**15 May 2018**

**Draft Summary of public hearings and written submissions on the Foreign Service Bill 2015**

1. **Purpose of the Bill:** To create an enabling administrative and management framework through which Foreign Service will be managed and regulated in a consolidated and coherent manner by DIRCO. Currently, the management of officials from different sectors of government is highly fragmented.

**Generic issues emerging:**

* accepting/not accepting a single Foreign Service system;
* constitutionality-encroachment into mandates of other departments
* professionalisation of service: career diplomacy and political appointees mix at Head of Mission level;
* officials must pass an examination which is an indispensable prerequisite of any foreign service career;
* management of assets abroad;
* disposal by a custodian of a surplus immovable asset subject to the State Land Disposal Act 48 of 1961;
* citizenship and security check
* appointment of fit and proper persons at all levels;
* officers sent to international organisation;
* officers sent by State-Owned Enterprises;
* diplomatic academy training all officials before entering Foreign Service (specific to each career track)
* complementary role by training institutions of other sectors of government and accreditation issues; and
* labour and bargaining issues.

**The process of public involvement/hearings**

In accordance with section 59 (1) of the Constitution[[1]](#footnote-1), ‘the National Assembly must facilitate public involvement in the legislative and other processes of the Assembly and its committees. Pursuant to this constitutional obligation, the Committee published its advertisement for public comment on 18 July 2016, with a newspaper coverage listed below, which are largely for rural and provincial audiences only. The resultant challenge was that the response was minimal, with four (4) individuals and organisations having submitted written submissions. The Committee had to leave the period for submissions open in order to allow for more public involvement. Subsequent to this move, more stakeholders sent their written submissions to the Committee for consideration.

The Committee still saw a need to seek more public involvement in the legislative process regarding issues of international relations, especially the management of South Africa’s Foreign Service. Having dealt with perceptions that Foreign Policy by its own nature remained elitist, the Committee had to be innovative and resolved to hold a public hearing/seminar in Pretoria, on the 24th of January 2017. The public hearing/seminar was able to reach a wider range of stakeholders. These stakeholders also informed the Committee that they had not seen the adverts issued by the Committee. The report of recommendations by stakeholders in the Pretoria public seminar is attached as Annexure “A”, for the Committee to deliberate and decide on the inputs made.

It was the considered view of the Committee that the contents of the Bill touched far and wide upon the mandate of other national departments. As a consequence of this finding, the Committee had to call upon the affected national departments to make their views heard on the Bill.

The Committee further resolved to undertake a Study Tour to Canada for purposes of bench-marking best-practice in matters of running an effective and efficient Foreign Service. The Committee had desired to expose itself to best practice of countries who either have legislation on Foreign Service, and those who rely on practice and tradition. Unfortunately, the Committee was allowed to visit only one country in this regard. The report of the Committee on the study tour to Canada is attached as “Annexure B”, for the Committee to deliberate and decide on the best practice learnt.

**2. List of stakeholders that made written submissions on the Bill.**

1. Mr Russell Pillay – Locally Recruited Personnel at South African embassy in Germany

2. Mr Vasu Gounden – Africa Centre for Constructive Resolution of Disputes - ACCORD

3. Public Service Co-ordinating Bargaining Council (PSCBC)

4. Mr Martins J Bauwens - Refugee Law

5. Professor Jo-Ansie van Wyk – University of South Africa - UNISA

6. South African Institute of International Affairs - SAIIA

7. Mr S. Francis Moloi- South African Ambassador to South Sudan

**3. Public Hearings**

**3.1 25 November 2016**

The following stakeholders made oral submissions to the Committee on 25 November 2016:

3.1.1 Department of Public Service and Administration (DPSA)

* + 1. Department of Home Affairs (DHA)
		2. Department of Public Works (DPW)

**The following members of the Committee were present at the hearing**

**African National Congress (ANC):** Mr MSA Masango, Ms DD Raphuti, Adv LKB Mpumlwana. Democratic Alliance (DA): Mr S Mokgalapa

**3.2 22 February 2017**

The following stakeholders made oral submissions to the Committee on 22 February 2017:

3.2.1 Department of Home Affairs

Committee members at hearings: **African National Congress (ANC):** Mr MSA Masango Ms DD Raphuti, Adv LKB Mpumlwana, Mr MSA Maila, Mr B Radebe, Ms T Kenye. **Democratic Party (DA):** Mr S Mokgalapa, Ms S Kalyan, Mr D Bergman. **Economic Freedom Fighters (EFF)**: Ms H Maxon. **African Christian Democratic Party (ACDP:** Ms C Dudley. **Congress of the People (Cope):** Mr MGP Lekota

* 1. **1 March 2017**

The following stakeholders made oral submissions to the Committee on 1 March 2017:

* + 1. Department of Trade and Industry (DTI)

Committee members present at hearings: **African National Congress (ANC):** Mr MSA Masango, Ms DD Raphuti, Adv LKB Mpumlwana, Mr MSA Maila, Ms T Kenye. **Democratic Alliance (DA):** Mr S Mokgalapa, Ms S Kalyan. **Economic Freedom Fighters (EFF)**: Ms H Maxon. **African Christian Democratic Party (ACDP):** Ms C Dudley. **Congress of the People (Cope)**: Mr MGP Lekota.

