



COUNCIL
FOR THE ADVANCEMENT OF THE
SOUTH AFRICAN
CONSTITUTION

MEDIA STATEMENT

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President refers Secrecy Bill back to Parliament

The Council for the Advancement of the South African Constitution (CASAC) believes that the Protection of State Information Bill (the Secrecy Bill) needs to be completely overhauled.

President Zuma's referral of the Bill back to Parliament in terms of section 79(1) of the Constitution falls far short of what is required to fix its numerous fundamental problems.

Parliament will be limited to a review of the two clauses that the President has highlighted, clauses 45 and 48. The Rules of Parliament prevent a consideration of any other parts of the Bill. Clause 45 provides some protection against over-zealous government officials classifying information for ulterior purposes (such as concealing corruption). It creates offences for the improper classification of information. Clause 48 requires the written authority of the National Director of Public Prosecutions to investigate or prosecute any offence under the Bill that carries a penalty of more than five years imprisonment.

In the absence of a clear articulation of the President's reasons for referring these clauses in particular, the question arises as to whether it is the intention of the President that Parliament should weaken the limited protections offered by these clauses. Even if the intention is to strengthen these clauses, tinkering with them will not render the Bill constitutionally compliant.

CASAC Chairman Siphon Pityana says:

"The Bill must be scrapped in its entirety because it is fatally flawed. The process must be started afresh to develop a piece of legislation that legitimately protects state secrets, without unnecessarily infringe on rights of access to information that are protected by the Constitution."

The real problems with the Bill include its broad definition of national security, inadequate protection for whistle-blowers, the ability to delegate authority to classify information to junior officials, its failure to incorporate a proper public interest defence and its incompatibility with the Promotion of Access to Information Act (PAIA). The Government has a right and a duty to

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effectively classify state information to protect our national security, but it must be done in line with the constitutional principles of government that is accountable, responsive and open.

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