The Transformation of the South African Security Sector: Lessons and Challenges

Sandy Africa

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About the author

Sandy Africa is an associate professor of political science at the University of Pretoria, South Africa. Over a period of twelve years, Africa held several senior appointments in the South African post-apartheid security services. One of these appointments included heading the Intelligence Academy, the training institute of the country's post-apartheid intelligence officers. As a policy researcher and activist, in the 1990s she participated in the democratic movement's reconceptualisation of the country's security philosophy, making inputs into the negotiations process for the new security architecture and policy framework. Sandy Africa holds a PhD in management from the University of the Witwatersrand, where she is also an associate of the Centre for Defence and Security Management. She is also a member of the African Security Sector Network (ASSN), a collaborative network made up of scholars, practitioners and policymakers committed to improving accountability and governance of the security sector in Africa.[1]

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List of Acronyms

ANC	Africa National Congress
APLA	Azanian People's Liberation Army
AU	African Union
AWB	Afrikaner Weerstandbeweging
AZANLA	Azanian National Liberation Army
AZAPO	Azanian People's Organisation
BCPR	UN Bureau for Crisis Prevention and Recovery
BOSS	Bureau of State Security
CODESA	Convention for a Democratic South Africa
DPKO	UN Department of Peacekeeping Operations
DSO	Directorate of Special Operations
GNU	government of national unity
IRPS	international relations, peace and security
JCPS	justice, crime prevention and stability
JMCC	Joint Military Coordinating Council
JSCD	Joint Standing Committee on Defence
JSCI	Joint Standing Committee on Intelligence
JSSR	justice and security sector reform
MK	Umkhonto we Sizwe
NAM	Non-Aligned Movement
NIA	National Intelligence Agency
NIS	National Intelligence Service
NPA	National Peace Accord
NPKF	National Peacekeeping Force
NSC	National Security Council
OAU	Organisation of African Unity
PAC	Pan Africanist Congress
PSC	private security company
RDP	Reconstruction and Development Programme
RSA	Republic of South Africa
SADC	Southern African Development Community
SADF	South African Defence Force
SANDF	South African National Defence Force
SAPS	South African Police Service
SASS	South African Secret Service
SSR	security sector reform
SST	security sector transformation
TBVC	Transkei, Bophuthatswana, Venda and Ciskei
TEC	Transitional Executive Council
TRC	Truth and Reconciliation Commission
UN	United Nations

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1. Introduction

Fifteen years since becoming a democracy, South Africa has made considerable progress in the reinforcement of democratic principles and institutions. The universal right to vote, a common citizenship for all in a unitary non-racial state, the rule of law and a Bill of Rights are among the principles that lie in sharp contrast to the oppressive laws that dominated the apartheid political landscape.

Parliament and local government now represent the country's diverse people regardless of class, race, gender or economic status. There is also a unified public sector charged with the equitable delivery of services to all sections of the population and the rights of workers are protected through progressive labour legislation.

One of the most challenging areas during South Africa's transition was the transformation of its security sector. Before 1994, the apartheid system relied for many years on a pervasive, repressive security apparatus, with institutions, laws and practices aimed at ensuring the political domination of the country by a minority regime. After 1994, the transformation of the security sector was consolidated through the following measures:

- A new constitutional and legislative framework for the new security services;
- The integration of statutory and non-statutory structures under a single command;
- The progressive establishment of a common culture and norms among the security services;
- Policy reviews to determine new priorities and strategies;
- Multiparty parliamentary oversight of the security services; and
- The introduction of a human rights ethos.

The overhaul of the security sector in South Africa is sometimes hailed as an example for countries emerging from conflict. As in many of these countries, the roles of security actors had to be redefined during the transitional phase and they had to be brought under civilian control. South Africa's transformation included disarmament, demobilisation and reconstruction of society and reorientation of the security sector.

It is necessary, however, to moderate an interpretation of the positive developments that took place in South Africa with an appraisal of some of the difficulties and challenges faced during the transformation process. As with many countries going through transitions, the process in South Africa was uncertain at times and the challenge of translating policies into practical measures did not always bear the desired fruit. It should also be kept in mind that the government considers that security sector transformation is

an ongoing process and that it will probably take decades to overcome the legacy of apartheid.[1]

The purpose of this paper is to consider the political agreements that redefined the role of the security forces during the period of political negotiations, to evaluate the policy frameworks and initiatives undertaken by the post-apartheid administrations and to consider the lessons learned and the challenges that remain in the country's security sector transformation.

2.   Analytical framework

2.1.   Security sector reform/ transformation

The terms security sector reform (SSR) and security sector transformation (SST) are interchangeably used in this paper.[2] This is contextual and reflective of the discourse and debates in South African politics during the transition period.[3]

In South Africa, the concept of *transforming* society – including the political and economic spheres – emerged during debates about the nature of the desired future state. It underlined the anti-apartheid campaigns for a truly democratic and just society, a fundamental redistribution of wealth and power and the establishment of a non-racial society in which all citizens had the right to participate freely in the political life of the country. Applied to the security sector, both during the anti-apartheid struggle and the period of transition, transformation implied the creation of security forces that were responsive towards meeting human security needs and protecting the gains of a democratic society.[4]

2.2.   The different stakeholders

South Africa's SSR process was complex and involved various stakeholders. These included: a minority government; organisations waging a liberation struggle from exile; a politically marginalised majority population; white voters; liberal and ultra-conservative parliamentary opposition parties; political movements in ethnically designated territories (the "bantustans"); the judiciary; and a vibrant civil society, which has persisted to this day.[5] Other important stakeholders included the security forces under the apartheid government, armed formations of the liberation movement, militarised self-styled entities

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[1]   Opposition parties and some within civil society think that the government missed some opportunities for addressing the security needs of the country.

[2]   Security sector reform is understood as a programmatic strategy for building the technical and operational capacity of the armed forces and security services, and reorienting them in observance of human rights and international humanitarian law towards professionalism. It offers a framework for conceptualising which actors and factors are relevant to security in a given environment as well as a methodology for optimizing the use of available security resources. By emphasizing the need to take a comprehensive approach to the security sector, security sector reform can also help integrate a broad variety of actors and processes.

[3]   A good reference for a study of state strategy during this time is: M. Swilling and M. Phillips, "The powers of the thunderbird: decision-making structures and policy strategies in the South African state" in *South Africa at the End of the Eighties: Policy Perspectives 1989*, Centre for Policy Studies, ed. (Johannesburg: Centre for Policy Studies, 1989).

[4]   For an eloquent articulation of this approach, see: R. Williams, "Human security and the transformation of the South African national security environment from 1990 to 2004: challenges and limitations," Journal of Security Sector Management, Rocky Williams Tribute Issue (March 2005).

[5]   The term "bantustans" is used pejoratively. Formally, the ethnic territories to which this label is applied were either "self-governing territories" or "independent states."

(self-defence units in troubled communities) and the Afrikaner Weerstandbeweging (AWB), a right-wing resistance movement.

SSR in South Africa was a contested process. The political agreements reached, however, were sufficient to allow for a relatively peaceful transition to majority rule. Under conditions of relative political stability, the post-apartheid agenda for rebuilding a more equal society could begin.

3.   A snapshot of the South African transition

The opening of political space in the 1990s was a major strategic moment in the advancement towards the transformation of South African society. Radically changed political conditions made it possible to place the reform of the security sector on the political agenda. To capture a sense of the momentum in the South African transition to democracy, we can consider the following chronology of events:

- 2 February 1990: President de Klerk announces that major political organisations such as the Africa National Congress (ANC), the Pan Africanist Congress (PAC) and the Communist Party, which had all been declared illegal in South Africa almost thirty years earlier, were no longer illegal.
- 2 May 1990: The government of South Africa and the ANC sign the *Groote Schuur Minute*, committing them to a negotiated political settlement. A working group is set up under this agreement to define political offences, propose time frames for the release of political prisoners and explore the modalities for granting immunity for offences committed under South African law at the time.
- 6 August 1990: The ANC and the government of South Africa sign the *Pretoria Minute*. Through this agreement, in exchange for the suspension of armed struggle by the ANC, the government agrees to release all political prisoners by 30 April 1991, to allow all exiles to return to South Africa and to commence talks about a future constitutional dispensation for the country.
- December 1991: All major political parties and organisations in support of a negotiated political settlement meet in South Africa at the Convention for a Democratic South Africa (CODESA) and sign a declaration of intent, pledging commitment to an inclusive process that must lead to the creation of a democratically elected constitution-making body.
- December 1992: All major parties reconvene at CODESA to consider the progress achieved.
- October 1993: Parliament passes the Transitional Executive Council Act (Act 151 of 1993) to facilitate the participation of all designated parties (including the liberation movements) in the democratic transition.

- 27 April 1994: South Africa's first ever non-racial and democratic elections are held according to the terms of an interim constitution, based on principles agreed upon during the negotiations.[6]
- May 1994: Nelson Mandela, the country's first president under democratic rule, is sworn into office along with his appointed executive deputy vice president, Mr. F. W. de Klerk.
- June 1996: Under the aegis of the first democratically elected parliament, the Constitution of the Republic of South Africa (Act 103 of 1996) is adopted.

