

Info sheet: The General Intelligence Laws Amendment Bill (GILAB 2023)

Introduction

The [General Intelligence Laws Amendment Bill](#) (GILAB 2023) is a new bill amending the powers and mandate of South Africa's state intelligence services.

The Bill was approved by Cabinet in May this year. At the time of this writing (2 August 2023), GILAB had yet to be tabled in Parliament. Once tabled, the National Assembly will create an *ad hoc* committee to consider the Bill and issue a call for public comments.

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

What GILAB is meant to do

GILAB's stated purpose is to provide for intelligence service reforms based on the recommendations that resulted from the Judicial Commission of Inquiry into Allegations of State Capture (the Zondo Commission) and the 2018 High Level Review Panel investigation into the State Security Agency (SSA). The Bill is also meant to address the findings of the Constitutional Court in the *amaBhungane* judgment, which struck down parts of the RICA surveillance law.

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

One of GILAB's key features is its provision for the reversal of a controversial Zuma-era proclamation that merged South Africa's two national intelligence agencies (one domestic, the other foreign) to form the SSA. That centralisation of power was made lawful by a previous GILAB, which Parliament passed in 2012. Following recommendations by the Review Panel and the Zondo Commission, the new GILAB splits the SSA into two intelligence agencies once more: the South African Intelligence Service (focused on foreign intelligence) and the South African Intelligence Agency (focused on domestic intelligence).¹

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

1. EXPANSION OF THE SSA'S VETTING POWERS

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

¹ For ease of reference this briefing note still refers to these combined intelligence structures as the SSA.

Background

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

2. EXPANSION OF MASS SURVEILLANCE CAPABILITIES

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

Background

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

3. FAILURE TO DELIVER ON OVERSIGHT AND ACCOUNTABILITY

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

Background

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

Conclusion

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

Resources

- Download the GILAB 2023 [here](#)
- Op-ed: [New intelligence bill a blueprint for State Capture 3.0](#)
- Op-ed: [How to unmuzzle the SSA watchdogs](#)