

HOW
TO
HOLD
INTELLIGENCE
ELITES
PUBLICALLY
TO
ACCOUNT:

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A
SCOPING
DOCUMENT
FOR
CIVIL
SOCIETY

Bangor University

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PROJECT

AIMS

This project aims to co-create with civil society practical guidelines to enable the press and NGOs to better hold secretive, sometimes manipulative, ‘intelligence elites’ publicly to account.

The guidelines are intended to help civil society ask critical and investigative questions of intelligence elites in this difficult area.

Impacts are expected on:

- **Civil Society:** To raise awareness among civil society actors of problems faced by the press and Non-Governmental Organisations (NGOs) in holding intelligence elites publically to account. It will provide strategies for how this may be better achieved.
- **Public Discourse:** To facilitate more critical researching and reporting of intelligence elites by NGOs and mainstream media.
- **Professional Practice/Training:** To help prepare journalists to cover intelligence elites with greater awareness.
- **Policy-making:** To indicate to intelligence elites that they need to better explain to publics the rationale, utility and ethics of their intelligence policies.

This document presents context for this project.

NEED FOR PUBLIC OVERSIGHT OF INTELLIGENCE ELITES BY CIVIL SOCIETY

...periodic failures of internal oversight place an onus on civil society to publicly and critically interrogate intelligence elites. Greater public accountability should also increase transparency and build public trust in intelligence agencies.

Intelligence agencies are public servants. Secretly and thanklessly, they work to further the national interest, aiming to keep the nation safe and secure (Omand 2011 [2010], Briant 2015). While these are laudable aims, this does not make them undeserving of critical, public scrutiny from civil society, be this academics, the press or Non-Governmental Organisations (NGOs).

Rather than focusing attention solely on intelligence agencies, it is more productive to examine ‘*intelligence elites*’. This comprises the small number of leaders in interlocking political, economic and military domains that make fundamental decisions on intelligence with far-reaching consequences for all citizens. For instance, everyone is affected by decisions to use torture for interrogations, which can initiate norm regress concerning hard won, international human rights as politicians argue that torture works and is a useful policy option in ticking time-bomb situations; or through bulk data collection of digital communications, which generates chilling effects on populations (Bakir 2018).

The term ‘*intelligence elites*’ should not imply an omnipotent monolith steeped in conspiracy. Rather, it evinces the normally close relationship between top politicians and intelligence agencies (Johnson 2009); the deferential relationship to intelligence agencies from wider politicians (Cormac 2016); and secret involvement of private companies that makes parliamentary scrutiny difficult (Hillebrand 2014).

The term '*intelligence elites*' further highlights the exclusion of civil society in oversight of intelligence agencies, which is largely limited to internal intelligence agency mechanisms, or to secret elements of the legislature and judiciary.

Such official mechanisms of intelligence agency oversight in the UK and other liberal democracies have failed to prevent policies that variously contravene fundamental human rights, or that, on exposure, generate significant public concern. **For instance:**

- In the USA, the George W. Bush administration's Detention and Interrogation Program (2001-2008) contravened the non-derogable human rights to freedom from torture and enforced disappearance: and the British government's complicity in this programme is increasingly evidenced (Bakir 2013, Blakeley and Raphael 2016).
- Contemporary US/UK mass surveillance policies that secretly engage in bulk data collection of citizens' digital communications, through 'chilling effects' (Penney 2016, Stoycheff 2016) on public discourse, challenge the human rights to privacy and freedom of expression.
- Official intelligence agency oversight mechanisms failed to prevent the politicisation of intelligence, when the administrations of George W. Bush and Tony Blair selectively used intelligence about Weapons of Mass Destruction (WMD) to generate political and public support for invading Iraq in 2003 (Kaufmann 2004, Herring and Robinson 2014).
- Such periodic failures of internal oversight place an onus on civil society to publicly and critically interrogate intelligence elites. Greater public accountability should also increase transparency and build public trust in intelligence agencies. However, civil society faces many obstacles.

BARRIERS TO PUBLIC OVERSIGHT OF INTELLIGENCE ELITES

Academics rarely research relationships of influence between civil society and intelligence elites, especially civil society's ability to publically hold intelligence elites to account. Reasons include difficulties of accessing official records or officials; problems of interpretation and verification; and a feeling that such research would encounter political obstacles. *My examination of this small field highlights two important barriers to civil society being able to publically hold intelligence elites accountable: namely, secrecy and manipulative information provision* (Bakir 2018).

On secrecy, governments maintain that their intelligence agencies require complete secrecy to deliver national security. Consequently, there is minimal transparency of intelligence agencies across liberal democracies. Where important intelligence policies are threatened by exposure, as with Snowden's leaks in 2013 about mass surveillance, three *silencing* techniques were used in the UK.