Although the negotiations were at times uncertain, they laid the basis for the principles of accountability and democratic control that were to characterise the constitutional and legislative frameworks of the post-apartheid security sector.

Two types of agreements were of particular relevance during the political negotiations: those reached bilaterally between the government and the ANC in the period between 1990 and 1992, and those made during the main multilateral decision-making processes in 1991 and 1994. The bilateral and multilateral processes had significant implications for the reform of the security sector and, at each stage, sowed the seeds of new terms of engagement, principles and rules by which security actors would have to abide.

3.1. Agreements reached during bilateral negotiations

Apartheid had long been condemned as a crime against humanity by the United Nations, which adopted a number of resolutions condemning this system of legal racial segregation. In August 1989, the Organisation of African Unity (OAU) Ad-hoc Committee on Southern Africa adopted the Harare Declaration. This document recognised that a negotiated political settlement would be likely and possible provided that certain conditions were met. The committee urged the South African government to take the following minimum steps in order to create a favourable climate for negotiations:

"- Release all political prisoners and detainees unconditionally and refrain from imposing any restrictions on them;
- Lift all bans and restrictions on proscribed and restricted organisations and people;
- Remove all troops from the townships;
- End the State of Emergency and repeal all legislation, such as and including the Internal Security Act, designed to circumscribe political activity; and
- Cease all political trials and political executions."[7]

The Harare Declaration reverberated in a number of intergovernmental forums around the world. It was endorsed by the Non-Aligned Movement (NAM) and formed the basis of the Declaration on Apartheid and its Destructive Consequences in Southern Africa, adopted by the UN General Assembly later in 1989.

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[6]   For a thorough account of the steps and analysis of the negotiation process, see: S. Friedman, ed., *The Long Journey: South Africa's Quest for a Negotiated Settlement* (Johannesburg: Ravan Press, 1993).
[7]   S. III, art. 19.1-5, Declaration of the OAU Ad-hoc Committee on Southern Africa on the Question of South Africa, Harare, Zimbabwe (21 August 1989).

What followed had profound political implications and took most observers by surprise. On 2 February 1990, President F. W. de Klerk ended the banning orders on political organisations such as the ANC, PAC and the Communist Party. Speaking in parliament, he also pledged the release of political prisoners and detainees, and the lifting of the state of emergency under which over 10,000 government opponents had been detained. Shortly after the removal of the ban on political organisations, Nelson Mandela was released from prison, to national and international acclaim.

3.1.1. The Groote Schuur Minute, 4 May 1990

In May 1990, three months after the release of Nelson Mandela, the first formal agreement between the government and the now legal ANC was signed. This agreement is known as the Groote Schuur Minute.[8]

The minute was a short, carefully worded agreement that set out measures needed to create a climate conducive for negotiations. Under the agreement, a working group was to be established to make recommendations on priority issues, such as the definition of political offences in South Africa and the modalities to grant immunity from prosecution for anti-apartheid activities that had been illegal under South African law. Immunity was to be granted on an urgent basis to the leaders of the ANC, to enable their return to assist in bringing violence to an end and take part in peaceful political negotiations. The government also undertook to review the existing security legislation, to bring it in line with the new political conditions that prevailed in South Africa and to work towards the lifting of the state of emergency.

The agreement heralded an era of open cooperation between the government and the ANC. It was initially a very uneasy truce, however. The ANC was afflicted by internal conflict over the correctness of its strategy and both parties, at a public level, accused each other of not being sincere about a peaceful settlement. Despite the rhetoric, the ANC and the government did convene in August 1990 to adopt another agreement, which moved the peace process forward.

3.1.2. The Pretoria Minute, 6 August 1990

In the three months between the meetings at Groote Schuur and Pretoria, the working group reached an agreement on how to classify political offences and indemnities. This paved the way for the release of certain categories of prisoners and indemnity for various categories of persons. The Pretoria Minute committed the government to release political prisoners in a specified time frame, and to allow exiles to return. It also announced the imminent end of the state of emergency in certain parts of the country.

In exchange for these gestures, the ANC was to suspend all armed action with immediate effect. Guerrilla warfare had been an essential component of the ANC's strategy. It had great emotional appeal, as it pitted the strength of an underground movement that held high moral ground in the eyes of the country's black majority against what was considered to be an illegitimate and racist regime with superior firepower. This clause in

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[8]   So named for the venue Groote Schuur, the official Cape Town residence of the president of the RSA.

the Pretoria Minute provoked great controversy within the movement's ranks: many ANC cadres were up in arms about the decisions taken and initially accused the leadership of betraying the organisation.

More details on the clause of the Pretoria Minute which concerned the suspension of the armed struggle were provided in the DF Malan Accord. This accord was a subsequent agreement signed by the South African government and the ANC in February 1991 which elaborated on the ANC's undertaking to lay down its arms. The suspension of hostilities and related activities implied that the following activities would no longer be undertaken by the ANC, with specific reference to its military wing Umkhonto we Sizwe (MK) and its organised military groups and armed cadres:

" i.   Attacks by means of armaments, firearms, explosive or incendiary devices;
  ii.   Infiltration of personnel and material;
  iii. Creation of underground structures;
  iv.   Statements inciting violence;
  v.   Threats of armed action;
  vi.   Training inside South Africa."[9]

The implementation of the Groote Schuur and Pretoria Minutes proceeded with difficulty, in particular in relation to the return of exiles, the amnesty process, the release of political prisoners and the measures to contain the political violence across the country. Within its own ranks, the ANC leadership encountered resistance and suspicion over the political agenda of the apartheid government. Senior leaders had to travel to Lusaka and to the ANC camps to explain the decision to suspend the armed struggle. Unity could be maintained within the party but other tensions emerged, such as the arrest of prominent ANC leaders accused of plotting to overthrow the government in an ANC underground mission, Operation Vula, while the movement was engaged in talks with the government.[10]

3.2.   Agreements reached during multilateral negotiations

3.2.1.   The National Peace Accord

From 1986 to 1992, around 10,000 people lost their lives in political violence and over 30,000 were displaced.[11] Public confidence in the capacity of the security forces to contain the violence was exceedingly low. An initial attempt by President de Klerk in 1990 to convene a peace conference failed, with neither the churches – an influential extra-parliamentary force at neither the time – nor the ANC attending. Furthermore, the ANC threatened to suspend negotiations with the government in April 1991.

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[9]   DF Malan Accord, para. 5(a), Cape Town (12 February 1991).
[10] Operation Vula, a top-secret ANC mission initiated under senior command in the late 1980s, was aimed at preparing the grounds for a possible armed insurrection. It generated controversy even within the ANC because it continued as talks with the government were under way. Some senior leaders involved in the operation were detained but eventually released in the context of the preconditions set by the ANC for the release of political prisoners for negotiations to proceed.
[11] N. Haysom, "Negotiating a political settlement in South Africa" in *South African Review 6: From "Red Friday" to CODESA*, G. Moss and I. Obery, eds. (Braamfontein: Ravan Press, 1992).

After a great deal of behind-the-scenes canvassing about who should be the convener of a national peace conference, a meeting was eventually convened. This first major national multilateral negotiation process led to the formal adoption of the National Peace Accord (NPA) in September 1991 by most major political parliamentary and extra-parliamentary groups, churches, businesses and unions in the country. PAC refused to ratify the NPA, as it pursued a policy of non-negotiation with the government. The Conservative Party and far-right-wing groups did not ratify the accord either.

The NPA was an elaborate document that put in place legally enforceable codes of conduct for political parties and the security forces. A national peace secretariat oversaw the mechanisms for dispute resolution.[12] New mechanisms for controlling the police were also introduced. These included a civilian-based police board to oversee the training and practices of the police and an ombudsman to investigate allegations of violations of the accord by the police. The introduction of these mechanisms represented a significant victory for the democratic allies. It also reflected recognition on the part of the government that security forces needed to be directed towards a consensual vision of peace to avoid the risk of undermining political objectives.[13]

Political organisations outside of government did not always believe that the government was committed to the NPA and the government expressed concern that rhetoric by the extra-parliamentary movement was inflammatory. The NPA was, however, the first significant transitional arrangement to lay the basis for the negotiations that were to begin in later months. It gave parties greater confidence that multiparty conferences could yield agreements and it made them move more quickly towards the next major round of talks.[14]

3.2.2.   The Convention for a Democratic South Africa (CODESA)

In their discussions, both the government and the ANC often had different views on the best way forward for the political process. Some of the issues of contention concerned the processes that should lead to the preparation of a new constitution, the time frame and who would take the lead. The government was hamstrung by the need to keep its constituency assured, while the ANC wanted to rally all internal anti-apartheid groupings behind it but faced similar dissent, particularly from radical black groups. The ANC attempted to consolidate its alliances with other extra-parliamentary groups and, at the same time, to engage in the bilateral discussions with the government in an effort to get the peace process off the ground. The ANC, PAC and Azanian People's Organisation (AZAPO) co-convened a multiparty conference of opposition forces – the Patriotic Front Conference – in October 1991. Significantly, leaders of the opposition in parliament and homeland leaders were invited to participate.[15] The forum agreed to enter into negotiations with the government.

