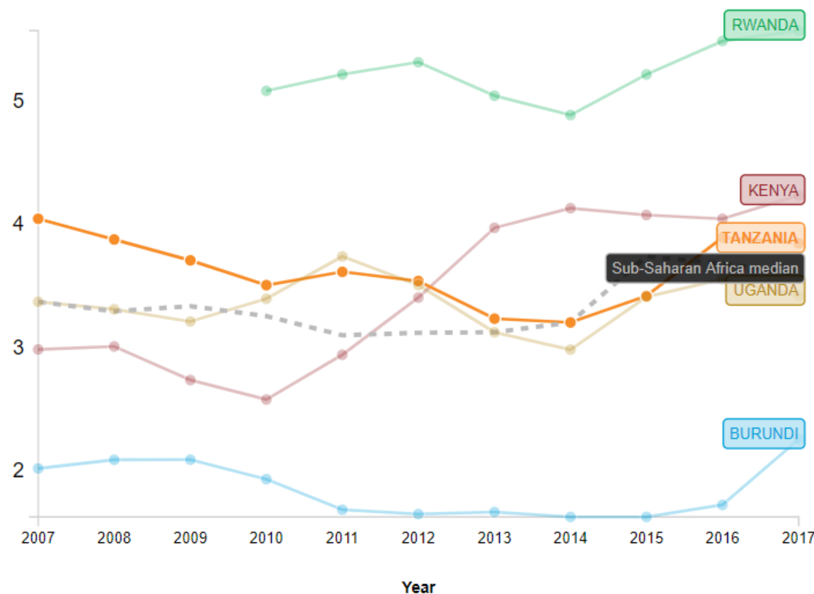
[162] World Bank, "Judicial Independence," n.d.
[163] World Bank.
[164] Øystein H. Rolandsen, "Another Civil War in South Sudan: The Failure of Guerrilla Government?," *Journal of Eastern African Studies* 9, no. 1 (2015), p. 166.

Figure 2.Judicial independence perception index of the EAC States between 2007 and 2017, Adapted from the World Bank; https://tcdata360.worldbank.org/



4.8 Conclusions

Based on the analysis of various national laws and policy documents on intelligence governance, the study has established that the executive control, parliamentary and judicial oversight of intelligence is common in all the EAC countries. However, provisions of such oversight mechanisms are marked with subtle or explicit differences across different states. National political dynamics and the culture of secrecy of the intelligence determine the extent to which constitutionally mandated intelligence oversight bodies approach and engage in the actual oversight processes. It is explicitly evident that constitutional guarantee for intelligence oversight across the EAC is a work in progress as some countries are in their formative stages of SSRs especially the states which are emerging from conflicts.

The trend towards opening up national intelligence services for scrutiny within the region follows a distinct pattern commensurate with shifts from colonization, Cold War, political liberalization of the early 1990s, the 9/11 terrorist attack on the US and subsequent war on terror and the post conflict national SSRs. However, despite various constitutional provisions for

intelligence oversight across the EAC, all the six countries are implementing the legal provisions at different paces. Kenya and Tanzania established their formative statutory intelligence oversight from the mid-1990s onwards. In Rwanda, Burundi, Uganda and South Sudan, part of national security oversight reforms have been aimed at restructuring the intelligence agencies.

The most pronounced form of intelligence oversight mechanism within the EAC is the executive control. The executive control of the intelligence across the EAC generally straddles matters of intelligence policies, internal administration including the appointment of the senior intelligence officers and budgetary allocation, tasking and consumption of the intelligence products as well as structuring of the IC. Some of these executive control roles are clearly stipulated or implied in the constitutions and other national laws establishing the IC in the region. Statutorily mandated or relevant parliamentary oversight committees or commissions in the EAC scrutinize general or specific aspects of intelligence services work some of which include approval or presidential appointees to executive positions in the intelligence services, budgetary oversight, policy legislation and approval of intelligence services activities. In actual practice, parliamentary intelligence oversight across EAC states tend to be largely focused on budgetary approval. One of the overarching reasons for lesser parliamentary involvement on issues of intelligence policies, strategies and operations is the endemic fear of national security being compromised incase parliamentarians who get privileged information decide to leak it. Parliamentary committees in charge of intelligence are also broad based as they focus on the general national security and defense issues thus many have not cultivated sufficient expertise on specific matters of national security in relation to national security intelligence.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

