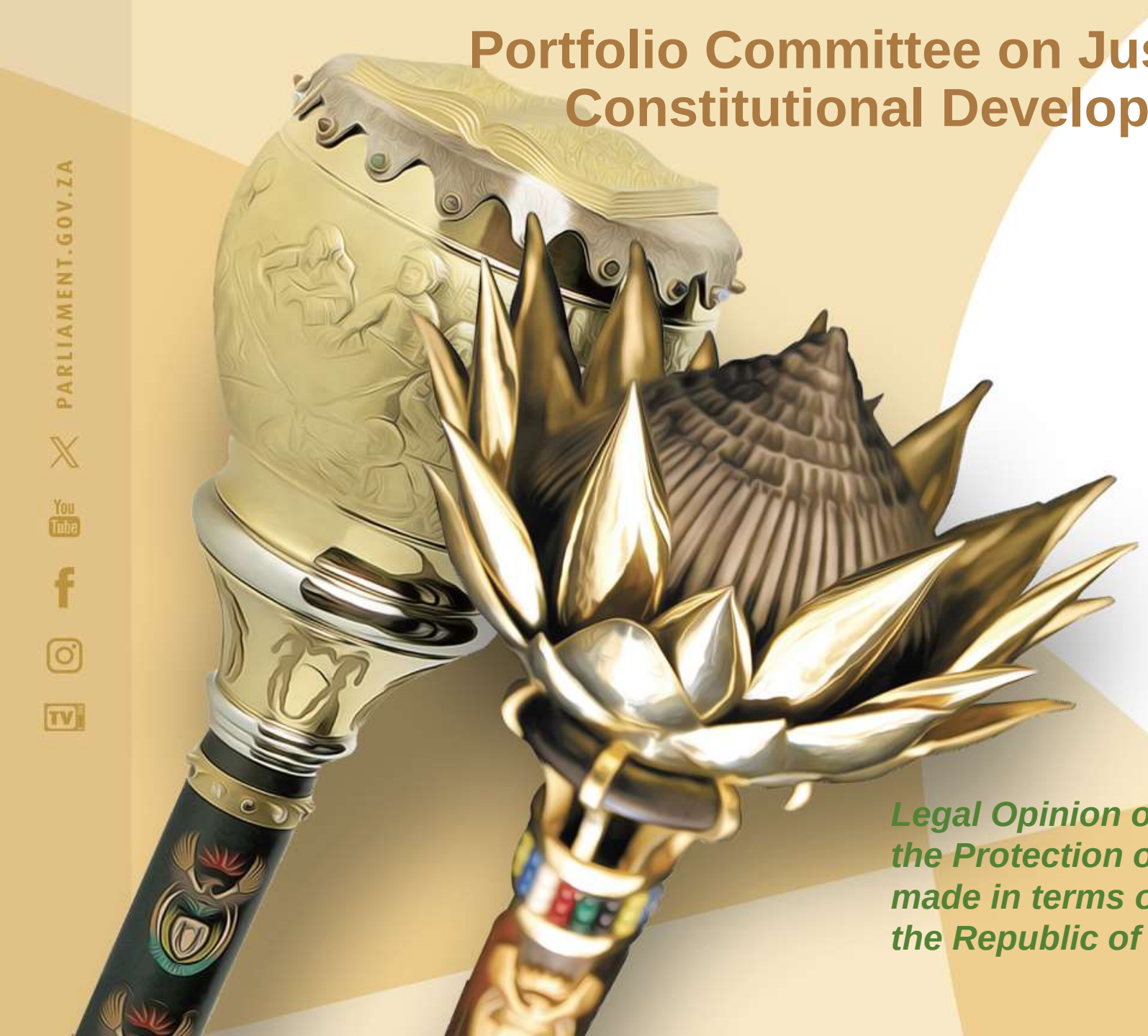
Portfolio Committee on Justice and Constitutional Development



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7 May 2025

Legal Opinion on the Reservations of the President on the Protection of State Information Bill [B6H-2010] made in terms of section 79(1) of the Constitution of the Republic of South Africa

INTRODUCTION

- The Constitutional and Legal Services Office ("CLSO") was requested to advise the Portfolio Committee on Justice and Constitutional Development ("the Portfolio Committee") on the reservations expressed by the President of the Republic of South Africa ("the President") on the constitutionality of the Protection of State Information Bill [B6H- 2010] ("the Bill").

