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**Attention: The Honourable Francois Beukman**  
Chairperson, Parliamentary Portfolio Committee on Police  
Dealing with the Critical Infrastructure Protection Bill

13 March 2018

Dear Mr Beukman

**WRITTEN SUBMISSIONS ON THE CRITICAL INFRASTRUCTURE PROTECTION BILL BY THE SOUTH AFRICAN NATIONAL EDITORS' FORUM (SANEF), THE SOS: SUPPORT PUBLIC BROADCASTING COALITION AND MEDIA MONITORING AFRICA (MMA)**

## 1. INTRODUCTION

- 1.1. These submissions are made by the South African National Editors Forum (SANEF), the SOS: Support Public Broadcasting Coalition (SOS) and Media Monitoring Africa (MMA) (collectively, the

Group) a grouping of civil society organisations which different focus areas but all involved in preserving media freedom and working to improve the media landscape in South Africa and to promote freedom of expression and access to information in South Africa.

- 1.2. The South African National Editors' Forum (SANEF) is one of the most influential groupings in South Africa. It consists of title editors and senior editorial executives operating in print, broadcasting and digital mainstream and certain regional and community media, as well as media trainers from major journalism training institutions in the country. SANEF's vision is to promote the quality and ethics of journalism, to reflect the diversity of South Africa, and to champion freedom of expression.
- 1.3. The SOS Support Public Broadcasting Coalition (SOS) is a civil society coalition that advocates for the presence of robust public broadcasting in the public interest to deepen our constitutional democracy. The coalition represents trade unions, non-governmental organisations (NGOs), community-based organisations (CBOs), community media, independent film and TV production sector organisations; academics, freedom of expression activists and concerned individuals. SOS campaigns for an independent and effective public broadcaster.
- 1.4. Media Monitoring Africa ("MMA") is an NGO that has been monitoring the media since 1993. The organisation aims to promote the development of a free, fair, ethical and critical media culture in South Africa and the rest of the continent. The three key areas that MMA seeks to address through a human rights-based approach are, media ethics, media quality and media freedom. In the last nineteen years the organisation has conducted over 120 different media monitoring projects – all of which relate to key human rights issues, and at the same time to issues of media quality. MMA has, and continues to challenge media on a range of issues always with the overt objective of promoting human rights and democracy through the media. In this time MMA has also been one of the few civil society organisations that has sought to deepen democracy and hold media accountable through engagement in policy and law making processes. MMA also actively seeks to encourage ordinary citizens to engage in the process of holding media accountable through the various means available – all of which can be found on MMA's website. ([www.mediamonitoringafrica.org](http://www.mediamonitoringafrica.org))
- 1.5. The Group thanks the Chairperson of the Parliamentary Committee on Policing for holding hearings on the Critical Infrastructure Protection Bill [B22 – 2017] ("the Bill"), for inviting members of the public to make submissions on this important piece of legislation and for undertaking publicly to ensure that all issues are fully aired and debated.

1.6. For your ease of reference, the overview of these written submissions is as follows:

1.6.1. The Group Welcomes Many of the Provisions of the Critical Infrastructure Protection Bill

1.6.2. South Africa's Obligations under African Union Agreements

1.6.3. International Good Practise on National Security, Freedom of Expression and Access to Information

1.6.4. Problematic Provisions of the Bill Requiring Urgent Amendment by the Committee

1.6.5. Conclusion

## 2. THE GROUP WELCOMES MOST OF THE PROVISIONS OF THE CRITICAL INFRASTRUCTURE PROTECTION BILL

2.1. The Group welcomes most of the provisions of the Bill.

2.2. The Group is of the view that South Africa is leading the way in demonstrating how post-Colonial countries need to deal with repressive, Colonial (or Apartheid)-era security laws, namely, by repealing same and replacing them with progressive laws that give meaningful protection to genuine national security while respecting the constitutionally-guaranteed rights of citizens.