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[12]   Section 7.3.2 of the National Peace Accord, 14 September 1991, provided for the creation and coordination of regional and local dispute resolution committees.

[13]   See: J. Rauch, "A preliminary assessment of the impact of the Peace Accord Code of Conduct on police behaviour," paper presented at the Centre for Criminal Justice Conference, Policing in the New South Africa II, Durban (August 1992).

[14]   Haysom, "Negotiating" (1992).

[15]   In the period leading up to the country's general elections, relations between the ANC and some bantustan leaders thawed. The ANC admitted in its strategic documents that the basis for this was to isolate Pretoria as much as possible.

After the success of the NPA, and with other issues of contention now settled through earlier bilateral agreements, the ANC and the government met to agree on a venue and on the logistics for a multiparty conference. The name "Convention for a Democratic South Africa" (CODESA) was chosen. A week before this conference, the PAC had pulled out of the Patriotic Front and had accused the ANC and the government of collaborating. This left the Patriotic Front as an alliance between the ANC, its allies (the Natal Indian Congress, Transvaal Indian Congress and the Communist Party), friendly bantustan governments, the Labour Party and the Democratic Party.[16] The momentum at this stage was too great for the meeting to be jeopardised and CODESA went ahead with the participation of all the other Patriotic Front constituent organisations.

CODESA's first meeting, held in December 1991, provided a platform for the parties to express their intent towards a negotiated political settlement. This landmark event was attended by the ANC, the South African government, representatives of all political parties in the formal political system, including the ethnic administrations for blacks, and the extra-parliamentary political groups of the democratic movement. Five working groups, made up of representatives of the political parties and organisations, were established to consider proposals on the following issues:

- The creation of a climate for free political activity;
- Constitutional principles to be included in a new constitution and the constitution-making forum;
- An interim government, transitional authority and transitional arrangements;
- The future of the homeland TBVC states (Republics of Transkei, Bophuthatswana, Venda and Ciskei); and
- The time frames and modes of implementation for CODESA agreements.

These multiparty working groups met over several months. The one responsible for the recommendations on how to create a climate for free political activity also indirectly addressed the future of the security forces. The government convinced the ANC and its allies of the necessity to retain security legislation, including the Public Safety Act and the Internal Security Act, under the justification of a volatile political climate. ANC-aligned delegates argued for the reconstitution of the forces with a view to create national, legitimate and representative security forces inclusive of the South African Defence Force (SADF), Umkhonto we Sizwe (MK) and the TBVC states and self-governing territories. They argued that all special forces and formations not included in this reconstitution should be dismantled.[17] These principles, although not debated extensively at the time, provided a basis for subsequent engagements.

A second CODESA meeting was convened in December 1992. One of the main outcomes of this second round of talks – which had been preceded by almost six months of tenuous talks aimed to address differences between the parties – was the passage of legislation to create the Transitional Executive Council (TEC).[18]

Even those who would earlier have been branded collaborators were treated under these conditions as patriots and allies, provided they aligned themselves with the ANC-led alliance's broad thrust for unity among the oppressed.

[16] Haysom, "Negotiating" (1992). The name "Communist Party" was adopted by the party after it was banned in 1950, and confirmed when it re-launched itself as an open, legal organisation in 1990.

[17] Friedman, "The long" (1993).

[18] Transitional Executive Council Act, Act 151 of 1993 (October 1993).

3.2.3. The Transitional Executive Council

The TEC Act 1993 created a multiparty system of collective governance set up to facilitate the transition and create the necessary conditions for free political participation. Under this act, the security services of the apartheid government were to remain intact, as were those of the TBVC states and the liberation movements. However, the act provided detailed guidelines for the management of the security organs of the state and the incorporation of the security organs of the liberation movements into those of the state (see Table 1 below).

Table 1: The Transitional Executive Council

The Sub-Council on Defence had a number of responsibilities, which included:

- To formulate a code of conduct that would bind all military forces, and to monitor the observance of the code; and
- To commission or undertake research into the parliamentary control, composition, manpower policy, organisation and executive command of a future defence force, and the future of the arms industry.

The Sub-Council on Defence was also charged with the establishment of the National Peacekeeping Force (NPKF). The NPKF would draw on the security resources of the parties involved in the negotiation process. It was disbanded after the 1994 elections, however, and its short existence foreshadowed a number of challenges (i.e., resources, command and control, training doctrines and mandate) faced by the architects of South Africa's new security services. Nevertheless, the main lesson that emerged from the NPKF was that integration, however difficult, was possible.[19]

The Sub-Council on Intelligence had powers of oversight and political supervision similar to those of the Sub-Council on Defence. It also had the following responsibilities:

- To adopt basic principles on intelligence to serve as a basis for the creation of a national intelligence capacity in the new democratic system;
- To formulate a binding code of conduct for all intelligence components during the transition, which could serve as a basis for an official code of conduct in a new democratic dispensation; and
- To obtain evaluations of the security situation in the country from the intelligence services.

The Sub-Council on Law and Order, Security and Stability was tasked with the supervision of police performance. Responsibilities included:

- To establish a national inspectorate composed of members of the police agencies and of outside police structures to investigate and monitor police agencies' alignment with the broad objectives of TEC and the transition;
- To establish, in consultation with the ministers responsible for the policing agencies, a national independent civilian complaints mechanism to be responsible for the investigation of complaints by members of the public about possible abuses or misconduct by police agents; and
- To ensure that the provisions of the National Peace Accord related to police responsibilities were complied with.

As a result of this legal framework, a measure of cooperation between former foes—the state's security forces and armed formations of the liberation movements—began to emerge. By the time of the first democratic elections in 1994, previously conflicting components of the statutory and non-statutory forces (at least at the leadership level) were already engaged in negotiations about their integration. On the basis of the reports of the sub-councils, further negotiations took place related to the future development of the intelligence, police and armed forces systems.

3.2.4. The interim constitution of 1993 and its Bill of Rights

Another critical piece of legislation passed by parliament under the de Klerk administration was the RSA Constitution Act 1993 (generally known as the interim

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[19] See: J.K. Cilliers, ed., "The National Peacekeeping Force: violence on the East Rand and public perceptions of the NPKF in Katorus," Report of the joint project between the Human Sciences Research Council and the Institute for Defence Policy (June 1994).

constitution).[20] The interim constitution was the product of bilateral and multilateral negotiations and was ushered in under the stewardship of the TEC. It contained an entrenched Bill of Rights, which was a new feature in South African politics. This guaranteed a range of fundamental rights to the population, including the right to life, equality before the law, privacy, freedom of expression, freedom of association, freedom of movement, access to the courts and administrative justice, and the right of access to information.

3.3. Strengths and weaknesses of security sector transformation initiatives during apartheid

3.3.1. The strengths

The following strengths of transformation initiatives in South Africa relate to the period before democracy in 1994. However, the values and lessons are still relevant and important today.

Local ownership of the transformation process

The transformation process was generally inclusive of the major political actors, security actors and citizens, who also had an opportunity to engage in the debate about the role of the security sector. Consultation and ownership were important for the legitimacy of the process. The ANC, for example, tried to broaden popular support for its choices by organising consultative meetings with other organisations, including its allies the Communist Party[21] and the Congress of South African Trade Unions. When the ANC agreed to abandon the armed struggle, strong opposition from within its ranks pushed the leadership to convene a meeting with members of the armed wing to debate the merits of its decision. The government, on the other hand, made use of its access to the levers of state power to call a referendum among the white voters in February 1992 to seek endorsement for the adoption of an interim constitution. The government emerged with an overwhelming mandate, which was a critical boost.

To place the issue of local ownership in a wider context, it should be noted that the involvement of the international community did not overshadow developments in South Africa. The South Africans had the support of the international community but were not dependent upon it for resources to the extent that other countries ravaged by conflict today might be. There was therefore a healthy space that allowed South Africans to carve out solutions that were appropriate to their circumstances, while at the same time being able to call upon the international community for support by way of training and models in accountability, efficiency and good governance.

Primary role of policymakers

It was vital to subject the armed and security components, both of the state and of the liberation movements, to political control. At a strategic level, this was probably one of the most important strengths of the entire transition in South Africa. Fortunately, there

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[20]   Republic of South Africa Constitution, Act No. 200 (1993).
[21]   Again, this reflects the name of the "new" organisation, operating legally.

was discipline and a respect for authority on both sides. This sentiment is best captured in the historic meeting that took place in 1990, when President de Klerk told the country's top 500 police officers and generals that they would no longer be required to prevent people from gathering to canvas support for their political views. Given the politicised role of the security forces till that point, this was a significant change of direction.