BACKGROUND

Legislative Process Prior to the 7th Parliament

- On 8 March 2010, the Minister of State Security introduced the Bill in the National Assembly ("NA") as a proposed section 75, whereafter it was referred for consideration and report to the Ad Hoc Committee on Protection of State Information Bill ("Ad Hoc Committee"). Following a second reading of the Bill, the National Assembly on 16 November 2011 adopted it with amendments.

- Thereafter the Bill was transmitted to the National Council of Provinces ("NCOP") for concurrence. The NCOP referred the Bill to the Select Committee on Security and Justice ("Select Committee") for consideration and report. On 29 November 2012, the NCOP adopted the Select Committee report on the Bill, which report recommended further amendments. This recommendation report was in turn referred to the NA

BACKGROUND

- The Ad Hoc Committee considered the Select Committee's recommendations over the period of 13 March to 23 April 2013. The recommendations were found to be persuasive and a duly amended version of the Bill was tabled in the NA. This amended version of the Bill was passed on 25 April 2013 and sent to the President for assent.
- On 12 September 2013, the President referred the Bill back to the National Assembly in terms of section 79(1) of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), for reconsideration "*in so far as sections of the Bill in particular clauses 42 and 45, lack meaning and coherence, consequently, are irrational, and accordingly are unconstitutional*".
- The NA referred the Bill back to the Ad Hoc Committee. The Ad Hoc Committee in turn reconsidered the Bill in light of the reservations, from 9 October to 8 November 2013. The Ad Hoc Committee expressed agreement with the President's reservations and duly amended the Bill to reflect several "textual corrections". This further amended version of the Bill was passed by the NA on 11 November 2013 and sent to the President for assent.

- On 2 June 2020, the President again returned the Bill to the NA in terms of section 79(1) of the Constitution ("2020 Reservations"), calling on the House to reconsider the Bill in light of reservations about its constitutionality: This referral being more detailed than the one submitted in 2013.

- The Bill lapsed on 21 May 2024 at the end of the 6th Parliament's term and following the elections was revived on 25 July 2024 by the 7th Parliament in terms of NA Rule 333(2).

PARLIAMENTARY RULES REGULATING SECTION 79 PROCESS

- Joint Rule 235(1) (previously Joint Rule 203), states that on receipt of a remitted Bill in terms of section 79 of the Constitution, the Speaker of the NA must refer the Bill and the President's reservations to an Assembly committee. Joint Rule 235(2)(a) further provides that the relevant committee must, subject to subrule (3), consider and confine itself to the President's reservations.

- Joint Rule 235(4) provides specific guidance as to the mandate of the relevant committee:

"*If the Committee agrees with the President's reservations, the committee must–*

(a) Indicate the steps taken by the Committee to correct any procedural defect;

(b) present with its report an amended Bill correcting any constitutional defect in the substance of the Bill, or resulting from the steps to correct the procedural defect;

(c) make a recommendation that any procedural defect can only be corrected by the council; or

(d) recommend that the Assembly rescind its decision to pass the Bill and reject the Bill, if it regards the Bill as being procedurally or substantively so defective that it cannot be corrected."

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PRESIDENT'S RESERVATIONS ON THE CONSTITUTIONALITY OF THE BILL

Following legal opinions obtained and public submissions received, the President used the process as set out in section 79 of the Constitution to raise several points of reservation regarding the constitutionality of the Bill*:*

(a) Constitutional Framework

The first constitutional reservation expressed by the President relates to the restrictions on the rights to freedom of expression and access to information as contained in sections 16 and 32 of the Constitution, respectively. The President reasons that "the Bill limits both of these sections. The Bill limits the freedom of the media (and everyone else) to access or receive and impart information. This is a limitation of section 16. The Bill also prohibits people from accessing certain information held by the state. This limits section 32.

Over-breadth of definitions

The second issue raised in the President's letter is the definitions of "national security" and "state security matter", which are broad as these are not closed list definitions and are drafted in an open-ended manner with the use of the word "includes". This, according to the President, means the definitions of "national security" and "state security matter" are not limited to the definitions provided in the Bill. As a result, the definitions leave scope for classifying bodies and officials to interpret the definitions of "national security" and "state security matter" as they see fit.

