

STATE SECURITY AGENCY RESPONSES TO ISSUES RAISED ON THE GENERAL INTELLIGENCE LAWS AMENDMENT BILL (GILAB)

ISSUES RAISED BY OIGI			
NO	CURRENT PROVISION/ NOT PROVIDED FOR	PROPOSED AMENDMENT	SSA RESPONSES
DEFINITIONS			
GILAB 2023 only provides for definitions in the Oversight Act that gives effect to the separation of the SSA. It is therefore suggested that the following definitions be included that will provide greater clarity for the execution of the oversight mandate			
1.	Monitor	Monitor means to oversee, examine, evaluate and investigate compliance of the intelligence and counterintelligence activities of a Service with the Constitution, applicable laws and relevant policies	SSA supports the proposal. It is further proposes that the word “Service” be amended to “National Intelligence Structures”. If the word “service” is used, it will suggest that only the activities of the South African Intelligence Service” would be monitored
2.	Review	Review means to oversee, examine, evaluate and assess the conduct of intelligence and counter-intelligence activities of a Service	SSA supports the proposal
3.	Significant Intelligence Failure Section 7 (11) (b)	Significant Intelligence Failure means, but is not limited to, an incident, act or omission, which has occurred within a Service’s statutory mandate, which resulted in a failure by that Service to comply with any of its statutory functions and operational priorities and which impacted on a national security interest of the Republic	SSA further suggests that the word “comply” be replaced with the word “fulfil”. If the word comply is used, this may result in a superficial exercise.

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4.	Unlawful Intelligence Activity	Unlawful Intelligence Activity means an activity carried out by a Service that is in contravention of the Constitution and applicable laws on intelligence and counter-intelligence	It is suggested that the use the terms be expanded to include “illegal” so that it reads “Unlawful and illegal Intelligence Activity”
5.	Fair presentation	Fair presentation means compliance with and including complete, accurate and reasoned representation of the intelligence and counter-intelligence activities of a Service in accordance with the Regulation on Certification	The proposal is supported
6.	Intelligence	The Oversight Act provides for a definition of intelligence that differs from the definition of intelligence contained in the National Strategic Intelligence Act 39 of 1994 (NSIA). It is suggested that definition of intelligence in either the Oversight Act or the NSIA be amended to reflect the same definition or a combination of both definitions	SSA supports that the definition of intelligence, as proposed in the GILAB will be used. The definition is consistent with the provision of the National Strategic Intelligence Act.
7.	Constitution	Citation to be removed (108 of 1996)	SSA supports the proposal to remove citation
SCOPE			
8.	Clause 7 - Services and Intelligence Services Entities	Section 7 (7) to be amended as follows: ‘The functions of the Inspector-General are, in relation to the Services and the Intelligence Services Entities’	The proposal is supported. However, it is proposed that the use of national intelligence structures should be used

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	Section 7(7) of the Oversight Act provides that the functions of the Inspector-General, are in relation to the Services -		throughout the Bill.
9.	Section 7 (7A) refers to reports on monitoring and review investigations shall contain findings and recommendations to the exclusion of referrals from the JSCI, functions designated and complaints	Section 7 (7A) should be amended to read: 'The reports of the IG contemplated in subsection (f) shall contain the findings and recommendations of the IG, which shall be binding'	The proposal for binding recommendations of OIGI will expose the IGI process to legal challenge. It is proposed that where there is disagreement the Minister intervenes and if that fails the matter be referred to the JSCI for final adjudication.
10	Currently Section 7 (7) (c) provides for the IGI to perform functions designated to him/her by the President or any Minister responsible for a service. There is no explicit provision for the IGI to perform functions designated by the JSCI.	Section 7 (7)(c) should be amended to include the JSCI	SSA will be guided by the JSCI on this proposal

