



**THE CENTRE FOR GEOPOLITICAL SECURITY AND STRATEGY**  
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**The Judicial Commission of Inquiry on the Mkhwanazi allegations:  
Is Another Commission serving the Common Good?**

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## **1. Introduction**

On 6 July 2025, South Africans listened to revelations made by Lt Gen Nhlanhla Mkhwanazi, the KwaZulu-Natal Provincial Commissioner of the South African Police Service at a media briefing, regarding a highly organised criminal syndicate that had infiltrated the law enforcement and intelligence agencies in South Africa. Subsequently, on 13 July 2025, President Cyril Ramaphosa announced, among others, the establishment of a judicial commission tasked with investigating these claims.

The announced Commission of Inquiry happens against the backdrop of a significant number of previous commissions that focused on the security cluster, with most of the findings from these still unimplemented and/or incomplete. From the standpoint of stakeholders, the most damaging aspect is that the 30-year milestone of democratically established statutory intelligence agencies is marked by yet another official inquiry. While the President of the Republic of South Africa has the constitutional right to institute state inquiries, the action warrants an examination of whether another serves the common good or public interest. This contribution asserts that any action aimed at addressing the decline of public trust, business confidence and the public value of state institutions must receive support. Nonetheless, the question of whether an additional commission of inquiry fulfils that goal is a matter of debate. At the heart of this issue is the subject of accountability, which requires institutional and political leaders to discharge their governance duties both legally and ethically. This position accrues to the professional bodies and regulatory entities responsible for ensuring compliance with regulatory standards. A social constructivist viewpoint combined with ethical reasoning

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<sup>1</sup> <https://humanities.nwu.ac.za/centre-geopolitical-security-and-strategy-cgss/more-about-us> see Advisory Board (external)

shapes the exploratory text. In particular, the normative standards that shape the social contract between the State and its citizens are essential for maintaining the institutional legitimacy of the statutory intelligence entities. Similarly, the issues of institutional and leadership legitimacy are fundamental to the current discourse.

## **2. The Common Good principle associated with commissions of inquiry**

Briefly, the concept of the common good relates to the application of social controls to enhance acceptable conduct that is reliant on agreed-upon actions or conduct, with moral duty promoted through collective values (Etzioni, 2014). From an epistemological standpoint, the common good linked to formal inquiries aims to explore and inform (Peté, 2020; Gomery, 2006), as well as to establish responsibility and restore public trust (Lawrence, 2018). Supported by existing research, the role of commissions within a democratic political context enhances the democratic governance arrangements (Kohn, 2024; Mudau & Takalani, 2024). Unfortunately, the effective use of their findings to foster accountability often results in a compromised common good, illustrated by several factors, including the following:

- The execution of recommendations can often depend on political judgment (Kohn, 2024).
- The Arms Deal Commission serves as a key example of a democratic inquiry that did not achieve its goals of uncovering the truth, ensuring accountability, and rebuilding public trust (Lawrence, 2018, p. 24).

In considering that the purpose of a commission of this kind is to determine the nature and extent of the compromise of institutional and leadership integrity, would another commission reach a different conclusion than those from previous inquiries? The question posed derives relevance from the ensuing Table 1, which outlines some of the commissions that focused explicitly on the statutory intelligence structures, individually or collectively. Their historical significance places governance challenges as a sustained motivation for their adoption. Conversely, the nature and extent of past leadership and governance challenges warranted the adoption of commissions to identify those areas in need of legislative and structural reform.