* 1. **8 March 2017**

The following stakeholders made oral submissions to the Committee on 8 March 2017:

* + 1. Department of Defence (DoD)

Committee members present at hearings: **African National Congress (ANC):** Mr MSA Masango, Mr BA Radebe, Ms DD Raphuti, Adv LKB Mpumlwana, Mr MSA Maila, Ms T Kenye, Mr B Molefe. **Democratic Alliance (DA):** Mr S Mokgalapa, Ms S Kalyan. **Economic Freedom Fighters (EFF):** Ms H Maxon. **African Christian Democratic Party (ACDP):** Ms C Dudley. **Congress of the People (Cope):** Mr MGP Lekota. **Inkatha Freedom Party (IFP):** Mr MA Mncwango.

3. 3 **22 March 2017**

The following stakeholders made oral submissions to the Committee on **22 March 2017:**

* + 1. **South African Police Service (SAPS)**

Committee members present at hearings: **African National Congress (ANC):** Mr MSA Masango, Mr BA Radebe, Ms DD Raphuti, Adv LKB Mpumlwana, Mr MSA Maila, Ms T Kenye, Mr B Molefe. **Democratic Alliance (DA):** Mr D Bergman, Ms S Kalyan. **African Christian Democratic Party (ACDP):** Ms C Dudley. **Congress of the People (Cope):** Mr MGP Lekota. **Inkatha Freedom Party (IFP):** Mr MA Mncwango.

* 1. **29 March 2017**

The following stakeholders made oral submissions to the Committee on 29 March 2017:

* + 1. **Department of National Treasury (NT)**
		2. **National Education and Health Allied Workers Union (NEHAWU)**

Committee members present at hearings: **African National Congress (ANC):** Mr MSA Masango, Mr BA Radebe, Ms DD Raphuti, Adv LKB Mpumlwana, Mr MSA Maila, Ms T Kenye, Mr B Molefe. **Democratic Alliance (DA):** Mr S Mokgalapa. **Congress of the People (Cope):**  Mr MGP Lekota. **Inkatha Freedom Party (IFP):** Mr MA Mncwango.

* 1. **20 October 2017**

The following stakeholders made oral submissions to the Committee on 20 October 2017:

* + 1. **National School of Government**
		2. **Department of Public Works**
		3. **Department of Public Service and Administration**

Committee members present at hearings: **African National Congress (ANC):** Mr MSA Masango, Mr BA Radebe, Ms DD Raphuti, Mr MSA Maila, Ms T Kenye, Mr L Ramatlakane. Adv. L Mpumlwana. **Democratic Alliance (DA):** Mr S Mokgalapa and Mr D Bergman. Economic Freedom Fighters (EFF): Ms H Hlophe. **African Christian Democratic Party (ACDP):** Ms C Dudley. **Congress of the People (Cope):** Mr MGP Lekota.

* 1. **25 October 2017**

The following stakeholders made oral submissions to the Committee on 25 October 2017:

* + 1. Department of Tourism
		2. Department of Science and Technology (DS&T)

Committee members present at hearings: **African National Congress (ANC):** Mr MSA Masango, Mr BA Radebe, Ms DD Raphuti, Mr MSA Maila, Ms T Kenye, Adv L Mpumlwana. **Democratic Alliance (DA):** Mr D Bergman. **Economic Freedom Fighters (EFF):** Ms H Hlophe. **African Christian Democratic Party (ACDP):** Ms C Dudley.

* 1. **1 November 2017**

The following stakeholders made oral submissions to the Committee on 1 November 2017:

* + 1. Department of Labour;
		2. Department of Agriculture,
		3. Department of Health

Committee members present at hearings: **African National Congress (ANC):** Mr BA Radebe, Ms DD Raphuti, Mr MSA Maila, Ms T Kenye, Adv L Mpumlwana. **Democratic Alliance (DA):** Mr S Mokgalapa, Ms S Kalyan **Economic Freedom Fighters (EFF):** Ms H Hlophe. **African Christian Democratic Party (ACDP):** Ms C Dudley. **Inkatha Freedom Party (IFP):** Mr MA Mncwango.

* 1. **8 November 2017**

The following stakeholders made oral submissions to the Committee on **8 November 2017:**

* + 1. Department of Higher Education and Training,
		2. Department of Transport
		3. Department of Energy.

Committee members present at hearings: **African National Congress (ANC)**: Mr MSA Masango, Mr BA Radebe, Ms DD Raphuti, Mr MSA Maila, Ms T Kenye, Adv L Mpumlwana. **Democratic Alliance (DA):** Mr D Bergman.