Likewise, the ANC was at pains to explain to its members that it was time to lay down their arms and that negotiations were necessary to achieve the movement's political objective. The leadership had to be dispatched to camps abroad to explain the new line. Building the organisation as a legal movement inside the country provided the opportunity to clarify the ANC's approach further and bring members of the movement on board.

A strategy to deal with "spoilers" (opponents of the talks)

Not all political actors were in favour of negotiations, nor committed to the changes needed in the security sector. Across the spectrum, there were those that favoured the introduction of progressive ideals and those that feared any major changes. It was necessary to engage those political actors who felt alienated from the changes in order to prevent them from undermining the process. This situation presented a major challenge for the political actors and required a considerable amount of negotiation between the political formations. In spite of the frustrations, continued efforts were made to accommodate all within the process and ensure its success.

Involvement of security actors

While the settlement was a political process, it was inclusive of security actors, which were considered to be important stakeholders and whose cooperation was thought to be critical for a peaceful transition. The implementation of many of the decisions to achieve a stable political situation depended upon cooperation among the political actors but when it came to decisions that concerned the security sector, the members of the security services were also consulted and under the Transitional Executive Council even cooperated under joint operational and policy advisory bodies.

The role of civil society in decision making

While the negotiations around South Africa's transition took place in a highly politicised context with a broad array of players influencing the proceedings, it was essentially the leadership of the major political formations that made the most crucial policy and strategic decisions. Other actors, such as policy researchers, academics and non-governmental organisations, also played an important role and had a positive impact on the process. The affirmation of the ideals of accountability, civilian control, oversight and transparency prevailed thanks to the influence of such actors.

Under the negotiated settlement, the apartheid state did not implode and the state machinery (the public service and the security forces) did not collapse. To an extent, the institutional framework of the apartheid state facilitated the transition. Parliament, although rejected as unrepresentative by the extra-parliamentary forces, passed the main legislative instruments that regulated the transition, namely the Transitional Executive Council Act 1993 and the RSA Constitution Act 1993. The major parties represented in parliament were able to rely on it to lift political restrictions and formally create the legal space to allow for joint decision making through the Transitional Executive Council.

3.3.2. The weaknesses

Besides the abovementioned strengths in the transitional process, there were also a number of flaws and weaknesses. Some of these appeared unavoidable; some were a product of the conditions that prevailed at the time; some were addressed; and others remained and led to several of the problems that have manifested themselves today.

Perceived secrecy

Despite bilateral and multilateral consultative processes, there was at times a public perception that deals were made behind closed doors. This was particularly the case in relation to the working groups that had to implement the agreements reached between the government and the ANC after the signing of the Groote Schuur and Pretoria Minutes, and after the first CODESA conference. The referral of broad decisions to smaller negotiating teams always carries the risk of alienation of those who are not directly involved, especially if communication or consultation strategies are inadequate.

The perception of secret deals was reinforced when it emerged that the ANC and the government had reached an agreement that those in the service of the apartheid government – including members of the security forces – would retain their employment after a democratic government had been installed. The ANC defended this "sunshine clause," arguing that it was important in order to create stability in an already volatile situation.

Fragmentation of the initiatives

Another problem during the transition was that the initiatives around the different sectors tended to happen in a piecemeal and uncoordinated fashion. The political actors endorsed a broad policy agenda but, when it came to negotiations on details of the future of the security forces, this often became fragmented, partly because each area – defence, policing and intelligence – required a degree of specialisation and technical expertise that was available only to particular structures. As a result, the transformation initiatives did not always appear to be coordinated, inclusive and strategically focused.

The transition took place with neither side defeated militarily in the conventional sense. Given this, neither side could directly raise the question of what should happen to those security actors who might have perpetrated gross human rights violations during the apartheid period. This was a matter that would eventually have to be addressed. The decision to establish a truth and reconciliation process through legislation occurred only after the country's first democratic elections.

The implication of this deferred decision was that changes in the security sector and cooperation during the transition would have to involve all actors, regardless of their past. The apartheid government, even as it sat at the negotiating table, directed the destruction of security records that would have helped a post-apartheid government to unravel the past. Forty thousand tons of records were destroyed by the security services so that by the time the new democratic government took office, most recorded evidence of the atrocities committed in the past had vanished.

Lack of preparation and expertise to lead a new government

Imbalances of power limited the extent of what could be achieved before a democratic government was installed in 1994. Until that time, the levers of law-making, the country's budget and its resources would remain in the hands of the ruling minority government. Despite these imbalances, the liberation movements and extra-parliamentary forces made serious efforts to prepare for government. Policy groups were set up to research the question of how to restructure the security forces, study tours were undertaken to other countries, and some governments even provided training for non-statutory forces on the ground and in their own countries in order to prepare them for governance. An inescapable reality, however, was that when a majority government was installed, it would not have the experience of running a formal state apparatus. In such a context, the experience of the former apartheid government and forces of the state machinery would necessarily have to support the democratic process. The challenge was to redirect efforts towards a new and consensual vision of peace and democracy.

4. Security sector transformation after apartheid

The transformation of the South African security sector did not happen in a vacuum. It was part of a complex web of political, economic and social measures that had a defining impact on the reform of security sector governance.

4.1. Fighting poverty

In the wake of the country's first democratic elections in 1994, the government of national unity (GNU), headed by the majority ANC, adopted a white paper on reconstruction and development (RDP). The RDP outlined the government's programme to address poverty and structural inequality. The plan envisioned the transformation of social services such as health, housing, education and the economy. It

did not contain a separate section on the reform of the security sector but the crucial link between changing the role and orientation of the security sector and development was articulated in the section detailing the basic principles:

> …this programme and this people-driven process are closely bound up with peace and security for all. Promoting peace and security will involve all people. It will build on and expand the national drive for peace and combat the endemic violence faced by communities in South Africa, with special attention to the various forms of violence to which women are subjected. To begin the process of reconstruction and development, the Government will now establish security forces that reflect the national and gender character of our country. Such forces will be non-partisan, professional, and uphold the Constitution and respect human rights.[22]

The government initially gave high priority to the implementation of the RDP and, from 1994 to 1999, many major policy changes for the security sector were initiated in line with the RDP. Over time, the RDP became less of a government priority and, in the opinion of some, more focus was placed on an economic policy that promoted free-market principles in a manner that undermined the goals of the RDP.

The gap between the rich and the poor, and between the developed urban areas and the impoverished countryside, persisted. Unemployment levels grew, even as the country's economic and financial systems stabilised. Additionally, although the delivery of social services improved, it was too often delayed mainly due to a shortage in skills and an inept bureaucracy.

4.2. Restructuring the public service

An assessment of the transformation of the South African public service provides some insight into the process of change of the security services. In June 1995, barely a year after the country's first democratic elections, the Ministry for Public Service and Administration released a draft white paper on the transformation of the public service. This white paper identified certain legacies of the apartheid era that needed to be addressed in the post-apartheid transformation process, such as:

- The lack of legitimacy of the public service;
- Its fragmentation and lack of representativeness;
- A low capacity for service delivery and development;
- Centralised control with a top-down management style;
- A lack of accountability and transparency;
- The absence of effective information management and financial control systems;
- Poorly paid and unmotivated staff;
- Conflictual labour relations; and
- The lack of a professional ethos and work ethic.

The security services were regarded by the GNU as part of the public service. The broad requirements of the public service transformation agenda (including demographic representation, service delivery, efficiency and rationalisation) were therefore always regarded as being just as relevant to the security sector.

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[22] RSA "Draft white paper on reconstruction and development" (September 1994), available at www.gov.za.

4.3. Promoting reconciliation, transitional justice and national healing: the Truth and Reconciliation Commission

Building trust in the security sector was another significant post-apartheid challenge. The GNU inherited a volatile political climate and faced the task of neutralising disaffected right-wing elements in society, some of which had access to resources in the security services.

A further problem related to violence in the townships, which persisted to such worrying levels that some members of the government were concerned that a *Third Force* existed in the country.[23] The Third Force was believed to be an organised body focused on undermining and destabilising the country. Even though the existence of this Third Force was never proved, the belief persisted.

Finally, accusations against persons suspected of having served as apartheid-era spies fuelled current political rivalry and have caused some political instability to this day.

The pall of the apartheid era undoubtedly left its mark and the government faced the challenge of putting to rest the wrongs of that time. To this end, the Truth and Reconciliation Commission (TRC) was established through the Promotion of National Unity and Reconciliation Act 1995. The TRC had three main objectives: to investigate and establish the nature, causes and extent of gross human rights violations that had occurred since 1960; to facilitate the granting of amnesty from prosecution to persons who fully disclosed illegal acts which had been politically motivated in the past; and to propose measures to repair, rehabilitate and restore the dignity of victims.[24]

The TRC held public hearings over an extended period of time and only presented its report to the government several years after its establishment. One chapter focused on the role of the security forces under apartheid and condemned their brutal and partisan conduct. The report equally condemned the ANC for reported atrocities committed by its members in exile, particularly in some of its training camps.

