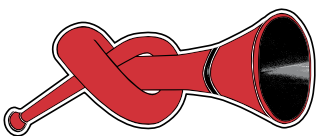




BIG BROTHER
EXPOSED

Stories of South Africa's intelligence structures
monitoring and harassing activist movements



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01 ABOUT THIS HANDBOOK

For many years, political activists in South Africa have raised concerns that state intelligence structures may be monitoring their work. This is seen as part of a local ‘rise of the securocrats’, where South Africa’s security cluster is becoming increasingly powerful, secretive, and involved in political affairs of the country. (For example, the recent use of ‘signal jamming’ in Parliament.)

But there is also a worldwide growth of ‘surveillance states’, where governments are spying on their own citizens and people from other countries – often with the help of new communications technology that we use every day.

In South Africa, there have been some famous scandals involving the use and abuse of intelligence agencies to spy on high-ranking politicians, and even some journalists, but there is also strong evidence that state security structures are monitoring the work of at least some activists and civic organisations. The most common structures named are the Crime Intelligence Division (CID) of the South African police, and the State Security Agency (SSA – formerly known as the National Intelligence Agency).

In this handbook we will hear from members of just a few different civic structures whose activities appear to have been monitored. Many are active in R2K or affiliated structures. They are based around Johannesburg, Cape Town, Durban, and Port Elizabeth, though the same experiences may be happening in other parts of the country too.

The purpose of this document is to tell these stories from the perspective of the activists involved, to show the damage that is done when intelligence structures intrude in democratic spaces, and to equip activists with the knowledge they need to fight back.

KNOW YOUR RIGHTS!

THE RIGHT TO PRIVACY

Section 16 of the Constitution of South Africa guarantees the right to privacy, which means that you should be able to control how much information the state, or any other person, knows about your activities, your personal views, and the things you say via e-mail or cell phone. It also means your home or property can't be searched without good reason. The International Covenant on Civil and Political Rights, which South Africa is party to, protects against "arbitrary or unlawful interference" in a person's privacy. Human rights law provides that infringements of this right must be "necessary and proportionate" to a legitimate aim (e.g. protecting against a specific threat to human life).

THE RIGHT TO ORGANISE

The right to organise is built into many other political rights – the freedom to associate with a cause or group, freedom to be politically active, freedom of expression and the right to assemble, all of which are protected in the Constitution. So when you are involved in an activist cause, you are exercising your basic human rights. But when people feel 'policed' or monitored, it can restrict their right to organise, because they may be afraid to say or do certain things – even if it is their right.



Police taking video at a protest against hate crimes in Johannesburg, 2011. Photo: Anita Khanna

What do we mean when we talk about ‘monitoring’?

This document talks about ‘monitoring’, ‘surveillance’ and ‘intelligence gathering’ interchangeably. When state bodies ‘gather intelligence’, it means they are collecting information on the activities of an organisation or individual. There are many kinds of intelligence gathering. Some are more invasive than others. These could include:

- Monitoring news media, public websites or public Facebook pages
- Conducting interviews or attending public meetings openly
- Recruiting informers or posing as a member of the public
- Covertly monitoring a person’s phone calls, e-mails or internet usage – sometimes called signals interception or ‘bugging’
- In some countries, law enforcement and security structures have used aerial ‘drones’ for surveillance, although there is not strong evidence that this is happening in South Africa at the moment.

Many forms of surveillance – especially electronic surveillance – are very hard to detect. This handbook mainly deals with the forms of surveillance that are easier to detect. But where we can detect that one kind of surveillance is happening, it is possible that other kinds are happening undetected.

02 “WE’VE HEARD PHONE CONVERSATIONS BETWEEN YOU”

How State Security tried to recruit an ordinary civil servant to become a spy

It’s not every day that an ordinary civil servant gets a call from government spies. But that’s what happened to Thembaⁱ, a local government employee who doesn’t want his identity revealed in this publication, when his phone rang suddenly one day in late 2014. The caller identified himself as a representative of the State Security Agency (SSA). He wanted to meet.

“I asked what is it in connection with,” remembers Themba, “And he told me it was regarding a conversation between myself and Brian Ashley.”

Brian Ashley is director of the Alternative Information Development Centre (AIDC), a leftwing think tank; he is also a prominent figure in the interim leadership of the United Front. Themba had been seeking advice from Ashley on labour issues.

Although he was very wary, Themba agreed to meet with the SSA official at his office. At the appointed time, two men showed up. They were dressed smartly, he says, in suit and tie.

The SSA officials got straight to the point. “We want to know more about your relationship with Brian Ashley,” one told him.

One of the men said that they had heard a recorded phone conversation between him and Brian Ashley about a plan to organise a general strike of workers in his sector – implying that the SSA had intercepted a phone conversation between the two.

In any case, both Themba and Ashley deny that they ever had such a conversation.

i Not his real name



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“Firstly, we never discussed a general strike,” says Ashley. “Secondly – so what if we did? The last time I checked the right to strike was in the Constitution!”

Themba says he can’t understand how the SSA could consider strike action to be a matter for state security. He challenged the SSA officials to explain their interest in Brian Ashley.

One of the SSA officers replied that they see Ashley as “an activist who wants regime change”, adding that Ashley was involved with the Association of Mine-workers and Construction Union (Amcu) in Marikana. Led by Ashley, the AIDC had provided technical support to Amcu during the months-long platinum strike in 2014. The underlying accusation that AIDC’s support for Amcu was somehow a programme of agitation, has previously come from the ANC when they accused Amcu of being guided by “white foreign nationals” intent on “destabilisation of our economy”ⁱⁱ – an apparent reference to AIDC staff.

ⁱⁱ ANC statement, 28 June 2014, www.anc.org.za/show.php?id=10985

Themba first got the impression that the SSA officials wanted him to simply cut ties with Ashley. However, by the end of their conversation, he got the impression that the men actually wanted him to become an informer on Brian's activities. "They told me, 'We'll come back to you, to see how best we can work together.'"

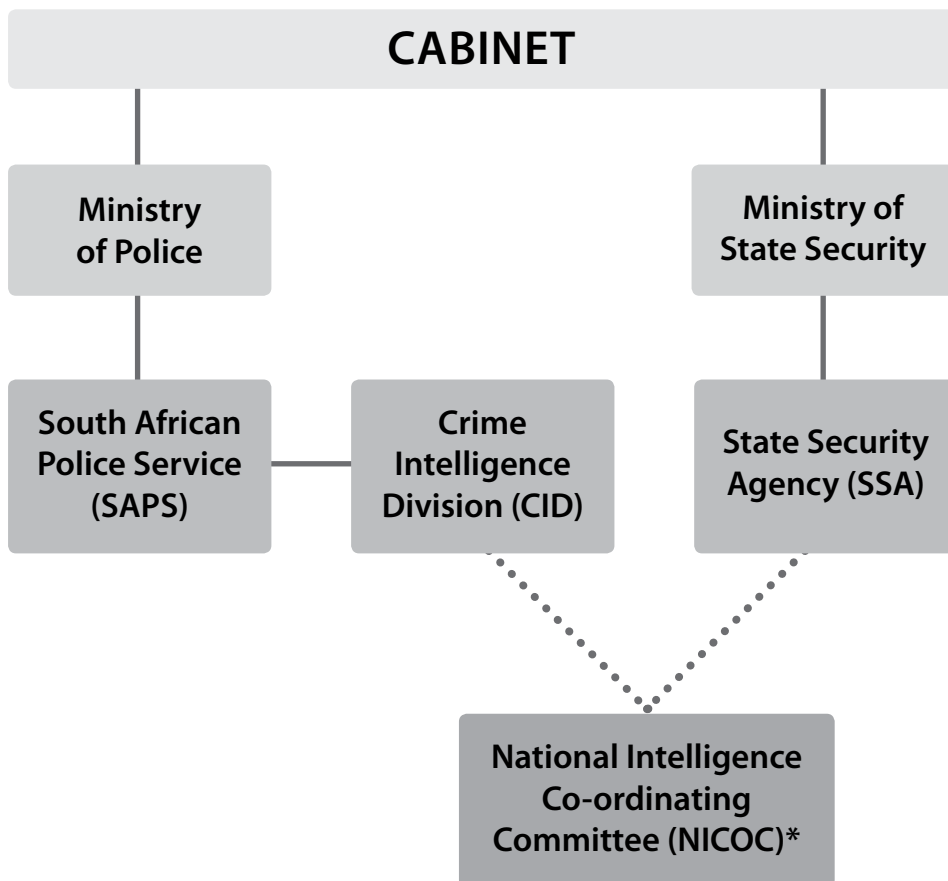
After the meeting, Themba informed Ashley, as well as two other comrades, of the visit. The SSA officials never called back. He believes that if they were monitoring phone calls between him and Ashley, they would know that he was not interested in becoming an informer.