2.3. The Group is of the view that South Africa is playing a critically important leadership role in this regard. Far too many countries on the Continent still have security legislation on their statute books that dates back to the early Colonial era, in many instances to before even the adoption of the United Nations ("the UN") Declaration of Human Rights<sup>1</sup>. By taking the step of repealing Apartheid-era security laws, such as National Key Points Act, 1980, designed to subjugate and silence, South Africa is demonstrating how law-making is a vital component of a developmental-focused and democratic political agenda. This is to be warmly welcomed.

2.4. Nevertheless, there is no doubt that certain of the current provisions of the Bill are not progressive, do not accord with the Constitution and are out of step with South Africa's commitments to good governance and transparency as contained in ratified African Union ("AU") Treaties, Conventions

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<sup>1</sup> See generally, Southern African Media Law Handbook, Limpitlaw, KAS, 2011 <http://www.kas.de/medien-afrika/en/publications/23503/>

and Declarations. The Group is of the view that the Committee must ensure that South Africa's leadership role on the Continent is not undermined by a few provisions in the Bill which can, with relatively minor amendments, make the passage of this Bill something that the country can be justly proud of.

### 3. SOUTH AFRICA'S OBLIGATIONS UNDER AFRICAN UNION AGREEMENTS

- 3.1. Before considering specific provisions of the Bill that continue to be of concern to it, The Group wishes respectfully to refer the Committee to a number of Treaties, Conventions and Declarations, emanating from the AU and its organs. These African documents are extremely useful and relevant to the matters that the Committee is considering because they shed light on where the line between the rights to safety and security and the rights to free expression and information needs to be drawn. While the Group recognises that such international instruments are only a part of a range of International human rights instruments that South Africa is a party to<sup>2</sup>, the Group has chosen to focus on the African international instruments because of their contextual usefulness.
- 3.2. The AU, and its organs, such as the African Commission on Human and Peoples' Rights, are critically important bodies in respect of political and economic development of the Continent. South Africa has played a leading role in the AU and its organs: South African women recently held the positions of Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights and Chairperson of the AU Commission. South Africa is clearly seen as a leading African country and it hits high above its weight, exercising regional and even Continental influence in respect of its governmental and legislative actions.
- 3.3. That South Africa takes the AU and its organs seriously is evidenced by the alacrity with which South Africa not only signs but also ratifies its Treaties, Conventions etc. The Group is of the view that the Committee must take cognisance of and be guided by commitments that South Africa has acceded to in respect of AU Treaty and Convention obligations when engaging in law-making, in order to ensure development and a deepening of democracy.
- 3.4. The Group sets out below, references to the provisions of a number of relevant international Treaties, Conventions and Statements that give guidance as to what the Committee's approach to the Bill ought to be in ensuring its compliance with these provisions:

#### 3.4.1. **African Charter on Human and Peoples' Rights, 1981** ("the Banjul Charter")

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<sup>2</sup> The UN Declaration of Human Rights, the International Covenant on Civil and Political Rights are examples.

- 3.4.1.1. The Banjul Charter was originally adopted in 1981 and came into force in 1986, as a Charter of the Organisation for African Unity (“the OAU”). South Africa ratified the Banjul Charter in 1996.
- 3.4.1.2. The Preamble to the Banjul Charter clearly sets out the OAU’s (and the AU’s) understanding of the relationship between eradicating Colonialism and a commitment to human rights. The Group wishes to highlight two of the provisions of the preamble:
- **“Reaffirming** the pledge they solemnly made...to eradicate all forms of colonialism from Africa, to co-ordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa...” and
  - **“Firmly convinced** of their duty to promote and protect human and peoples’ rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa”.
- 3.4.1.3. From the point of view of the Bill, The Group wishes to highlight the following provisions of the Banjul Charter:
- Article 9.1: “Every individual shall have the right to receive information”; and
  - Article 22.2 “States Parties shall have the duty, individually or collectively, to ensure the exercise of the right to development”.
- 3.4.2. **Declaration of Principles on Freedom of Expression in Africa, 2002** (“The Declaration on Principles of Freedom of Expression”)
- 3.4.2.1. The Declaration of Principles on Freedom of Expression was adopted by the African Commission on Human and People’s Rights (“the African Commission”) in 2002.
- 3.4.2.2. The Preamble to the Declaration of Principles on Freedom of Expression clearly sets out the African Commission’s understanding of the relationship between a free press, access to information and development. The Group wishes to highlight two of the provisions of the preamble:
- **“Convinced** that respect for freedom of expression as well as the right of access to information held by public bodies and companies, will lead to greater public transparency and accountability as well as to good governance and the strengthening of democracy”; and

- “**Convinced** that laws and customs that repress freedom of expression are a disservice to society”.