Pursuant to the release of the report, charges were brought against those who did not receive amnesty as a result of the TRC processes. Those who had not applied for amnesty and were eligible for prosecution could also be brought to justice.

The process was overall perceived to be too slow because of the weak capacity within the criminal justice system, causing bitterness among those seeking justice.[25] The final report of the TRC also generated controversy among those who felt that their role in the violence had been misrepresented. The truth and reconciliation process was equally perceived by some actors as being a divisive mechanism that opened old wounds. Though a difficult process, it remained a fundamental step towards the affirmation of a

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[23] K. O'Brien, "South Africa's evolving intelligence and security structures," *International Journal of Intelligence and Counterintelligence* 9 (2) (1996).

[24] This is reflected as the aim of the Promotion of National Unity and Reconciliation Act, Act No. 34 of 1995.

[25] Recent newspaper reports have claimed that a group of influential Afrikaners plan to bring charges against members of the current government for alleged crimes committed and for which amnesty was not given nor applied for. In 2007, a former minister of law and order, Adriaan Vlok, was prosecuted for his role in the poisoning of Reverend Frank Chikane, the high-profile secretary-general of the South African Council of Churches, during the 1980s. In a plea bargain arrangement, Vlok was given a suspended sentence.

new culture among the security forces based on respect for human rights and the rule of law.

4.4. Reorientation and reorganisation of the security sector

4.4.1. Background

The composition and structure of the South African security sector under apartheid reflected the racially fragmented nature of the apartheid design. The geographical and political landscapes were characterised by a proliferation of security structures:

- Five armed forces (one for the central South African state and four separate defence forces for the "independent" republics of Transkei, Bophuthatswana, Venda and Ciskei);
- Eleven police forces (one for the central South African state and ten separate police forces for the Transkei, Bophuthatswana, Venda, Ciskei and the self-governing territories of KwaZulu, KwaNdebele, QwaQwa, Lebowa, KaNgwane and GaZankulu); and
- Four intelligence services (one for the central South African state and three separate intelligence services for the Transkei, Bophuthatswana and Venda).

The security forces of the apartheid regime had the following traits:

- They were racially stratified and politically partisan entities that reflected the divisions and fragmentation of apartheid.
- They were not subject to the rule of law, and through the TRC it later emerged that many members of the security forces were engaged in extra-legal activities.
- The activities of the security sector were characterised by considerable secrecy. There was no effective oversight by parliament, which meant that parliament did not have the means to hold the executive accountable.

All of these aspects were challenged during the negotiations for a new political dispensation and the processes leading to the reform of the security sector. TEC and the country's first democratic parliament created the frameworks for the establishment of unified, integrated and transparent security entities, overseen by parliament and accountable to the executive.

Across the security sector, a number of difficulties were encountered, including physical relocation and reintegration into society, the pressures of investigations into previous abuses and adaptation to a new order. The parties nevertheless persisted and to a large extent overcame the challenges of disarmament, demobilisation and reintegration of previously opposed armed formations—setting new policy frameworks and advancing the new security agenda.

4.4.2. The constitution and the security sector

One of the key tasks of South Africa's first democratically elected parliament was to produce a final constitution to replace the interim one. Parliament also reviewed or repealed hundreds of laws that had been passed under apartheid, and passed new laws. After intense parliamentary debates, the new constitution of the Republic of South Africa was finally adopted in 1996. In its preamble, it reflected the broad consensus that had emerged about South Africa's past and the kind of future its people strived to build. It outlined the role and function of all three branches of government as well as the public service. The constitution contained a Bill of Rights, which guaranteed the right to equality and human dignity, to life, to privacy, to freedom of association and expression, and to assembly, among others. These rights had been flagrantly abused in the past by the apartheid state's security forces. Today, the constitution of South Africa specifically defines the role of the security services (see Table 2). It also contains the principles that were tabled during the negotiation processes, which were shaped by a wide range of actors.

4.4.3. The military

The South African Defence Force

Under apartheid, the numerically dominant South African Defence Force (SADF) loomed large in the country's political life. It had well-organised formal structures, its facilities were excellent and its training could compare with that of Western armed forces. As the political conflict in South Africa intensified, the SADF began to play an overtly political role within South Africa as well. The absence of meaningful accountability to parliament gave it virtually free rein in the townships. Covert operations were directed against activists of the democratic movement, as revealed by subsequent commissions of inquiry. The military's hand in politics was curtailed when President de Klerk took over as leader of the National Party and the government, however, concerns about the perceived political partisanship of the military lingered on for the better part of the transition.[26]

The South African National Defence Force (SANDF) replaced the SADF in 1994, integrating the apartheid-era SADF and the armed wings of the liberation movement.[27]

Non-statutory armed formations

Umkhonto we Sizwe (the armed wing of the ANC, popularly known as the "MK") and the Azanian People's Liberation Army (APLA, the armed wing of PAC) were important actors in the transformation process.[28] The MK was established in 1961 by the ANC after all legal means of opposition at its disposal had been closed. Cadres were sent abroad for

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[26] See: D. Hansson, "Changes in counter-revolutionary state strategy in the decade 1979 to 1989" in *Towards Justice? Crime and State Control in South Africa*, D. Hansson and D. Van Zyl Smit, eds. (Cape Town: Oxford University Press, 1990).

[27] The constitution defined the primary mandate of the SANDF as protecting the territorial integrity of the country, in line with conventional international norms. South Africa, as a member of the Southern African Development Community (SADC), has also had to meet regional military commitments. In addition, the country was called upon to facilitate dialogue between the conflicting parties in the Great Lake countries of Rwanda, Burundi and the Democratic Republic of Congo.

> **Table 2: Constitution of the Republic of South Africa, Act 108 of 1996**
> **Chapter 11: Security Services**
>
> Chapter 11 concerns national security: the establishment, structure and responsibilities of defence, police and intelligence services and the conduct of the security services.
>
> "Governing Principles:
>
> 198.　The following principles govern national security in the Republic:
> a.　National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life.
> b.　The resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation.
> c.　National security must be pursued in compliance with the law, including international law.
> d.　National security is subject to the authority of Parliament and the national executive.
>
> Establishment, structuring and conduct of security services:
>
> 199.
> 1.　The security services of the Republic consist of a single defence force, a single police service and any intelligence services established in terms of the Constitution.
> 2.　The defence force is the only lawful military force in the Republic.
> 3.　Other than the security services established in terms of the Constitution, armed organisations or services may be established only in terms of national legislation.
> 4.　The security services must be structured and regulated by national legislation.
> 5.　The security services must act, and must teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic.
> 6.　No member of any security service may obey a manifestly illegal order.
> 7.　Neither the security services, nor any of their members, may, in the performance of their functions:
> a.　Prejudice a political party interest that is legitimate in terms of the Constitution; or
> b.　Further, in a partisan manner, any interest of a political party.
> 8.　To give effect to the principles of transparency and accountability, multi-party parliamentary committees must have oversight of all security services in a manner determined by national legislation or the rules and orders of Parliament."

training and, in spite of setbacks suffered from the arrest and subsequent long-term imprisonment of its leaders in the 1960s, it continued to function abroad together with the ANC. The structure, training and force levels of the MK underwent several changes in the period of the movement's existence, the most notable being the massive injection of youth after the 1976 Soweto uprising.[29]

APLA was the guerrilla wing of PAC, which came into existence after the latter had been banned from the country and its leaders sent into exile. APLA was much smaller than the MK and was prone to internal disputes and organisational problems. It received military support and training from some countries and movements on the continent but its disorganisation prevented it from implementing an effective guerrilla strategy.[30]

The liberation movements did not match the numerical strength of the SADF, nor did they have the same access to heavy weapons and resources. Their main leverage was their ability to affect the psyche of the white voters in South Africa and to inspire the masses. In any event, the armed struggle was only one component of a multi-pronged strategy to

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[28]　Other smaller formations such as the Black Consciousness Movement's Azanian National Liberation Army (AZANLA) were of inconsiderable influence. They were not involved in the negotiations and security sector transformation processes since they rejected such collaboration with the apartheid regime.
[29]　T. Motumi, "Umkhonto we Sizwe: structure, training and force levels (1984-1994)," *South African Defence Review* 18 (August 1994).
[30]　For a rich description of PAC, its organisational challenges and its armed efforts in the period up to 1976, see: T. Lodge, *Black Politics in South Africa since 1945* (Johannesburg: Ravan Press, 1983).

end white minority rule. Effectively, politics ruled the gun and the cadres of the MK and APLA, when required to do so by the political movements, were duty-bound to comply with the orders to lay down their weapons.

Reorientation and integration of the armed forces

There were significant changes in the governance and orientation of the armed forces in the post-apartheid period. These were the result of political negotiations about the integration of the liberation movements' armed formations and the apartheid military structures that began under the auspices of TEC, and about the role of the armed forces. To promote democratic civil-military relations, the Defence Amendment Act 1995 provided for a restructured Department of Defence, comprising the defence force (under the operational command of the chief of the armed forces) and a civilian Defence Secretariat (headed by the secretary for defence). The secretary for defence was the principal adviser to the minister on defence policy.