This handbook tries to explore some of these questions. But first we must understand the background of South Africa's intelligence structures and the path they have followed since 1994. We will focus on the State Security Agency and the police's Crime Intelligence Division.



TAKE AWAY QUESTIONS

- How did the State Security Agency come to view a particular political activist as a threat to national security?
- Why is the SSA investigating lawful political action at all?
- What does this mean for the Constitutional rights of privacy, freedom of expression and freedom of association?
- On what grounds could the SSA have intercepted a phone call? See *page 38* for the requirements for legal 'bugging'.



** NICOC is the structure set up to coordinate the activities of South Africa's intelligence agencies. It also includes the Defence Intelligence Division of the SANDF, which does not feature in this handbook. NICOC reports to Cabinet via the Ministry of State Security.*

03 THE STATE SECURITY AGENCY AND POLITICAL ACTIVITY

How the SSA's mandate was changed to prevent it from spying on political activists

For years, people have raised the concern that the State Security Agency (SSA) and its predecessors have become too involved in everyday aspects of our democracy. In March 2015, the SSA announced that it would investigate an anonymous website that claimed that the Public Protector Thuli Madonsela, Joseph Mathunjwa of Amcu, the EFF's Julius Malema and the DA's Lindiwe Mazibuko were CIA agents. All four have said that the investigation is just an excuse to spy on them.

This came weeks after the media had exposed a secret document among the “Spy Cables” which showed the SSA had agreed to monitor and exchange information on “Rogue NGOs” with Zimbabwe’s intelligence agency.

In 2013, a new law was passed that limited the mandate of the State Security Agency, to specifically exclude matters relating to “lawful political activity, advocacy, protest or dissent” from the Agency’s work. (See next page.)

The law, called General Intelligence Laws Amendment Act, was criticised for failing to address many of the other big problems in the intelligence structures, but this change was an important step forward. But as we shall see, there are signs that the SSA is still monitoring “lawful political activity”.

Remaking the intelligence structures in the 1990s

The 1990s saw a big effort to change the make-up and mandate of the intelligence structures, to move away from the legacy of human rights abuses inflicted by the apartheid intelligence agencies. After 1994, two new intelligence structures were created to replace the apartheid structures: the National Intelligence Agency (NIA), which was responsible for domestic intelligence, and the South African Secret Service (SASS), which was responsible for foreign intelligence. They were staffed by a mixture of members of the ANC’s former security structures and the apartheid intelligence service.



Who defines “National Security”?

The appropriate definition of “national security” is a matter of intense debate across the world. It could be argued that the concept naturally lends itself to a broad or expansive definition, and this is part of the problem. The broader the definition of ‘national security’, the greater the opportunity for security structures to involve themselves in aspects of our daily lives. According to the General Intelligence Laws Amendment Act (11 of 2013):

“National security includes the protection of the people of the Republic and the territorial integrity of the republic against

- (a) the threat of use of force or the use of force;
- (b) the following acts:
 - i. Hostile acts of foreign intervention directed at undermining the constitutional order;
 - ii. Terrorism or terrorist activity;
 - iii. Espionage;
 - iv. Exposure of a state security matter with the intention of undermining the constitutional order of the Republic;
 - v. Exposure of economic, scientific or technological secrets vital to the Republic
 - vi. Sabotage; and
 - vii. Serious violence directed at overthrowing the constitutional order;
- (c) acts directed at undermining the capacity of the Republic to respond to the use of, or the threat of the use of force, and carrying out the Republic’s responsibilities to any foreign country and international organisation...

But does not include lawful political activity, advocacy, protest or dissent.”

Why create two agencies? One reason was to prevent too much power being concentrated in one agency.ⁱⁱⁱ

But in 2009, these two agencies were merged into a single new body called the State Security Agency. The reason given for creating a single new agency was to prevent duplication and lack of coordination between rival agencies.

The “political intelligence” mandate in the 2000s

In the early 2000s, President Mbeki issued a directive to expand NIA’s mandate to include “political and economic intelligence”. This required NIA to assess “the strengths and the weaknesses of political formations, their constitutions and plans, political figures and their roles in governance, etc”.^{iv}

Soon after that, South Africa saw its first big ‘spy’ scandal in the post-apartheid era, which showed the problems with the “political intelligence” mandate. In 2005 it emerged that NIA operatives had spied on businessman Saki Macozoma (seen as an Mbeki ally) as part of ‘Project Avani’, an effort to gather political intelligence on the emerging faction battle between Mbeki and Zuma.

The then Inspector General of Intelligence, Zolile Ngcakani, launched an investigation, which found that elements within NIA had illegally spied on 13 people as part of Project Avani, including government officials, politicians, and a journalist. The investigation implicated NIA’s director general, Billy Masetlha, who was fired.^v

The project also resulted in the strange leaking of ‘hoax emails’ which ‘revealed’ a conspiracy against Zuma by Mbeki loyalists. These fake emails seem to have been created and released by a pro-Zuma faction in NIA to boost Zuma in the ANC succession battle.

This whole episode showed two risks of the controversial “political intelligence” mandate. Firstly, it invites the security structures to monitor lawful political

iii L Nathan, ‘Intelligence bound: the South African constitution and intelligence services’, International Affairs, 2010

iv Cited in Ministerial Review Commission on Intelligence, ‘Intelligence in a constitutional democracy’, 2008, p 129

v Office of the Inspector-General of Intelligence, “Executive summary of the final report”, March 2006, p 17

activity, which they shouldn't be doing in the first place. Secondly, once they start monitoring lawful political activity, there is a risk that members of the intelligence structures could use the information they gather to advance individual or factional interests, by giving information to their allies about perceived political opponents.

The Matthews Commission exposes more problems in 2008

The scandal surrounding Project Avani and the 'hoax emails' also led to a Ministerial Commission of Inquiry into whether South Africa's intelligence services complied with the Constitution – it is often known as "The Matthews Commission".

The Commission, finalising its report in 2008, found that the intelligence services suffered from weak oversight, and had an overly broad mandate to gather domestic intelligence, which can "lead to the NIA focusing in an inappropriate manner on lawful political and social activities." In particular the Commission found evidence of surveillances abuses, and flaws in the Rica oversight system. (See page 50.)

The Commission also identified a lack of regulation and oversight on other "intrusive" intelligence gathering methods, such as infiltrating organisations, physical and electronic surveillance, and recruiting informers. The Commission found that these practices were unconstitutional, as there was no regulation.

Though its findings were explosive, the Commission's report has been officially sidelined on a technicality – it was 'leaked' to the media before being tabled before Cabinet. This has allowed state officials to refuse to recognise the report, saying it has "no status" because it was not properly processed. Because of the lack of transparency in South Africa's state security sector, it is also difficult to know whether the Matthews Commission recommendations have been implemented.

Narrowing the intelligence mandate in 2013

However, a small gain was made in 2013 with an amendment to the intelligence laws, which narrowed South Africa's domestic intelligence mandate to specifically exclude "lawful political activity, advocacy, protest and dissent."

But as this handbook shows, there is evidence that the State Security Agency is still involving itself in matters related to "lawful political activity, advocacy, protest and dissent" – and may still be gathering so-called 'political intelligence'.

04 CRIME INTELLIGENCE AND PROTEST ACTION

How intelligence methods have become part of policing of protest

The Crime Intelligence Division, which falls under the South African Police Service, is responsible for gathering intelligence on criminal activity, to support police investigations and to make crime-fighting efforts more effective. Crime Intelligence also has authority to use surveillance, and do covert and undercover operations, such as infiltrating crime syndicates.

However, there is also a lot of evidence that the police's Crime Intelligence Division has also taken on a mandate to monitor community organisations involved in protest and other political activity.

When protesters are monitored

Many people who have been involved in protests may have observed police officers photographing or videotaping them during a protest. Some have even noticed police officers reading the placards that are on display, carefully writing down the slogans in a notebook.

So why is this happening? What many people don't know is that police have received orders 'from the top' to actively gather this information, with a big role for Crime Intelligence. (See next page.)

This may explain why so many activists find themselves getting phone calls from Crime Intelligence officials – as we will explore later – although it does not excuse it.

The shift to intelligence-led policing in protests

These experiences are only likely to get worse, given that in 2014, the police announced a policy shift to 'demilitarise' public-order policing and adopt more "intelligence-led" methods. This has led to SAPS seeking more resources to gather intelligence for its 'public-order policing' functions, including appointing more video operators and more 'intelligence gatherers', and extra funds for

surveillance equipment such as long-range ‘listening’ devices.^{vi}

These policies have been adopted without public debate or buy-in. This means our rights may be infringed without us knowing, and it can create a feeling of intimidation or distrust between activists and authorities. There are also no clear limitations on what information can be gathered and how.

The lack of safeguards makes the involvement of Crime Intelligence even more dangerous, as it has the ability to use covert and intrusive methods to get information, unlike other divisions of the police.

