



21 November 2011

Hon Mr K Motlanthe
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Dear Deputy President Motlanthe

The Protection of State Information Bill: Parliamentary Process

We refer to the above Bill which is currently within the Parliamentary process.

As you are aware, the process was halted in late September by the ANC within Parliament in order to facilitate a broader consultation process.

Regrettably, that public consultation process seemed flawed from the start. It was, at least initially, to be limited to the ANC's own constituencies and was not part of a Parliamentary process. Ordinarily, Parliament, as an institution would call for further hearings and accept submissions from the public once more. This did not happen. On the several occasions when the 'Right to Know' campaign (r2k), of which Idasa is a member, requested details regarding the ANC's 'public participation' process, we were unable to either access information or to make oral or written submissions. At all times it was also unclear how the submissions which the ANC would receive might be able to be filtered back to Parliament for all MPs (not only the ANC MPs) to consider, given that the Ad Hoc Committee which processed this Bill then no longer existed.

The r2k campaign wrote to the Speaker of Parliament raising questions relating to what we considered to be a flawed Parliamentary process but no satisfactory response was forthcoming from the Parliamentary administration. This is deeply regrettable.

In the *Doctors for Life* and the *Matatiele* cases, our Constitutional Court was very clear about the requirements for public participation processes and what makes them not only legitimate but lawful.

It has now come to our attention that ANC consultations on the Bill were scheduled during the past weekend and some during this week. We are unable to see how these can have any value given that the Minister of State Security has already introduced the Bill and it is due to be voted upon in the National Assembly on Tuesday or Wednesday. The Ad Hoc Committee concluded its business last week, agreeing on its final report to the National Assembly. If the public whom the ANC consults has objections, concerns or proposals, it is not at all clear how these would be filtered through into the Parliamentary process. The only other viable route is a public participation process in the National Council of Provinces (NCOP), which would be unusual but not unprecedented.

There are, we would contend, very serious flaws in the current version of the Bill and we are deeply concerned. We were heartened by your comments two weeks ago which hinted at openness to a compromise on, for instance, a public interest defence over-ride in the Bill. Since then, however, we have seen the ANC in Parliament rushing ahead with a Bill which will surely be the subject of a future Constitutional challenge. The former Minister of Intelligence and others have already pointed out the Bill's shortcomings. Yet, we believe we need to restate our concerns here as follows:

- Harsh prison sentences of up to 25 years, with no protection for whistleblowers except for the most minor offences. Even those who harbour whistleblowers may face prison sentences.
- Anyone who comes into possession of a state secret faces up to 25 years in prison if they do not hand the information to the police or security services.
- Last-minute drafting by the Parliamentary ad hoc committee ensured that the Secrecy Bill would trump the Promotion of Access to Information Act which promotes citizens' right to know.
- The Bill shuts off the state security agencies from any kind of scrutiny or accountability to the public.
- No public interest defence.

We believe that the Bill in its current form will not pass Constitutional muster but, more importantly, that the process since the Bill was withdrawn in late September has, sadly, been marked by bad faith and a lack of due process and proper information.

We therefore write to you, as the Leader of Government Business in Parliament, to ask that the scheduling of this Bill be reconsidered so that there is a proper consultation involving all MPs and not merely the ANC. Last week saw the reconstitution of the Ad Hoc Committee to consider Hon Ambrosini's proposed amendments. Yet this

opportunity to consider public inputs was not utilised. A proper debate did not ensue and there was no feedback from the ANC members on what, in retrospect, was an imminent 'public participation' process which they are apparently co-ordinating. This is most curious, we would submit.

If the NCOP is the next forum for public hearings and consultation, then civil society organizations would be happy to participate. We would be happy to - and will - participate in the 'consultations' scheduled for this week but we are unable to see what benefit they will have given the rushed Parliamentary schedule.

We therefore ask that you intervene to ensure that the participation process is as broad and open as our Constitution envisages, so that Parliament is presented with a Bill which protects what needs to be protected but does not undermine ordinary citizens' right to access information about their lives.

We look forward to your urgent response.

Yours Sincerely,



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Idasa is a member of the Right to Know campaign – www.r2k.org.za

CC Hon M Sisulu MP, Speaker of the National Assembly
Hon C Burgess MP, Chairperson of the Ad Hoc Committee on the Protection of State Information Bill
Hon MJ Mahlangu MP, Chairperson of the National Council of Provinces

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