The integration of the designated armed forces into the SANDF had its roots in the pre-1994 transition process. Under the Joint Military Coordinating Council (JMCC) – one of the structures established under TEC – the compilation of a certified personnel register had begun. The sheer size of the newly constituted SANDF (over 100,000 personnel upon integration) meant that much time would be spent in the initial period on various tasks: determination and communication of new policies; the creation of new structures; movement of personnel; training; and the creation of systems for the implementation of new corporate practices that would support the establishment of the new armed forces. The civilian Defence Secretariat was established, which for practical staffing purposes required the decommissioning of some active armed forces personnel.[31]

The framework for the transformation of the armed forces was further defined in the constitution. The primary role of the defence force was to "defend and protect the Republic, its territorial integrity and its people in accordance with the Constitution and the principles of international law regulating the use of force."[32] Like other sectors of the security services, the defence force was required to be politically non-partisan, to function within the ambit of the law and to be subjected to parliamentary oversight and accountability. These principles were reaffirmed in a defence review and then in the defence white paper adopted in 1997. The defence review process has been widely acclaimed for its transparent and inclusive nature. Headed by the Defence Secretariat, it led to a policy outlook on the future defence needs of South Africa, the required strategic orientation of the armed forces and consensus on the force's posture and strength.[33]

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[31] It should be noted that there is disillusionment among veterans of the armed forces and especially veterans of the anti-apartheid struggle, who feel that they were not given any form of security after 1994. Members of the security services enjoy many rights, including employment and family benefits and the right to form trade unions. On the other hand, many liberation movement veterans were demobilised because they were too old to be integrated into the post-apartheid services and were left without pensions, jobs or any other form of support.

[32] RSA Constitution, 1996, section 200 (2).

[33] See: G. Cawthra, "Security transformation in post-apartheid South Africa" in *Governing Insecurity: Democratic Control of Military Security Establishments in Transitional Democracies*, G. Cawthra and R. Luckham, eds. (London and New York: Zed Books, 2003).

There has been a generally positive perception about the shift in orientation and the role of the SANDF, despite controversy over questionable procurements.[34] Contrary to the situation under apartheid, the SANDF is subject to parliamentary oversight. In addition to a multiparty Portfolio Committee on Defence, the Joint Standing Committee on Defence (JSCD), established in the terms of the Defence Act, is responsible for oversight of the SANDF. Its task is to monitor the military for compliance with its statutory mandate. The JSCD and the Portfolio Committee have dealt with a range of issues over the years, of which the more significant are the defence review, the strategic arms procurement package, the integration of the various pre-1994 units into the SANDF and the deployment of South African troops in peacekeeping missions.

4.4.4. The police

Under apartheid, the police were regarded as politically partisan as they were required to enforce a plethora of restrictive and discriminatory laws. The security police of the South African Police were particularly unpopular, and played an overtly political role. They were responsible for the detention of tens of thousands of people during the apartheid period. Police brutality and torture resulted in the deaths of several prominent anti-apartheid activists while they were in prison. Public control methods used by units such as the riot police were also deliberately confrontational.

With the establishment of the TRC by the new government, testimony on previously unsolved deaths came to light when several police officers revealed that they had been part of hit squads sanctioned by higher authorities. The use of vigilantes, who were encouraged to target activists in the townships, was widespread. In relation to crime prevention, police services patrolled mainly white areas, leaving blacks generally more vulnerable to crime.[35]

A new policy framework for the police

In line with the provisions of the interim constitution, the South African Police Service Act, No. 68 of 1995, spelt out the framework for the South African Police Service (SAPS). This followed a lengthy consultation process about the contents of the act. The rationalisation and amalgamation of the pre-existing eleven policing components in a post-apartheid police service had already been announced in the Proclamation for the Rationalisation of the South African Police Service in January 1995.[36] Only a small number of ex-combatants from the ANC and PAC were integrated into SAPS, while the majority were incorporated into the SANDF.

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[34] A controversial strategic arms procurement package resulted in a purchase in the year 2000 of 2 billion rands worth of equipment for the SA Navy. Allegations of corruption relating to this procurement became the source of several prosecutions and ongoing claims of complicity in corruption by members of the ruling ANC.

[35] Hansson and van Zyl Smit comprehensively cover the fault lines of policing in South Africa at the end of the 1980s. See: D. Hansson and D. van Zyl Smit, eds., *Towards Justice? Crime and State Control in South Africa* (Cape Town: Oxford University Press, 1990).

[36] RSA Proclamation 5 (27 January 1995).

The head of SAPS, responsible for policy formulation, was to be a minister who would be supported by a civilian Secretariat for Safety and Security. This mirrored the situation pursued in the defence force, a deliberate effort to locate policymaking in civilian hands.

A white paper on safety and security was adopted by parliament in 1998. It consolidated the policy outlook on the provision of policing services that had informed the South African Police Service Act 1995 and the National Crime Prevention Strategy, adopted in 1996. The white paper argued the need to address crime at two levels: through efficient delivery of law enforcement services, and through the creation of social conditions favouring crime prevention in cooperation with other government departments such as justice, correctional services, social welfare, education, the public service and transport.[37]

A new integrated police service with a new ethos was a significant victory. For the first time, demilitarised and depoliticised police had legitimacy. As a result, they were able to tackle pressing problems, such as the political violence that carried over from the transitional period, with impartiality and vigour.

Notwithstanding these important gains, the police service has continued to struggle with its law enforcement role. Criminal activity rose after 1994. The failure of the state to stem the tide adequately created a widespread perception of police ineffectiveness. Several problems compounded this perception, one being that the government was at times defensive about the scale of the problem and sometimes even placed a moratorium on the release of official crime statistics. The police have had inadequate human and material resources to do their work properly. The generally low education and skill levels of the police force, coupled with a lack of sufficient police vehicles and other basic equipment, have compromised the investigative capacity of SAPS. Policing resources are also very unevenly distributed. The government and provincial authorities have had to deal with the challenge of moving police stations from the wealthier and historically white areas to areas that the poor could access. Finally, instances of inefficiency and corruption among the police service have further undermined public confidence.[38]

As in many high-crime societies, private security companies (PSCs) have been quick to fill the vacuum. Evidence suggests that the industry burgeoned in the post-1994 period on the back of a massive exodus of personnel from the formal security sector. By the late 1990s, the government had come to terms with the reality that the industry was an indelible part of the landscape, due to its own inability to meet demand, and it has sought instead to regulate the multi-billion rand private security industry.[39]

Oversight over the police

Because of the history of abuse by police agencies under apartheid, the constitution and the law have subjected them to several mechanisms of oversight, at both the provincial and national levels. The most significant of these is the Portfolio Committee on Safety

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[37] RSA "White paper on safety and security, 1998", available at www.gov.za.
[38] See: A. Altbeker, *The Dirty Work of Democracy: A Year on the Streets with the SAPS* (Cape Town: Jonathan Ball Publishers, 2005). This is an attempt to cover the harsh realities facing the police today as they interact with a wide variety of crimes across the racial, class and geographical divides of South Africa.
[39] Refer to www.iss.co.za, the website of the Institute for Security Studies, which has a research programme on private security, for an in-depth understanding of this phenomenon.

and Security. As is the case with defence, the Portfolio Committee on Safety and Security is a multiparty committee. It can call upon police management to explain aspects of its work and assess the police's behaviour. The Portfolio Committee visits police facilities to assess conditions first hand. Members of the public can also address complaints to the committee about unacceptable police conduct.

In spite of their limitations, the police have had some successes over the years. For example, they worked closely with communities and political leaders to bring about an end to political violence in the KwaZulu Natal province. The police also arrested and prosecuted white right-wingers involved in violence, and thwarted a group responsible for a campaign of urban terror in the Western Cape.

In 1999, the government took a decision to establish an investigative unit under the National Prosecuting Authority. This unit, called the Directorate of Special Operations (DSO) or more popularly "the Scorpions," had a high public profile and attracted top investigators from other law enforcement structures, along with enthusiastic and skilled experts. The Scorpions came under attack from political actors when the unit began to investigate senior leaders within the ruling party, who believed that the Scorpions were targeting them for prosecution relating to corruption and fraud.[40]

Amid considerable controversy, the Scorpions were disbanded in 2008 and a new unit was created in SAPS to deal with organised crime. Some civil society organisations and opposition political parties interpreted this move as a bid by the government to protect ruling party leaders who had become the subject of investigation by the directorate. The ANC and the government rejected these claims and argued that the integration of the Scorpions into SAPS was merely an attempt to consolidate resources so as to improve the fight against organised crime. Parliamentary public hearings on the proposed legislative amendments drew intense interest and public opinion was clearly divided.[41] In the end, parliament endorsed the decision and the formal dissolution of the Scorpions was implemented.