The purpose of this study was to comparatively analyze intelligence oversight mechanisms within the EAC countries. The introductory chapter provided the background of the study and the methodology. Chapter two examined the universal intelligence oversight mechanisms and practices universally and some of the attendant issues. Chapter three explored the evolution and forms of intelligence services in the EAC states and lastly it explored similarities and differences in intelligence oversight mechanisms in the EAC states. Chapter four examined post independent intelligence oversight mechanisms in EAC emphasis the impacts which the advent of colonialism to independence; the collapse of political pluralism; the return of multiparty politics in the 1990s; the post-Cold war national security intelligence within the EAC and the post 9/11 had on the evolution of intelligence services development and oversight in the region. Chapter five presents the study findings and recommendations.

The study looked into the emergence and evolution of intelligence oversight in EAC countries. In order to answer the research questions. It examined the emergence of colonially decreed police force intelligence in Africa through to the periods of decolonization and subsequently during and post the Cold War. In these contexts, the study looked at the post-Cold War and the dynamic national security threats which emerged thereafter catapulting matters of intelligence oversight into public discourse.

5.2 Study Findings

The key finding is that all the EAC States have established statutory bases for intelligence oversight mechanisms corresponding to some of the global practices in intelligence accountability. Within the region, constitutional intelligence oversight mandate lies with the executive,

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parliament, the judiciary and formal independent bodies like the national audit institutions. Some countries including Kenya and South Sudan have also created legal basis for the establishment of intelligence oversight boards to open up the national intelligence agencies for formal and informal scrutiny by the larger public although.

Emergence of intelligence oversight mechanisms in EAC reflects the general global trends which have seen increased parliamentary legislation and introduction of formal intelligence oversight mechanisms in the aftermath of Cold War, political liberalization particularly in the Global South in the 1990s and emergence of new nontraditional national security threats. In some of the EAC states, intelligence oversight mechanisms are fairly new developments coming in the post conflict state building and therefore remains at the formative stages.

The nexus between party politics and the executive influence on matters of national security bear significant impact on parliamentary oversight of intelligence agencies in EAC. Most of the parliamentary committees with a role on intelligence oversight are dominated or led by parties which from the government in all the EAC states and this could interfere with oversight if a regime in power incline towards regime survival. Furthermore, some EAC countries are at the formative stages of post-conflict state building and currently in the process of implementing their SSRs.

The executive wields significant influence on issues of intelligence control in all the EAC states. Preeminence of the executive on intelligence control is premised on the needs for secrecy by the intelligence organizations. Therefore, intelligence oversight by the judiciary and parliaments is largely limited to matters including issuances of warrants and approval of budgets respectively. In the EAC like elsewhere in the world, parliamentary and judicial oversight of

intelligence is approached with a general caution to avoid unwarranted leakage of classified national security issues.

The study established that the EAC parliamentary committees perform intelligence oversight work in the shadows of the executive or parties forming the government which portend a potential hurdle on independence of such committees in executing their oversight roles on the secret government entities. The six countries have also established legal requirements for intelligence collection particularly electronic surveillance and searches. However, the actualization of such legal provisions by the ICs within EAC is difficult to ascertain for lack of any publicly available reports to show the nature and extent of compliance. Noteworthy, executive influence on the judiciary portends a significant determiner on the nature and outcome of judicial intelligence oversight in the region. In some EAC countries there is lack of clear legal pronouncements on the role of judiciary on intelligence oversight other than the issuance of warrant for use of special powers which include communication interception.

The study also established that despite providing for the establishment of complaint boards in South Sudan through the NSS Act 2015 and Kenya's NIS Act 2012, the two countries are yet to establish such boards. Kenya is currently in the process of creating the NIS complaints board as per its NIS Act 2012. The six countries have also mandated their supreme audit institutions with powers to audit utilization of resources which are allocated to the intelligence institutions. Financial audit reports by supreme audit institutions are often shared with the executive and parliament. In Rwanda, the President can limit the extent of external audit of the NISS. In Kenya, external audit of the NIS has been routinized and the reports of such audits are sent to the executive and subsequently to relevant committees of parliament in charge of intelligence oversight.