**Table 1: List of past judicial commissions in the statutory intelligence community**

<b>INQUIRY NAME</b>	<b>STATUTORY INTELLIGENCE STRUCTURE</b>	<b>SCOPE/ LEGAL BASIS</b>	<b>ETHICAL INFERENCE</b>
<b>Judicial Commission on the Meiring Report (1998)</b>	Military Intelligence	Evaluate the report and determine why the President was the recipient instead of the Minister of Defence. The Meiring report relied on a single source.	Leadership credibility. This can be inferred to the Commission's finding that the single source report present to former President Mandela was untested and unverified.
<b>Hefer Commission (19 September 2003)</b>	Civilian Intelligence	Inquiry into allegations of spying against the Director of National Prosecutions	Integrity as a key fundamental. The conclusion was that the 1989 investigation was fatally flawed by unwarranted assumptions and unjustifiable inferences and by blatant failure to examine available avenues of inquiry (2004, p.50)
<b>Matthews Commission (August 2006)</b>	Civilian Intelligence	The review aimed to strengthen the mechanisms of control within civilian intelligence structures to ensure full compliance and alignment with the Constitution, constitutional principles, and the rule of law, particularly to minimise the potential for illegal conduct and abuse of power.	Asserting moral conditions and requirements as central to the governance, management and conduct of civilian intelligence.
<b>Zondo Commission (8 February 2018)</b>	Statutory Intelligence	Inquiry into allegations of state capture, corruption and fraud in the Public Sector including Organs of State	Asserting moral conditions and requirements as central to the governance, management and conduct of civilian intelligence.
<b>High Level Review Panel (July 2018)</b>	Civilian Intelligence	Enable the reconstruction of a professional national intelligence capability for South Africa that will respect and uphold the Constitution, and the relevant legislative prescript	Asserting moral conditions and requirements as central to the governance, management and conduct of civilian intelligence.
<b>Expert Panel on the July 2021 unrest (5 August 2021)</b>	Statutory Intelligence	To review South Africa's response to the unrest. More directly, the Panel was required to review South Africa's preparedness and shortcomings in responding to the unrest.	The report concludes, among other points, that the operational planning by the police was inadequate and that there was a lack of coordination between state security and intelligence agencies.

Source: Author

### 3. The post-1994 transformation agenda targeting statutory intelligence entities

The nature and scope of inquiries conducted after 1995 within the statutory intelligence environment contrast with the political aim of ensuring that moral responsibility become a fundamental aspect of these institutions. Central to this were the *1993 Transitional Executive Council Act* and the *1995 White Paper on Intelligence*. This *White Paper*'s implementation specifically emphasised the need to replace pre-1995 intelligence practices where state security entities functioned with minimal institutional oversight. This piece of law advocates for an ethical framework to guide the behaviour and actions of individuals within the statutory intelligence environment.

The two foundational legal documents outline the necessary normative attributes of the statutory intelligence entities and their personnel. The *2014 Intelligence Services Regulations* serve as the clearest legal framework to establish an ethical mandate for the SSA and set forth an obligation for ethical governance to the appointed minister and director-general of the SSA: section 4(1)(c)(i) directs the director-general to “*promote a strong organisational culture that reflects high standards, professionalism and moral integrity*” (SSA, 2014, p.37). Section 5(2)(c), in turn, assigns the SSA the underpinning ethical mandate to “*assist good governance by providing honest and critical intelligence that highlights the weakness of government*” (SSA, 2014, p. 39). Overall, the ethical mandate infers a compliance expectation, an enforcement obligation, an advocacy task, a performance expectation, as well as a reporting requirement on the part of those tasked with a governance responsibility to the mandate.

### 4. Concluding remarks

Based on the analysis, establishing another commission seems self-defeating, given that previous commissions have already articulated findings on existing governance challenges. Consequently, it is reasonable to question what new insights might emerge. Although the Speaker of Parliament has already initiated a process through existing parliamentary oversight structures and the Office of the Inspector-General for Intelligence (OIGI) to investigate this matter, this does not preclude the President from appointing a judicial commission on the same issue.

Practically, it is vital to ensure that the provisions stipulated under the Intelligence Regulations establish the legal and ethical framework necessary for evaluating institutional leaders' Key Performance Areas. This will support the maintenance of public value and good governance practices. Moreover, strengthening oversight mechanisms and professional entities linked to statutory intelligence institutions remains essential for addressing underlying governance concerns.

Additionally, within the South African legal context, alternative mechanisms exist that could be effectively utilised either instead of or alongside a new commission of inquiry. These include:

- Parliamentary inquiries utilising existing joint parliamentary committees with relevant oversight mandates to investigate matters. Suitable committees could include, either

individually or collectively, the Joint Committee on Ethics and Members' Interests, Portfolio Committee on Police, Joint Standing Committee on Defence, or the Joint Standing Committee on Intelligence.

- Conducting comprehensive lifestyle audits targeted at specific senior officials within the South African Security Cluster of departments. Heads of departments and their delegated officials, notably Ethics Officers and Investigators, are mandated to undertake these lifestyle audits (South Africa, 2021).
- Enhancing the investigative and oversight capacities of existing institutions such as the Special Investigating Unit (SIU) and the National Prosecuting Authority (NPA), thereby enabling them to investigate and prosecute criminal activities uncovered through lifestyle audits (South Africa, 2021).

Adopting and reinforcing these established legal frameworks and institutions may provide more efficient, cost-effective, and targeted alternatives compared to establishing a new commission of inquiry.

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