4.4.5. The intelligence services

Under apartheid, the National Intelligence Service (NIS) was a civilian service operating without executive powers of arrest or detention. Its functions were confined to intelligence gathering, analysis and advising the government on threats to security. The NIS was considerably more sophisticated than its predecessor organisations, especially the Bureau of State Security (BOSS), which had been established in 1969. BOSS's tactics were blatantly intimidating and authoritarian.

There were very few black recruits in the NIS, although it would almost certainly have relied on an extensive network of black informers throughout the country. It led the

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[40] The most publicised of these instances is the insistent efforts by the National Prosecuting Authority to prosecute Jacob Zuma, now president of the RSA, for alleged corruption relating to the "arms deal" or strategic arms procurement package that the government undertook several years ago. The charges were eventually dropped. The DSO has also brought criminal charges against the national commissioner for police.

[41] The dismantling of the Scorpions was all the more controversial because it came in the wake of recommendations by a commission of inquiry headed by Judge Sisi Khampepe. While the judge had pointed out flaws in the functioning of the Scorpions, the recommendations had not gone as far as the dismantling of the DSO but included measures for correcting the flaws and improving accountability and governance.

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governmental process in making contact with the ANC in the 1980s and its role in facilitating the talks during the transition was even acknowledged by the ANC.

The intelligence services were the first of the security services to be reconstituted after the elections of 1994. Parliament was still operating in terms of the provisions of the interim constitution, which remained in force until 1996. As TEC had ceased to function with the election of a new democratic parliament, its sub-councils (supervisory roles) no longer existed. Mechanisms for dialogue and interaction between the intelligence actors that had been established under TEC still remained intact, however, and with the approval of government they continued to discuss the future intelligence dispensation.[42]

There was a particularly urgent need to constitute the new intelligence services and the government was mindful of this. Existing intelligence structures were operating in a constitutional and legal vacuum and their accountability to civilian authorities was not clearly defined. A white paper on intelligence (with integrated policy views that had been agreed upon in the multilateral talks) and three bills, namely the Intelligence Services Bill, the National Strategic Intelligence Bill and the Committee of Members of Parliament and Inspector Generals of Intelligence Bill, were presented to the legislature for approval.

The white paper on intelligence, which was adopted by parliament in 1994, established the following responsibilities for the security services:

- Safeguarding of the country's democratic constitution;
- Upholding the individual rights enunciated in the constitution's Bill of Rights;
- Promoting security, stability, cooperation and development, both within South Africa and in Southern Africa;
- Making an active contribution to global peace and other globally defined priorities for the well-being of humankind; and
- Promoting South Africa's ability to face foreign threats and enhancing its competitiveness in a dynamic world.[43]

Under the post-apartheid government, the record of the intelligence services has been chequered. A thorough assessment is rendered difficult by the restrictions placed on the disclosure of information.[44] There is, however, an element of routine to the work of both the National Intelligence Agency (NIA) and the South African Secret Service (SASS). The NIA, for example, which has a national counterintelligence responsibility, is responsible for vetting and issuing security clearances to government employees who have access to

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[42] The government of national unity had been formed by Mandela in a gesture of reconciliation and as per bilateral discussions between the ANC and the NP government before the 1994 elections.
[43] S. Africa and S. Mlombile, "The transformation of the South African intelligence services," Paper presented to the Roundtable on the Reform of the Guatemalan Intelligence Services, 31 March–2 April 2000 (Boston: Harvard University Law School, 2001).
[44] Legislation requires the heads of the intelligence services to protect from unauthorised disclosure the names of members and informants, the methods of intelligence gathering and intelligence reports. In addition, the expansive Protection of Information Act 1982 has been in force, notwithstanding the introduction in 2000 of the Promotion of Access to Information Act, which aims to give effect to the constitutional right of access to information.

sensitive information.[45] The NIA is also required to ensure that standards of information security are adhered to in all government departments.

The NIA has a controversial track record, however, in its intelligence-gathering role. Over the years, ministers responsible for the intelligence services defended the reputation of the services and drew the public's attention to the dilemmas faced in conducting intelligence work.[46] It was also brought to the attention of parliament that intelligence services had provided valuable information related to different threats of violence.[47] The NIA also worked with SAPS on issues that threatened internal stability. A continuing dilemma has been the extent to which its resources should be directed to the fight against crime, particularly organised crime.

Besides these achievements, the NIA has also suffered several embarrassments in its counterespionage operations. It has been dogged by scandal since 2005, when the minister for intelligence services suspended and later dismissed several senior members, including the head of the agency, after an investigation into allegations that he had conducted "illegal" surveillance operations.[48] Since then, the intelligence services have been embroiled in a circle of court cases.[49] These complex and sometimes confusing events have led to suggestions that the intelligence services have been politicised and are mere instruments in the rivalry between factions in the ruling ANC government.

Oversight of the intelligence services

Several bodies provide oversight of the intelligence services. The minister has political responsibility for the services and defines the policy framework for intelligence activities. Parliamentary oversight of the intelligence services is exercised by the Joint Standing Committee on Intelligence (JSCI), which is composed of members of parliament nominated through a prescribed proportional formula of members of parliamentary political parties. The JCSI has to monitor the performance of the intelligence services and report to parliament on its findings. The JSCI may call upon the minister to appear before it and has the power to call upon the heads of the intelligence services to provide explanations on different aspects of their governance and administration. In relation to financial oversight, the JSCI cooperates with the Office of the Auditor-General.

Judicial oversight is also required in the case of intrusive intelligence operations. This may not take place without the express authorisation of a specially appointed judge.

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45 The criteria for the issuing of security clearances are under consideration by the cabinet, following concerns that they may be in violation of the constitutional right to privacy.

46 During her tenure (2001–2004), Intelligence Services Minister Lindiwe Sisulu went on an extensive public relations drive. The NIA and SASS launched public reports, the NIA launched its website and the minister held several media briefings and also launched an advertorial proclaiming that South Africans could sleep at night with the assurance that the intelligence services were at work, promoting national security.

47 Intelligence services had provided information about the instigators of a terror campaign in the Western Cape between 2001 and 2004, leading to the arrest and prosecution of those involved. The NIA also played a crucial role in gathering intelligence around the violence in the taxi industry, and on violent rivalry between political parties that had spilt over from the pre-1994 period.

48 In the wake of the scandal, the minister initiated a commission of inquiry to investigate whether the intelligence services were sufficiently regulated to compel them to act in accordance with the law and the constitution.

49 Prosecutions against senior officials were initiated by the minister but in court they made counter-claims that he was victimising them. Cases against the dismissed head of the NIA, Billy Masetlha, were dropped in relation to several charges brought against him.

Intelligence services are also required to justify the use of interceptions as a method of investigation.

The incidents around the NIA mentioned above, however, point to several gaps in regulatory control. These were also highlighted by a review commission created by the serving minister for intelligence following the 2005 events. The review found that even under the post-apartheid political dispensation, there were inadequate controls over the intelligence services' clandestine operations. Moreover, it questioned the lack of focus of the NIA's legal mandate, citing it as the source of the organisation's forays into the domestic political space. These observations were meant to remind South Africans of the potential harm intelligence services can cause if they are not properly regulated. At the same time, the ministerial review raised the question of the role and effectiveness of oversight structures, which were unable to anticipate the lapses that became the subject of the commission's review. Finally, it pointed to the role of the executive, which had clearly failed to create the necessary safeguards to avert the scandals that came to light in 2005.

4.4.6. Coordination of the security sector

Background

For the greater part of the apartheid years, the security sector was dominated by the military and political life was highly securitised. This was in keeping with the apartheid state's security strategy, which, during the 1970s and early 1980s, was conceived to counter any threats by communist-aligned forces. This was used to justify draconian measures directed against anyone who opposed the regime. Low-intensity conflict and repressive tactics by the security forces took place alongside efforts to improve the infrastructure in certain targeted areas so as to project a concern by government about the plight of the people.

This interconnected system, which sought to combine the security and welfare aspirations of the apartheid state, was known as the National Security Management System (later renamed the National Management System). From 1986, this system was used more deliberately to monitor political resistance in communities and to coordinate the implementation of government policy under the auspices of the security services.

On ascending to the presidency in 1989, de Klerk replaced the system created by his predecessor, P. W. Botha, with a coordinating system called the National Coordinating Mechanism. The military lost its central status within this system and the National Intelligence Service assumed the role of collating intelligence information, in line with its mandate of advising the cabinet on security threats.

In the post-apartheid period, security services have been confined to the sphere of security, subject to political control. The main challenge has been to ensure that they are not subject to political interference and are free to conduct their constitutionally mandated tasks. To achieve these objectives, it has been necessary to define clear and limited mandates for the different security services in order to avoid overlap and

duplication, and to ensure coordination of the services. Coordination was sought at the policy and operational levels.