- 1 Self-censorship via Defence Advisory (DA) Notices issued to the British press by the Defence, Press and Broadcasting Advisory Committee. The Guardian's then editor, Alan Rusbridger, states that most British news outlets willingly complied with the DA Notice on Snowden's leaks (Rusbridger 2013).
- 2 For non-compliant press outlets – notably The Guardian, the newspaper that broke Snowden's leaks – the silencing technique of *threatening and harassing non-compliant media workers* was used. British police pursued a criminal investigation into The Guardian's actions; the Cameron administration politically pressurised The Guardian to destroy its leaked files on the National Security Agency (NSA); its employees were forced to physically smash their computer hard drives in London under GCHQ's tutelage; and journalists in The Guardian's US office noticed that they were being surveilled electronically and in person (Rusbridger 2013, Harding 2014).
- 3 In the pipeline is the silencing technique of *threatening and harassing the whistleblower*. Already a well-developed technique in the USA (using The Espionage Act [1917]), the UK is currently considering increasing the punishment for national security whistleblowers breaking the Official Secrets Act [1989] from two to 14 years imprisonment (Law Commission 2017).

On manipulative information provision, intelligence elites try, at key moments, to influence civil society organs (especially the press). Three main techniques are evident in the UK today to drip-feed partial information to the press.

- 1 Unattributed briefings. Lashmar (2013) categorises various official, unofficial, formal and informal ways in which British intelligence agencies release information to selected journalists, examining intelligence agencies' intentions to mislead the media.
- 2 Selective declassification to misdirect attention. The Obama administration used this technique when, in 2014, it declassified the lengthy Executive Summary of the Senate Intelligence Committee report on the Detention and Interrogation Program, alongside three other intelligence reports. These produced an information glut of misdirection that scapegoated the Central Intelligence Agency (CIA) for avoiding oversight procedures, but made no demands for responsibility to be taken by the Bush administration that secretly ordered the Program. Such selective declassification to misdirect attention influenced press demands for accountability on this issue (Bakir 2017).
- 3 Using opinion leaders (politicians) to promote the intelligence policy. Studies of British news following Snowden's leaks show most press outlets and BBC news privileged political sources that justified and defended the security services and mass surveillance (Lischka 2016, Wahl-Jorgensen et al. 2016, 2017).

A CHALLENGING JOB FOR CIVIL SOCIETY

Civil society operates in a difficult environment when reporting on, and researching, intelligence elites. Alongside the twin obstacles of pervasive secrecy and periodic attempts at *influence*, there is always *uncertainty* about what any evidence means, whether it be provided by sanitised, official reports or unearthed via whistle-blowing or critical investigations. By its nature, intelligence information is uncertain, based on intelligence analysts' risk assessments derived from material of varying credibility. These characteristics mean that *intelligence information, if publicised, is manipulable by those seeking to influence wider opinion, while civil society's ability to assess claims is compromised by absence of independent evidence* (Bakir 2017).

Arising from these constraints, academic research shows that journalists across liberal democracies face many challenges when dealing with intelligence elites. **These include:**

- *Negotiating the balance between secrecy for national security and the right to know.* In the USA, journalistic ethical codes tend to ignore the topic of leaking (classified) information. Given Washington DC's prevalence of leaking, including of classified information, journalists are left with little formal guidance on when leaks should not be used (Vanacker 2016).
- *Finding and verifying information.* US journalists face the challenge of gaining access to knowledgeable sources, especially where intelligence agents' penalties if discovered to have provided reporters with classified information are grounds for prosecution (Gup 2004).
- *Lacking time, resources and ability to recognise disinformation.* In the build-up towards the US invasion of Iraq in 2003, The New York Times correspondent Judith Miller acted as a conduit for anonymously sourced stories on WMD originating in US military and intelligence agencies and exiled Iraqi political opposition groups, rather than recognising this information as political manipulation of intelligence on WMD (Boyd-Barrett 2004).
- *Dealing with minimal audience knowledge or interest in intelligence stories.* US public opinion on mass surveillance following Snowden's leaks was divided: Hastedt (2016) suggests that not enough people wanted reform to give the policy of intelligence reform any urgency.
- *Dealing with being surveilled, which compromises source anonymity and may have a chilling effect on journalism.* Snowden's mass surveillance revelations in 2013 led to a number of investigative journalists around the world taking measures to protect their sources' anonymity, largely by minimising their use of digital communications (Lashmar 2016).

NGOs also face specific challenges when dealing with contemporary intelligence elites.

