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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

**CHAIRPERSON'S DIRECTIVE IN TERMS OF REGULATION 10(6) OF THE
REGULATIONS OF THE COMMISSION**

TO : Mr Charles Nqakula

**ADDRESS : 8 Adolf Goertz Street
Bruma
Johannesburg 2026**

TEL : 066 170 3291

EMAIL : charlie42.cdk@gmail.com

By virtue of the powers vested in me in my capacity as Chairperson of the abovementioned Commission by Regulation 10(6)* of the Regulations of the Judicial Commission of Inquiry

* Regulation 10(6) of the Regulations of the Commission reads: "For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person."

into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, I hereby direct you, Mr Charles Nqakula, to:

1. deliver by 7 **June 2021** to the Secretary of the Commission at the address given above an affidavit or affirmed declaration in which:
 - 1.1 you state whether you were a member of the Joint Standing Committee on Intelligence (JSCI) established by the Intelligence Services Oversight Act 40 of 1994 (the Oversight Act) and, if so, the precise period during which you were a member thereof;
 - 1.2 you state whether you became chairperson of the JSCI and, if so, the precise period during which you served as chairperson;
 - 1.3 you identify and annex a full copy of each and every annual report furnished by the JSCI to Parliament, as required by section 6 of the Oversight Act, during the period that you were a member of the JSCI (“the relevant period”) and state the date on which such reports were submitted to Parliament;
 - 1.4 if there were years during the relevant period in which no such report was furnished to Parliament, you explain, in detail, why no such report was furnished;
 - 1.5 you state whether or not you and/or the JSCI received (in a redacted or unredacted form) the following certificates/ reports from the IGI:
 - 1.5.1 any or all of the documents furnished herewith (in redacted form, the said documents in this redacted form having been declassified by the IGI) marked “SD20”

- 1.5.2 any or all of the documents furnished herewith (in redacted form, the said documents in this redacted form having been declassified by the IGI) marked “SD21”
- 1.5.3 any or all of the documents furnished herewith (in redacted form, the said documents in this redacted form having been declassified by the IGI) marked “SD22”;
- 1.6 if the answer to any of 1.5.1 to 1.5.3 above is in the affirmative, you set out in relation to each such document:
- 1.6.1 what steps, if any, you and/or the JSCI took (or recommended to Parliament that it should take) to ensure
- (a) that the concerns raised by the IGI were satisfactorily addressed
 - (b) that any conduct reported on therein which was incompatible with, or subversive of, the Constitution and/or the Oversight Act was appropriately addressed and remedied, so as to prevent or discourage a recurrence thereof
 - (c) that any conduct reported on therein which was criminal, or conduct reasonably suspected of being criminal, was referred to the appropriate authorities for the prosecution of any person reasonably suspected of being guilty of such conduct
- 1.6.2 to the extent that the steps referred to in para 1.6.1 above were not taken or recommended, or were not adequately taken or

recommended, you state why such steps were not taken or recommended or were not adequately taken or recommended

1.7 you confirm or deny that during the relevant period the JSCI received a report or reports, whether from the Inspector General of Intelligence (IGI) or from any other source, on an investigation or investigations into the Principal Agent Network (PAN) and, if you admit that the IGI did receive such report or reports, you state the following:

1.7.1 from whom such report or reports were received

1.7.2 when such report or reports were received

1.7.3 whether such reports disclosed criminal conduct, or conduct reasonably suspected of being criminal, on the part of any person

1.7.4 if so:

(a) whether the JSCI revealed to Parliament (or to any other entity or person) that such information had come to its attention (and if not, why not)

(b) what steps, if any, the JSCI took (or recommended to Parliament that it should take) to ensure that such criminal conduct was referred to the appropriate authorities for the prosecution of any person reasonably suspected of being guilty of such conduct

(c) if no such steps were taken, or recommended why they were not taken or recommended

- 1.8 you state whether you admit or deny that during the relevant period the IGI, or any other person or entity, brought any or all of the following to the attention of the JSCI and/or of yourself in your capacity as chairperson of the JSCI:
- 1.8.1 that Mr Arthur Fraser (Mr Fraser) was believed to be implicated in material irregularities and/or unlawful conduct in relation to the PAN
 - 1.8.2 that Mr Fraser had resigned after the above had come to light and that the investigation into irregularities and/or unlawful conduct in relation to the PAN had thereafter dissipated or been halted
 - 1.8.3 that Mr Fraser had subsequently been appointed as director general of the SSA, without his name having been cleared in respect of the allegations above
 - 1.8.4 that the SSA (including but not limited to Mr Fraser, as its director general) was refusing to co-operate with and/or to subject itself to oversight by the IGI and thereby (i) undermining the office of the IGI and consequently (ii) undermining the Constitution
 - 1.8.5 that there was a prevalence within the State Security Agency (SSA) of fraud and theft cases involving large sums of cash
 - 1.8.6 that financial controls within the SSA were avoided or ignored
 - 1.8.7 that secrecy and classification were being used as a cloak to hide criminality