3.4.2.3. From the point of view of the Bill, The Group wishes to highlight the following provisions of the Declaration of Principles on Freedom of Expression:

- Article IV, Freedom of Information, provides, inter alia:  
 “2. The right to information shall be guaranteed by law in accordance with the following principles:  
 ....  
 ➤ No one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and  
 ➤ Secrecy laws shall be amended as necessary to comply with freedom of information principles”  
 .....”.
- Article XIII, Criminal Measures, provides:
  1. “States shall review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society.
  2. Freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal connection between the risk of harm and the expression.”
- Article XVI, Implementation, provides: “States Parties to the African Charter on Human and Peoples’ Rights should make every effort to give practical effect to these principles.”

3.4.3. **The African Union Convention on Preventing and Combating Corruption, 2003** (“the AU Corruption Convention”)

- 3.4.3.1. The AU Corruption Convention was adopted by the AU in 2003, was signed by South Africa in 2004, ratified in 2005 and came into force in 2006.
- 3.4.3.2. The Preamble to the AU Corruption Convention clearly sets out why the AU believes corruption must be tackled. The Group wishes to highlight just two of the provisions of the preamble:

- “**Concerned** about the negative effects of corruption and impunity on the political, economic, social and cultural stability of African states and its devastating effects on the economic and social development of the African peoples”; and
- “**Acknowledging** that corruption undermines accountability and transparency in the management of public affairs as well as socio-economic development on the continent”.

3.4.3.3. From the point of view of the Bill, The Group wishes to highlight the following key provisions of the AU Corruption Convention:

- Article 9: “Each State Party shall adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences”;
- Article 12: State Parties undertake to:
  - (1) ...
  - (2) Create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs;
  - (3) .....
  - (4) Ensure that the Media is given access to information in cases of corruption and related offences on condition that the dissemination of such information does not adversely affect the investigation process and the right to a fair trial.”

3.4.3.4. It is clear from these provisions of the Corruption Convention that the ability of the media to obtain and publish information regarding corruption is key to developing transparency and accountability in the management of public affairs. Thus access to information must be protected where the public interest is being thwarted by corruption and other illegal and untoward practices by public sector officials.

#### 3.4.4. **African Charter on Democracy, Elections and Governance, 2007 (AU Democracy Charter)**

3.4.4.1. The AU Democracy Charter was adopted in 2007, was signed and ratified by South Africa in 2010, and came into force in 2012.

3.4.4.2. The Preamble to the AU Democracy Charter clearly sets out the AU's commitment to democracy. The Group wishes to highlight three of the provisions of the preamble:

- **"Reaffirming** our collective will to work relentlessly to deepen and consolidate the rule of law, peace, security and development in our countries";
- **Committed** to promote the universal values and principles of democracy, good governance, human rights and the right to development"; and
- **Determined** to promote and strengthen good governance through the institutionalisation of transparency, accountability and participatory democracy".

3.4.4.3. From the point of view of the Bill, The Group wishes to highlight the following key provisions of the AU Democracy Charter:

- Article 3 provides that State Parties shall "implement the Charter in accordance with the following principles:
  1. Respect for human rights and democratic principles;
  2. Access to and exercise of state power in accordance with the constitution of the State Party and the principle of the rule of law;
  - .....
  8. Transparency and fairness in the management of public affairs; and
  9. Condemnation and rejection of acts of corruption, related offences and impunity.
  - ...".
- Article 27 provides that in order to advance political, economic and social governance, State Parties "shall commit themselves to:
  - ....
  3. Undertaking regular reforms of the legal and justice systems;
  - ...
  5. Improving efficiency and effectiveness of public services and combating corruption; and
  - ....
  8. Promoting freedom of expression, in particular freedom of the press and fostering a professional media.
  - .....".