It is debatable about whether surveillance is actually a ‘demilitarised’ approach. Surveillance may be less violent than other methods, such as use of rubber bullets and tear gas, but can be extremely intrusive. If combined with political interference, intelligence-led methods may just lead to more targeted forms of violence, whereby authorities are able to identify leaders of protests – “trouble-makers” – and target and harass them.

Anticipating criminal behaviour?

Another problem is that these approaches may encourage authorities to anticipate criminality among people who are actually exercising basic rights. There is a risk that authorities may begin to profile and predict who is ‘likely’ to engage in criminal behaviour, even if they have not yet done anything that is against the law.

Misallocating crime-fighting resources

When Crime Intelligence resources are allocated to monitor community organisations which engage in protest – the majority being situations where no crimes have been or will be committed – it means they are being diverted from investigating serious crimes such as robbery, hijackings and organised crime.

vi Daily Maverick, “Public Order Policing: SAPS demands more muscle, 3 Sept 2014



Gathering intelligence in protests: what does the policy say?

In March 2014, SAPS National Commissioner Riah Phiyega signed off on **National Instruction 4**, which sets out the most recent rules for using intelligence in public order policing. Like previous policies, it has a lot to say about how police must gather information on protesters:

- According to the policy, when the relevant officer receives notice that there will be a gathering, his or her first responsibility is to “make an attempt to gather information pertaining to the proposed gathering by using the POP [public-order policing] unit information network (and crime intelligence network where appropriate).” It does not state on what grounds it would be appropriate to involve Crime Intelligence.
- From there, the policy says that police must do a “threat assessment” (to anticipate possible unrest) – again, drawing on Crime Intelligence among other units. According to the policy, the threat assessment does not call for new information to be gathered, but should draw on “available operational information”, including “history of peaceful or violent protests by the parties involved [and] past experience with the parties, suitability”.
- Police must then assess the likelihood of violence, whether the participants will be aggravated or carrying weapons, and determine “the intention of the participants” and “any other information which is of importance for the operation.” It does not outline what methods should be used. The policy is silent on whether or not Crime Intelligence officials should participate in any pre-protest meetings between police and the protester organisers, although as we will see, this sometimes happens.

Other aspects of the policy also have privacy implications:

- It states that POP units must have an Information manager “to take responsibility for the collection and supply of all information, before, during and after gathering to ensure informed tactical decision making in order to professionally police all gatherings.”
- Station commanders are given a vague mandate to use intelligence for pre-emptive policing, to “identify indicators of potential violent disorder in their areas by continuously gathering information...”
- According to the policy, “All potential or existing challenges and underlying factors must be analysed by intelligence and information structures...” – a very broad, vague mandate.
- The policy states that protests should be videotaped, and the footage stored for evaluation and training.

PROBLEMS: This policy does not give clear limitations on what methods should be used for this kind of information-gathering, or any requirement that the police should choose the least invasive means to carry out such assessment. These provisions also encourage a form of pre-policing, without any evidence of wrongdoing. There are no guidelines for how long information should be stored or when information should be discarded.

TAKE AWAY QUESTIONS

- Why should the reasons for a protest be a factor in police responses?
- What is being done with all the information gathered?
- Does intelligence-led policing lead to more secretive forms of abuses?
- How much power should be given to those who equate political stability with national security?



The United Front 'preparatory assembly'. Photo © Oupa Nkosi, Mail & Guardian

05 "A SIGN OF CREEPING AUTHORITARIANISM"

How Numsa and the United Front exposed attempts to gather intelligence on their members

At the start of this handbook we read about Themba, who was approached by the State Security Agency because of his affiliation with Brian Ashley, a prominent political activist with links to the 'United Front', a proposed working class alliance between the National Union of Metalworkers (Numsa), and community organisations. The United Front seen as an alternative to the current alliance between the African National Congress (ANC), South African Communist Party (SACP), and Cosatu.

In the time since Numsa first called for a United Front in December 2013, a great deal of evidence has emerged that South Africa's intelligence agencies have taken a great – and possibly unlawful – interest in the United Front and its affiliates.

Leaking of the “plotters” document

In December 2014, around the same time that Themba had State Security Agency officials sitting in his office, in another part of the country, another part of the same story was playing out. Numsa called a press conference in response to the leaking of a dossier claiming to “expose” details of a “secret regime change plot” by Numsa’s leadership.

Claiming to be written by “concerned members within Numsa”, the document accused Numsa’s leaders of trying to destabilise South Africa with a programme of land-grabs, agitation and violence, as well as the launch of a new political party. (It is often speculated that the United Front is intended to become a political party, though its public discussion documents make it clear that the United Front’s interim leadership is on the fence about electoral politics.) The document also accused six external “plotters” of being involved, including several academics – and Brian Ashley, the political activist who the SSA questioned Themba about.

At their press conference, Numsa’s leaders tore into the document. They pointed out basic inaccuracies in the text which suggested that someone outside of Numsa must have written it, contrary to its claims. It was clear, they said, that Numsa’s decision to break away from the ANC and SACP had created panic in the alliance. The document was a desperate attempt to divide Numsa and discredit its leadership, they said.

The Numsa leaders pointed out that the ‘leaked document’ was similar to many other anonymous, fake ‘intelligence’ reports that have been used in smear campaigns in South African politics in the past.

Karl Cloete, Numsa’s Deputy General Secretary, also revealed that several shop stewards and United Front activists had reported similar experiences to that of Themba. People suspected of acting on behalf of the State Security Agency, “have been trying to recruit shop stewards and activists in Ekurhuleni and Eastern Cape to spy on the union’s activities on the proposed United Front.” Several officials’ cars had been followed and broken into, and laptops stolen.

We will explore three of those cases in the following pages.

Numsa leaders has said it will make a complaint to the Inspector-General of Intelligence, which is tasked with investigating potential abuses in the security services. (See page 58)

Numsa also pointed out that potential harassment from intelligence agencies is not a new phenomenon:

“It happens to activists in social movements involved in ‘service delivery protests’. It happens to investigative journalists digging up all the rot on corruption. It happens to all those who are critical of the status quo. There is a pattern where intelligence forces are used to deal with legitimate and lawful struggles and campaigns. It is a sign of creeping authoritarianism.”

FOR THE RECORD

When asked if the SSA was monitoring the activities of Numsa or the United front, spokesperson Brian Dube told R2K: “We have been on record saying the conduct of our work is done in terms of the law and relevant policies and directives. We have also said that we will discharge this work without fear or favour irrespective of individuals or groups... As a matter of policy, we don’t disclose names of individuals and or groups who may be subject of our work. As far as we know, the organisations you mention are legitimate social organisations that advocate for issues of their members.”

THE SSA AND UNITED FRONT IN EKURHULENI

Mxolisi Ndimande is coordinator of a civic structure called the Political Discussion Forum in the township of Katlehong, and is provincial secretary of the United Front in Gauteng. In November 2014, he was helping to organise a march under the banner of the United Front, whereby various civic structures planned to deliver a memorandum on service delivery to the Mayor of Ekurhuleni.

As one of the convenors of the march, Ndimande's details were submitted in the notice sent to the municipality to inform them of the march. On the same day that notice was submitted to the municipality, Ndimande's phone rang with a call from a private number.

It was a woman identifying herself as a representative of the State Security Agency. She told Ndimande that the SSA was "intervening" because of the submission Ndimande had made to the municipal authorities.

According to Ndimande, she was polite at first, but said she wanted to know, "Who are these people who want to march all the time, to disrupt this work of the government?"

"What type of intervention is this?" asked Ndimande. "Everything we are doing is in line with the law."

The woman wanted the names of the steering committee of his organisation, which he refused to give without speaking to the committee.

"That's when she began to be furious," says Ndimande. The woman said she would get back to him after he had consulted his organisation, and ended the call.

CASE 1

A few days later, he got another call from the woman.

“She was no longer very friendly,” says Ndimande wryly. She wanted to know why he had not contacted her, even though she had been the one to say she would call him back, and in any case had contacted him from a private number.

The woman still wanted Ndimande to send her the list of steering committee members, and gave him her email address, before ending the call. He did not send her the list. She called again in the morning, asking to meet with him at a restaurant. Feeling that he “could not trust” her, he declined. That was the last time he heard from her.

Physical surveillance?

During that time, Ndimande also believes that someone had placed his organisation under physical surveillance. In the days before the protest was to take place, a planning meeting took place at a community centre in Katlehong. When the meeting ended, Ndimande noticed two white Corsa bakkies parked outside the centre, with three men standing around. One bakkie had its bonnet popped open like it was broken down. But as people filed out of the centre, the three men were surprisingly interested in the discussions that had taken place inside. Ndimande remembers, “They asked some of [us], what was the meeting about? Who is chairing the meeting? Who is the leadership? How did we organise people to come to the meeting?”

The following week, Ndimande heard that a ‘municipal official’ had contacted the centre’s administrator to say that the Katlehong Political Discussion Forum shouldn’t be given permission to use the venue again.

