

Annexure A:

1. **Problematic Provisions of the Bill: Insufficient protection for the public broadcaster, the SABC**

1.1. As the National Assembly is obviously aware, the SABC has been designated as a National Key Point (NKP) in terms of the NKPA.

1.2. As a result of this, the SABC is subject to regulations that have been passed in terms of the NKPA with regard to the appointment of security guards and other security staff at NKPs. These regulations are contained in Notice 1731 published in Government Gazette No. 8338 dated 13 August 1982 (as amended) (the Regulations).

1.3. These are the only legal regulatory requirements in respect of security measures for staff as required in terms of the NKPA that we are aware of.

1.4. It has come to our attention (as a number of SABC editorial staff members are also individual members of SANEF) that the State Security Agency (SSA) has been approaching non-security personnel at the SABC and more specifically, editorial staff, that is journalists and/or management personnel and informing them of the necessity of completing a very detailed and invasive security vetting questionnaire, a copy of which is annexed hereto. As is clear from the questionnaire, the information required goes far beyond basic personnel details such as: name, address, ID number and includes information regarding family members, relationships etc.

1.5. The authority for this is cited as section 2A(1)(b)(ii) of the National Strategic Intelligence Act, 1994 (the NSIA) which provides, in its relevant parts, as follows:

***“The relevant members of the National Intelligence Structures may conduct a vetting investigation in the prescribed manner to determine the security competence of a person is such a person... is rendering service... which service may... give him or her access to areas designated national key points in terms of the National Key Points Act, 1980.”***

1.6. We have a number of comments to make about this ostensible authority to act in this manner:

1.6.1. First, this power given to the National Intelligence Structures is discretionary (see use of the term “may” as opposed to “must”) and there is no absolute legal requirement for all non-security personnel to be vetted in this matter;

- 1.6.2. Second, it is unclear whether or not employment services outside of the ambit of security services were intended to be subject to this provision;
- 1.6.3. Third, there is no recognition that a public institution such as the SABC as the nation's independent public broadcaster is a *sui generis* example of a National Key Point;
- 1.6.4. Fourth, the vetting of journalistic staff in this extremely probing manner appears designed to be intimidatory and to put journalists "under watch" as it were by the SSA; and
- 1.6.5. Fifth, this power is being exercised in a manner that we believe to be an unconstitutional violation of the right to freedom of the press which is a specifically protected aspect of the right to freedom of expression as is provided for in section 16(1)(a) of the Constitution of the Republic of South Africa, 1996 (the Constitution).
- 1.6.6. It is with this in mind that the Group requests the NCOP to ensure that specific protection of editorial integrity and freedom of work as a journalist be provided for with regard to the staff of the SABC, other than, of course, in respect of the security staff needed to secure the SABC as a National Key Point or, in due course, a Critical Infrastructure or Critical Infrastructure Complex.
- 1.6.7. We therefore suggest the introduction of a new section 24 to be contained in Chapter 3 of the Bill (which will require consequential renumbering of the subsequent sections and probably additional definitions, for example, of the SABC) as follows:

*"Specific Protections for the SABC as the independent public broadcaster*

*24. In recognition of the vital role that the SABC, the independent public broadcaster, plays in ensuring that the public has access to a wide range of news and information, nothing in this Act shall require the security vetting, other than of the SABC's security staff, of the SABC staff, in particular, no journalist or non-security staff member shall be required to disclose any communication undertaken in the course of his or her employment and sources of journalistic information as a result of the SABC being declared critical infrastructure and/or a critical infrastructure complex."*

- 1.6.8. Obviously this would not prevent security scrutiny of any journalist or indeed of any non-security staffer at the SABC should there be reasonable grounds to consider him or her a real security threat but what we are anxious to avoid is a routine securitization of journalists as it were.