INDEPENDENCE

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<p>Section 210 provides for the civilian monitoring of the activities of the Services. The need to provide for civilian monitoring of the Intelligence Services arose as part of the constitutional reforms adopted during the development of the new dispensation of SA. The mission of the IGI is to provide assurance that the Intelligence Services operate within the framework of the rule of law and due process and act with probity and respect for human rights. The independence of the IGI was recommended by the 2006 and 2008 Commissions and endorsed by the High Level Review Panel Report and the Judicial Commission of Inquiry into allegations of State Capture</p>			
11	<p>Clause 11 - The Minister must, after consultation with the Inspector-General, appoint such number of persons to the office of the Inspector-General as may be necessary for the performance of the functions of that office, on such conditions of employment and security requirements as are applicable to members of the intelligence services (section 7 (12)).</p>	<p>It is recommended that there should be a new provision inserted in the Oversight Act to replace section 7 (12) which should read as follows: ‘The Inspector-General may, subject to this Act, do and cause to be done all things necessary for the efficient superintendence, control and functioning of the OIGI including the appointment of persons to the office and the management of the budget, as prescribed’</p>	<p>The proposal by IGI suggest that a third scheduled entity be established. The HLRP recommended the establishment of the Foreign Service and Domestic Service. The impact on the budget might not allow implementation. The Executive authority exercises control and direction over the department to prevent the structures from being referee and player at the same time. Regulations will be drafted to ensure standardization of systems and processes and delegation of authority to both the OIGI and NICOC.</p>
12	<p>Clause 11 – The Minister may determine the organisational structure and grading of posts for the function of the Office of the Inspector-General in terms of the Intelligence Services</p>	<p>New provision that replaces the current one in GILAB to read: ‘The Inspector-General may determine the organisational structure and grading of posts for the functioning of the Office of the Inspector-General ‘</p>	

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	Act, 2002 (Act 65 of 2002)		
<p>The certification function of the IGI is a key function that is a culmination of the other oversight functions into an annual certificate. Certification is regarded by Ministers responsible for the Services and the JSCI as a key element of oversight over the intelligence community. The IGI is currently required to issue a certificate stating the extent to which he/she is satisfied with the report on the activities of a Service and an opinion on the lawful conduct of the Services. In the absence of reporting standards, the Services have relied on their PFMA Annual Report for certification purposes which has resulted in the IGI having to issue a disclaimer. This is clearly not what is envisaged in the execution of this function.</p>			
13	<p>Current section 7 (11) (c) As soon as practicable after receiving a copy of a report referred to in paragraph (a), the Inspector-General shall submit to the Minister responsible for the Service in question, a certificate stating the extent to which the Inspector-General is satisfied with the report and whether anything done by that Service in the course of its activities during the period to which the report relates, in the opinion of the IGI.....'</p>	<p>Section 7 (11) (c) should be amended to read: 'As soon as practicable after receiving a copy of a report referred to in paragraph (a), the Inspector-General shall submit to the Minister responsible for the Service in question, a certificate in which an opinion is expressed on the <u>fair presentation</u> of the report and whether anything done by that Service in the course of its activities during the period to which the report relates, in the opinion of the IGI.....'</p>	<p>SSA support the inclusion of "fair representation" in Section 7(11) (c)</p>
<p>Section 8 provides for Regulations to be issued by the Minister acting in concurrence with the JSCI. This section is all-encompassing by providing for the regulation of the performance of the functions by the IGI and any other matter that is requires or permitted to be prescribed.</p>			

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This provision imports an aspect of discretion on what is required to be regulated.			
14	Clause 12 – The Minister, acting with the concurrence of the Committee must make regulations regarding – (b) the performance of the functions designated to the Inspector-General under 7(7) (c)	The current provision in section 8 (1) (b) must remain unchanged to enable the Minister and the JSCI to regulate the performance of all the functions of the IGI	SSA supports the proposal
GENERAL PROVISIONS			
15	Clause 1 - Definition of intelligence gathering means the acquisition and processing of relevant and reliable information into intelligence products related to any domestic or foreign opportunity or potential opportunity or threat or potential threat to national security or threats to the advancement or protection of national security;”;	Suggested amendment: ‘intelligence gathering’ means the acquisition and dissemination of relevant and reliable information for the development of intelligence products related to any domestic or foreign opportunity or potential opportunity or threat or potential threat to national security or threats to the advancement or protection of national security’	SSA submits that according to the National Strategic Intelligence Act, 1994 “intelligence gathering” is the acquisition and processing of information which includes correlation, evaluation and analysis of such information into an intelligence product. The dissemination (as per IGI) or the supply (as per the Act) of such intelligence product to a client or NICOC is a process that follows the Intelligence gathering process.