The ‘colonel’ from Crime Intelligence

The planned march was postponed to later in the month, as the Ekurhuleni Metro Police Department (EMPD) wanted extra docu-

CASE 1

ments that weren't legally required in order for the march to go ahead (including a letter of confirmation from the Mayor's office that it was prepared to receive a memorandum during the protest). All the same, Ndimande and his comrades pulled together the desired documents.

Before EMPD gave the final go-ahead, though, Ndimande and his fellow organisers were called to a pre-protest meeting with the authorities. Ndimande remembers there being five officials in the room, including a superintendent from the EMPD, the Provincial Commander of the public order policing unit, and a man who was introduced by the superintendent as a colonel from Crime Intelligence. Ndimande says the colonel was casually dressed – in a tracksuit, t-shirt and cap.

Ndimande remembers the meeting being “a very hot debate”, as the officials haggled over the chosen route of the march. However, he says the Crime Intelligence colonel only spoke once: “He wanted to know why do we choose to march instead of engaging [with authorities].”

Ndimande believes this was not a legitimate question. “There are many ways in which people can choose how they want to carry out their programme. To march is a decision that you arrive at after having observed certain challenges [with engaging with authorities],” he says. (As we will see, this is not the only case where a Crime Intelligence official questioned the motives of a protest at meetings like this.)

The march went ahead successfully. Ndimande says he wants other people to know about these experiences, as he believes they are an example of abuse of the intelligence services.

“When state power is being misused, the only counter is when we speak out,” he says.



United Front march on Budget Day. Photo: Ashley Fataar

CASE 2

MYSTERIOUS 'RESEARCHER' IN NUMSA P.E.

Another suspicious encounter was reported in Port Elizabeth. A Numsa member who is active in the United Front structure in PE was approached by a person who identified himself as a researcher at UKZN, who was interested in finding out more about the United Front.

According to the Numsa member: “He told me his research wanted to know the state of Numsa on the ground. Are there any activities? Are there any meetings? Are there any gatherings, any programmes? And most importantly, he wanted the names of the leaders.”

The researcher offered him a stipend to help get this information.

After getting some documentation on Numsa's activities, and interviewing several Numsa members and UF affiliates, the 'researcher' disappeared. The number gave for himself, and the UKZN email address he gave for his supervisor, were both disconnected. We could find no evidence of a student or researcher at UKZN with his name and the UKZN human resources department did not have any record of a staff member matching the name he gave for his supervisor.



United Front march on Budget Day. Photo: Ashley Fataar

CASE 3

A LONG-LOST 'COMRADE' WHO WANTS TO JOIN THE UNITED FRONT

In the course of researching this publication, R2K encountered another suspected instance of someone trying to gather information on the United Front: we will call him comrade Simon^{vii}, because he is feeling so threatened by his experiences that he has asked to be anonymous.

Simon is active both in R2K and the interim structures of the United Front, and was helping to prepare for the United Front's big protest on Budget Day. Two days before the protest, he got a call from an old comrade, a person he has known since the days of the struggle, who had also worked for the National Intelligence Agency (NIA) until a few years ago.

vii Not his real name

CASE 3

He wanted to ask Simon about the protest, which he says he heard about “from a friend”. He was interested in being part of the event, he said.

Simon told him, yes, on Wednesday we will march to Parliament for Budget Day, under the banner of the United Front.

But Simon’s old comrade seemed to know more than he was letting on, because next he asked: “And aren’t you also part of the United Front steering committee?”

He started to ask Simon a lot of questions about the demands of the protest and about the United Front itself, especially the question of whether the United Front would become a political party. Simon remembers him asking: “Where are you thinking of going with the United Front? Are you thinking of going political with this?”

Simon remembers feeling “very suspicious and very fearful”. He knew his comrade’s old affiliation with National Intelligence and found these questions very invasive – and said so.

Asking for documents

The next day, Simon got a visit from his old comrade. Simon says the man was still making it seem as if he was just interested in finding out information for “his friend” – and possibly interested in joining the United Front himself.

Simon’s comrade asked for a copy of the memorandum that would be handed over. He wanted to know who would be leading the march itself, how many people are expected to attend. He wanted to know who was funding the United Front and how much money it had. He even wanted attendance registers, says Simon.

CASE 3

“Your ‘friend’ is wanting a lot of information,” Simon told him, feeling certain that his comrade had been sent to spy on him. “Please let your ‘friend’ know that he must come meet me face-to-face.”

Simon never asked point-blank if his comrade was acting on behalf of his old employers in the intelligence structures. But it appears Simon’s coded question hit home. “You know I left my job,” his old comrade told him, “but the guys are still calling me [to get information] when they hear something.”

Before he left, Simon says his comrade offered to get funding for Simon’s community organisation, including a computer, a printer and a stipend. This offer came with only one condition: the community would need to know that the funding was coming from the ANC. Simon rejected the offer.

Simon is certain that his old comrade had been sent to gather intelligence on the United Front, but doesn’t fully understand why. “Are they trying to make us fearful? Are they trying to prepare themselves for what they think may happen? Are they trying to create a diversion?”



TAKE AWAY QUESTIONS

- What does it mean for democracy if political activity is being mediated without our consent, by non-transparent institutions?
- Is the intelligence structures’ interest in the activities of the United Front a sign that these structures are serving the interests of the ANC?
- Are these intelligence activities legal, given that the Constitution makes it illegal for South Africa’s security services to “prejudice a political party interest” or “further, in a partisan manner, any interest of a political party”?



R2K camp-out at the gates of Parliament. Photo: Juliette Garms

06 “MAKE THE SMART MOVE AND GET OUT OF THE CAR”

How one activist was apprehended and intimidated by intelligence officials

Miriam^{viii} is an active member of Right2Know who is also very involved in anti-crime efforts in her community, where violent crime has drawn the attention of the authorities. In January 2015, men apparently representing an intelligence structure approached her three times, and she later discovered her house was under physical surveillance.

Through a local residents’ forum, she has helped organise a series of evening processions through the streets of the community to reclaim the public space back from crime. Miriam is a well-known personality in her area.

This is why she wasn’t concerned or surprised when, one evening during the procession, a white sedan rolled up and the men inside called her over. There were three men, she says – all in plain clothes.

viii Not her real name

“They asked what the protest was about and who I am, and am I the convenor of this march,” says Miriam. Assuming that they were just residents who had come to support the event, she answered all their questions. Then the man in the driver’s seat asked her name.

“My name is Miriam,” she answered.

He said, “Oh, you’re *the* Miriam?” He turned to the guy in the passenger seat and said, as if they already knew about her, “This is Miriam, have a good look at her.”

Miriam was taken aback, but thought it was possible they had heard her name through the grapevine.

Miriam’s second encounter

The next night, residents again took to streets in a peaceful march. The same car rolled up. This time only two of the men, but this time the man behind the wheel asked her to get into the car. She sat in the back seat.

This time, says Miriam, their questions were a lot more direct: Where do you stay? Do you have children? Are you married? Which organisation do you represent?

Miriam was stunned. “I’m starting to ask questions back,” she says. “Why do you want to know who’s my family? Why do you want to know where I stay? What interest is it to you who I am?”

The man responded, “It’s just part of our work,” but refused to say what sort of ‘work’ that was.

Miriam remembers feeling suddenly very unsafe. She told them, “Guys if you don’t have any more questions for me, I will rather get out of the car.”

The meeting had left Miriam feeling shaken, and she reported it to her committee the following day.

Miriam’s third encounter

That next evening, for the third night running, she joined the residents’ march through the streets. This time, as she was walking, one of the men from the car

came up behind her and grabbed her. “He came up alongside me and hugged me like this,” says Miriam, simulating linking of arms, “and pulled me out of the protest and into the car.”

She was wearing a Right2Know t-shirt, and when she got into the back seat, one of the first things the men asked her was if she worked for Right2Know.

She said, “No, but I’m a great supporter of Right2Know.”

It became clear that the men had found out a lot of information about Miriam since their last meeting, including her affiliation with Right2Know. They began to list other organisations that she was affiliated with or where she had been employed. Some of the information was inaccurate, but it was clear that they had researched her.

Just then, her phone rang: one of her committee members had followed her from the protest. He had just called a local police contact to give a description of the men he’d seen accost Miriam.

He told Miriam, “Make a smart move and get out of the car and don’t give them any more answers. These guys are from the national intelligence office.”

Miriam told the men that she was ending the interview and made to get out of the car, but not before one of the men said, “Okay, we know where you stay, if we need you again.”

“That made me scared,” remembers Miriam, especially after they had asked about her children. She had also not told them where she stayed.

Physical surveillance?

The next week, Miriam noticed that a different white car had been parked on her street several days in a row. She says the car didn’t have a number plate. Two men she didn’t recognise were in the car. Several times, especially at night, one of the men would get out of the car and walk down the street, and peer into her front yard. It seemed clear that she had been put under physical surveillance.