* 1. **15 November 2017**

The following stakeholders made oral submissions to the Committee on 15 November 2017:

* + 1. Department of Cooperative Governance and Traditional Affairs (COGTA)
		2. South African Revenue Services

Committee members present at hearings: **African National Congress (ANC):** Mr MSA Masango, Mr BA Radebe, Ms DD Raphuti, Mr MSA Maila, Ms T Kenye, Adv L Mpumlwana. **Democratic Alliance (DA):** Mr S Mokgalapa, Ms S kalyan. **Inkatha Freedom Party (IFP)**: Mr M Hlengwa. **African Christian Democratic Party (ACDP):** Ms C Dudley.

* 1. **22 November 2017**

The following stakeholders made oral submissions to the Committee on 22 November 2017:

* + 1. Department of Justice and Constitutional Development,
		2. South African Association of Former Ambassadors

Committee members present at hearings: **African National Congress (ANC):** Mr MSA Masango, Mr BA Radebe, Ms DD Raphuti, Mr MSA Maila, Ms T Kenye, **Democratic Alliance (DA):** Mr S Mokgalapa, Ms S kalyan and Mr D Bergman. Economic Freedom Fighters: Ms H Hlophe **Inkatha Freedom Party (IFP)**: Mr M Hlengwa. **African Christian Democratic Party (ACDP):** Ms C Dudley. **Congress of the People (Cope):** Mr MGP Lekota.

* 1. **17 April 2018**

The following stakeholders made oral submissions to the Committee on 17 April 2018:

Committee members present at hearings: **African National Congress (ANC):** Mr MSA Masango, Ms DD Raphuti, Mr MSA Maila, Ms T Kenye, Democratic Alliance (DA): Mr S Mokgalapa, Ms S Kalyan. Economic Freedom Fighters: Ms NR Mashabela. Inkatha Freedom Party (IFP): Mr M Hlengwa. Congress of the People (Cope): Mr MGP Lekota.

The advertisement was published in various national and regional newspapers from 18 July 2016 as follows:

|  |  |
| --- | --- |
| **Media Publication** | **Language** |
| City Press | English |
| Rapport | Afrikaans |
| Ngoho News | tshiVenda |
| Free State Sun | seSotho |
| Seipone News | sePedi |
| Mmaiseng News | seTswana |
| Emakhazeni News | siSwati |
| iPhondo News | isiXhosa |
| Thembisile News | IsiNdebele |
| Bushbuckridge News | xiTsonga |
| uMamgobhozi News | isiZulu |