Defences

The President also indicated that he has reservations regarding the limited defences provided in the Bill in respect to the offences set out in Chapter 11 (clauses 34 to 48) of the Bill :

- **Public Interest Defence:** The President expressed reservations about a lack of public interest defence to offences relating to unlawful disclosure and possession of classified information as contemplated in clause 41 of the Bill. According to the President, this 'will create an unjustifiable chilling effect on the freedom of expression'.

- **Public Domain Defence:** The President also raised his reservation that the Bill in its current form does not afford anyone in possession of classified information an opportunity to rely on the public domain defence. The President asserts that it is a basic principle of privacy law that once information loses its secrecy for being in the public domain, for example, such information can no longer be protected.

Classification & Declassification

In the context of classification and declassification the President has the following concern:

Classification: The President expressed reservations concerning the classification of state information as it pertains to clause 12(2) of the Bill which provides that a head of an organ of state may delegate, in writing, the authority to classify state information to a staff member at a sufficiently senior level. The President expressed concern that "sufficiently senior" is an undefined term and it is unclear who can designate staff and how such designation is determined. The clauses pertaining to classification of state information are 'impermissibly vague', unconstitutional as they unjustifiably limit the right to freedom of expression and access to information

Declassification: The President raised concerns that the Bill makes no provision to sever information which should legitimately remain classified following a request for access to classified information. Consequently, an entire document could be withheld despite information in that document having to bearing on national security. The President expressed concern that the lack of such severability provision is an unjustifiable limitation on the rights of freedom of expression and access to information.

Classification of the Bill: Concerns expressed regarding the tagging of the Bill relate to the following impact on provincial interests:

i.The President is of the view that the Bill provincial organs of state because section 239 of the Constitution includes provincial entities as organs of state. Accordingly, reference made to organs of state within the context of clauses 3(3) and 5(1) can be read as affecting provinces.

ii. The President further contends that Clause 6 read with clauses 7(1) and 51, prescribes how valuable information and state information must be dealt with at the provincial level. It is argued that this will have an impact on the management and control of provincial archives. Archives other than national archives is a functional area of exclusive provincial competence as set out in Schedule 5 of the Constitution. The President therefore argues that the Bill affects provinces and should be classified as a section 76 Bill.

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Constitutional Framework – Rights to Freedom of Expression and Access to Information

Scope of the Right: Freedom of Expression

- Whether clause 35 of the Bill infringes upon the section 16 of the Constitution must be determined by reconciling it with section 16 and with due consideration to the limitations test set out in section 36 of the Constitution.
- Clause 35 of the Bill sets out the criteria and processes in terms of which state information may be protected from unauthorised or unlawful disclosure.

Clause 35 of the Bill provides that –

"(1) *it is an offence punishable on conviction by imprisonment for a period not exceeding 25 years to unlawfully and intentionally receive state information classified top secret which the person knows would directly or indirectly* benefit *a foreign state to the detriment of the national security of the Republic.*

(2) it is an offence punishable on conviction by imprisonment for a period not exceeding 15 years to unlawfully and intentionally receive state information classified secret which the person knows would directly or indirectly benefit a foreign state to the detriment of the national security of the Republic.

(3) it is an offence punishable on conviction by imprisonment for a period not exceeding five years to unlawfully and intentionally receive state information classified confidential which the per-son knows would directly or in-directly benefit a foreign state to the detriment of the national security of the Republic".

❑ In Clause 1 of the Bill, “**national security**” is defined broadly as including:

“*the protection of the people of the Republic and the territorial integrity of the Republic against, inter alia, the threat of use of force or use of force, hostile acts of foreign intervention directed at undermining the constitutional order of the Republic, terrorism or terrorist related activities, espionage, exposure of a state security matter with the intention of undermining the constitutional order, exposure of economic, scientific or technological secrets vital to the Republic, sabotage, serious violence directed at overthrowing the constitutional order of the Republic; and act directed at undermining the capacity of the republic to respond to the use of force and carrying out the republic’s responsibilities to any foreign country and international organisation*.”

