

## 10. Intelligence Agencies

### *Key definitions: who are the intelligence agencies and what makes them different from other security providers?*

Intelligence agencies are responsible for providing policymakers and political authorities with the most accurate, timely and credible information possible for the basis of decision-making in government. To fulfill this mission, they use both publicly available information and the information they may have gathered secretly. The secret aspects of intelligence work tend to attract the most attention, but public or “open-source” information is increasingly the more important source of information. Both public and secret information-gathering rely on human and technological sources, including information gathered online and from intercepted communications, but different agencies tend to specialize in different kinds of intelligence gathering: for example, “signals” intelligence focusses on intercepting communications through technological means, while “human” intelligence gathering focusses on interpersonal contacts and requires a very different skillset. Regardless of how information is acquired, the most important, resource-intensive and challenging work of intelligence agencies is analyzing the information gathered in order to arrive at credible assessments. Information only becomes intelligence once it has been through a process of analysis that gauges its reliability, puts it in a larger context, and provides a basis for prediction, and, ultimately, action.

Intelligence agencies often specialize in particular domain of security, such as threats originating from foreign sources, threats to domestic security, or intelligence relevant to military affairs, criminal activity, or financial crimes. Intelligence agencies that are too close to political power may exercise undue influence on political decisions, so most democracies divide the different intelligence functions among several different agencies to avoid this problem. Having several intelligence agencies helps to maintain a healthy distance from political power so that intelligence gathering is driven by the needs of policymaking and not the political interests of policymakers. In some cases, a state’s intelligence functions are performed by a single national agency, because centralizing these functions in a single agency saves resources and promotes information-sharing across thematic domains.

Where intelligence agencies serve the public interest within a framework of respect for rule of law and human rights, they perform functions essential to peace and democracy, such as providing information that may help resolve or prevent an escalation in conflict, identifying potential threats to the public and the nation before they become violent, and providing strategic assessments that support the best possible decisions about national security policy. Yet in many places, and especially in non-democratic states intelligence agencies function as dangerous secret police, controlled by political interests. They may spread disinformation and commit violent abuses against the population with impunity in the interests of the government of the day instead of the public and the nation. In this case, intelligence gathering is often centralized within a single intelligence agency, which may itself be a locus of power and control over other security actors including the police and the armed forces.

### *Key issues for reporting on intelligence agencies*

**Legal and legitimate?** Security sector reporting focusing on intelligence agencies is difficult because their very existence, their inner workings, and much of their impact (positive or negative) may be hidden from the public. Yet in democratic contexts, these norms are changing and intelligence agencies in democracies are now typically well anchored in legal frameworks that are agreed by parliaments (not by executive decree), and increasingly subject to democratic oversight by parliamentary and judicial authorities. When this is not the case, it could be a matter of unintentional omission or tradition rather than a deliberate

attempt to shield the agencies from oversight. The legal foundations for intelligence agencies in a democracy should be mandated by acts of parliament rather than executive or presidential decrees to ensure that intelligence agencies are not at risk of political interference and for the sake of democratic legitimacy. International cooperation in intelligence should also be subject to national legal control and oversight, including through parliamentary approval. In order to balance the need for democratic oversight with the legitimate need for secrecy of intelligence agencies, parliamentary authorities (often specialist committees) and special courts are established with security clearances and protections that allow them to review the performance of intelligence agencies and in some cases to authorize certain activities. These provisions create a closed system wherein intelligence officials can be held accountable to parliamentary authorities and aspects of intelligence operations can be subject to parliamentary and judicial review without jeopardizing operational security. Access to information about the content of such a system will likely be limited for journalists, but the terms by which such a system functions and assessments of whether it is fit to purpose, can and should be publicly available.

→ **Journalists can ask:**

- ✓ Is the existence of one or all intelligence agencies publicly acknowledged?
- ✓ What are the legal foundations for intelligence agencies?
- ✓ What are the legally defined missions of intelligence agencies?
- ✓ Are the legal foundations for intelligence agencies mandated by Acts of parliament, or executive or presidential decrees (which may not be subject to parliamentary scrutiny or control)?
- ✓ Does the law include provisions for a democratic oversight?
- ✓ What information is available to the public about the oversight of intelligence?
- ✓ Is there a closed system of democratic oversight in place?
- ✓ What options exist for intelligence personnel to make complaints?
- ✓ What protections on whistleblowing exist?
- ✓ What measures are in place to provide the public with credible assurances that rights are respected, and resources well used in the course of their duties?
- ✓ What are the limitations on access to information and for how long are they in force?
- ✓ Who has the authority to challenge decisions about the release of information?