**Summary of key issues emerging from the various public participation processes**

| **General issue/Theme/Bill clauses** | **Stakeholder(s)** | **Submission summary and issues raised** | **Committee’s response on emerging issues** | **Department’s response** |
| --- | --- | --- | --- | --- |
| 1. Objective: create an administrative and management framework; a single Foreign Service | HE Ambassador S. Francis Moloi | In the Memorandum of Objectives, the Bill does not state its Objectives of establishing a Foreign Service System in clear and unambiguous terms. What is needed is for government to take a clear policy decision to bring all international relations work under one roof.  | Policy issues |  |
| Public Service Co-ordinating Bargaining Council (PSCBC) | -Conflict of laws created because the Bill purports to establish a new process for determining future conditions of service outside the Labour Relations Act;-Creates duplication of powers between Ministers of Public Service and DIRCO on conditions of service-Purports to amend various conditions of service for employees deployed to foreign missions. |
| COSATU | -welcomes the objectives of the Bill. |
| SAIIA | Bill is welcome and timely. Responds to the Department’s Strategic Plan 2012-2017, and Chapter 7 of the National Development Plan. |
| Pretoria public seminar | A single Foreign Service is needed to address hierarchy and accountability issues at the Missions |
| Canada | Adheres to a “one pen policy” where in the Missions only the Head of Mission has overall responsibility and accountability |
| Association of South African Former Ambassadors | In support of the Bill, as Public Service is territorial and DIRCO has an extra-territorial mandate. |
| African Centre for the Constructive Resolution of Disputes (ACCORD) | The Bill will go a long way towards codifying and streamlining the administration and management of Foreign Service. Reference is made to paragraph 2.2 of the Explanatory Memorandum to the Bill, in that: attention be given to the role that officials of other departments play in the missions, and where they must play a leading role. The Bill gives an impression that only DIRCO will lead all matters relating to international relations. |
| Departments of: Labour, Transport, SA Tourism, Health, Science and Technology, Public Service, Higher Education, SARS, Defence, COGTA, Justice, SAPS, Defence, Public Works, Home Affairs | All stakeholders agree on a need for a single Foreign Service. Labour also proposed a creation of a structure or advisory committee of officials from other departments to advise DG of DIRCO in administrating the Service. |
| 2. Nature of Foreign Service South Africa requires. | Pretoria Public seminarAssociation of former Ambassadors | -Professionalisation of Foreign Service, knowledge of national interest | Policy issues |  |
| Ambassador S. Francis Moloi | -Efficient, non-partisan, career-oriented, professional Foreign Service in line with section 195 of the Constitution.- How can the practice of populating ambassadorial positions in South African missions with non-career, non-professional and partisan “appointees” or “deployees” be consistent with the obligation to ensure that the Foreign Service of South Africa is career-oriented, professional and non-partisan?-What could be the rationale, justification, if any, for non-compliance with a clear constitutional obligation requiring a career-oriented, professional and non-partisan foreign service?-When Ambassadorial appointments are made contrary to the letter and spirit of the Constitution, would the Executive (the President to be precise) not be acting contrary to her/his responsibility to “uphold, defend and respect the Constitution as the supreme law of the Republic”?-deeply alarmed at several incidences where officials have been implicated in criminal activity overseas and then sought to hide behind diplomatic immunity. |
| COSATU | - concerned with the extent the Bill delegates powers to the Minister to determine various policies and regulations, in particular labour relations, codes and directives relating to conditions of service.-It is the PSCBC which collectively negotiates public service labour relations and conditions of service. There is no reference to this in the Bill. There is no provision for collective engagements between the department and unions to negotiate such policies. -Bill is needed to enhance professionalism and accountability of the country’s Foreign Service. |
| Professor Jo-Ansie van Wyk | Amend Preamble: To provide for the management, administration, ‘accountability’ and functioning of ‘a professional South African the Foreign Service ‘and the international representation of’ the Republic of South Africa ‘at home and abroad’; to provide for the operational requirements that are suitable and supportive of the operations of the ‘a professional South African’ Foreign Service in a global environment; and to provide for matters incidental thereto. |
| Department of TransportSA TourismSARS | A need for covering officers posted by SoEs, and those seconded to international organisations to have a reporting line to the Head of Mission in the country of accreditation. |
| **1:** Definitions“employee”- a person appointed to the Department or to any other national department in terms of the Public Service Act, 1994 (Proclamation103 of 1994), including members of the Foreign Service as contemplated in section 2. | Mr Russell Pillay | Broaden definition of “**employee**” to include Locally Recruited Personnel (LRPs) as follows:‘employee’- a person appointed to the Department or any other national department in terms of the Public Service Act, 1994 (Proclamation 103 of 1994), including members of the Foreign Service as contemplated in section 2 and locally Recruited Personnel. |  |  |
| Professor Jo-Ansie van Wyk | -include definition of the appointments by the President cited in Section 84(i) of the Constitution of the Republic of South Africa, Act 108 of 1996.-include definition of the Special Advisor(s) on International Relations and Cooperation of the President and Minister. |
| PSCBC | Considering the definitions in section 1 of the “Foreign Services” as envisaged in the Foreign Service Bill vs “Employee” in the Public Service Act, there may be a conflict in employment provisions between the two |
| Department of Defence | - “employee’- not clear whether definition covers civil servants not appointed in terms of Public Service Act 1994 |
| National TreasuryDepartment of Defence | -include definition of ‘prescribed’ to clarify clauses 9&12 of the Bill |
| Department of Public Works (DPW) | -include definition of ‘acquire’ in the context of new proposal on clause 8 as follows: ‘acquire’ in relation to an immovable asset, means acquisition through construction, purchase, lease and acceptance of a gift outside the Republic, for use by the Foreign Service.-Include definition of ‘immovable asset’ in the context of the new proposal on clause 8 as follows: ‘immovable asset’ means land, or rights in such land or immovable structure.-Include definition of “GIAMA”, being the Government Immovable Assets Management Act, 2007 (Act No.19 of 2007). |