❑ Freedom of expression includes protection of the freedom of the media and press, and the freedom to receive and impart information. Our courts have emphasised the importance of freedom of expression as an integral part of our constitutional order. In ***Khumalo and Others v Holomisa***, the Constitutional Court acknowledged the role of the media in a democratic society and held that ‘the print, broadcast and electronic media have a particular role in the protection of freedom of expression in our society’.

- Therefore, section 16 of the Constitution must be interpreted against this background. It must be noted that section 16(2) serves as a limitation of the right to freedom of expression, which provides that certain expressions, i.e. propaganda for war, incitement of violence or advocating hatred, are not protected in terms of section 16.

- In ***Laugh it off Promotions CC v South Africa Breweries International***, the Constitutional Court emphasised that section 16 contained two parts:

i) The first subsection sets out expression which is protected under the Constitution (i.e. freedom of press and other media, receiving information or ideas, artistic creativity and academic and scientific research).

ii) The second subsection contains three categories of expression which are expressly excluded from the constitutional protection, and therefore the Court concluded that unless the expressive act is excluded by section 16(2) of the Constitution, it is protected.

- In summary, freedom of expression, encompasses any form of human expression. The effect of the constitutional recognition of the right to freedom of expression is that the right has a fixed meaning and content, in that limitations to the right must comply with the provisions laid down in the Constitution.

- The content of the right may only be limited by the internal limitations listed in section 16(2) of the Constitution, and if justifiable, the requirements laid down in section 36; namely, the limitation clause.

Scope of the Right: Access to Information

- The right of access to information is enshrined in section 32 of the Constitution and is a vital component of a free, open democratic society. Section 32(1) of the Constitution guarantees the right of access to information 'that is required for the exercise or protection of any rights'. To give effect to this constitutional provision, Parliament promulgated the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) (PAIA).

- Section 9(b) of PAIA stipulates that the object of the Act is to give effect to the constitutional right of access to information subject to justifiable limitations, including, but not limited to, limitations aimed at the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance; and in a manner which balances that right with any other rights in the Bill of Rights in the Constitution. [own emphasis]

Possible Limitation

- The Court in ***Brummer v Minister for Social Development and Others*** ("***Brummer***") stated that—

"*access to information is crucial to the right to freedom of expression which includes freedom of the press and other media and freedom to receive or impart information or ideas*"

- As discussed, subsection 16(2) of the Constitution sets an internal limit beyond which the right to freedom of expression enshrined in subsection (1) does not extend. The connection between sections 16 and 32 is demonstrated by the ***Brummer*** judgment.

- In order to pass the test of constitutionality, the Bill must not only be a law of general application, but must also show that any limitation to a right (in this case the right to freedom of expression, particularly including freedom of the press and other media and freedom to receive or impart information or ideas), is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including:

(a) the nature of the right;

(b) the importance of the purpose of the limitation;

(c) the nature and extent of the limitation;

(d) the relation between the limitation and its purpose; and

(e) less restrictive means to achieve the purpose.

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- The Court in ***Brummer*** stated that –

"*Each of these factors must be weighed up but ultimately the exercise is one of proportionality which involves the assessment of competing interests. Where justification rests on factual or policy considerations, the party contending for justification must put such material before the court*"

- The Court further stated that the importance of the right of access to information too, in a country 'which is founded on values of accountability, responsiveness and openness, cannot be disputed and to give effect to these founding values, the public must have access to information held by the state'.

- It is clear that, through the legislative process of the Bill, there have been a number of changes, following various submissions and legal input and advice at the time. In particular, the definition for "national security" has been extended, and a "quasi-public-interest-defence", i.e. clause 41 of the Bill, has been included in response to legal concerns.

- However, the provisions of the Bill would still render it illegal to possess such classified information, unless the possessor of such information raises a defence envisaged in clause 41. This creates an onerous burden and will require journalists to use time and money to defend themselves., This will have the effect of stifling media freedom. Furthermore, criminal activity is not clearly proscribed in clause 41 of the Bill, which renders the provision vague.

- Although clause 35 of the Bill contains a proviso that the top-secret information received should directly or indirectly benefit a foreign state to the detriment of the national security of the Republic, the actual determination of what is top secret is entirely dependent on a functionary of the state with no objective party or tribunal prescribing classification. This could result in inconsistency.