These include:

- Competing with front organisations, as intelligence elites set up state-private networks and covertly launch and finance front organisations. For instance, the US Congress funded NGO, the National Endowment for Democracy, legally channelling funding from larger agencies, like USAID and the CIA, to promote, via independent media institutions, 'low-intensity', PR-friendly democracy in Iraq and Afghanistan post-9/11 (Barker 2008).
- Dealing with being monitored. Deibert (2003) documents the monitoring of NGO hacktivists and citizen networks by Canadian intelligence services.

HOW CIVIL SOCIETY HOLDS INTELLIGENCE ELITES PUBLICALLY ACCOUNTABLE

Despite these constraints and challenges, there are contemporary examples of civil society holding intelligence elites publically accountable.

Journalistic practices include:

- Exposing secret or little-known policies that contravene human rights. For instance, many journalists collaborated across Europe to expose the Bush administration's secret policy of extraordinary rendition (Tulloch 2007).
- Maintaining editorial independence while facing intelligence elite pressure. While, following Snowden's leaks, most UK press outlets privileged political sources that justified mass surveillance, there were some exceptions. *The Guardian/Observer* and *Daily Express/Sunday Express* were balanced in offering pro- and anti-surveillance opinions; and *The Independent/ Independent on Sunday, i* and *The People* were anti-surveillance (Wahl-Jorgensen et al. 2017).
- Highlighting intelligence failures and demanding reform. Spain's press paid more attention to intelligence scandals in the mid to late 1990s, leading to reform in 2002 to make it more accountable (Fernández 2009).
- Resorting to opinion when intelligence facts are few or unclear. Opinion (rather than hard news) stories demanded accountability from intelligence elites following the US Senate Intelligence Committee (2012) report into the Detention & Interrogation Program (Bakir 2017).

Documented NGO practices to hold intelligence elites publically accountable mainly involve generating and sharing of a pool of knowledge and analysis to:

- Enable activism and protest. For instance, Deibert (2003) describes knowledge-sharing to keep secret the organisation of activism, such as using encryption tools and software to secure private exchanges, and using Internet Relay Chat to allow street activists to engage in real time organisation of protest.
- Seek greater intelligence accountability. In the USA, this includes obtaining and circulating information to intelligence overseers; supporting whistleblowers; targeting and mobilising people; providing them with opportunities for civic engagement and communication with institutions; using litigation and relying on court judgments; lobbying; and testifying before congressional committees (Van Puyvelde 2013).

HOW CAN CIVIL SOCIETY DO BETTER?

Academic research shows that civil society - especially academics and the press - largely do a poor job of holding intelligence elites publically accountable. As for NGOs, there is not enough academic research to make an evaluation.

*I am therefore creating a set of **best practice guidelines** to encourage critical researching and reporting in this difficult area.*

The draft **best practice guidelines** direct civil society's attention to three issue areas:

- The intelligence itself;
- Political responses to intelligence controversies;
- Wider ethical, moral and legal questions concerning the intelligence.

Each issue area consists of a set of critical questions that civil society can use to publically hold intelligence elites to account (see Table 1).

TABLE 1 Draft Best Practice Guidelines to Publically Hold Intelligence Elites to Account:

<i>ISSUE AREAS</i>	<i>CRITICAL QUESTIONS CIVIL SOCIETY COULD ASK</i>
A. <i>Accuracy & value of intelligence</i>	<i>How strong is the analysis underlying an administration's public characterisation of intelligence?</i> <i>What is the level of consensus across the intelligence community on the accuracy or value of the intelligence?</i> <i>What is the level of uncertainty regarding intelligence assessments?</i>
B. <i>Intelligence elite response to intelligence controversies</i>	<i>What further work is needed to achieve full accountability?</i> <i>To what extent has political/corporate responsibility been taken?</i>
C. <i>Ethics, morality & legality of how intelligence is gained and for what it is used</i>	<i>Are human/civil rights compromised in the production or use of intelligence?</i> <i>Are principles of fairness/justice/morality compromised in the production or use of intelligence?</i>

WHAT INFORMS THE DRAFT BEST PRACTICE GUIDELINES?

They are informed by academic literature from Journalism, Media, History and International Relations (summarised below). As I conduct interviews with civil society, they will be adapted and extended.