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16	Clause 2 – (v) impede and apprehend members suspected of contravention of this Act and related regulations and hand them to the relevant law enforcement agencies	Apprehend confers the powers of arrest. It is therefore unclear whether intelligence members have now been given the powers of arrest. In the absence of an offences provision in the National Strategic Intelligence Act, it remains uncertain on how a contravention will take place	The word apprehend will be removed and replaced by “impede or “neutralize”. “Impede” should be defined to include measures taken within the confines of the Constitution and the law to disrupt and prevent any threat to national security from manifesting, in a prescribed manner.
17	Clause 2 – (ix) provide periodic national security briefing to the Joint Standing Committee on Intelligence, members of Cabinet, Premiers, Parliamentary Presiding Officers and the Chief Justice;	The scope of parties included and excluded in this provision needs to be reviewed	The purpose of this provision is to create a framework for the periodic briefing of the three (3) arms of the State (Legislature, Judiciary (on a needs basis) and the Executive) on National Security trends impacting the country.
18	Clause 13 – Civilian Intelligence Structures Defined as Agency, Service and the Academy	Civilian Intelligence Service not defined despite being referred to in GILAB	Clause 13 will be amended to make provision for any other entity established in terms of the Act.
19	Clause 32 No member of the Civilian Intelligence Service may strike or induce or conspire with any other member or	Suggested amendment ‘No member of the Civilian Intelligence Service may strike or induce or conspire with any other member or person to strike <u>nor may the employer cause the lock-out of a member or person</u>	SSA supports the proposal

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	person to strike.		
20	Clause 32 The Minister must in the prescribed manner make provision for internal rules to deal with complaints, grievances and consultation on conditions of service and human resources within the Civilian Intelligence Service.”.	Suggested amendment ‘The Minister must in the prescribed manner make provision for internal rules to deal with complaints, grievances, <u>alternate dispute resolution mechanisms</u> and consultation on conditions of service and human resources within the Civilian Intelligence Service.”.	The SSA has no objection to the proposals made in this regard. The existing Regulations will be reviewed to enhance consultation and dispute resolution mechanisms.

ISSUES RAISED BY NICOC			
NO	ISSUES	PROPOSED AMENDMENT	SSA RESPONSES
21	Supply intelligence regarding any such threat or opportunity to NICOC	NICOC proposes that “ <i>The proposal is the insertion of (ii) supply intelligence regarding any such threat or opportunity to NICOC</i> ” Section 2(b)(a) of the Bill,	The Bill should make it obligatory for all the National Intelligence Structures to supply intelligence to NICOC.

22	GILAB provides that “(ix) provide periodic national security briefing to the Joint Standing Committee on Intelligence, members of Cabinet, Premiers, Parliamentary Presiding Officers and the Chief Justice.	The proposal is the deletion of <i>members of Cabinet</i> in line with Section 4 (2) (a) of the Act which mandates NICOC to interact with Cabinet	<p>Cabinet decided that there is a need for the Domestic Service to provide periodic national security briefings on Counter-Intelligence and Domestic Intelligence to the three (3) arms of the State being the Executive, Legislature and Judiciary (on a need basis). Members of Cabinet and Premiers are part of the Executive.</p> <p>SSA further submits that the conduct of counter intelligence is not coordinated by NICOC. Once priorities have been approved, it is the responsibility of the National Intelligence Structures to develop operational plans on which Cabinet would need to be appraised.</p>
23	The proposal is to amend section 4 (1) (f) on co-option of members of departments of state by NICOC	The chief of the intelligence division of the National Intelligence Structures, or the alternates of the said persons, and such members of departments of State, <u>and other relevant stakeholders as and when the need arises</u> , who may be co-opted by NICOC on a permanent or an <i>ad hoc</i> basis.	Intelligence structures are defined in the Bill and it is proposed that departments that have no mandate with regard to intelligence are not given the responsibility. Departments or any entity can be invited to provide relevant information to NICOC instead of being co-opted. The Regulations on Intelligence Coordination will further address the matter.
24	GILAB 2023 , provides that the “(3) The Minister— (a) must appoint members or persons who will provide coordination and	NICOC proposes that it must be the Coordinator, with the approval of the Minister, must appoint members of NICOC or the support staff referred to above.	The responses provided on OIGI is also applicable to NICOC