| Department of Public Service and Administration (DPSA) | -Insert a clause on conflict of laws, specifying which legislation (the Bill or the PSA) will prevail in cases of conflict. |
| South African Revenue ServiceDepartment of DefenceSouth African Police ServiceSouth African TourismDepartment of Labour | -consider the definition of ‘national departments’ in the Bill to cover officials sent on posting to represent South Africa in international organisations. |
| SA Tourism | -Consider cases where it would be ideal for transferred officials not to be physically accommodated in the embassy. |
| **2: Foreign Service***(b)* The Department is responsible for conducting and coordinating the internationalrelations and cooperation of the Republic at bilateral, regional and multilateral levelsthrough the Foreign Service abroad and through interactions with foreign representativesin the Republic, in accordance with the foreign policy of the Republic.(2) The Foreign Service consists of all South African Missions and of those personswho serve in a position in the South African Missions and who are accredited to aforeign state for the period of time that they hold that position, regardless of whetherthey are ordinarily employed by the Department or by any other national department orappointed on a contractual basis for a fixed period.2(3)(d) Foreign Service ‘must ‘render consular services to South African national in the Republic and abroad’(3) The Foreign Service is managed and administered by the Department and to thisend the Department must—*(a)* administer all foreign representations in the Republic;*(b)* lead the coordination and alignment of the Republic’s international relationsbetween all three spheres of government; | Pretoria public seminarAssociation of former AmbassadorsBest practice: Canada | -Professionalisation of Foreign Service was regarded as a key element. Members of Foreign Service should undergo qualifying exams; have competencies requisite, language proficiency, knowledge of national interest; good conduct. | Policy issues(Responsibility of Committee not legislation)Vienna Convention on Consular Relations 1969: Article 5 refers to ‘consular functions’. |  |
| ACCORD | -Clause2(1)(b): clause is ambiguous when referring to “..conducting and coordinating the international relations at bilateral and multilateral levels..”. Redraft to either refer to “bilateral and multilateral levels”, or alternatively, “regional, continent and international levels”.-Clause 2(2): Bill has excluded Honorary Consuls as part of what a Foreign Service should consist of. |
| SAIIA | -Clause 2(2): definition of Foreign Service be expanded to include officials at DIRCO or other department that are South African-based. It should also include officials from time to time travelling to South African missions abroad, or to international conferences, or conducting consultations with missions on policy or operational matters.-Foreign Service be expanded to include “Special Envoys”. However, these commissions should be time-bound.-Parliamentary oversight on special envoys be provided for. |
| HE Ambassador S. Francis Moloi | -Section 2(1)(a) of the Bill should spell out the core function of the Foreign Service which is to “pursue the national interest” of the Republic which is language that is more precise and clearly states the essence of what the Foreign Service of South Africa is expected to do.-It is suggested that the last few words in Section 2(1)(b) which state that “in accordance with the foreign policy of the Republic” should be taken out so that the Bill avoids language that should rather remain in the “policy field”.-Section 2 (2) implies that HOMs could be appointed from outside the ranks of the career corps. While clause 3(1) of the Bill appears to limit membership of the Foreign Service to “only citizens of the Republic, employed by the Department or by another national department”.- Section 2(2) on the other hand opens the door for “officials” who might be appointed “on a contractual basis for a fixed period” which would ordinarily refer to “political appointees” who might come from other department or completely from outside of government such a business, academia, the unemployed and NGOs. |
| Professor Jo-Ansie van Wyk | Amend by adding the following at the end of Clause 2(2): “The Foreign Service also consists of those persons who represent South Africa on an ad hoc or permanent basis at international organisations, international conferences, mediation and negotiations; those persons referred to in Section 84(i) of the Constitution, and the President of the Republic’s Special Advisor on International Relations”. |
| PSCBC | -Clause 2(2) creates a conflict because employees in Foreign Service are therefore bound by the provision of the Bill and the Public Service Act or any other legislation under which they may be appointed. |
| Mr Russell Pillay | -Clause 2(3) (a-f) -consider definition for “support services” to mean “the administrative and technical assistance rendered by locally recruited personnel to the Foreign Service in a South African mission, and excludes the exercise of public powers. |
| Professor Jo-Ansie van Wyk | -An amendment to Section 2(3) of the Bill to include reference to, and the mandate of, the South African Council on International Relations and the South African Association of Former Ambassadors, High Commissioners and Chief Representatives. Section 2 should also include reference to South Africa’s mediators in international conflicts. |
| Department of Home Affairs | -The term “consular services” may be misunderstood to mean that DIRCO will be now responsible for key DHA competencies; such as the issuing of passports.- The term ‘services’ be amended.DIRCO has no mandate to execute ‘consular services’ in the Republic. |
| Mr Martin J Bauwens | -It is surprising that the Bill confers on DIRCO consular services powers in the Republic. This would include issuance of documents like passports, birth/death certificates, including collection of outstanding income tax. This would mean amending legislation (otherwise it is contrary to section 238 of the Constitution), giving the mandate to Home Affairs. SARS also has responsibility to collect income tax locally. |
| Department of Labour | -Increase the number of officials of minority groups and women-consider employing South Africans in the diaspora as Locally Recruited Personnel (LRPs).-DIRCO should have unfettered discretion to place officials of particular expertise where needed.Currently departments decide whether there is a need to post in country X. |
| COGTA | -With regard to clause 2(3)(b), COGTA will provide support to local government to ensure alignment with South Africa’s Foreign Policy and relevant frameworks. |