Issue Area A: Accuracy & Value of Intelligence

Intelligence reports, being based on uncertain knowledge, are vulnerable to political manipulation. Research emerging post-‘9/11’ identifying political manipulation of intelligence risk for public consumption includes the Bush and Blair administrations’ inflation of the WMD threat to justify invading Iraq in 2003 (Kaufmann 2004, Herring and Robinson 2014). Given such political manipulation of intelligence for public consumption, it is vital that civil society critically responds. With the Blair and Bush administrations’ justification for invading Iraq in mind, Bean (2013) outlines three critical questions that journalists could have asked, but missed. These comprise:

- 1 Assessing the strength of analysis underlying an administration’s public characterisation of intelligence;*
- 2 Determining the level of consensus across the intelligence community on a given issue;*
- 3 Uncovering the level of uncertainty regarding intelligence assessments.*

The press failed in these areas when presented with deceptively incorrect intelligence in 2002 that Iraq’s leader, Saddam Hussein, was developing WMD that posed an imminent threat to the west. Had the press critically queried these areas, the decision to go to war may have changed.

While querying the accuracy and value of intelligence is vital, so is scrutinising intelligence elite responses to inaccurate, or otherwise problematic, intelligence. This leads us onto issue area B.

Issue Area B: Intelligence Elite Responses to Intelligence Controversies

Studies find journalists succumbing to politicians' desire for closure on controversial security issues. For instance, once the Bush administration's secret Detention and Interrogation Program was outed in 2004 (following US press publication of photos of torture at the hands of US Military Police at abu Ghraib prison), UK and US political administrations generated public investigations with tightly defined remits that focused on the military's involvement. They concluded that individual soldiers had abused policy, and that any mistakes in training soldiers had since been redressed. This diverted attention from intelligence agencies' central role (Bakir 2013). Given such artificial issue resolution, and misdirection to tangential areas where reform has already happened, civil society should ask a fourth critical question:

4 Assessing what further work is needed to achieve full accountability.

Research on the Detention and Interrogation Program shows that politicians denied the existence of this secret policy by presenting perpetrators of torture caught on camera (US Military Police at abu Ghraib) as abusing policy, rather than as enacting the secret Program (Bakir 2013). Since then, minimal political or corporate responsibility has been taken (Bakir 2017). Yet, global monitoring of torture depends not just on exposing torture through documentation, but holding state agents responsible for torture conducted on their watch (Rejali 2007). As such, civil society should ask a fifth critical question:

5 Assessing the extent to which political/corporate responsibility is taken.

Yet assessing national political and corporate responses to intelligence controversies is not always enough, as it can ignore wider ethical, moral and legal frameworks within which intelligence elites operate. These frameworks transcend narrow, political frameworks of acceptability – such as being 'in the national interest'. This leads me to issue area C.

Issue Area C: Ethics, Morality & Legality of how Intelligence is Gained or For What it is Used

In national security issues, nation-states may seek to contravene international norms and human rights to protect their national interests (Lashmar 2015). For instance, the Bush administration, desperate to prevent another '9/11' by eliciting actionable intelligence from detained al-Qa'eda suspects, generated complex legal arguments to buttress their stance that EITs did not constitute torture, and that al-Qaeda detainees were illegal enemy combatants rather than Prisoners of War. National security concerns thereby negated the human right to be free from torture and international humanitarian law (Bakir 2013). Consequently, civil society should ask a sixth critical question:

- 6 *Assessing whether human and civil rights are compromised through acquisition or use of intelligence.*

International human rights and humanitarian law are not the only source of ethical guidelines: other codes include professional ethics, religion, and a sense of what is fair or just. For instance, the Hoffman Report (2015) for the American Psychological Association (APA) found that across the Bush administration's second term in office, APA officials developed ethical guidelines to enable continued involvement of psychologists in Enhanced Interrogation Techniques (a.k.a. torture); and that the APA sought to curry favour with the US Department of Defence to ensure that the military would continue to 'provide large-scale support to psychology as a profession'. As such, civil society should ask a seventh critical question:

- 7 *Assessing the extent to which principles of fairness, justice and morality are compromised through acquisition or use of intelligence.*

HOW THESE DRAFT BEST PRACTICE GUIDELINES CAN BE USED

- Civil society can use the guidelines as a standing reserve of critical questions focused on intelligence elites – to help navigate this difficult area.
- For the press, the guidelines can act as a training element and aide-memoire to counteract lack of awareness of secretive intelligence policies; and to avoid simply reproducing unsubstantiated, or selectively substantiated, intelligence elite claims. This can generate more critical researching, reporting, and campaigning to demand change for action, reform or redress.
- For NGOs, understanding the obstacles faced by the press when reporting on intelligence elites may help NGOs develop strategies to address these obstacles when attempting to share their pool of knowledge with the public.
- The critical questions in the best practice guide are framed at a general level, and do not assume in-depth knowledge of secret specific policies. But, if consistently asked by civil society, they would enable this knowledge to be publicly built up, thereby creating a stronger epistemic position from which to better hold intelligence elites publically to account.

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