Late one night, one of the men came past the house and peered into Miriam’s

yard and one of her children yelled at him from the window. He fled back to the car, and the next day, the car wasn't there any more.

It is difficult for Miriam to know what to make of this. She still does not know why intelligence operatives became so interested in her life. Even though she is involved in organising her community against crime, she feels like she is being monitored as if she were a criminal. It is possible that they believed they were protecting her, as she has received death threats from criminals in the area. But their actions and motives lacked any transparency, and if they were trying to keep her safe, it is clear that their presence has had the opposite effect. She says she feels unsafe, and violated. She also feared that her phone was bugged. (See page 39 for more information on communications surveillance.)

“Currently a lot of things are happening and I'm trying to put my finger on it,” she says. “I don't know why it's happening to me.”



TAKE AWAY QUESTIONS

- How does an intelligence agency justify involving itself in the affairs of any community organisation, but especially one campaigning against violence and crime?
- Were the intelligence officials' questions designed to intimidate Miriam or did they just have that effect?
- When Miriam demanded to know who they were and why they were interested, why did they refuse to give a straight answer?



Bhayiza Miya. Photo: Kate Stegeman

07 “HE WANTED ANY INFORMATION CONCERNING POLITICAL ACTIVISM”

How intelligence officials have tried to recruit community activists in Thembelihle

Bhayiza Miya is a leader of the Thembelihle Crisis Committee (TCC), a community organisation in Thembelihle informal settlement in south Johannesburg.

Bhayiza is known for being the person that police tried to hold personally responsible for a days-long protest that happened in Thembelihle in September 2011. After incidents of violence and property destruction during the protest, Bhayiza was charged with intimidation and public violence, though at his trial it emerged that he and other TCC leaders actually played a significant role in restraining residents and subduing the violence.^{ix} The state’s case fell apart and the matter was eventually struck from the court roll.

Unlawful and brutal behaviour of police in Thembelihle has continued to

^{ix} M Clarke, “An anatomy of dissent and oppression: the criminal justice system and the 2011 Thembelihle protest”, Socio-Economic Rights Institute, 2014

make news – most recently in March 2015, when residents’ protest against the housing MEC was violently suppressed. Police used rubber bullets and teargas on protesters and arrested residents indiscriminately.

But one part of the story that hasn’t been told is the evidence of Crime Intelligence’s involvement in community politics in Thembelihle. In fact, on two separate occasions Crime Intelligence operatives have approached Bhayiza to become an informer – as recently as December 2014.

Bhayiza’s first encounter

Bhayiza says he was first approached to become an informer as early as 2005, although he isn’t sure about the date. A single Crime Intelligence officer, wearing plain clothes, came to his shack to talk with him. “He said, ‘Bhayiza, we want you to work for us, because it seems as if you are famous or popular within this community,’” says Bhayiza. The officer told him they wanted help to “arrest criminals.”

Bhayiza says he would have no problem with helping efforts to fight crime in the community. But during this discussion at his shack, it became clear to him that the Crime Intelligence officer was more interested in political activity in the area. “Within the very same talk,” he says, “they changed it to say: we want people who are involved in political activities.”

The official said he wanted help identifying “people who want to kill the councillor or overthrow the government.”

But who was it in Thembelihle that wanted to kill councillors or overthrow the government? There is no credible reason to believe that this has ever been a risk in the area. To Bhayiza, it seemed that the officer was interested in getting information on whoever was helping to organise residents of Thembelihle to demand better services and more accountability from local government. In other words, in the view of the Crime Intelligence officer, the work of Thembelihle activists was a potential risk to state security.

“Talking about criminals was the entry point,” he says, “but the aim and objective was to target the so-called [community] leaders that are causing problems.” The official were offering money – about R40,000, according to Bhayiza.



Siphwe Segodi. Photo: Kate Stegeman

Siphwe's first encounter

Siphwe Segodi, another Thembelihle Crisis Committee leader who now works at the Freedom of Expression Institute (FXI), remembers getting a phone call in about 2008 from a person who turned out to be a National Intelligence Agency officer. The caller wanted to meet at a nearby petrol garage. Although he was suspicious, Segodi decided to go meet him. "I remember he had a white Corsa bakkie," says Segodi. It was in that bakkie that the two sat and talked.

At that time, Segodi and the TCC were planning a march in Pretoria with the Anti-Privatisation Forum (APF).

"What he wanted to know was more about that march, which communities were going to be involved, details of the march, and so on," says Segodi, "But he also was saying he wanted a relationship going forward."

"He was saying if I buy into this idea [of giving information], they will take care of me," says Segodi – he believes this was an offer of money. Segodi did not take him up on the offer – instead he reported it to his organisation. Since then, Segodi agrees with Bhayiza that there have been several other attempts to recruit TCC leaders as informers – though it is not always clear which intelligence structures were involved.

Bhayiza turned them away. However, he would not be the last Thembelihle activist who reported an approach from an intelligence agent.

Bhayiza's second encounter

Just before this handbook was printed, Bhayiza reported that a Crime Intelligence official had tried to recruit him once again – in December 2014.

A man called, saying he was from “Gauteng Intelligence”, to request a meeting at a nearby mall; they met at Steers. “He took out a recorder like is normally used by researchers, so he was recording the conversation,” remembers Bhayiza.

“He went direct to the point to say that he was informed that I was [approached to be] recruited and I declined. He said there are a lot of benefits and I should take the job.” The Crime Intelligence official apologised to Bhayiza about the incidents surrounding his arrest in 2011 and promised that it would not happen again if Bhayiza became an informer.

Compared to the 2005 encounter, Bhayiza remembers that the official was even more upfront about wanting information about lawful political activism. “He wanted to know anything that deals with politics, about the protests, the service delivery protests that are normally happening in Thembelihle,” says Bhayiza. “He wanted any information concerning political activism that is in the area.”

Though Bhayiza turned down the offer – again, involving large amounts of money – he says he was not angry or concerned about the experience. After everything that he has experienced, “It comes in this ear and went through the other ear. I don't consider these people as seriously as I might.”

Use of local information networks

Though Bhayiza may have turned down these requests, it is clear that police are getting information from somewhere. Some months ago, Bhayiza reported getting a call from a local police official who he says is sympathetic to his organisation.

“He told me, ‘We have heard you are having a protest tomorrow,’” recalls Bhayiza. “It was not a protest; it was a meeting with the MEC for housing. So I said, ‘Where did you get that information?’ And he told me, ‘I got that

information from the intelligence.”

The call ended with a warning: “He said, ‘Bhayiza, whatever you are doing tomorrow, be careful.’”

So where are intelligence structures getting this (sometimes wrong) information?

Bhayiza reports that TCC leaders have long believed that Crime Intelligence uses local ANC members to report on TCC’s activities. “They [Crime Intelligence] could see that they could not get into us as comrades – they are now using ANC members... They normally come to our mass meetings with a recorder – you know, a phone – and they record.”

This suspicion was underscored when police charged Bhayiza in the aftermath of Thembelihle’s September 2011 protest – he discovered that the police statement included information from two local ANC members.

The use of local informers could explain why TCC members are finding that SAPS appears to have prior knowledge of TCC’s meetings, even when they haven’t been publically announced.

TAKE AWAY QUESTIONS

- Why are intelligence officials viewing the expression of community grievances as crimes and threats to public safety and “national security”?
- How common is it for intelligence officials to recruit community informers, and for what purpose?
- Such actions create division and sow mistrust within communities and organisations – is this intentional?

08 “WHERE HAVE YOU BEEN, WHAT DID YOU TELL THOSE PEOPLE?”

How intelligence officials have harassed Abahlali baseMjondolo

Abahlali baseMjondolo (ABM), a movement of shackdwellers based around Durban, has experienced intense repression throughout its existence. There are few organisations in South Africa, if any, with more vivid experiences of harassment – by local ANC political structures, eThekweni civil servants, police, and, it would seem, by intelligence structures.



S'bu Zidoke. Photo © Delwyn Verasamy, Mail & Guardian

Abahlali's experiences of repression have included police brutality at protests, veiled public threats by elected officials, anonymous death threats, and most shockingly a series of assassinations: in 2013 and 2014, several Abahlali leaders and allies have been gunned down in or near their homes.

In the context for this very real, tangible violence, the issue of possible surveillance is almost an afterthought. But many in the leadership of Abahlali are certain that the organisation is being monitored. At a recent presentation to the South African Human Rights Commissions, Abahlali leaders declared: “We are under constant surveillance by intelligence. If we were doing anything illicit the government would know about it.”

Strange phone calls

S'bu Zikode, the president of Abahlali, became especially aware of this in early 2010. After Zikode returned to South Africa from an overseas speaking tour, he says the first call he received when he turned on his phone was from the National Intelligence Agency (now the State Security Agency). “They wanted to know, ‘Where have you been, what did you tell those people?’” he says.

