

The logo for Intelwatch is displayed in a black rectangular box. It features the word "INTELO" in a bold, white, sans-serif font on the top line, followed by a stylized white eye icon. Below this, the word "WATCH" is written in the same bold, white, sans-serif font on a second line.

INTELO WATCH

Submission on the General Intelligence Laws Amendment Bill of 2023 (GILAB)

Intelwatch is a non-profit organisation dedicated to research, policy work and advocacy to strengthen public oversight of state and private intelligence agencies in Southern Africa and around the world. Founded in 2022 in South Africa, Intelwatch aims to carry forward the work of the Media Policy and Democracy Project, which was a research collaboration between the Department of Communication and Media, University of Johannesburg and the Department of Communication Science, University of South Africa, and which contributed important policy research on surveillance issues in Southern Africa, and South Africa especially.

Presenter: Heidi Swart, Intelwatch research and journalism coordinator

The Bill's aim

- Apart from splitting the State Security Agency into its various components, the Bill does not do enough to address the findings of the
 - 2018 Presidential High Level Review Panel
 - Judicial Commission of Inquiry into Allegations of State Capture
 - 2008 Ministerial Review Commission on Intelligence (the Matthews Commission)
 - 2006 Report of the Task Team on the Review of Intelligence-Related Legislation
 - Report of the expert panel into the July 2021 civil unrest
- **IT WILL NOT PREVENT A SECOND STATE CAPTURE.**

Definitions

- The Bill STILL provides **highly problematic, overly broad definitions** for a number of core constructs that will be central to the Bill's interpretation once enacted. These include:
 - **'opportunity'**
 - **'national security intelligence'**
 - **'intelligence gathering'**
 - **'threat to national security'** now even broader, highly problematic because:
 - **NO DEFINITION OF NATIONAL SECURITY**
 - **Policy shift away from public safety and international obligations / reminiscent of how Western powers (USA, UK) view the role of intelligence**
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- **Oversight: The Inspector General of Intelligence (IGI), the Joint Standing Committee on Intelligence (JSCI), the Auditor-General (AG), investigative bodies external to the intelligence community, and the courts**

Despite the findings of the 2018 HLRP and the State Capture Commission that both the JSCI and the IGI, for various reasons, failed to provide sufficient oversight, and despite years of qualified audits from the AG.

The Bill does not provide sufficiently for the independence and powers of the IG, JSCI and AG

- Inextricable links between the three main oversight bodies: IGI, the JSCI and the AG.
- Investigative bodies external to the intelligence community, SAPS, HAWKS, NPA, IPID, etc.
- Legal limitations/lack of certain safeguards placed upon the JSCI, IG, and AG – renders oversight ineffective.
- AG IN PARTICULAR IS unable to do proper audit – the Bill must repeal the Secret Services Account Act, and the Security Services Special Account Act.

JSCI /Evaluation Committee

- JSCI – must approve intelligence budget based on sound knowledge of intelligence activities (input from the EC also crucial here). Approval **cannot be a rubber stamp**.
- Must be able to start and investigation, bring charges
- Evaluation committee must
- *produce continual/quarterly reviews*
- *be a subcommittee of the JSCI*
- Both bodies – provided with expertise with security clearance