Coordination

Policy and operational coordination of the security services have been a challenge since the beginning of the new political dispensation in 1994. In the early years, coordination was ensured through a system of cabinet committees, where ministers responsible for security functions jointly considered policy and implementation of executive decisions. Under the GNU, the security services were initially subject to the Cabinet Committee for Security and Intelligence, whose first political head was Deputy President de Klerk. Having de Klerk lead such a sensitive portfolio was considered by some as a means of assuring the former apartheid-era security service leadership that their interests and concerns would be treated with some deference.[50]

After the second democratic elections held in 1999, the government reconsidered its coordinating mechanisms and governmental "clusters" were established. Under these clusters, ministers and their respective departments were coordinated by one department, which took the lead in policymaking and implementation. The new system had a more streamlined process of prioritising targets and objectives, and the clusters had to report regularly on performance regarding priorities.

The two governmental clusters coordinating the security services were the international relations, peace and security cluster (IRPS) and the justice, crime prevention and stability cluster (JCPS). The clusters functioned at the ministerial and director-general levels. The ministers' cluster was primarily concerned with setting policy and targets, while the directors-general cluster advised ministers on priorities and oversaw the implementation of targets set collectively by its principals.

The IRPS was led by the Ministry and Department of Foreign Affairs and included the SANDF, SASS and other agencies with a significant external focus. As the name suggests, this cluster was responsible for formulating government policy and implementing priorities relating to South Africa's relations with the rest of the world. One of the main priorities was to define ways to contribute to peace and stability in Africa. The JCPS was under the leadership of the Ministry and Department of Justice. It included SAPS, the NIA, the Department of Justice, the Department of Home Affairs and the Department of Correctional Services. Its mandate was to address matters affecting security and stability, and to streamline the criminal justice system.

The National Security Council (NSC) was another coordinating body that emerged over time. This was a non-statutory body created by a cabinet decision in the post-1999 period. The NSC had only advisory powers. It provided security ministers with the opportunity to coordinate their functions and gave advice to the president on critical matters. There has been little public knowledge about the functioning of the NSC, probably as a result of its lack of clear status under the law.

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[50]   O'Brien, "South Africa's evolving intelligence" (1996).

There are many circumstances under which the security services are required to cooperate with each other. It is important that these circumstances be defined by law, according to the constitution.[51]

Coordination is an ongoing challenge for the South African security sector. With time, it has become clear that coordination must take into account local and national variations, the decision-making cultures of the various entities and unbalanced resource allocation.

Coordinating the reform of the South African security sector has been a great challenge involving the introduction of new doctrines and legislative frameworks and programmes. This has happened in a context of rapid domestic, regional and international changes.[52]

5.   Lessons and challenges of the transformation process

5.1.   Overcoming the obstacles

Undoubtedly, the South African security services enjoy greater legitimacy today than they did under apartheid. However, there were challenges with the merger of entities with different missions and political alignments and the attainment of racial balance in the security services. Following the negotiation period, political leaders had to move decisively to align their armed followers with the policy decisions made in pursuit of peace. This required extensive consultation and the formation of coalitions and alliances; transparent decision making; strategies to deal with those in opposition; use of the state machinery and powers to facilitate changes that would enhance the peace process; and the involvement of the security actors themselves in the processes of change and consultation.

In the fifteen years following South Africa's democratic transition, the changes in the security sector have been necessary but not sufficient to provide security for all. There has been a lack of capacity, and structural and leadership deficiencies. Moreover, the link between development, poverty alleviation and security, whilst featuring in government policy and strategies, has been weakened due to the sheer scale of the challenges. Finally, the failure of the state to address the problem of crime in the country has resulted in the increasing sense of insecurity that many citizens feel.

Having considered security sector transformation efforts in South Africa and their strengths and weaknesses, it can be concluded that the journey towards democratic governance of the security sector is not complete. It might even be fair to argue that a state of stagnation has been reached and that the country is still in search of solutions towards improved security for citizens, the region and the continent, along with renewed vigour in the transformation of security institutions.

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[51]   The law makes provision for those cases where cooperation is permissible. The defence force, for example, can assist the police during a state of emergency or crisis.
[52]   The challenge of complexity is made in: L. Nathan, "Accounting for South Africa's successful transition to democracy," Crisis States Development Research Centre Discussion Paper No. 5 (June 2004).

A thorough analysis of the security problems in South Africa should be prioritised in order to develop the best strategies. While South Africa's crime trends have been widely condemned, they are not always well understood. In South Africa, lack of human security creates instability and socio-economic inequalities and an absence of economic opportunities encourages crime. Weak and ineffectual security institutions allow opportunists to take advantage of the situation.

The South African context is also affected by organised and transnational crime, regional instability and global insecurities. South Africa, like any country, must develop the capacity to respond to these multilayered security threats. A reinvigorated security sector transformation strategy must place development and poverty alleviation as central concerns and establish clear short- and long-term goals. Some key recommendations for reinvigorating security sector transformation feature below.

5.2. Key recommendations

Improving the delivery of security

Ensuring that the necessary materials and human resources are deployed to critical areas of need will be essential to further reform South Africa's security institutions. The human resource needs of the security sector require effective management. Examining and reviewing the human resources management regulatory frameworks could be a first step in that direction. Such a process should ensure that effective performance management and reward systems are put in place in all relevant institutions.

Moreover, it is particularly important to the delivery of security that mechanisms be in place to enable the security sector to benefit from inputs from relevant players, such as welfare, education and health institutions. Similarly, the adoption of legislation allowing local competent and inclusive organisations (such as community policing forums, local partnerships between police, communities and business councils, and neighbourhood watches, to name a few) to play a meaningful role in the provision of security is critical for the long-term promotion of human security.

Reinvigorating oversight

Although the security services have been placed under heavier scrutiny than under apartheid, abuses have still occasionally been perpetrated. In order to avoid the risk of resumption of such abuses as part of the structure of the system, mechanisms for overseeing the security sector should be re-examined. In particular, measures aiming to enhance transparency in senior appointments and in major policy shifts should be promoted.

Reinvigorating oversight also requires that mechanisms be in place to enable security sector institutions to engage in a dialogue with advocacy bodies, the media and other independent institutions, which have an important role to play in overseeing the security sector.

In a context of increased globalisation, South Africa should prioritise regional security cooperation, which can be a crucial building-block in countering problems such as transnational organised crime, including the illicit narcotics trade, human trafficking and money laundering. Building intelligence capability should also be made a priority in order to be able to respond to terrorist threats.

South Africa's position on international and regional security matters is an essential component of the country's national security strategy. Considering the significant intellectual capital and experience the country has to share, South Africa should continue contributing to standard-setting in relation to security sector reform at regional and continental levels and within the framework of intergovernmental institutions such as the United Nations.

Protecting the human security ethos of the South African security services

Probably the most important legacy of the SST in South Africa is that it was founded on an ethos of human security. This was to permeate the way in which the security services would relate to the communities they served and to all who came into contact with them. It was also reflected in a strong belief that the security services are at the service of the nation and not a particular party. Finally, it is reflected in the philosophy that until there is a more egalitarian society, instability and insecurity will prevail and development and progress will be hindered.

Recent experience has shown that it is indeed possible for political actors and the security services to lose sight of these values. It is therefore important that the security services be constantly reminded of how the country came to adopt these values and why it is so important that they continue to uphold them.

6.   Conclusion

The seeds of transformation of the security sector were planted in the 1990s during the political transition that led to democracy. A range of factors, including visionary and mature political leadership, the input of civil society activists sensitive to human security needs and the existence of functional and cohesive security entities, made it possible to reorient the security services towards democratic and security-oriented goals.

The climate of political negotiations in the 1990s created certain opportunities but conditions for reforming the security sector were limited. The suspension of armed hostilities between government and liberation movements was fraught with suspicion and tension. Complicated technical matters, such as indemnity to former guerrilla fighters and the creation of a transitional authority, signalled a shift in the balance of forces, while underlying a tenuous hold on the levers of power by the ruling minority government.

Nevertheless, agreements reached during that time about the role of the security actors opened the door to a longer-term agenda. After the country's first democratic elections

the transformation could proceed, although with sometimes measured success. Demobilisation and integration of ex-combatants of guerrilla movements into the ranks of the formal armed forces took place under difficult conditions and, regrettably, more elderly veterans were not absorbed into the new forces after returning from exile.

The post-apartheid constitution has created a solid framework for the SST. Key features in the transformation of the security sector have included demographic representation, redressing the racial and gender imbalances of the past, the introduction of multiparty oversight institutions over the security sector and the creation of independent complaint mechanisms. The promotion of the rule of law and efforts to align the security framework with international law have also changed the security services for the better. All of these measures have been vital to promote the legitimacy and credibility of the security sector.

The effectiveness of the security sector has been uneven over the past fifteen years. Human security has been undermined by enduring poverty, in the country and the region, which in turn have given rise to a growing problem of crime; the intelligence services have been subject to political manipulation; the armed forces have been involved in a controversial arms acquisition; and integration of certain sectors such as correctional services, immigration and the justice service is still incomplete.

The security sector transformation in South Africa is in need of renewed leadership, creative ideas and a determined social pact between citizens and the state in order to address the security needs and role of the country. South Africa can choose to tackle these challenges in a mediocre fashion, or to excel in dealing with them decisively. Its own history has shown that the latter path is possible.

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