Lastly, the extent of involvement of the executive in day to day management of the intelligence services bears certain similarities and subtle differences. All the national intelligence services in EAC have presidential appointees who are in charge of various administrative and operational issues. However, in Tanzania, TISS DG controls day to day operations of the agency but subject to occasional consultation with the minister in charge, particularly on issues touching on intelligence operational policies. In Kenya, the DG of NIS oversees day to day operations of the agency and he or she is answerable to the executive and the NSC but also regularly account for the agency's activities at the NISC. In Uganda while the general duties of the ISO and ESO lies with their respective directors, the President in consultation with NSC can make decisions on internal matters which are affecting the agencies. In Burundi, the President and the NSC has powers to oversee day to day operations of its intelligence, specifically on matters including policies and strategies, human resource administration and intelligence budgets. In Rwanda, the Secretary General in charge of NISS oversee day to day management, administration and operational matters but the President has powers of overall supervision of NISS. The directors of various directorates of NISS work under the directive of Secretary General. Similarly, South Sudan also has elements of the executive's involvement in day to day management of the NSS under whom is DG in charge of respective divisions of the national intelligence agency.

This study findings verify the research problem which arises from national intelligence services oversight dilemma which arises from secrecy and the needs for accountability. National intelligence oversight laws and policies while bearing some commonalities in EAC states, there are remarkable differences in the actual intelligence oversight practices in the region. Some of the notable sources of differences are attributed to the character of national politics on accountability of the national security organs in different EAC states, the culture of the national intelligence

services in respective EAC states. For instance, in South Sudan unlike all other EAC states, the NSS operates more on a military doctrine.

5.3 Recommendations

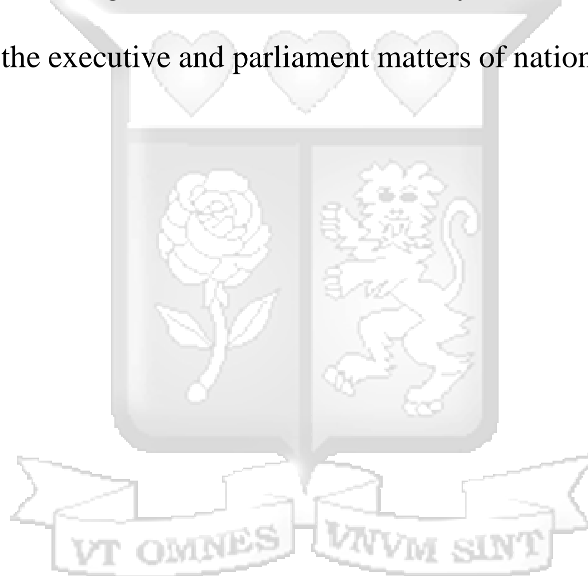
EAC states have made significant steps towards democratization of the national security sector since the end of Cold War. The end of Cold War dawned with new nontraditional national security threats which meant that countries had to restructure their national security organs to not only counter the traditional external military threats, but also emergent nontraditional military threats. SSRs which included opening up the national security organs for scrutiny has meant that multiple actors are now constitutionally mandated to play an oversight role on the efficacy and legality of the expanding intelligence activities. Parliamentary legislation on intelligence matters have brought new impetuses in driving intelligence operations to promote and protect national security matters and to check politicization of intelligence.

Despite the gradual shift towards openness in national intelligence accountability, several challenges that different oversight mechanisms have had to contend with in the region include politicization of intelligence, partisan party politics in parliaments, post conflict state building instabilities and inadequate oversight resources. Additionally, parliamentary intelligence oversight committees in most of the EAC mainly operate outside the secrecy loop and therefore limited in contributing towards intelligence policies or reforms of the agencies in promoting and protecting national security. The study recommends the following;

- Study on specific cases would be feasible to understand national dynamics of intelligence oversight in the EAC states
- EAC national parliaments should consider forming specialized parliamentary committees with specific roles on intelligence oversight, because matters affecting intelligence agencies are often diverse, fluid and complex and requires building sufficient institutional

memory which would better be attained by having dedicated oversight committees in the legislatures