- Article 44.1 provides that “State Parties commit themselves to implement the objectives, apply the principles, and respect the commitments enshrined in this Charter as follows:
  - (a) State Parties shall initiate appropriate measures, including legislative, executive and administrative actions to bring State Parties’ national laws and regulations into conformity with this Charter:
  - (b) ...
  - (c) State Parties shall promote political will as a necessary condition for the attainment of the goals set forth in this Charter; and
  - (d) State Parties shall incorporate the commitments and principles of this Charter in their national policies and strategies”.

3.4.4.4. It is clear from these provisions of the Democracy Charter that:

- good governance and democracy depend on open, transparent and accountable government;
- corruption flourishes where there is no transparency; and
- the rule of law and a free press are critical to the success of democracy and to the broader goal of development.

#### 4. INTERNATIONAL GOOD PRACTICE: THE JOHANNESBURG PRINCIPLES ON NATIONAL SECURITY, FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

4.1. Besides the African Treaties, Charters and Declarations discussed above, The Group is of the view that the Committee would do well to give serious consideration to:

4.1.1.the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (available at: <http://hrlibrary.umn.edu/instreet/johannesburg.html>) that were developed in 1995 in South Africa by an international panel of experts under the auspices of Article 19, an international NGO committed to freedom of expression. It is noteworthy that the Johannesburg Principles have been endorsed by the UN’s Special Rapporteur on Freedom of Expression<sup>3</sup>; and

4.1.2.the Principles on the Right of Access to Information developed by the African Platform on Access to Information (“APAI Principles”) (Available at: <http://www.africanplatform.org/apai->

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<sup>3</sup> See pg 3 of the Johannesburg Principles published by Article XIX as part of its International Standards Series. <http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>.

declaration/14-key-principles/) that were developed in 2011 in South Africa at the Pan African Conference on Access to Information, organised by the Windhoek+20 Campaign in partnership with the United Nations Educational Scientific and Cultural Organisation (“UNESCO”), the African Union Commission and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights.

## **4.2. The Johannesburg Principles**

4.2.1. While The Group is of the view that all of the Johannesburg Principles are particularly relevant to any discussion of the Bill, we confine ourselves to pointing to those provisions of the Johannesburg Principles that we consider to be critically important to the Committee when considering problematic provisions of the Bill.

4.2.2. Principle 1(d) provides that: “No restriction on freedom of expression or information on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest. The burden of demonstrating the validity of the restriction rests with the government”. The Johannesburg Principles go on to give further elucidation of these requirements. These include:

- The law must provide adequate safeguards against abuse, including prompt, full and effective judicial scrutiny of the validity of the restriction by an independent court or tribunal.<sup>4</sup>
- To establish that a restriction on freedom of expression or information is necessary to protect a legitimate national security interest, a government must demonstrate that its genuine purpose and demonstrable effect is to protect the country’s existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.<sup>5</sup>
- In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or expose of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.<sup>6</sup>

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<sup>4</sup> Principle 1.1(b).

<sup>5</sup> Principle 2(a).

<sup>6</sup> Principle 2(b).

- No person may be punished on national security grounds for disclosure of information if: (1) the disclosure does not actually harm and is not likely to harm a legitimate national security interest; or  
(2) the public interest in knowing the information outweighs the harm from disclosure.<sup>7</sup>

