

Key Points Act used to undermine accountability

WHEN the Minister of Public Works, Thulas Nxesi, sought to withhold information to the public about his department's expenditure of over R200m on renovations to the President's private residence, he reached for the National Key Points Act.

Similarly, when the chair of the Parliamentary portfolio committee on correctional services, Vincent Smith, sought to justify the destruction of photographs of warders beating a prisoner, who later died, he too resorted to the National Key Points Act. He argued that the photographers who had captured the scene on film had committed a crime by taking a photograph at a "national key point".

The Correctional Services officials, he said, were merely doing their job of enforcing the act. The invocation of the National Key Points Act by members of Parliament and public officials to justify the unjustifiable is not only a sad twist of history, but leads us down a rabbit hole of absurdities.

The National Key Points Act was passed in 1980 to give the apartheid minister of defence very broad authority to "declare" any place in South Africa a national key point "if it appears to the minister at any time that any place or

Analysis

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area is so important that its loss, damage, disruption or immobilisation may prejudice the republic, or whenever he considers it necessary or expedient for the safety of the republic or in the national interest".

The act not only allowed the minister of defence to decide which locations should be declared key points (whether state or privately owned), but also to enforce security measures at such places (whether at the cost of the state or the private owner) and to allow for the appropriation of funds into a special account for securing national key points.

The act is vague about what constitutes a declaration of a national key point – requiring only that the minister of defence inform the owner of a national key point in writing that their property or properties or facilities have been declared a key point. There is no requirement for the minister to inform Parliament or the public about the declaration of a key point,

nor does the minister have to account for his or her decision to make any place a "key point".

Smith, alleged that taking photographs of national key points was a criminal offence – yet there is no reference in the act to this being an offence – and there exist no regulations to the act in which this may have been specified. If there are such regulations, they are not publicly available or accessible.

It is for this reason that constitutional law expert Prof Pierre de Vos has argued that the National Key Points Act "is almost certainly unconstitutional, given that it creates criminal offences relating to key points, but we have no idea which properties have been declared key points and therefore are unable to comply with the law because we are not allowed to know what the law has prohibited. On this ground alone, these provisions cannot stand."

Yet it is precisely the fact that key points are unknowable that makes it the perfect excuse for otherwise unjustifiable acts.

It is worth remembering that concern about the act also arose in 2006 when it was invoked to declare harbours national key points. At the time, Jane Duncan, director of the Freedom of

Expression Institute, pointed out to the media that the Promotion of Access to Information Act trumped the National Key Points Act.

This was confirmed by the Safety and Security spokesperson at the time, Trevor Bloem, who was quoted by Independent Online as saying: "The National Key Points Act does not deny access to information. The Promotion of Access to Information Act does not exclude national key points."

It is therefore painfully ironic that politicians are relying on this law now, when in 1990 the ANC's chief representative to the US, Lindiwe Mabuza, identified the law as having been used by the apartheid government to "put down black demonstrators". It is troubling that the act has not been repealed or revised and is now being used to shield politicians and state officials who may be involved in corruption and other crimes.

Indeed, it is shameful that our current public representatives and officials of government are, like their apartheid predecessors, using this legislation to undermine transparency and accountability.

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