



For attention: Ms Alutho Sombexé
Email: GILAB2023@parliament.gov.za

15 February 2024

Dear Ms Sombexé

Submission on the General Intelligence Laws Amendment Bill [B40 - 2023]

We attach our written submission in response to the invitation for comments on the General Intelligence Laws Amendment Bill.

We would like to confirm our interest in making oral representations at a later, convenient date.

Should you have any queries, it would be appreciated if you could contact me at the following email address: naseema@hsf.org.za.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Naseema', is placed above the typed name.

Naseema Fakir

Acting Director

Acting Executive Director: Naseema Fakir
Trustees: Max du Plessis • Cora Hoexter • Nick Jonsson • Daniel Jowell • Palesa Morudu • Kalim Rajab • Phila Zulu
Patrons: Prof. Thuli Madonsela • Lord Robin Renwick

1. Introduction

- 1.1. The Helen Suzman Foundation ("HSF") appreciates that the General Intelligence Laws Amendment Bill ("Bill") aims to comply with the directives of the Financial Action Task Force and the recommendations of the State Capture Report; and that prior iterations of the Bill have been revised to remove express provision for vetting 'non-profit organisations and religious organisations'.¹
- 1.2. Nonetheless, in summary, HSF submits that the Bill's proposed section 2A(1)(a)(iv) of the National Strategic Intelligence Act 39 of 1994 ("NSI Act") remains vague and overbroad, and, thereby, still risks the South African Intelligence Agency ("Agency") abusing its vetting powers to target innocent individuals and institutions of civil society.
- 1.3. Consequently, we submit that the Bill's proposed section 2A(1)(a)(iv) of the NSI Act be removed.²

2. The Bill's definition of national security interest is vague and overbroad.

- 2.1. Clause 3 of the Bill proposes to amend section 2(A)(1) of the NSI Act to *require* the Agency to vet persons who:

"(a) [Fall] within a prescribed category of persons or institutions who must have a security clearance –

- (i) in order to be employed or render a particular service to an organ of state;
- (ii) in order to have access to classified information and intelligence in the possession of that organ of state;
- (iii) in order to have access to areas designated as critical infrastructure areas in terms of the relevant law; or
- (iv) if a person or institution of national security interest in terms of section 4(2)(a)(i) of the [NSI Act] (sic)."³

¹ For a critical statement on the Bill's previous iterations, HSF respectfully draws this committee's attention to a joint statement made by various civil society organisations, available [here](#).

² For the sake of completeness, HSF has previously made similar parliamentary submissions on the potentially oppressive regulation of civil society organisations via the General Laws (Anti-money Laundering and Combating Terrorism Financing) and Non-Profit Organisation. HSF's submissions in this regard can be read [here](#) and [here](#).

³ This is a direct quote of the proposed section 2A(1)(a)(iv), which appears to be incomplete in its expression.

- 2.2. Section 4(2)(a)(i) of the NSI Act, in turn, describes threats to national security in broad terms as “any threat or potential threat to the national the national security of the Republic.”
- 2.3. While HSF recognizes that the state has a legitimate interest in vetting persons listed in the proposed section 2A(1)(a)(i) to (iii), the proposed section 2A(1)(a)(iv) is dangerously broad as it effectively exposes *all* institutions and individuals to the risk of being vetted by the agency.
- 2.4. The Bill's own definitions offer little solace for those looking to interpret the proposed section 2A(1)(a)(iv) to provide protection against abuse.
- 2.5. A “person or institution of national security interest” is defined in clause 1(p) of the Bill as:

“any person or institution, identified by the Agency *in the form and manner prescribed*, that conducts himself/herself for itself or engages in activities that *are inconsistent with the principles set out in section 198 of the Constitution* including any person or institution that engages in activities that are defined as a *threat to national security in terms of this Act*”⁴
- 2.6. There are three problems with this definition.
 - 2.6.1. First, it gives no indication that meaningful procedural safeguards guide the Agency in identifying persons “in the form and manner prescribed”.
 - 2.6.2. Second, the “principles set out in s 198 of the Constitution” are general principles that guide South Africa in protecting its national security interest and, therefore, are too broad to determine who should be the subject of security vetting.
 - 2.6.3. Third, the Bill defines “threat to national security” in dangerously broad terms, as “any action or omission which may potentially cause damage, harm or loss to the national security”.⁵
- 2.7. The breadth of these definitions, whether emanating from the NSI Act or the Bill itself, effectively allow *any* individual and/or institution to fall prey to state security vetting based on the whim of those in power and not on a reasoned, risk-based assessment.

⁴ Emphasis added.

⁵ For completeness, the Bill includes a list of eleven examples of what sort of action might fall under this category, but the list is an open one and, thus, prone to abuse.



2.8. This is by no means a far-fetched concern given our recent state capture history.

3. Conclusion

3.1. HSF welcomes the restructuring of South Africa's intelligence services to restore operating capacity that was lost under state capture.

3.2. Nonetheless, the broad construction of the proposed section 2A(1)(a)(iv) of the NSI Act allows for potentially unfettered surveillance of civil society and private individuals, and without judicial oversight does not afford those individuals and/or institutions their constitutionally guaranteed legal protections.

3.3. Therefore, HSF submits that the Bill's proposed section 2A(1)(a)(iv) of the NSI Act should be removed from the Bill.