- It holds true that state security is an important purpose, weighed against the role of the media which "is an instrumental function of our democracy". However, in considering the relationship between the limitation and its purpose; i.e. whether there is a good reason for the law to infringe upon the right in the way it does, it is doubtful whether the purpose outweighs the importance of the protection the right.

- Lastly, in considering the efficacy of the Bill and whether the objects could reasonably be achieved using an alternative or less restrictive means, it is argued that perhaps the Promotion of Access to Information Act 2 of 2000, could be used to effect further limitations to access to information that is confidential or otherwise required to be protected.

- In conclusion, we are of the view that the Bill unreasonably infringes upon the rights enshrined in sections 16 and 32 of the Constitution.

OVER-BROAD DEFINITIONS

- Regarding the reservation raised regarding the broad definitions of “national security” and “state security matter”, the President refers to the case of ***Dawood and Another v Minister of Home Affairs*** (“***Dawood***”)

- The Court in ***Dawood*** cautioned Parliament against conferring a broad discretion upon an official, who may be untrained in law and constitutional interpretation, and expecting that official, in the absence of direct guidance, to exercise the discretion in a manner consistent with the provisions of the Bill of Rights. The Court stated that the legislature must take care to limit the risk of an unconstitutional exercise of the discretionary powers it confers to officials, as it has a constitutional obligation to “respect, promote, protect and fulfil the rights in the Bill of Rights”.

- Caution must be applied when using the word “includes” in a definition. The purpose of a definition is to provide clear parameters. According to Professor Dr Helen Xanthaki, “includes” means the legislature intends to keep the door slightly ajar lest something has been omitted through an oversight. Dr Xanthaki states that a provision in a definition in a law containing an extended meaning or only a part of the conventional meaning, by using “includes”, may at worst induce an unintended interpretation of the meaning.

- Generally, and in light of the ***Dawood*** decision, “includes” should not be used unless an open-ended definition is expressly required and justified in the circumstances. The current Bill does not present such a justifiable context, as the Bill in design limits rights, and limitation should be approached with extreme caution. Avoiding an unqualified “includes” in definitions ensures that there is no room for interpretation that could unintentionally grant a decision-maker an unfettered discretion in the determination of the scope of application of legislation. In other words, a clear policy must underpin the definitions used to limit rights in the Bill of Rights in a manner that ensures certainty. The Bill appears to fall short in this regard.

- Furthermore, the President is concerned that even though clause 8 sets out the conditions for classification, the provisions are still overly broad in scope and thus insufficient to save the Bill from unconstitutionality. The President refers to ***Case and Another v Minister of Safety and Security and Others***, which concerned a challenge to the constitutionality of section 2(1) of the Indecent or Obscene Photographic Matter Act, 1967 (Act No 37 of 1967). The Court held that the impugned section constituted an infringement of the right to personal privacy guaranteed in the Interim Constitution. The Court held that the invasion of the right to privacy, was aggravated by the very broad definition of indecent or obscene photographic matter contained in the Act.

- In this instance, the definitions of '**national security**' and '**state security matter**' are broad as they are not a closed list and as such are prone to be interpreted differently by different administrators.
- In light of the above discussion, our Office is in agreement with the President as to the definitions of "**national security**" and "**state security matter**", namely that these are too broad and create the risk of abuse. Definitions should promote certainty, and such must be underpinned by clear policy to ensure that the affected constitutional rights are not unduly and unreasonably limited.
- If the Committee agrees with this view, it is advised that the Department be consulted as to the policy implications that could result from an amendment of the affected definitions. It would be advisable for the Committee to request the Department to present a proposed amended text that would address the concern raised with regard to the overly broad scope of the definitions in question.

DEFENCES

- The President states in his letter that chapter 11 (clauses 34 – 48) of the Bill sets out the offences and related penalties for non-compliance with the provisions of the Bill. In turn, clause 41 of the Bill provides three narrow defences limited to the offence of disclosure or possession of classified information. Accordingly, the President is concerned that the defences provided in clause 41 of the Bill are narrow and do not take into account other defences that are widely recognised in our jurisprudence, for example public interest and public domain defences.

- The President is concerned that while the Bill does provide for three narrow defences it omits to provide for offences.