- The EAC states should also consider establishing external oversight bodies whose membership should be nominated or selected on the basis of an appointee's previous experience and skills on national security, defense or intelligence matters.
- EAC states may also need to consider creating specialized courts to handle issues of national security intelligence as this would help such court systems to develop expertise on issues touching on intelligence and national security. Traditionally, many courts have tended to defer to the executive and parliament matters of national security whenever they arise



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APPENDICES

Appendix I: Participant Information Guide

Research proposal on *'Comparative Analysis of Intelligence Oversight Mechanisms in EAC States'*

Dear Sir/Madam,

Request for Research Interview

My name is **Isaiah Otieno Omburo,** I am a post-graduate student at **Strathmore University** currently pursuing a **Master of Arts Degree in Diplomacy, Intelligence and Security (MDIS)**. I am carrying out a research on the topic "**Comparative Analysis of Intelligence Oversight Mechanisms in EAC States"** as part of the University requirement for this course**.**

I am kindly seeking for your participation in this study interview given your experience on issues accountability and oversight in public governance. Information provided shall strictly be used for academic purposes only and treated with utmost confidentiality. The information provided would be indispensable in enriching the study literature.

Your participation is entirely optional, and you can withdraw from the study at any time without giving any reasons.

My contact details are as follows:

Institutional Affiliation: Strathmore University

Thank you in advance for your kind cooperation and assistance.

Sincerely,

Isaiah. O. Omburo.

Appendix II: Data collection Instruments

PART I: Questions to Guide the interview and discussions with serving and ex members of the relevant parliamentary oversight committees on issues of intelligence and national security issues

i. Has parliament operationalized intelligence oversight as stipulated by the Constitution 2010 and the National Intelligence Service (NIS) Act 2012)?

ii. Could you explain the major areas of focus for parliament on issues of intelligence oversight?

iii. How would you describe the current parliamentary intelligence oversight practices?

iv. Kindly share with me your assessment of the weaknesses and strengths of current parliamentary intelligence oversight practices in Kenya?

v. Would you comment on whether or not; parliamentary oversight over intelligence is a continuous process or intermittent? If intermittent? Why?

vi. What policy areas are of major interest to parliament in regards to issues of national security intelligence?

vii. Would you comment on whether or not; prevailing political circumstances in the country at any given time affect parliamentary intelligence oversight?

viii. Going forward, is there any further parliamentary intelligence oversight reforms you would wish to see? What kind of reforms would they be?

PART II: Questions to Guide Interview and Discussions with the Executive and Senior Management at NIS

i. NSIS Act 1998, NIS Act 2012 and the Constitution of Kenya 2010 lays statutory foundation for executive, parliamentary, judicial and independent intelligence oversight in Kenya. What are the benefits of intelligence oversight both internally and externally?

ii. What is the nature of the synergy between different institutions of intelligence oversight in Kenya today?

iii. Would you comment on the degree of operationalization of these statutorily required intelligence oversight regimes since 1998 to date?

iv. What are the current internal intelligence oversight practices which the organization has established?

v. Are there any challenges with internal intelligence oversight? If yes? What are some of the improvements you'd wish to see?

vi. What contributions do external oversight by constitutional commissions and/or boards add to efficacy and legality of intelligence in informing national security policy formulation and implementation?

vii. What national security dilemmas are posed to intelligence especially by parliaments and the judicial oversight bodies?

viii. What would be some of the best ways to improve external oversight of intelligence particularly by parliament and the judiciary?

PART III: Questions to Guide Interview and Discussions with the Executive (Relevant Ministries in Charge of National Security)

i. Has the National Intelligence Service Council been established? If does exist? What oversight roles does it undertake on the national intelligence service?

ii. Are there any challenges facing the council in undertaking its oversight duties on intelligence?

iii. Is the executive under any obligation to furnish parliamentary intelligence oversight committee with information whenever the latter requires such information?

iv. Is the National Service Complaints Board operational? If it does? What oversight roles does it perform on the on the national intelligence service.

v. The board is vested with powers commensurate with the High Court under some circumstances, does this mean that the board may compel the national intelligence service to produce sensitive and classified matters touching on national security or operational matters? How does the board determine sensitivity of information it requests from the Service?