Zikode had given talks at several US universities.

Firstly, this incident told Zikode that the state intelligence agency had a completely inappropriate interest in his activities, but also the timing of the call – so soon after he returned – also suggested that they may also have been monitoring his movements.

At least once, Zikode believes he has been phoned by a police officer pretending to be a civilian: in August 2013 he received a call from a man identifying himself as a journalist. At some point in the interview, the ‘journalist’ tried to put Zikode on hold... “Except that it did not work,” says Zikode. “Instead I could hear them talking amongst themselves. And then I heard the sound of the police radios and realised I was actually [listening] in a police station.”

Zikode could hear people talking on the other end of the line, but could not make out the words. However, he is now certain that someone from within the SAPS had called him under false pretences to get information about Abahlali. (In the next section, we will hear from another KZN activist who says a Crime Intelligence official called her to get information under false pretences.)

Since about 2011, Zikode has started to receive occasional phone calls from various officers in the Crime Intelligence Division, often from a particular officer who identified himself as a Captain. “He started asking me, ‘What plans do you have as a movement?’” says Zikode. According to Zikode these calls were an almost weekly occurrence at one point – between 2012 and 2013 he says he kept a record of them in his notebook.

The most recent call happened in September 2014 after the assassination of Thuli Ndlovu, the Abahlali baseMjondolo chairperson in KwaNdengezi, who was gunned down in her home after receiving several death threats. Several days after her death, a member of Crime Intelligence called Zikode to ask about the programme of the funeral and what speeches would be made.

As we will see in the next section, Abahlali was also one of the groups questioned by Crime Intelligence officials in the lead-up to the COP17 climate talks in Durban in 2011.

“Intelligence reports”

There is at least one piece of documentary evidence of intelligence reports being compiled about Abahlali and its affiliates. In 2010, eThekweni municipality evidently received an intelligence report on Abahlali which they used to ‘ban’ a protest by an affiliate organisation called the Valley View Flats Committee. According to the municipality’s records, authorities banned the protest, on issues of land and services, because:

“An *intelligence report* said that these were actually members of Abahlali base-Mjondolo attempting to protest under another name. The integrity of the application was therefore questioned due to the apparent misrepresentation and march was not approved.”^x

Aside from the fact that the municipality’s decision was not lawful, it also revealed that the state’s intelligence capabilities – presumably through the Crime Intelligence Division – are being used to gather information on a civic organisation. That such capabilities are being used against civil society at all is probably illegal, but to add an extra layer of irony, in this case the intelligence was also wrong. The Valley View Flats Committee is indeed a member organisation of Abahlali (not a ‘front’, as suggested by the official record), but the protest was organised by the Valley View civic organisation in its own capacity.

^x J Duncan, “People’s protest is being criminalised,” Mail & Guardian, 2 May 2014



TAKE AWAY QUESTIONS

- Exactly what kind of threat does Abahlali pose to national security?
- Why are the intelligence structures monitoring lawful Abahlali activities, but failing to protect them from violence and murder?
- How much of the intelligence gathered is informed by paranoia and misunderstanding – and is therefore inaccurate and useless?



Riot police at the climate justice march in Durban during COP17, 2011

09 CIVIL SOCIETY EXPERIENCES DURING COP17

How intelligence agents monitored activists at the 2011 climate talks

Abahlali was among those who reported getting calls or visits from Crime Intelligence officials during the COP17 climate talks in Durban in 2011, as thousands of people planned to take to the streets to express dissatisfaction with the talks. Des D’Sa, of the South Durban Community Environmental Alliance, and Bobby Peek, of environmental group ground-Work, were also approached. The line of questioning they reported ranged from specific plans for protest action, to questions about the broader politics and activities of those involved – for example, Abahlali was questioned on its conflict with the eThekweni Mayor.^{xi}

Concerns of surveillance at the climate talks were shored up by media reports on the leaked ‘Spy Cables’ in 2015. One report exposed a secret agreement between the SSA and Zimbabwe’s Central Intelligence Organisation to exchange intelligence about COP17, including “monitoring of pressure groups and social media networks”. There may have been similar agreements with other governments.

^{xi} J Duncan, “How Deep Is the Rot in South Africa’s Intelligence Services?” sacsis.org.za, 23 Oct 2011

When questioned on it in 2011, police spokesperson Vish Naidoo was quoted as saying, “They will be asking lots of questions to identify threats to the event, so that we can prepare ourselves. This is in no way intended to intimidate people. We have a constitution that defends the freedoms of expression and association... This is what we have done in relation to all the other major events that South Africa has hosted.”^{xii}

This may sound reasonable, but it means that officials were already assuming that activist movements could veer into criminal activity. It also ignores how easily this can intimidate political opponents. Some activists involved in COP17 also expressed concern that some of the people attending their meetings may have been sent by intelligence agencies.^{xiii}

The apparent spying on civil society at the climate talks was not the first such incident during a large international event. Des D’Sa says that SDCEA had similar experiences with intelligence agents (although he is not sure from which structure) during the FIFA World Cup in 2010, the World Conference against Racism held in Durban in 2001, and the World Summit on Sustainable Development held in Johannesburg in 2002.

In the lead-up to the World Summit on Sustainable Development, the Anti-Privatization Forum (APF) also reported that NIA had tried to question its members on their plans – even attempting to recruit an informer.^{xiv}

xii J Duncan, “How Deep Is the Rot in South Africa’s Intelligence Services?” sacsis.org.za, 23 Oct 2011

xiii City Press, “Spies snoop on greens”, 12 Nov 2011

xiv APF Statement, 18 August 2002

TAKE AWAY QUESTIONS

- When people feel that they are being watched or are under suspicion, could that intimidate people or silence some voices in important debates?
- Do intelligence structures start with the assumption that activist organisations or movements could be dangerous or untrustworthy?
- Could major events become a pretext to intrude into the lives and privacy of local activists?



Vanessa Burger. Photo © Daily News, Independent Newspapers

10 “WHO IS SHE WORKING WITH? IS SHE STARTING A POLITICAL PARTY?”

How Crime Intelligence’s interest in one activist revealed paranoia

Vanessa Burger was chairperson of the Umbilo Action Group, a small community organisation in Umbilo, South Durban, whose main activities focused on substance abuse and police accountability. (UAG closed in May 2013 due to lack of funds.)

UAG’s work in the community was wide-ranging, with public awareness and advocacy campaigns on issues such as substance abuse, advocacy for rape survivors, and sex-workers’ rights. With Vanessa as a driving force, they organised marches and protests against police corruption and poor law-enforcement. Vanessa was also working closely with a SAPS internal investigator to probe allegations of police involvement in the local drug trade.

During this time, Vanessa became an increasingly prominent voice in local news media, with regular interviews in newspapers and on radio. The Sunday Tribune even featured her as a LeadSA “Local Hero”. But privately, Burger experienced intense harassment – often anonymously. Her home phone would

ring dozens of times a day; she would pick up and the caller would just stay silent. One night two vehicles tried to force her off the road; at another point, someone left a dead rabbit on her doorstep.

Because she was both a public face for community activism, and privately involved in an investigation of organised crime with possible links to police corruption, it is difficult to assess whether these experiences related to her public activities or private investigative work – and while Burger has suspicions, it is also hard to say who exactly is behind them.

It is clear, though, that Crime Intelligence took a great interest in the public activities of her organisation.

Covert phone calls

In 2012, Burger received a call from someone calling himself ‘Malusi’, who claimed to be an Umbilo resident. “He said he wanted to attend UAG [Umbilo Action Group] meetings,” says Burger, “Every time he called he wanted to know when is the meeting happening, what is going to be discussed?”

But Burger started to get suspicious: “He kept me calling me, and he was very stupid actually because he kept using the same cell phone number, but giving a different name each time,” she says. In September 2012, during one of these phone calls she finally confronted the caller directly and he admitted that he was actually a sergeant with Crime Intelligence. (In fact, they had met: he had been present at a meeting between police and UAG organisers in the lead-up to a protest against the Umbilo SAPS station commander.)

After that, he would continue to call her to request information on her activities – this time openly identifying himself as the sergeant from Crime Intelligence. “Eventually I started SMS-ing him details of upcoming meetings pre-emptively,” says Burger: “‘Hello my friend, this is what I’m up to this weekend, will you be there?’”

Phoning around town

Vanessa was not the only person to receive calls. Between 2012 and 2013, several times she learned that Crime Intelligence had called her associates to gather information on UAG. It seems clear that this was an attempt to gather

“political intelligence”.

In 2013 when the Shallcross Community Police Forum invited Burger to speak at a public awareness day, a Crime Intelligence officer called the organiser and demanded information about Burger and the Umbilo Action Group. Among other things, apparently the officer wanted to know if UAG was “starting a political party.”

The next UAG newsletter quipped, “Although we find this allegation insulting, so what if we WERE starting a political party? It IS permitted in a democracy.”