- 1.8.8 that the SSA had become politically motivated, contrary to the requirement under the Constitution (see s 199(7)) that the security services should not prejudice any political interest that is legitimate or further in a partisan manner any interest of a political party.
- 1.9 if the answer to any of the questions in para 1.8 above is in the affirmative, you state in relation to each issue:
- 1.9.1 what steps, if any, you and/or the JSCI took or recommended to Parliament that it should take to address such issue
- 1.9.2 if no such steps were taken, or recommended or if such steps as were taken or recommended were not adequate and effective, why such steps were not taken or recommended or why such steps as were taken or recommended were not adequate and effective.
- 1.10 you state whether in your view the annual report by the JSCI for the financial year ending 31 March 2017 (a copy of which is annexed hereto) adequately addresses the issues reported to the JSCI in the IGI's report in relation to that period; and if you accept that it failed to do so adequately and effectively, you explain why it failed to do so
- 1.11 if you contend that the JSCI did furnish an annual report for the financial year ending 31 March 2018, you state whether in your view that annual report adequately addressed the issues reported to the JSCI in the IGI's report in relation to that period; and if you accept that it failed to do so adequately and effectively, you explain why it failed to do so

1.12 if you contend that the JSCI did furnish an annual report for the financial year ending 31 March 2019, you state whether in your view that annual report adequately and effectively addressed the issues reported to the JSCI in the IGI's report in relation to that period; and if you accept that it failed to do so adequately and effectively, you explain why it failed to do so

1.13 you state whether you admit or deny (and, to the extent that you wish to do so, you comment further on) the following allegations made by Mr S Dintwe, the IGI, in his testimony to the Commission:

1.13.1 that the JSCI did not take any action in response to reports submitted by the IGI (day 378 pages 352-3)

1.13.2 that the IGI's recommendations to the JSCI were "*just being ignored willy nilly*" (day 393 page 42)

1.13.3 that the observation by the Chairperson of the Commission, based on his testimony, that "*if anything has been done, it seems not to have been effective*" was his submission (day 393 page 56)

1.13.4 that no member of the JSCI could claim ignorance of problems raised in his testimony, summarised by the evidence leader as "*the impropriety, the illegalities, the loss of monies, the looting that you have spoken about, the improper use of monies in factional battles*" all of which were in his reports (day 393 page 151)

1.13.5 that recommendations made and reports produced by the Office of the IGI are largely ignored by the Ministry and Director Generals and equally by the JSCI (day 393 pages 102-3)

1.14 You admit or deny (and, to the extent that you wish to do so, you comment further on) the following observations made in the Report of the High Level Review Panel on the SSA:

1.14.1 *“...The Panel did have sight of a number of IGI reports on abuses, such as the report on the Principal Agent Network and others which did indeed identify problems and recommended corrective action. But as far as the Panel could ascertain, no action of consequence management took place in response to the IGI’s reports.” (p 94)*

1.14.2 *“...However, it did seem to the Panel that the JSC played little role in recent years in curbing the infractions of the SSA and that no effective oversight on its part was carried out. In fact it would seem that the Committee, with an ANC majority, was itself affected by the politicisation and factionalisation seen in the ANC, in Parliament, in the intelligence community and in the other arms of government.” (p 96)*

1.14.3 *“ j) The JSCI over the past few years has been largely ineffective and impacted by the factionalism of the ANC.*

k) The Committee is divided and unable to articulate a coherent collective response on the state of intelligence in the country.

l) The absence of/changes to the Chair of the Committee coupled with a lack of institutional memory has contributed to the dysfunctionality of the JSCI.” (p 97)

2. If you would like assistance from the Commission in order to prepare the affidavit or affirmed declaration, you must, within two days (excluding weekends and public holidays) of receipt of this directive, contact, or communicate with, the Secretary of the Commission and indicate that you would like such assistance in which case the Commission will provide someone to assist you with the preparation of the affidavit or affirmed declaration. In such a case you will not pay anything for such assistance. In this regard, please contact M Alec Freund SC (alecf@commissionsc.org.za).
3. If, in order to prepare the affidavit or affirmed declaration, you do not need any assistance from the Commission, you must, with or without the assistance of a lawyer of your own choice, prepare the affidavit or affirmed declaration and have it delivered to the Secretary of the Commission on or before the date given above for the delivery of the affidavit. If you make use of a lawyer of your own choice to assist you to prepare such affidavit or affirmed declaration, the Commission will not be responsible for the payment of your lawyer's fees or costs.
4. This directive is issued for the purpose of pursuing the investigation of the Commission.
5. Your attention is drawn to Regulations 8(2), 11(3)(a) and (b) and 12(2)(c), (d) and (e) of the Regulations of the Commission, as amended. Regulation 8(2) reads:

“8 (1) ...

- (2) A self-incriminating answer or a statement given by a witness before the Commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947).”

Regulation 11(3)(a) and (b) reads:

- “11 (1) ...
- (2) ...
- (3) No person shall without the written permission of the Chairperson—
- (a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or
 - (b) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson.”

Regulation 12(2)(c), (d) and (e) reads:

- “12 (1) ...
- (2) Any person who
- (a) ...
 - (b) ...
 - (c) . . . wilfully hinders, resists or obstructs the Chairperson or any officer in the exercise of any power contemplated in regulation 10(1) or (2);
 - (d) refuses or fails, without sufficient cause, to submit, within a period fixed by the Chairperson or at all, an affidavit or affirmed declaration pursuant to a directive issued by the Chairperson under regulation 10(6); or
 - (e) contravenes a provision of regulation 11, is guilty of an offence and liable on conviction -
 - (i) in the case of an offence referred to in paragraph (a), (c),

- (d) or (e), to a fine, or to imprisonment for a period not exceeding 12 months; or
- (ii) in the case of an offence referred to in paragraph (b), to a fine, or to imprisonment for a period not exceeding six months.”

SIGNED IN JOHANNESBURG ON THIS 24th DAY OF May 2021.



JUSTICE RMM ZONDO
DEPUTY CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA

and

**CHAIRPERSON: JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS
OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
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