	administrative support to NICOC on such conditions of employment and security requirements as are applicable to members of the intelligence services”		
25	<p>The proposal to amend the section is line with section 5 (1) (a) of the Act which direct the Coordinator to manage and administer the functions of NICOC</p> <p>(3) (b) The Minister may determine the organisational structure and grading of the posts for the functioning of NICOC in terms of the Intelligence Services Act, 2002 (Act No. 65 of 2002)</p>	<p>The proposal is the amended provision as follows:</p> <p><u>The Coordinator may determine the organisational structure and grading of the posts in the Office of the Coordinator for the functioning of NICOC with the approval of the Minister Intelligence Services Act, 2002 (Act No. 65 of 2002);</u></p>	
26	<p>GILAB, 2023 provides that “(4) <u>The budget of NICOC</u> shall be appropriated by Parliament as part of the budget vote of the intelligence services, and shall be expended in accordance with the rules and procedures set out in the Public Finance</p>	<p>NICOC proposes that “(4) <u>The budget of the office of the Coordinator</u> shall be appropriated by Parliament as part of the budget vote of the intelligence services, and shall be expended in accordance with the rules and procedures set out in the Public Finance Management Act, 1999 (Act No. 1 of 1999).”</p>	<p>SSA does not have a budget vote. The budget of SSA is appropriated under National Treasury. It is proposed to ring-fence the NICOC budget similar to that of the IGI.</p>

	Management Act, 1999 (Act No. 1 of 1999).”		
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ISSUES RAISED BY SAPS CRIME INTELLIGENCE		
NO	ISSUES	SSA RESPONSES
27.	Cybersecurity: The Bill proposes the insertion of a definition for “cybersecurity” in the National Strategic Intelligence Act, 1994, but the SAPS noted that it is unclear how this will impact on the Cybersecurity Bill that is to be promoted by the Department of Justice and Constitutional Development	<p>The inclusion of the definition of the cybersecurity is in line with the definition that is in the draft Cyber Security Bill and alignment will be ensured in the process.</p> <p>The SSA, and not the department of Justice is drafting the Cybersecurity Bill.</p>
28.	<p>Definitional syntax: The syntax of the first two definitions below differ slightly.</p> <p>“domestic intelligence” means intelligence on any internal threat or opportunity or potential opportunity or threat or potential threat to national security;</p> <p>“foreign intelligence” means intelligence on any external threat or potential threat and opportunity or potential opportunity to national security”</p>	The definitions of domestic and foreign intelligence will be amended in line with the 1994 National Strategic Intelligence Act.
29.	Security Competent Test	Security competence assessment will be applied throughout the Bill

ISSUES RAISED DURING PUBLIC AND NATIONAL HEARINGS AND THROUGH WRITTEN SUBMISSIONS			
DEFINITIONS			
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30.	<p>National Security</p> <p>“the capabilities, measures and activities of the State to pursue or advance – (a) any threat; (b) any potential threat; (c) any opportunity; (d) any potential opportunity; or (e) the security of the Republic and its people, in or outside the Republic by section 198 of the Constitution”</p> <p>The existing definition of “national security” is expanded to include “opportunity or potential opportunity”.</p>	<p>National Security</p> <p>“the protection of the Republic's interests, citizens, institutions, and sovereignty from internal and external threats, as governed by the principles set out in section 198 of the Constitution”.</p>	<p>Proposal supported</p>
31.	<p>Opportunity or Potential Opportunity</p> <p>“Such capability measure or activity employed to pursue and advance national security by section 198 of the Constitution”</p>	<p>“opportunity or potential opportunity” is unworkable because it is ambiguous, overbroad, subjective, and circular. This makes the definition open to abuse which could result in the unreasonable and unjustifiable limitation of various fundamental rights.</p> <p>The inclusion of “opportunity or potential opportunity” makes the definition of “national security” unconstitutional and open to abuse – which is arbitrary and contrary to the rule of law and could result in the</p>	<p>The SSA supports the definition in the Bill and proposes the deletion of the words “ potential opportunity” and potential threat with the understanding that intelligence should forewarn and anticipate threats.</p>

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		<p>unreasonable and unjustifiable limitation of various fundamental rights.</p> <p>Delete the definition of “opportunity or potential opportunity” from the Bill.</p>	
32.	<p>Person or Institution of National Security Interest “any person or institution, identified by the Agency in the form and manner prescribed, that conducts himself/herself or 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”</p> <p>The new definition of “person or institution of a national security interest” is overbroad. It includes conduct and engagement in activities inconsistent with section 198 of the Constitution. This means religious organisations (and their leaders, employees and members) can be considered of national security interest because they affect and reflect South Africans’ resolve to seek a better life.</p>	<p>“any person or institution suspected of espionage”.</p>	<p>The Agency supports the proposal to narrow the definition by excluding the part dealing with section 198 of the Constitution and retaining the part dealing with “ Threats to National Security”</p>