There were other, similar incidents. When Burger was invited to speak at UKZN’s Centre for Civil Society, at a meeting about housing issues that was attended by other civil society organisations, a Crime Intelligence officer called the chair of the local community watch to ask similar questions. “He (the community watch member) came to me and asked, ‘Why is Crime Intelligence calling me?’”

When Burger was to attend a housing meeting at Flamingo Court flats, some residents reported that they had received similar calls from Crime Intelligence.

The last time that Burger is aware of such a call was in January 2014. “They contacted the guy in neighbourhood watch again, to ask what I was working on, who was I with now.”

TAKE AWAY QUESTIONS

Is it reasonable that people and organisations engaging with the State should have all their plans and movements known, but not the other way around?

- Why should the police have any interest in a potential political party?
- How does it affect Burger’s ability to organise, knowing that Crime Intelligence tried to gather information through her associates?

11 "SOMETIMES THEY ARE PRE-INFORMED OF OUR MEETINGS"

How community leaders in Makause learned their activities were being monitored

‘General’ Alfred Moyo is the organiser of Macodefo, a civic organisation in the Makause informal settlement in Primrose, Germiston. Macodefo (short for ‘Makause Community Development Forum’) formed in 2007 to assist residents who were facing forced evictions; government had a plan to relocate residents of Makause to a site 40 kilometres away. Led by Macodefo – with General Moyo at the front – many residents bitterly resisted this plan, a number of aspects of which appear to have been illegal, leading to a souring of relations between SAPS officials and Macodefo and its supporters.



‘General’ Alfred Moyo. Photo: Kate Stegeman

Today, Macodefo continues anti-eviction work, and has campaigned against xenophobia, police brutality, and a range of other social ills affecting the community, as well as taking up many of the Right2Know Campaign’s programmes.

For General Moyo, there is no question that SAPS is gathering information on his organisation, although he isn’t sure if Crime Intelligence is specifically involved. “Some would phone me if we distributed some pamphlets, because my phone number would be there on the pamphlet. The detective would phone me to pretend as if they are interested in my pamphlets and they would want to participate in our march or they will want to be in our meeting. Asking for a venue, what time, all those sorts of things. Some are even wanting to be my friend on Facebook,” he says.

But Macodefo activists also believe that police officers were gathering infor-

mation using more covert methods. “Some are actually residents of Makause. They are deployed to be in Makause to trace us. They used to even attend our meetings.” He goes on to explain that Macodefo had a source in SAPS that was sympathetic to the organisation: after the organisation had a mass meeting “[the source] will come back to us and say there were two police officers who were amongst us in this meeting. But they were in private uniforms [plain clothes].”

Moyo was also privately informed by a SAPS member that police had recruited certain residents to be informers on Macodefo’s activities in the community. He explains that when Macodefo engaged with the municipality, they would often invite several community members to the meeting to provide an independent report-back to other residents. But he later learned that at least some of these residents might have also been reporting to police.

“Those members used to pretend they were our members but each and every time they will phone the police after our meeting ... so the police will know everything. Those police officers who are on our side, told us that at the police station they were discussing us, discussing a report that they got from this group. Sometimes they are pre-informed of our meetings, we don’t even know who phoned them.”

Again, these experiences are just a small aspect of an extraordinary level of abuse experienced by Macodefo activists and Moyo in particular. This reached its pinnacle in 2012, when, in response to a peaceful Macodefo-organised protest against police brutality in Makause, the local station commander charged Moyo with “intimidation” under the apartheid-era Intimidation Act. The charges were finally dropped in early 2015, and the station commander has long since moved on, but General reports that his organisation is having the same difficulties with the new SAPS leadership.



TAKE AWAY QUESTIONS

- How does suspected surveillance affect organisational unity?
- If much of what we do know about surveillance was revealed only by chance, how much could be happening that we don’t know about?



Right2Know KZN picket of Chatsworth police station, 2015. Picture: Siviwe Mdoda

12 WHY IS CRIME INTELLIGENCE IN THE ROOM AT ALL?

How intelligence officials' role in protests raises questions about their mandate

Many activists report that Crime Intelligence officials are sometimes present at meetings between police and protest organisers in the lead-up to a protest. As stipulated in the Regulation of Gatherings Act, these meetings are a platform to negotiate the logistical details of the gathering. Legally this meeting should only be called if authorities believe the proposed plan will disrupt traffic, put participants in harm's way or risk property damage.

Since the meetings are meant to be logistical in nature, it is not clear why Crime Intelligence officials should be present at all. The SAPS policy discussed on [page 11](#) is silent on whether they should be involved in these meetings.

Joanne Adams and Phezu Ntetha, Right2Know KZN's organiser and coor-

dinator, report that a particular Crime Intelligence official is often present such meetings in eThekweni municipality. Described as a tall Indian man in his mid-50s, he has sometimes confronted Adams and Ntetha with invasive questions about their political beliefs.

In April 2014, Right2Know KZN decided to hold a picket in support of the Public Protector, after ministers of the security cluster announced they would go to court to stop the release of her Nkandla report. A few days before the protest, Adams and Ntetha were called to meet with police to discuss the gathering. The Crime Intelligence official was sitting among the police when they arrived for the meeting.

“During the meeting, he started asking some funny questions,” says Adams. “He wanted to know ‘Why are you having a protest supporting Madonsela?’ I said, “Because we can.”

“He then asked, ‘Do you think that Madonsela is against Jacob Zuma?’”

Firstly, it is not clear why a Crime Intelligence official should be present at all in such a meeting, which is usually only attended by municipal officials, and local police and traffic officers. Secondly, there is no justification for an official questioning the purposes of a protest or the political positions of protesters.

On a previous occasion, the same official had called Adams after the meeting to get more information, asking if particular organisations will be attending. He seemed particularly interested in the possible attendance of Abahlali base-Mjondolo members, and representatives of the Stand Up! Foundation.

Adams says she usually fobs these questions off, but she was so angry after the ‘Madonsela’ meeting that she decided to confront the Crime Intelligence officer.

“I went right up to him [after the meeting] where he was making conversation with the other police officers, and said, ‘Oh and by the way, don’t call me after this meeting, because I have *nothing more to say to you.*”

She says the other police officers looked at him – and then burst out laughing.

This experience is similar to the incident reported by Mxolisi Ndimande, the United Front member in Ekurhuleni who sat in a meeting with a Colonel from Crime Intelligence. Vanessa Burger of the Umbilo Action Group also reported a similar incident.

How common is it for Crime Intelligence officials to participate in these meetings? It is hard to know for certain, because activists may not always be able to tell CID officials from regular officers.

TAKE AWAY QUESTIONS

- What role is crime intelligence playing in conversations that are supposed to deal only with administrative details?
- Is it a good use of public resources to have crime intelligence officers sit in on such meetings?

13 BREAK-INS AND CYBER ATTACKS AT UJ

How protest researchers believe they were targeted by an intelligence structure

Most of this handbook has focused on South African intelligence structures' apparent interest in activists who are involved in protest and dissent. But others may be at risk as well.

Peter Alexander, Carin Runciman, and Trevor Ngwane are part of a University of Johannesburg research project on protests. They have interviewed hundreds of people involved in protest across the country and have collected a database of more than 2000 media reports of protest from the past 10 years.

In February 2014, after the researchers hosted a media briefing with journalists to go public with their research, there was a series of break-ins and strange incidents at their office and their homes. First, they arrived at work to discover that the office security gates and doors were open – though nothing appeared to have been stolen. In the following days, Alexander and Runciman both experienced break-ins, with their laptops being stolen. Runciman says she arrived back at work the morning after a break-in at her home, to discover that someone had tampered with the lock of the security entrance to her office.

And then, in what appears to be a sophisticated cyber attack, someone hacked into the online 'Dropbox' folder where the researchers stored their interviews with protesters, effectively stealing the information.

We can only speculate about who was behind these events. Based on the sophisticated methods, and the potential value of the researchers' database of information on protest and protesters, Runciman says she and her colleagues "think it has got to be state intelligence or someone working with them."



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14 IS MY PHONE BEING BUGGED?

Though communications surveillance is hard to detect, it has been abused in the past

People who worry that their phone is being bugged often talk about hearing funny sounds over the phone, such as clicking, beeping, echoes, or voices. Many people who contributed to this handbook expressed such concerns – and often feel deeply insecure about their communications.

In fact, it is unlikely that these sounds would be caused by attempts to monitor your communications. Most electronic surveillance is almost impossible

to detect: if it were happening, you would probably never know about it.

So when is surveillance legal?

According to the Regulation of Interception of Communications and Communication-Related Information Act (Rica), the State Security Agency and Crime Intelligence can only listen in on your communications if it has been authorised by a judge. Under Rica, there is a specific ‘designated’ judge who is appointed to handle all such requests from law enforcement.

Such permission can only be granted if police or state-security officials can show reasonable grounds that a “serious offence” has been, is being or will probably be committed, that there is an actual or potential threat to public safety or national security, or “compelling national economic interests”.