**Keeping too many secrets?** The work of intelligence agencies is by necessity often secret and for good reason. Yet there is a tendency to use justifications of national security to classify more information than is necessary. Intelligence agencies performing a mission for public and national security using public resources and in possible contravention of fundamental rights have an ethical responsibility to be accountable for their performance in the same way as every other public service, even if their work is secret. Classification laws should lay clear guidelines for what can legitimately be classified, to what level, and how access will be managed. This should also include a timeline for declassifying information once time has made secrecy irrelevant. The presence of classified information in a document should not necessarily be a reason to limit public access and there should be a process and standards for redacting sensitive information so that it can be made more accessible.

### Box 23 Practical example: “U.N. investigators say Burundian forces still torturing, killing opponents”

In 2017 Reuters reported on accusations made by United Nations investigators against the National Intelligence Service of Burundi. The story detailed allegations of politically motivated torture and killings following a political crisis that began in 2015. The report focused on the contradictions of Burundi’s membership of the United Nations Human Rights Council at the same time as the country’s Foreign Ministry had failed to reply to enquiries from investigators, thereby denying them access to the country. The article presents background on the allegations in the context of the ongoing political crisis in the country, as well as the points of view of Burundi’s ambassador to the UN, the UN Commission of Inquiry responsible for the investigations, and civil society organizations monitoring human rights in the country. It is based on combined reporting from journalists within Burundi and those covering events about Burundi outside the country. This is an example of reporting that raises public awareness about how dangerous intelligence agencies can become when they function outside legal and legitimate missions. It also shows how journalists can leverage sources and partnerships outside the country in question to report on secretive agencies which might otherwise be difficult, or too dangerous at a national level.

*Source: “Attackers kill three in heavily guarded district of Bujumbura”, November 2019, <https://www.reuters.com/article/us-burundi-violence-idUSKBN196175>*

#### → Journalists can ask:

- ✓ Does a classification schedule exist?
- ✓ Is it fit for the purpose of protecting operational security while guaranteeing accountability and transparency?
- ✓ Do clear guidelines and protections for journalist handling classified information exist?
- ✓ What is the legal basis for limiting access to information and how is this right weighed against the need for classification?
- ✓ Are the terms of classification being fairly applied in good faith?
- ✓ Is a legal remedy available through the courts when abuse of process is suspected?
- ✓ What does experience from the past with whistleblower protections and provisions for secure internal complaints suggest about cultures of secrecy inside intelligence agencies?

Obeying the law? In a democratic setting, intelligence agencies do not have law enforcement powers and they do not have the authority to break the law in the regular course of their duties: aspects of intelligence gathering that may violate civil or political rights in the domestic context, such as surveillance or the interception of communications, are supposed to be approved by political and judicial authorities within a legal framework that protects the rule of law and human rights. In practice, these systems have often failed to place adequate controls on intelligence agencies and violations of privacy and other fundamental rights have occurred. Even if journalists are limited in what they can know about the content of intelligence work, they can and should be able to know everything about the system in place to assess whether intelligence agencies are following the law.

#### → Journalists can ask:

- ✓ What provisions are in place to ensure intelligence agencies are complying with human rights protections in their work?

- ✓ Whose human rights are protected by such provisions (e.g., citizens, legal residents, activities abroad)
- ✓ How is the need to protect fundamental civil and political rights weighed against security imperatives in operational decision-making?
- ✓ What processes are in place to guarantee that people are not targeted for surveillance or otherwise on the basis of their gender or other aspect of their identity?
- ✓ Do the intelligence agencies have diverse personnel?
- ✓ How is information stemming from international cooperation handled and what is shared? What mechanisms are in place to ensure that international intelligence cooperation does not result in human rights abuses abroad?

**Box 24 Practical example: “NSA collecting phone records of millions of Verizon customers daily”**

Large scale illegal data collection by a group of five intelligence agencies known as the Five Eyes (the United States, the United Kingdom, Australia, Canada and New Zealand), was revealed by a former defense contractor and whistleblower, Edward Snowden. Snowden did not make the evidence he had stolen public directly but instead worked with journalists at UK’s The Guardian newspaper. The Guardian journalists verified the information to ensure that the story published as result of the illegally obtained information would be published in the public interest without jeopardizing any aspect of public safety or national security. The first report provided evidence that the US National Security Agency had been secretly conducting domestic surveillance on a large scale. That story and those that followed created a scandal that led to wide-spread changes in laws governing intelligence gathering and data protection in a number of countries. This example highlights how informing the public of the failures of security sector agencies to function within their mandates and legal powers can create useful change without jeopardizing operational security.

Source: “NSA collecting phone records of millions of Verizon customers daily”, June 2013, <https://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order>



Image: The logo of the General Directorate for Internal Security, France's domestic intelligence agency, is seen at its headquarters in Levallois-Perret on July 13, 2018. The agency has recently summoned reporters for questioning in a leak investigation. © AFP/Gerard Julien.