vi. Would you comment on whether or not, the executive should have powers to task the intelligence service to carry out certain operations that are of utmost importance in protecting national interests under exceptional circumstances without informing parliament or judiciary

PART IV: Questions to Guide Discussions with the Judiciary on Matters of Intelligence Oversight

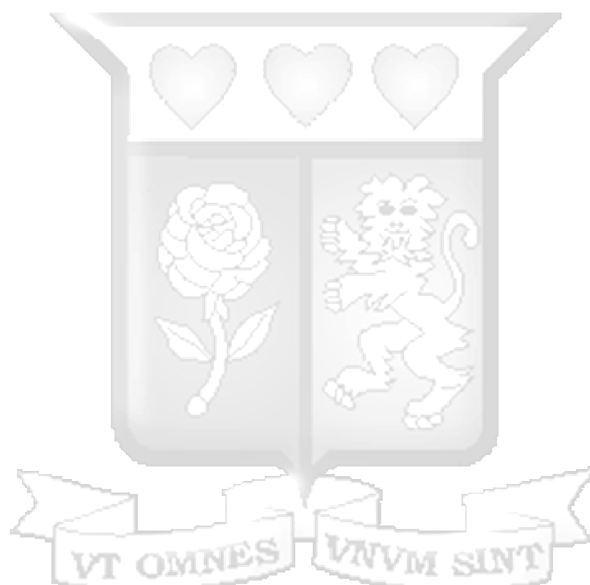
i. What role does the judiciary play in intelligence oversight?

ii. Would you say that the judiciary is sufficiently independent to oversight as sensitive and closed government agency as national security intelligence?

iii. Kindly share with me some of the achievements and challenges that the judiciary face in oversight of national security intelligence?

iv. Is there sufficient compliance between the intelligence service and the judiciary on matters of intelligence oversight?

v. Would you have additional comments or suggestions for improvements required on judicial oversight of national security intelligence?



Appendix III: Letter of Research Approval

Strathmore UNIVERSITY

2nd April 2020

Mr Otieno, Isaiah
isaiah.omburo@strathmore.edu

Mr Otieno,

RE: Comparative Analysis of Intelligence Oversight Mechanisms in EAC States

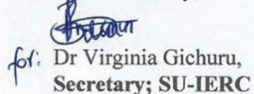
This is to inform you that SU-IERC has reviewed and **approved** your above research proposal. Your application approval number is **SU-IERC0740/20.** The approval period is **2nd April 2020 to 1st April 2021.**

This approval is subject to compliance with the following requirements:

i. Only approved documents including (informed consents, study instruments, MTA) will be used
ii. All changes including (amendments, deviations, and violations) are submitted for review and approval by SU-IERC.
iii. Death and life threatening problems and serious adverse events or unexpected adverse events whether related or unrelated to the study must be reported to SU-IERC within 72 hours of notification
iv. Any changes, anticipated or otherwise that may increase the risks or affected safety or welfare of study participants and others or affect the integrity of the research must be reported to SU-IERC within 72 hours
v. Clearance for export of biological specimens must be obtained from relevant institutions.
vi. Submission of a request for renewal of approval at least 60 days prior to expiry of the approval period. Attach a comprehensive progress report to support the renewal.
vii. Submission of an executive summary report within 90 days upon completion of the study to SU-IERC.

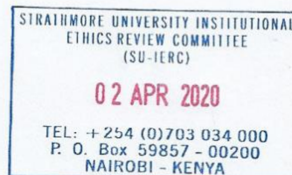
Prior to commencing your study, you will be expected to obtain a research license from National Commission for Science, Technology and Innovation (NACOSTI) https://oris.nacosti.go.ke and also obtain other clearances needed.

Yours sincerely,



for: Dr Virginia Gichuru,
Secretary; SU-IERC

Cc: Prof Fred Were,
Chairperson; SU-IERC



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Appendix IV: Research Permit

THE SCIENCE, TECHNOLOGY AND INNOVATION ACT, 2013

The Grant of Research Licenses is Guided by the Science, Technology and Innovation (Research Licensing) Regulations, 2014

CONDITIONS

1. The License is valid for the proposed research, location and specified period
2. The License any rights thereunder are non-transferable
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