| Department of Home AffairsDepartment of DefenceSAPS | Close consultations needed on priorities of other departments for purposes of posting relevant personnel. |
| **3. Requirements for members of the Foreign Service****3.** (1) Except for the appointment of locally recruited personnel to serve at a South African Mission or in cases where the Minister has granted an exemption based onoperational requirements, only citizens of the Republic, employed by the Department or by another national department who meet the prescribed requirements, are eligible to become a member of the Foreign Service.(2) “A member of the Foreign Service may not take up a position at a South African Mission until such time as he or she has met the prescribed requirements for such transfer and has obtained a security clearance as issued by a competent authority: Provided that transfer must be approved by the Director-General.” | DPSA  | -Pursuant to the Public Service Act, permanent residents, and not only citizens, should qualify for Foreign Service. There is a court judgement confirming this situation. | Perhaps at the category of Heads of Mission, it should be only natural citizens.Departments should also ensure such officers are vetted accordingly to address this issue.“Requirements” should clearly state what one should have to be in Foreign Service. Currently the clause has not adequately detailed what a person must do or have to qualify. |  |
| Canada | Citizens and people with dual citizenship are eligible for Foreign Service. However, only citizens considered for HOM position. |
| SAIIA | -Clause 3(1)- should spell out rules and guidelines that govern appointment of LRPs. Especially as their employment is governed by laws of South Africa.-Clause 3(1)- there is no justification for inclusion of non-citizens as members of the Foreign Service. Issuance of a diplomatic passport to a non-citizen exposes the Republic to security risks. Therefore, strongly advises against the inclusion of this exemption. |
| HE Ambassador S. Francis Moloi | -Section 3 (1) of the Bill appears to limit membership of the Foreign Service to “only citizens of the Republic, employed by the Department or by another national department”, Section 2(2) on the other hand opens the door for “officials” who might be appointed “on a contractual basis for a fixed period” which would ordinarily refer to “political appointees” who might come from other department or completely from outside of government such a business, academia, the unemployed and NGOs. |
| ACCORD | -Clause 3(1) suggests that anyone outside of Government may not be part of the “foreign service”. This could be inconsistent with Section 84(2) of the Constitution of South Africa 1996, assigning specific powers to the President of the Republic.-Bill silent on people who join the “foreign service” as “Heads of Mission”, who at the time of their appointment may have not been in service of government as anticipated in clause 3(1). |
| SAIIA | -Clause 3(2)- “prescribed requirements” should specifically mention that taking up of position should be subject to the successful completion of relevant training requirements, in addition to a security and criminal clearance. Does security clearance not cover criminal clearance? |
| HE Ambassador S. Francis Moloi | -Section 3(2) should provide for Minimum and maximum periods for the tour of duty of members of the Foreign Service abroad maybe 4 years). The Bill should also provide for the minimum and maximum periods that officials may spend at head Office (maybe 2 years) after their first posting before being eligible to apply for the next posting should that meet all the relevant requirements. |
| Professor Jo-Ansie van Wyk | -Include the following to clause 3:- “The Department shall keep a National Foreign Service Interest Register which shall be submitted to Parliament. Members of the Foreign Service shall declare all their interests in the National Foreign Service Interest Register. -The appointment of those persons cited in Section 84(i) shall be approved by Parliament subsequent to making presentations to Parliament [similar to the process of the appointment of the Public Protector]. -The President and Minister’s Advisor(s) on International Relations shall be required to report to Parliament on a quarterly basis”. |
| Defence DTIDHANT | Clause 3(2)- Bill should clarify that partner departments will still be the ones to identify officials to be transferred to the Missions, and DIRCO to approve them for transfer. |
| **4: Head of Mission****4.** (1) The Head of Mission is responsible for the management and administration of the Mission and all members of the Foreign Service located at the Mission, including thelocally recruited personnel in the Mission.(2) The Head of Mission must act on the instructions and under the authority of theDirector-General. | HE Ambassador S. Francis Moloi | -Clause 4(1) & (2) does not provide in categorical terms that HOMs should be career-oriented, professional and non-partisan. Appointment of Heads of Mission should be provided in line with the constitutional concerns that have been raised.-Furthermore, the Memorandum is incorrect in its description of Clause 4.- It is submitted that the Presidency, the Department, and the “ruling party” reconsider the issue of appointment of “political appointees” into the Foreign Service, particularly at the Heads of Mission level.-It is suggested that this should be reconsidered to ensure that the Foreign Service be career-oriented, profession and non-partisan. | It is a prerogative of the President. However, it could describe a criterion for a HOM; such as a mix of career diplomats(professionalism) and political appointees as policyExplanatory memorandum is not in sync with clause.Issues of constitutionality |  |
| ACCORD | -Clause 4(2) is too restrictive on the authority of the Head of Mission.-Amend to include the Minister as the instructing authority together with the Director General which would be consistent with clause 9 (5) and possibly align with clause 10 (1) (a), or- specify if the instruction and authority of the Director-General is only limited to, and applicable to matters anticipated in clause 4 (1). |
| Professor Jo-Ansie van Wyk | -Include an addition “Parliament shall approve the appointment of Heads of Missions”. |
| COSATU | -The memorandum of the Bill speaks to the criteria and requirements for the appointment of Heads of Mission. The Bill is silent upon what are these criteria and requirements.-The Bill needs to be amended to require that Heads of Mission present their credentials and visions to the Portfolio Committee for engagement before departing for their deployment. |
| **5: Recall of member of Foreign Service**A member of the Foreign Service may also be recalled to the Republic after consultation with the member concerned – 1. on such conditions as the Minister or President may determine; or
2. at the request of the member concerned”