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33.	<p>Threat to National Security</p> <p>The expanded definition of “threat to national security” includes “subversion and undue influence by hostile interests on government processes, policies and the sovereignty of the State and its organs”.</p> <p>The definition is so wide that it could potentially include persons and institutions who oppose government policies, regulations and draft legislation (Bills) – especially since it does not expressly exclude and protect “lawful political activity, advocacy, protest or dissent”.</p> <p>Religious institutions (and their leaders, employees and members) and other members of society can engage in political activity, advocacy, protest or dissent that is lawful and that is their constitutional right. Thus, it is in the interest of our constitutional democracy that such activities be excluded from the Bill.</p> <p>The overbroad definition will enable the State to gather intelligence on anyone it deems a “threat to national security” including religious institutions, civil society, activists, concerned citizens, and journalists without ever telling</p>	<p>The Bill does not define “threat”.</p> <p>Insert definition and define as “impending danger of serious harm to the Republic as one, sovereign, democratic state founded on the values set out in section 1 of the Constitution”.</p>	<p>The agency submits that the word “Threat” is used in the context of “Threat to National Security” which is defined in this Bill.</p>

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	them.		
34.	<p>Security Competence Test</p> <p>“administering a vetting investigation to determine the security competence of a person or institution and if such person or institution is suitable to access classified information or critical infrastructure of the State or is viewed as vulnerable to blackmail, undue influence or manipulation or security compromise or is a person or institution of a national security interest in terms of Section 4(2)(a)(i)”</p> <p>The disjunctive reading of the new definition of “security competence test” makes the definition overbroad. Almost any person is vulnerable to blackmail, undue influence and manipulation. However, that does not mean that they are a threat to national security and that the State should be able to perform a security competency test on them. That would be irrational.</p> <p>Security competence tests should be limited to only those individuals with access to classified information and critical infrastructure of the State.</p>	<p>“administering a vetting investigation to determine the security competence of a person to determine whether such person is suitable to access classified information or critical infrastructure of the State. Such vetting investigation should consider whether the person is a security compromise because they are seen as vulnerable to blackmail, undue influence or manipulation”.</p>	<p>SSA support this proposal. The Bill should make reference to security competence assessment</p>

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DEFINITIONS			
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35.	Domestic Intelligence “intelligence on any internal threat or opportunity or potential opportunity or threat or potential threat to national security”	“intelligence on any internal threat to national security”.	SSA proposes to use the definition in the 1994 National Strategic Intelligence Act which reads “domestic intelligence means intelligence on any internal threat or potential threat or opportunity to national security”
36.	Foreign Intelligence “intelligence on any external threat or opportunity or potential opportunity or threat or potential threat to national security”	“intelligence on any external threat to national security”.	“Foreign intelligence means intelligence on any external threat or potential threat to the national interests of the Republic and its people, and intelligence regarding opportunities relevant to the protection and promotion of such national interests irrespective of whether or not it can be used in the formulation of foreign policy of the Republic”.
37.	Intelligence Gathering “the acquiring and processing of relevant and reliable information into intelligence products related to any domestic or foreign opportunity or potential opportunity or threat or potential threat to national security or threats to the advancement or protection of national security”	“the acquiring and processing of relevant and reliable information into intelligence products related to any domestic or foreign threats to national security”.	The Agency supports the definition in the Bill (GILAB, 2023)

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PROVISIONS IN THE BILL			
38.	(v) impede and apprehend members suspected of contravention of this Act and related regulations and hand them to the relevant law enforcement agencies.	Remove this provision	The Agency proposes the removal of the word “apprehend” and replacing it with the words “impede and neutralize” and this proposal is consistent with definition of Counter-Intelligence in the Act.
39.	Clause 2(b) amends section 2(b) of the Act to expand the functions of the South African Intelligence Agency to include “(a) be to fulfil national counter-intelligence responsibilities and for this purpose to conduct and coordinate counter- intelligence and to gather, correlate, evaluate, analyse information regarding counterintelligence and domestic intelligence to – (xi) conduct security competence tests on categories of persons or institutions referred to in section 2A of the Act to issue or decline to issue a security clearance certificate”.	Amend to clause 2(b) to read: “Conduct security competence test on categories of applicants and employees of organs of the State and Departments of State to issue or decline to issue a security clearance certificate”.	(xi) conduct security competence assessments on categories of persons or institutions referred to in section 2A of the Act in order to issue or decline a security clearance certificate or to detect threats to National Security”.
40.	Clause 3(a) amends section 2A of the Act to read: “(1) The relevant members of the National Intelligence Structures must conduct a vetting investigation in the prescribed manner to determine the security competence of a	Amend to clause 3(b) – a reference to section 4(2)(a)(i) – to read: “(b) is seen as a threat or potential threat to the national security of the Republic.”	The Agency proposes that the definition of security vetting be broadened to include “or to identify and detect threats to National Security”.