#### 4.3. The APAI Principles

- 4.3.1. While The Group is of the view that all of the APAI Principles are relevant to any discussion of the Bill, we confine ourselves to pointing to those provisions of the APAI Principles that we consider to be critically important to the Committee when considering problematic provisions of the Bill.
- 4.3.2. Principle 8 of the APAI Principles is headed “Limited Exemptions” and provides: “The right of access to information shall only be limited by provisions expressly provided for in the law. Those exemptions should be strictly defined and the withholding of information should only be allowed if the body can demonstrate that there would be a significant harm if the information is released and that the public interest in withholding the information is clearly shown to be greater than the public interest in disclosure. Information can only be withheld for the period that the harm would occur. No information relating to human rights abuses or imminent dangers to public health, environment, or safety may be withheld”.
- 4.3.3. Principle 11 of the APAI Principles is headed “Whistleblower Protection” and provides: “To ensure the free flow in the public interest, adequate protections against legal, administrative and employment-related sanctions should be provided for those who disclose information on wrong-doing and other information in the public interest.”
- 4.3.4. The APAI Principles also contain a section entitled “Application of Principles”. The Group is of the view that two sections thereof are particularly relevant to the Committee’s consideration of the Bill:
  - Enabling Environment: “Governments should ensure that the legal frameworks create an enabling environment allowing individuals, civil society organisations including trade unions, media organisations, and private businesses to fully enjoy access to information, thus fostering active participation in socio-economic life by all. In particular people living in poverty and those discriminated against or marginalised.”

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<sup>7</sup> Principle 15.

- The Fight Against Corruption: “By contributing to openness and accountability, access to information can be a useful tool in anti-corruption efforts. Besides ensuring that access to information legislation is effectively implemented, governments have a duty to guarantee a broader legal and institutional framework conducive to preventing and combating corruption. Civil society organisations and plural media independent of powerful political and commercial interests are critical actors in unveiling and fighting corrupt practices, and their use of access to information laws and other mechanisms enhancing transparency should be encouraged”.

## 5. PROBLEMATIC PROVISIONS OF THE BILL REQUIRING URGENT AMENDMENT BY THE COMMITTEE

5.1. As the Group has stated previously, we are generally excited by and welcoming of the majority of the provisions of the Bill as they are in line with international good practice and, in particular, with AU recommendations as expressed in its Treaties, Conventions, Charters and Declarations. We have no doubt that this Bill could herald a decisive break from our terrible history of security legislation that promotes secrecy and a culture of impunity by the state.

5.2. However, where the Group does have concerns about the Bill, these concerns are not trifling. They are serious concerns which unaddressed could result in the passage of legislation which:

5.2.1. is unconstitutional;

5.2.2. flouts the provisions of International African Treaties, Declarations and the like that South African has ratified and which it has promised to uphold; and

5.2.3. is out of step with the Johannesburg Principles, international good practice standards which South Africans played a leading role in developing.

5.3. The Group has had the privilege of perusing the submissions of both the Right2Know Campaign and of the AmaBhungane Centre for Investigative Journalism on the Critical Infrastructure Protection Bill. Frankly we are in agreement with their suggested amendments although we have additional concerns as set out in more detail below.

### 5.4. **Problematic Provisions of the Bill: Section 4 – Appointments to Critical Infrastructure Council**

- 5.4.1. The Bill contains a proposed section 4(3)(c) which read with proposed section 4(6) allows for public nominations and the eventual Ministerial appointment of five persons from the private sector to the Critical Infrastructure Council established in terms of section 4.
- 5.4.2. While the Group welcomes the introduction of public nominations for such positions we are concerned that the term “private sector” is too business-oriented and is likely to result in private security consultants being nominated and appointed which would be insufficiently broad to meet some of the criteria mentioned in that section, including: “disaster management or basic public services”.
- 5.4.3. The Group therefore proposes that the term “and civil society” be inserted between the words “sector” and “who” in section 4(3)(c) of the Bill.
- 5.4.4. The effect of this would be to make it clear that individuals from civil society organisations such as the Red Cross, the Institute for Security Studies and other bodies with appropriate skills sets referred to in section 4(3)(c) are also to be welcomed as nominees.