5(1) […] such a member is found guilty of misconduct in terms of the disciplinary code applicable to that member | SAIIA | -Clause 5(5)(a)- amend the clause to provide that recall will be “in line with South African labour legislation after due process and in consultation with relevant departments”, especially the sending department should the Foreign Service officer not be attached to DIRCO. | 3 types of recall |  |
| Professor Jo-Ansie van Wyk | -Include in the clause- “A member found guilty of misconduct shall not be appointed as a South African representative abroad”. |
| COSATU | The recall procedures and policies need to be amended to state that the Foreign Service labour relations, policies, codes and directives will be engaged upon with employees and their union representatives at the PSCBC and internally in DIRCO. |
| PSCBC | -Due consideration must be given to the provisions of PSCBC Resolution 1 of 2003 outlining the disciplinary process of the public service for employees employed on level 1-12 and the SMS handbook for discipline of senior managers. -Consideration must also be given to the practical implementation of such clause such as the continued payment of allowances and other as to not act prejudicial to an employee while being investigated or recalled. |
| Defence, DTI, DHA, SAPS, Health | Partner departments have expressed concerns about DIRCO’s ability to unilaterally recall officials that may fall under the authority of other departments. |
| DoD, SAPS, SARS, SA Tourism | Suggested that the Bill provide that officials from partner departments may be subjected to their own disciplinary codes and process. |
| **6: Diplomatic Academy**6(1) ‘The Diplomatic Academy, under the control and management of the Department, is responsible for-1. providing training, or causing training to be provided to employees and to members of the Foreign Service;
2. [conducting such examinations…]
3. Issuing of diplomas or cause diplomas or certificates to be issued to persons who have passed such examinations.