Public Interest Defence

- The limited defences in clause 41 will not withstand constitutional scrutiny. According to the President, the defences provided in clause 41 are narrow and are only provided in respect of disclosure and possession of classified state information. No defences are provided for other certain other offences. This may create a situation that would allow for the arbitrary (and thus irrational) limitation of the right to freedom of expression. This will be contrary to the public interest.

- To address the concern, the Bill could provide for a public interest defence. The introduction of the public interest defence would not be new. It has been introduced in the secrecy laws in other jurisdictions. It has also been recognised in common law where it functions as a defence to an infringement of privacy. The Constitutional Court in ***Independent Newspapers (Pty) Ltd v Minister for Intelligence Services*** **2008 (4) SA 31 (CC),** has recognised the importance of public interest in the context of security cases, and held as follows:

"*On the other hand, the circumstances in which an intelligence agency came to improperly and unlawfully infringe upon the privacy of an innocent citizen are not merely matters of public curiosity. They would be issues of immense public interest. The degree of public interest is an important factor to be put into the balance and would, in my view, not be of insignificant weight if the interest is one that must be fulfilled*. *The starting point of the enquiry into whether the document should be released is that it was of great public importance and justified considerable public interest*."

<u>Public Domain Defence</u>

- Furthermore, the President is concerned that the Bill does not provide for a **public domain defence** and that unjustifiably limits the right to freedom of expression and access to information. We agree with this concern. It is trite that once information loses its secrecy, for example, by falling into the public domain for whatever reason, such information cannot be protected.

- Providing for a public domain defence would align the Bill with the recognised principle of confidentiality, which states that it is futile to protect information that has lost its secrecy. This principle has been recognised in a number of legislation and courts. In ***Independent Newspapers (Pty) Ltd v Minister for Intelligence Services*** mentioned above, the Constitutional Court further held that: “If the information is already lawfully in the public domain, there can be no reason for its non-disclosure”

CLASSIFICATION AND DECLASSIFICATION

- The President also indicated his reservations concerning clause 12 of the Bill, which provides that any head of an organ of state may classify state information. In addition, the head of an organ of state may delegate, in writing, the authority to classify state information to staff members at ‘a sufficiently senior level’.

- The President is concerned that “sufficiently senior” is an undefined term and it is not clear who can designate and to which category of staff members and how such designation is determined. The President submits that this opens the Bill to a constitutional challenge for being impermissibly vague and in violation of the constitutional principle of legality.

- The principle of legality requires that the executive and all organs of state may exercise no power or perform no functions beyond that conferred upon them by law. It is a requirement of the rule of law that the exercise of power by the executive and other functionaries should not be arbitrary. Decisions must be rationally related to the purpose for which the power is given, otherwise they are in effect arbitrary and inconsistent with this requirement. As such, the President's reservation is valid.

- The failure to clearly define the term "sufficiently senior" (inclusive of parameters as to the staff in question) in the Bill creates ambiguity with regards to who has the power or authority to designate a staff member and how such designation is determined. Such ambiguity infringes on the principle of legality.

- The President is also concerned that there is no confinement of the authority granted by clause 12(6) of the Bill. The exception granted in respect of SAPS and SANDF members further extends the authority to an unidentified group of people. This creates further ambiguity, as this clause is not clear, resulting in the provision also falling short of what is required by the principle of legality.

- As part of the reservation in this regard, the President also reasons that the word "must" in clause 12, may result in over-classification because of the duty imposed and should be replaced with the word "may" to render it an empowering provision. We submit that there is no harm in replacing the word "must" with "may" in the context. It is clear that the provision in question is one that confers power or authority, thus the use of "may" in such an empowering fashion would be appropriate in the circumstances.

- The President contends that although Chapter 6 provides for review and appeal processes, no provision is made for the severance of legitimately classified information: This creates a situation where an entire document can be withheld, even if it contains information that has no bearing on state security. The lack of severability is an unjustifiable limitation to the rights of access to information in that it unduly limits the public from accessing information that would have ordinarily been available to it had it not been contained in a classified document.

- Our jurisprudence recognises the principle of severability in relation to information disclosure. For example, section 28 (1) PAIA states that:

"*If a request for access is made to a record of a public body containing information which may or must be refused in terms of any provision of Chapter 4 of this Part every part of the record which –*

(a) does not contain: and

(b)can reasonably be severed from any part that contains, any such information must, despite any other provision of this Act, be disclosed".