#### **5.5. Problematic Provisions of the Bill: Limitations on the right to freedom of expression**

- 5.5.1. The Bill contains exceptionally severe penalties for violations in relation to critical infrastructure as provided for in section 26. These range from 30 years imprisonment for tampering with, damaging or destroying critical infrastructure (section 26(1)) to a fine and/or 12 months imprisonment.
- 5.5.2. The Group recognises the impact that the destruction of critical infrastructure may have on the public and it therefore does not wish to make specific comments on what the penalties for criminal activity ought to be as it is aware that the Civilian Secretariat for the Police Service has already conceded that the penalties provided for in section 26 of the Bill are too severe and that these will be amended in the Committee process. We trust that the Committee will not proceed with the Bill unless this is done satisfactorily.
- 5.5.3. Nevertheless, we think it critical to point out that a penalty of up to 20 years imprisonment is currently provided in section 26(2) for activities that could be described as journalism, namely section 26(2)(c), (d), (e) and (h), which sections prohibit, *inter alia*, being at and taking photographs of critical infrastructure. While it is true that many of these are subject to this being done for an “unlawful purpose” – this term is never defined and we are

concerned that this would have a chilling effect on reporting about activities taking place at critical infrastructure sites.

- 5.5.4. For example, while the offence provided for in section 26(2)(c) is specifically subject to the Protected Disclosures Act, 2000, that Act only provides protection for disclosure by employees, not for journalists reporting on a particular subject matter outside of his or her immediate employment.
- 5.5.5. The Group therefore supports the call that the Bill specifically contains a public interest override to ensure, in particular, that the information-disclosure activities contained in section 26 of the Bill would not constitute offenses if the disclosure of information regarding critical infrastructure would be in the public interest.
- 5.5.6. We therefore suggest that new section 26(6) be inserted into the Bill as follows:

“Notwithstanding any other provision in this section 26, where a disclosure of information regarding critical infrastructure would reveal evidence of:

- (a) a substantial contravention of, or failure to comply with, the law; or
  - (b) an imminent and serious public health, safety or environmental risk; and
  - (c) the public interest in the disclosure clearly outweighs the harm in question,
- the disclosure shall be lawful.”

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

- 5.6.1. As the Committee is aware, the SABC is both the independent public broadcaster in terms of the Broadcasting Act, 1999, and a National Key Point as declared in terms of the National Key Points Act, 1980.
- 5.6.2. In line with our progressive Constitution and the protected rights to freedom of expression and access to information, together with the principles of transparency and encouraging a diversity of views and opinions, South Africa does not adhere to and support a system allowing for the registration of journalists and media workers.
- 5.6.3. The Group has grown increasingly concerned at the securitization of the SABC, far beyond what is even envisaged in the National Key Points Act. We are aware that journalists and employees of the SABC have been asked to submit to vetting by the State Security Agency and that an intrusive questionnaire appropriate for senior intelligence officers but not for journalists and other staff at a public broadcaster, has been circulated to certain SABC staff, including journalists and other editorial staff. In the Group’s view, such vetting

constitutes a form of registration or de facto licensing of journalists and media workers and, as such, is unconstitutional and does not accord with international best practise.

5.6.4. It is with this in mind that the Group requests 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.

5.6.5. 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.”

## 6. CONCLUSION

6.1. The Group thanks the Committee for this opportunity to submit written representations on the Bill and reiterates its request that it be allowed to present oral submissions at the Committee hearings on the Bill.

6.2. The Group is of the view that the Bill is a step in the right direction on the long road to ridding our statute books of outdated Apartheid-era security legislation. However, there is no doubt that the Bill as it currently stands is still flawed, and is out of step with South Africa’s AU obligations, and, in our view, is unlikely to withstand Constitutional scrutiny.

6.3. As The Group has pointed out, relatively minor wording changes to two sections, namely sections 4 and 26, together with the proposed new section 24 as set out above, requiring no major policy reconsiderations and doing no damage to coherence of the Bill, would transform the Bill into one that South Africa can be justly proud of. If the Committee makes the amendments suggested by the Group herein, the Group is of the view that the Bill will find that illusive balance between

protecting the public interest in legitimate national security interests and protecting the public interest in a free press and in the free flow of information in order to further democracy and development, and will pave the way for other countries of the Continent to reconsider Colonial-era security laws to the benefit of the peoples of Africa.

- 6.4. Please do not hesitate to contact us should you have any queries or require any further information.

**Yours Faithfully**

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