(4) provides that accreditation and recognition of qualifications is subject to: NQF Act, SDA Act, any other legislation intended to enhance skills and qualifications in the public service. | ACCORD | -Clause 6(2) be expanded to read “institutions of Higher Learning, think tanks, civil society, experts in the Republic and elsewhere to achieve this objective”.  |  |  |
| Professor Jo-Ansie van Wyk | -Include the following to clause 6: “The Diplomacy Academy shall be led by a person appointed by Parliament after a public call for nominations. -The Minister shall lead and appoint, but approved by Parliament, a Board of Advisors for a period of five years. A Board of Advisors, consisting of representatives of civil society, Parliament, South African Council on International Relations and the South African Association of Former Ambassadors, High Commissioners and Chief Representatives, the Director-General, the head of the Academy, and at least one international Advisor, shall oversee and assist the Diplomatic Academy. -The Board of Advisors shall report to Parliament on an annual basis. |
| Department of DefenceDepartment of Higher EducationSouth African Police Service | Whether DIRCO will now conduct all training, and what will be the status of training done by partner departments. |
| Department of Labour | -Provision be made for linkages with the 2005 International Relations Framework Act 2005. |
| Department of Higher Education | The Bill encroaches into sections 5&7 of the NQF Act-creating a single integrated national framework for learning achievements. Chapter 6C establishes QCTO as a quality council responsible for skills development qualifications. Chapter 26J gives the Minister of Higher Education powers of make regulations on skills qualifications, recognition and registration of skills development. |
| **7: Establishment of coordination and other mechanisms**(1) The Minister may establish such consultative, coordination and othermechanisms as may be necessary for the effective execution of this Act.(2) The Minister may, by notice in the *Gazette*, issue guidelines regarding thecoordination and alignment of activities relating to international relations between the three spheres of government, subject to the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005). | Mr Martin J Bauwens | -It empowers Minister to “issue guidelines regarding the coordination...”. The imposition of “guidelines” by the Minister of DIRCO acting alone, might be inconsistent with s 41 (1)(g) of the Constitution, which provides that all spheres of government must exercise their powers and perform their function in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere. | Policy issues |  |
| ACCORD | -certain inconsistencies in the Bill can be addressed by strengthening the wording within this clause. |
| SAIIA | -Agree with the principles that are embodied in this section and would urge that it is effected as soon as possible after the Bill’s enactment.-However, such a coordinating mechanism should include not only other national departments, but also provincial administrations and municipal authorities.-Noted with concern that, per the Memorandum on the Objects of the Foreign Service Bill, provincial and municipal authorities were not among the organisations and institutions consulted in the drafting of the Bill. |
| Professor Jo-Ansie van Wyk | -Include to the clause:“The Minister shall establish an inter-governmental forum, consisting of those persons responsible for local and provincial government’s international relations and cooperation. The forum shall meet regularly and report to Parliament annually”. |
| COGTA | -Proposes that the Minister of COGTA shall be consulted in this process in so far as it impacts local government.-With regard to clause 7(2) – following consultations, Minister of COGTA shall give effect to these guidelines through existing structures. |
| **8: Assets**Notwithstanding the provisions of the Government Immovable Assets Management Act, 2007 (Act No. 19 of 2007), or any other law, all immovable property utilised by the Foreign Service outside the Republic, any right in respect of such property and the management and accountability thereof must vest in the Minister.Notwithstanding any other law, the Minister may on such terms and conditions as he or she may deem fit – a) Acquire and dispose of; andb) Lease, rent, maintain or construct structures or installations on or refurbish any immovable property belonging to the Department for the use of the South African Missions or for any other purpose he or she may deem necessary for the efficient functioning of the Foreign Service.” | SAIIA | -Clause 8(1)(a)- remit too wide. Make direct reference to clause 9 (1) as follows, “that a determination involving expenditure from revenue shall be made in consultation with the Minister of Finance”. This would suggest that any proposed disposal or acquisition of foreign assets should be tabled in the annual budget of DIRCO. | -The clause refers to ‘Assets’, but only deals with **immovable assets** in the Missions abroad. However, management of movable assets have also been a major challenge.-DIRCO has to take full responsibility of properties under the watch of Missions abroad. However, this has to be done in line with Public Works through GIAMA.-This would address the issue of a number of derelict properties abroad, under DIRCO’s watch, however under the responsibility of DPW. The Bill has to give direction on this matter. |  |
| Professor Jo-Ansie van Wyk | -Include the following to clause: “The Minister shall conduct a regular audit of assets. -All assets shall be reported in an Asset Register”. |
| Department of Home Affairs | -Wanted a resolution regarding its assets (as revenue from visa fees) to be fully accounted for by DIRCO. |
| Department of Public WorksNational Treasury | -DIRCO’s custodianship of RSA properties abroad is not in dispute and is recognised in terms of GIAMA.-However, the wording of Clause 8(1) creates the impression that DIRCO’s control of the foreign property portfolio falls outside the ambit of GIAMA,-and that the principles of immovable asset management contained in the Act and the standards and best practice guidelines issued in terms thereof, would therefore not apply to the management of such properties.-The Minister can only be a ‘custodian’; any right over such properties vest in the State.- Acquiring, managing, disposal of such properties has to be in accordance with GIAMA. Minister must act as a caretaker of assets under her custodianship as stipulated under section 13 (1&2) of GIAMA. The current wording of the clause is in conflict with GIAMA.-GIAMA requires custodians to observe Principles of immovable asset management (s 5).It is compulsory for a custodian to prepare a custodian immovable asset management plan.-The custodian may dispose of a surplus immovable asset subject to the State Land Disposal Act 48 of 1961.-Therefore the words ‘Notwithstanding the provisions of GIAMA be reviewed;‘Notwithstanding any other law be reviewed’;-‘custodian’ be used not ‘vest’. |
| **9:Policies, codes and directives** | Professor Jo-Ansie van Wyk | -Reference to public participation in the foreign (service?) process should be included here. | ‘Policies’ could be confused with departmental policies.  |  |
| COSATU | -Bill be amended to state that the Foreign Service labour relations, policies, codes and directives will be engaged upon with employees and their union representatives at the PSCBC and internally in DIRCO. |
| PSCBC | -Clause is a duplication of the Public Service Act, especially sections 2(2); 3(3) and 41. |
| Department of Home AffairsSAPS, DoD, NT, DPSA, Labour, Health, Science and Technology, SARS, DTI | -There is a need for DIRCO to seek input from affected departments when drawing up codes and directives affecting the working conditions of the Foreign Service. |
| **10: Delegation of powers**‘The Minister may-b) Delegate to the Director-General any power conferred on the Minister by this Act, except the powers contemplated in sections 9 and 12; orc) Authorise the Director-General to perform any duty imposed on the Minister by this Act.’ |  |  | Clause 9 is on policies, codes and directives- Minister may delegate these powers to DG from time to time. |  |
| **11: Offences**“Any person or member of the Foreign Service or employee of the Department, who in a wilful or negligent manner, contravenes or fails to comply with the provisions of this Act or its regulations, is guilty of an offence and liable on conviction to a fine not exceeding R50 000 or imprisonment for a period not exceeding one year.” | HE Ambassador S. Francis Moloi | -Section 11(2) is just too broad and could create a “class of criminals” by insisting that audit findings even when they are minor become punishable which doesn’t take into account the kind of work and environment foreign service personnel work under. | The Committee felt that the fine was too low, taking into consideration the sensitivity of the mandate for Foreign Service. Best practice from other countries be compared regarding fines. |  |
| Department of Defence | -The wording ‘any person’ includes ‘members of the Foreign Service and employees of DIRCO’. Is the intention to apply it to other persons other than those in the Missions and falling under the nomenclature of members of the Foreign Service? These words should be deleted. |
| SAIIA | -Clause 11(2): -A decision regarding the size of a penalty should be directly linked to the nature of the offence. Any imposition of penalties should be the outcome of due process followed in the preceding clause 11(1) and commensurate to the liability for the state. |
| **12:** Regulations12 (1) The Minister may make regulations regarding: | All the participating departments | -Proposed a requirement that DIRCO Minister consult affected Ministers before regulations are promulgated.Expressed a need for consultations with affected Ministers. | The essence of consultation is echoed here.Consultation with other stakeholders is important when drawing up all that is envisaged under “Regulations” |  |
| National Treasury | -Proposed this amendment: ‘The provisions of other legislation governing the employment of members of the Foreign Service apply to the members insofar as they are not contrary to the provisions of this Act’. |
| Mr Martin Bauwens | - The language is particularly broad, it allows the Minister of DIRCO to regulate matters (issuance of visas, collection of taxes) which are to be processed within or by the Foreign Service, but fall under the competence of another Minister. |
| PSCBC | -Clause 12(1) and (3) are a duplication of section 3(5) of the Public Service Act and is it necessary to have them here? |
| Department of Public Works | -Clause 12(1)(g) should recognise that there are in place principles of immovable asset management in GIAMA, and the standards and best practice guidelines issued in terms of GIAMA on how to conduct any activity under GIAMA. |

1. The Constitution of the Republic of South Africa 1996 [↑](#footnote-ref-1)