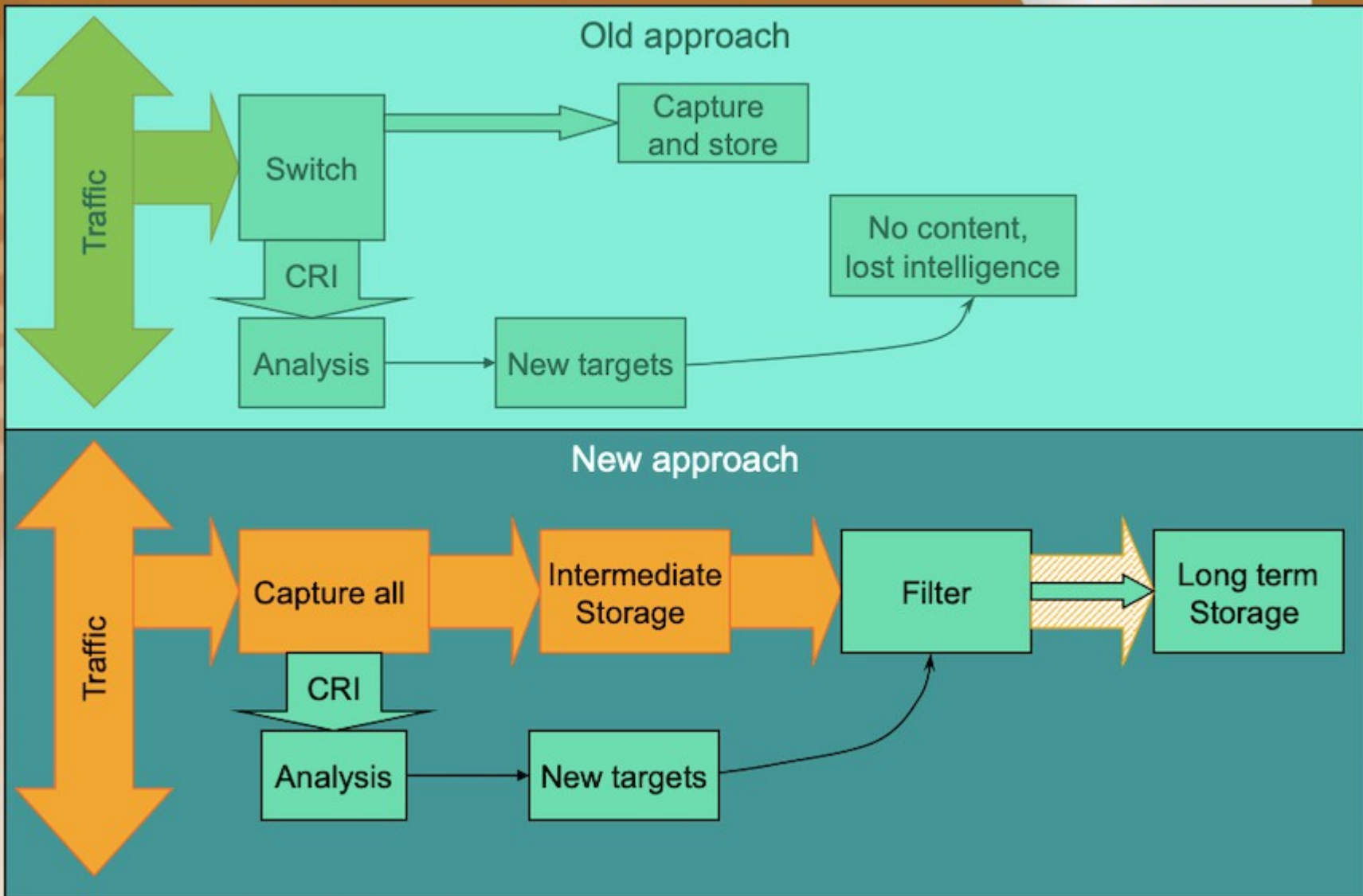
Inspector-General of Intelligence

- Binding recommendations – the court has the power to decide of information should be classified (CONCOURT RULING)
- Recommendations should not require concurrence of the services
- Deputy IGI/Acting IGI
- Whistleblower protections/anonymous hotline

NCC/BULK INTERCEPTION

- NOT ENOUGH i.t.o CONCOURT RICA ruling
- PARALLEL LAW TO RICA
- NO DEFINITION OF BULK INTERCEPTION/MASS SURVEILLANCE – NO DEFINITION OF SURVEILLANCE, FOR THAT MATTER
- THE BILL MUST MAKE EXPLICIT THAT THE PRESIDENT CAN NOT APPOINT THE NCC JUDGE WITHOUT THE AGREEMENT OF THE CHIEF JUSTICE.
- Careful regulation of the various stages: collection, storage, analysis, etc. – CANNOT be left to regulations made in secret by a minister; MUST BE IN THE FINAL ACT, NOT in regulations that can be altered
- Must be located within the foreign service
- CYBER BREACHES CANNOT BE SECRET

Record all and filter



SECURITY COMPETENCE TESTS

- Vetting department, on equal terms with other departments of intelligence
- Vetting appeals division
- Appeals process – provision of reasons
- Final option of turning to the courts
- Vetting cannot be unilaterally revoked
- Vetting criteria more detailed, operationalised, public.

SECURITY COMPETENCE TESTS

- SABC – CRITICAL NATIONAL INFRASTRUCTURE
- Leaves room for interference with free press through vetting of SABC journalists, OR ANY PERSON ACCESSING THE PREMISES OF THE SABC
- Journalists / editors / media professionals must be explicitly protected by GILAB

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ADDITIONAL CRUCIAL ASPECTS

- APARTHEID ACTS ENABLING THE SLUSH FUNDS MUST BE REPEALED
- As the Bill stands, it allows for ministerial overreach
- Illegal surveillance/targeting of non-profits and their legitimate activities can still occur
- Agency members can “neutralising and impede” suspects – this needs to be removed from the Bill. Agency cannot take over the role of the police. Bill must be clear about this.
- KEEPING THE SERVICES WITHIN THE PRESIDENCY IS DANGEROUS

Penalties

- Failing to provide access to classified info – JSCI, AG, Evaluation Committee, internal and external investigators
- Weaponisation of vetting
- Any interference with any investigations, be they through revoking clearance or refusing to provide information
- Interference or any kind with all investigations – internal/external/IGI/JSCI/EC/HAWKS
- SURVEILLANCE OR OPERATIONS THAT TARGET CIVIL SOCIETY