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	person, if such a person – (a) falls within a prescribed category of persons or institutions who must have a security clearance – (iv) if a person or institution of national security interest in terms of Section 4(2)(a)(i) of the Act”.		
41.	Bulk interception	<ul style="list-style-type: none"> • safeguard the independence of the specially designated judge issuing interception warrants (for instance, by having such a judge appointed by the judiciary instead of the minister); compensate for the fact that one cannot defend oneself when state intelligence agencies apply for a surveillance warrant, since that warrant is sought in secret; • create special protections when the surveillance subject is a lawyer or a journalist (two professions where confidentiality is key to upholding democracy); • better regulate the storage and deletion of the intercepted communications and data; and 	<p>The bulk interception function: In the initial presentation bulk interception was conflated with targeted/legal interception.</p> <ul style="list-style-type: none"> • Is going to be limited, exclusively, to foreign jurisdiction; • The IGI will conduct continuous oversight and provide assurance to Minister and the JSCI that bulk interception activities are not directed at individuals or institutions in RSA and that activities are in compliance with the applicable laws and directives. • The Minister will introduce

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		<p>compel intelligence services to notify all surveillance targets – after the fact – that they were</p> <ul style="list-style-type: none"> intercepted on (as long as that notification doesn't jeopardise any ongoing investigation) 	<p>bill to address with Interception and Surveillance of Communications in South Africa.</p>
42.	<p>“person or institution of national security interest s198 of the Constitution: vague concepts and open to abuse. “threat to national security”: fails to exclude: lawful political activity, advocacy, protest or dissent. Thus is overbroad, open to abuse</p>	<p>Amend the definition to read: “any person or institution suspected of espionage” The Bill defines “espionage” as “the unlawful and intentional communication, delivery, or making available of classified information directly or indirectly benefit a foreign state, person or institution.”</p>	<p>The Agency proposes the following definition in this regard: “any person or institution, identified by the Agency in the form and manner prescribed, that engages in activities that are defined as a threat to national security in terms of this Act”</p>
43.	<p>“national security” unworkable and open to abuse due to circularity. no parameters Arbitrary, irrational i.e. failure to comply with rule of law, failure of s36 justification analysis</p>	<p>Delete “opportunity or potential opportunity” from Bill entirely. 2. Amend the definition of “national security” to read: “the protection of the Republic's interests, citizens, institutions, and sovereignty from internal and external threats, as governed by the principles set out in section 198 of the Constitution”</p>	<p>Refer to paragraph'.....above</p>

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44.	<p>opportunity or potential opportunity”</p> <ul style="list-style-type: none"> “potential” threat or opportunity is redundant no parameters Arbitrary, irrational i.e. failure to comply with rule of law, failure of s36 justification analysis 		Refer above
45.	“Domestic intelligence”	Relies on the definition of: “threat or opportunity or potential opportunity or threat or potential threat to national security”.	Refer above
46.	“Foreign intelligence”		
47.	“Intelligence gathering”		
48.	“national security intelligence”	Relies on the definition of: “threat or opportunity or potential opportunity or threat or potential threat to national security”.	Refer above
49.	“Security competency test”	Disjunctive reading, resulting in	Refer above

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		clause failure to achieve its purpose, resulting in an arbitrary infringement of the affected constitutional rights – contrary to rule of law and section 36.	
50.	Clause 2(b) expands the functions of the South African Intelligence Agency to include: “(a) be to fulfill national counter- intelligence responsibilities and for this purpose to conduct and coordinate counterintelligence and to gather, correlate, evaluate, analyse information regarding counterintelligence and domestic intelligence in order to—(xi) conduct security competence test on categories of persons or institutions referred to in the section 2A of the Act to issue or decline to issue a security clearance certificate”	Clause 3(a) amends section 2A of the Act referred to in clause 2(b), to read: “(1) The relevant members of the National Intelligence Structures must conduct a vetting investigation in the prescribed manner to determine the security competence of a person, if such a person— (a) falls within a prescribed category of persons or institutions who must have a security clearance— (iv) if a person or the institution is of national security interest in terms of Section 4(2)(a)(i) of the Act”.	Refer above