- The Bill does not make provision for the severance of the classified information in the case where both classified and unclassified information is contained in one document. The lack of severability is an unjustifiable limitation to the rights of freedom of expression and access to information.

- Clause 17(5) of the Bill requires the head of an organ of state to consider the conditions for classification and de-classification in clauses 8 and 11. According to the President, these conditions are inadequate to qualify as sufficient guidance, taking the Dawood judgment into account, as clause 17(5) requires the head of that organ of state to determine that the public interest in disclosing the information clearly outweighs the harm that will arise from the disclosure.

- The legislature has an obligation to identify the policy considerations that would inform the decision as to when the public interest outweighs the harm that will arise when disclosing information. Although it is the executive who is responsible for formulating and implementing policy, the legislature must take care to limit the risk of an unconstitutional conferral of discretionary powers in fulfilment of its constitutional obligation to ‘respect, promote, protect and fulfil the rights in the Bill of Rights”.

TAGGING OF THE BILL

- With regard to the concern of the Bill's tagging as a section 75 Bill. The President is of the view that the Bill does affect provinces because section 239 of the Constitution includes provincial entities as organs of state. As the Bill refers to all organs of state, it therefore affects provinces. Clause 3(3) of the Bill provides that the Bill applies to all organs of state. Lastly, clause 5(1) obliges the head of an organ of state to establish conditions for the protection against alteration, destruction or loss of state information.

- The President further contends that Clause 6 read with clauses 7(1) and 51, prescribe how valuable information and state information must be dealt with at the provincial level. This will have an impact on the management and control of provincial archives. Archives other than national archives is a functional area of exclusive provincial competence as set out in Schedule 5 of the Constitution. The President argues that the Bill should be tagged as a section 76 Bill.

- Section 44(2) of the Constitution, which provides that Parliament may intervene, by passing legislation in accordance with section 76(1), with regard to a matter falling within a functional area listed in Schedule 5, when it is necessary—

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a) to maintain national security;

b) to maintain economic unity;

c) to maintain essential national standards

d) to establish minimum standards required for the rendering of services; or

e) to prevent unreasonable action taken by a province which is prejudicial to the interest of another province or the country as a whole.

- The test for tagging is informed by the purpose of the Bill. The more it affects the interests, concerns and capacities of the provinces, the more say the provinces should have on its contents.
- The objects of the Bill are, *inter alia*, to regulate the manner in which state information may be protected and to promote transparency and accountability in governance while recognising that state information may be protected from disclosure in order to safeguard the national security of the Republic.
- In the process of tagging, the provisions of the Bill, in ‘substantial measure’, were found not to relate to functional areas listed in schedules 4 and 5.

- As indicated above, the Bill was tagged as an ordinary Bill not affecting provinces, as the provisions of the Bill viewed in light of its express objects do not give effect to any grounds listed in section 44(2). Should the Bill be reconsidered by the NA and the NCOP in respect of tagging, Parliament would have to justify the classification of the Bill with reference to section 44(2) and include the same in the objects of the Bill.

PREVIOUS DELIBERATIONS

- When the Bill was deliberated upon at the different stages, the Office of the Chief State Law Adviser provided legal advice and support to the Committee. The CLSO was not required to provide any input or advice.

CONCLUSION

- In terms of Joint Rule 235, it falls within the mandate of the Committee to decide how it wishes to proceed with the Bill.
- As set out in the above discussion, our Office holds the view that there is merit in most of the President's reservations as these address crucial issues of ambiguity (which could result in abuse of power), unreasonable infringements of rights, and application that could undermine the principle of legality. Our only point of disagreement in its current form is on the issue of tagging. We are of the opinion that the Bill was correctly tagged, but in the event that further amendments are made (in addressing the President's concerns) this could result in a change in tagging. The Committee may engage with the Joint Tagging Mechanism at the appropriate point of the process.
- As discussed above, the President's reservations relate to several policy considerations that are substantive, and which will require the Committee to closely work with the Department in obtaining clarity of such for purposes of deliberation on the section 75 reservations: If the Committee regards the President's reservations as persuasive, inputs from the relevant Department would be required to obtain guidance on possible rephrasing or expansion of affected provision in line with relevant policy considerations.

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THANK YOU