These provisions have already been criticised being vague and for allowing law enforcement officials to speculate. There also isn’t much transparency in the system, as little information about these surveillance practices is disclosed each year, and people who have been bugged are not notified about it, even after the fact.

Once the judge’s permission has been given, the authorities can then “intercept” your communications, i.e. listen in directly to your communication as it happens – this could include phone calls, text messages, or your internet traffic. These interceptions are done from the Office for Interception Centres (OIC).

The authorities can also seek access to other information, known as “meta data”, which means the information about the communication. This includes the location of your phone, who you are calling or texting, and the time of the call or text – but not the actual contents. A warrant to collect this information can be obtained from any magistrate or High Court judge (i.e. not the “Rica” judge), and there is even less oversight.

Signs of illegal surveillance

There is also clear evidence that authorities sometimes ‘cheat’ or bypass the ‘judge’s permission’ system.

Firstly, there are known examples where the authorities have seemingly misled the judge, by falsely claiming that a person is involved in criminal activity in

order to get permission to monitor him or her – this happened in 2010 when Sunday Times journalists had their phones bugged. In 2008 Mail & Guardian journalists also made a complaint to the Inspector General of Intelligence that they had been bugged as part of a bogus criminal investigation.

Secondly, some kinds of surveillance seem to ‘bypass’ the Rica process of getting a judge’s permission. Rica’s big loophole is that it only regulates ‘domestic’ signals, and not ‘foreign’ signals. Foreign signals can mean any communication that passes either into or out of South Africa – including a lot of internet traffic. It has long been suspected that this kind of surveillance is sometimes undertaken without a judge’s permission.

Rica also does not regulate the practice of ‘bulk monitoring’, a form of mass surveillance where intelligence agencies ‘suck up’ a wide range of information from communications networks, rather than targeting a particular individual, to analyse them for potential threats. The 2008 Matthews Commission found that the intelligence agencies were doing bulk monitoring through a second facility called the National Communications Centre (NCC) without any legal oversight.^{xv}

xv For more, see J Duncan, *Rise of the Securocrats: the case of South Africa*, Jacana Publishing, 2014

MAKE YOUR COMMUNICATIONS MORE SECURE!

You should always assume that your communications are not secure.

But there are a few apps that can improve your security, making it more difficult and expensive to crack your communications.

Unfortunately there is still unequal access. More secure facilities are available to smart phone users, while feature phones are less secure.

ENCRYPTED SMS: Android users can download Text Secure, which encrypts SMS sent to any other user with the app on their phone. iPhone users can download Signal to do the same.

ENCRYPTED MESSAGING: Telegram is a very secure, free messaging app that works across several different platforms: Android phones, Windows Phone, and iPhone. WhatsApp has a bad reputation for security, but the developers are slowly introducing end-to-end encryption, which makes it much more secure. It is currently only secure for Android, and does not include WhatsApp groups.

ENCRYPTED PHONE CALLS: Red Phone is a free Android app which allows very secure phone calls between users. The call is also free, except for data charges. The Signal app for iPhone does the same.

WHY YOU SHOULD USE THESE APPS

These practices do not guarantee your security: someone who is a target for state surveillance cannot expect these tools not to be cracked. But not all surveillance is targeted: the vast majority of it is ‘bulk collection’, or mass surveillance. Better security makes this practice more difficult and expensive. If enough people adopt better security, mass surveillance becomes impossible.

For more information, see the Electronic Frontier Foundation’s Surveillance Self Defence guide at <https://ssd.eff.org>.



R2K camp-out at the gates of Parliament, 2012. Picture: Kate Stegeman

15 TAKING IT FORWARD!

How activists can fight back against these intrusions - and why they should!

This handbook has made it clear that at least some organisations are being monitored by state security structures, although it is not always clear why. In some cases, the state security structures may be ‘accidentally’ infringing on our rights, by being over-zealous and overstepping their mandate. In some cases, they may be deliberately infringing on our rights, by secretly pursuing a mandate that they know is illegal. Some cases may be a combination.

Either way, it has the same effect: these very powerful and untransparent agencies run the risk of conflating the interests of the state or the governing party, with real potential threats to people’s safety and security.

When intelligence agencies monitor the activities of civic activists, it may well violate the constitutional right to privacy, as well as international principles

on the protection of privacy. It can also be a form of intimidation, and have a chilling effect the freedom to campaign, which is enshrined in other constitutional rights.

The threat of surveillance can also sow division within organisations, causing members to suspect one another as informers.

There are real threats to people's safety in South Africa where many people would agree that the intelligence agencies have a role to play: these tackling include gangsterism and organised crime, xenophobic attacks, the worrying trend of political assassinations – and, of course, police brutality. There are also potential threats to South Africa's constitutional order, including the cancer of corruption in government and the private sector, and the risk of political manipulation of important state institutions such as the police and security agencies.

It is clear that the situation becomes worse, not better, when intelligence agencies turn their sights on political activists and civic organisations who are working to defend and build democracy on the ground.

Here are some practical steps to fight back:

- Know your rights and equip yourself with knowledge of the intelligence structures. Share this handbook with others.
- Incorporate anti-spying work and resistance to intelligence abuses into existing efforts to build democracy
- Demand reform! Fight for Parliament to pass laws and policies that protect our rights, and put pressure on Parliament and the Inspector General of Intelligence to provide better oversight on the intelligence services.
- **TAKE ACTION!** Turn to the next page to find out what you can do if you experience harassment from a member of an intelligence structure.

TAKE ACTION!

If you have a similar experience to one of the cases described in this handbook, here are some of the steps you can take:

- Write down everything that happened
 - What happened? (e.g. got a phone call from CI; attended a meeting where CI was present)
 - When did it happen? (Date)
 - Where did it happen? (Area)
 - Names and phone numbers provided (Get the name and rank of the person involved. If it was a phone call, save the number)
- Inform other members of your organisation
- If possible, record interactions with officials on your phone
- You may have grounds to make a complaint to the Inspector General of Intelligence. Visit www.oigi.gov.za or call 080 00 000 13
- If you need assistance, contact support@r2k.org.za

About the Inspector General

The Office of the Inspector General of Intelligence is mandated “to receive and investigate complaints from members of the public... on alleged maladministration, abuse of power, transgressions of the Constitution, [and] laws and policies” in the intelligence structures.^{xvi}

As an ombud, the Inspector General is not without flaws. The body has been criticised in the past for not being independent or transparent enough, and for taking a long time to finish investigations.

But as a platform for ordinary people to hold the intelligence structures to account, it remains under-explored.

xvi Intelligence Services Oversight Act 40 of 1994

GLOSSARY

Civic structures

<u>AIDC</u>	Alternative Information Development Centre
<u>Amcu</u>	Association of Mineworkers and Construction Union, a rival to the Cosatu-aligned National Union of Mineworkers
<u>ANC</u>	African National Congress
<u>APF</u>	Anti-Privatisation Forum, a social movement which closed down in 2010
<u>Cosatu</u>	Congress of South Africa Trade Unions
<u>Macodefo</u>	Makause Community Development Forum, a civic structure in Makause informal settlement in Gauteng
<u>Numsa</u>	National Union of Metal Workers of South Africa
<u>R2K</u>	Right2Know Campaign
<u>SACP</u>	South African Communist Party
<u>TCC</u>	Thembelihle Crisis Committee, a civic structure in Thembelihle informal settlement in Gauteng
<u>UAG</u>	Umbilo Action Group, a civic structure in Durban which closed down in 2013
<u>UF</u>	United Front, a proposed civil society alliance between leftist community organisations and Numsa and allied unions

State structures

<u>SSA</u>	State Security Agency, includes the former NIA and SASS
<u>CID</u>	Crime Intelligence Division, the intelligence structure of the South African Police Service
<u>EMPD</u>	Ekurhuleni Metro Police Department
<u>OIGI</u>	Office of the Inspector General of Intelligence, an intelligence oversight body which can receive complaints from the public
<u>NIA</u>	National Intelligence Agency, the former domestic intelligence body which was absorbed by the SSA
<u>SAPS</u>	South African Police Service
<u>SASS</u>	South African Secret Service, the former foreign intelligence body which was absorbed by the SSA

KNOW THE SIGNS!

Signs that someone may be monitoring your organisation's activities:

- A member of Crime Intelligence phones you before a meeting or protest to get information about your organisation and its activities
- A member of Crime Intelligence attends any meeting where you are present, especially the 'Section 4' consultation between the protest organisers and local police/authorities, before a march or protest
- A member of SAPS takes photos/videos of your protest, writes down slogans, or interviews the convenor of the protest
- Police or authorities have information about your movements or activities, but you don't know how (e.g. police get information on your activities from someone other than you)
- A member of your organisation or someone in the community is approached in private to spy on the organisation
- You are contacted at any point by a member of the State Security Agency (SSA)

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