

AN AFFIDAVIT BY CHARLES NQAKULA IN RESPONSE TO THE CHAIRPERSON'S
DIRECTIVE IN TERMS OF REGULATION 10(6) OF THE REGULATIONS OF THE
JUDICIAL COMMISSION OF INQUIRY INTO STATE CAPTURE, CORRUPTION AND
FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

I, the undersigned,

CHARLES NQAKULA

do hereby make an oath and state that:

1. I am an adult male residing at 8 Adolf Goertz Street, Bruma, Johannesburg. I am duly competent to make this affidavit.
2. Unless the context otherwise indicates, the contents of this affidavit fall within my personal knowledge and they are both true and correct.
3. I was served with a Chairperson's Directive issued in terms of regulation 10(6) of the Regulations of the Commission, the Judicial Commission of Inquiry Into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State ("the



7. President Mbeki appointed me as his Parliamentary Councillor, a position which is akin to an advisor. When the Deputy Minister of Justice, Mr Joe Nhlanhla, whose responsibility was Intelligence, became seriously ill, President Mbeki appointed Miss Lindiwe Sisulu on 24 January 2001, as a replacement for Mr Nhlanhla, and appointed me to the position of Deputy Minister of Home Affairs, a position previously held by Miss Sisulu.
8. On 7 May 2002, I became Minister for Safety and Security following the passing on of Mr Steve Tshwete, the former Minister in that portfolio. I served in that position until 25 September 2008, when I was appointed by the new president, Mr Kgalema Mollanthe, as Minister of Defence.
9. After the 2009 General Election, I left Parliament to serve in Mr Jacob Zuma's office as his Political Advisor until 24 September 2012, when Mr Zuma appointed me as South Africa's High Commissioner (Ambassador) to Mozambique.
10. During or about February 2014, the African National Congress ("ANC") redeployed me back to Parliament. On 14 August 2014 I became a member of the Joint Standing Committee on Intelligence (JSCI). The Chairperson of the JSCI at the time was Ms Connie September.



11. The appointment of the Chairperson of the JSCI is provided for in section 2 of the Intelligence Services Oversight Act No 40 of 1994 ("the Act"). The person appointed to chair the Committee, as section 2(4) dictates, cannot be "a member appointed to the JSCI."
12. The ANC, as the majority party in Parliament, has always been able to get one of its members elected to chair the committee. If the member was already a member of the JSCI, they had to resign from the Committee and accept the nomination.
13. Another important dictate regarding the membership of the JSCI, is that no member of Parliament can be appointed to the Committee unless "the National Intelligence Agency has issued a security clearance in the prescribed manner in respect of that member, as provided in terms of Section 2(2)(b) of the Act.
14. Members of Parliament ("MP"), including those who are appointed by the President to serve as Cabinet Ministers and Deputies, do not require to be vetted as a condition to be MP's. Although members of Parliament take an oath of office for them to conduct their Parliamentary functions, they are still enjoined in terms of the relevant legislation to take a separate oath of office to be members of the JSCI. Those measures talk to the secrecy and confidentiality that attend to the category of the work of the JSCI.

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15. Section 5 of the Act provides that:
- (1) *"The Committee shall conduct its function in a manner consistent with the protection of national security."*
- (2) *"No person shall disclose any intelligence, information or document of which is restricted by law and which is obtained by that person in the performance of his or her functions in terms of the Act."*
16. The exceptions contained in sub-section (2)(a), (b), (c) and (d) all relate to the Act. Section 2(5)(b)(ii) provides that "a member of the Committee shall be ... replaced ... if he or she has conducted himself or herself in a manner which constitutes a threat to national security ..."
17. The exclusivity of the Committee is defined at Section 2(7), where it is stipulated that "no person other than members of the Committee ... may be present during the proceedings of the Committee, except with the permission of the Committee."
18. My sense, during Ms September's tenure and mine, was that there was a wonderful sense of camaraderie among the members of the committee. The spirit of rapport among the members was palpable. Every member was given by Ms September, and I subsequently, the right and space to contribute, without hindrance, to all matters on the

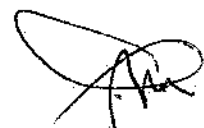
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table. Decisions were arrived at through a process of consensus rather than by way of an imposition.

19. Pursuant to receipt of the Commission's Directive, my attorneys of record wrote a letter to the Secretary of Parliament requesting certain information and documents, to assist in the compilation of the responses to the questions raised in the directive. The copy of the letter is attached as Annexure "CN1". I was advised by the Secretary that the requested documents are classified and would have to be declassified first before they can be made available. The Secretary further advised that the process to declassify the documents, should the declassification be authorised, is laborious and would take long to complete.

20. Having set out the background information above, I now proceed to respond to the questions raised in the directive.

Ad paragraph 1.1

21. I was appointed as a member of the JSCI on 14 August 2014.

Ad paragraph 1.2

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22. I was appointed as Chairperson of the JSCI on 14 September 2016. I continued to serve as the JSCI's Chairperson until my departure from Parliament on 15 June 2018. A simple arithmetical calculation would reveal that my tenure as Chairperson of the JSCI was for a period of about 21 months.

Ad paragraph 1.3 – 1.4

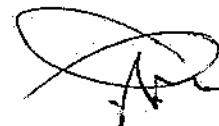
23. During my tenure as Chairperson of the JSCI, two annual reports for 2017 and 2018, were tabled in Parliament as required by Section 6 of the Act. I am unable to recall the dates on which the two reports were tabled. The copies of the 2017 and 2018 annual reports are attached as Annexures "CN2" and "CN3", respectively.

Ad paragraph 1.5 (including 1.5.1 – 1.5.3)

24. The Inspector General of Intelligence ("IG") has submitted to the JSCI copies of his Certification for Defence Intelligence, marked "SD20"; State Security Agency, marked "SD21" and Crime Intelligence, marked "SD22".

Ad paragraph 1.6 (including 1.6.1 – 1.6.2)

25. Pursuant to receiving the IGI's certification marked "SD20", "SD21" and "SD22", the JSCI advised the IG of the correct protocol of

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handling the certification, in terms of the injunctions of Sub-section (7)(d), (e) and (f), where he is enjoined to "submit the certificates ... to the relevant Ministers responsible for the State Security Agency, the Department of Defence and the South African Police Service ... (and) to the Committee ..."

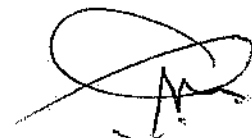
26. The IG had left out the Ministers in his mailing list. That caused a lot of friction between him and the Ministers.

27. The provisions of Section 7(11) dealing with the functions of the IG are quoted in parts as follows:

(a) Each Head of a Service shall, in respect of every period of 12 months or such lesser period as is specified by the Minister responsible for that Service, submit to that Minister, a report on the activities of that Service during that period, and shall cause a copy of such report to be submitted to the Inspector General.

(b) (i) Each Head of a Service shall report to the Inspector-General regarding any unlawful intelligence activity or significant intelligence failure of that Service and any corrective action that has been taken or is intended to be taken in connection with such activity or failure.

(ii) Each Head of a Service shall submit the report referred to in subparagraph (i) to the Inspector General within a reasonable period

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after such unlawful intelligence activity or significant intelligence failure came to his or her attention.

(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 Inspector General -

(i) is unlawful or contravenes any directions issued by the Minister responsible for that Service; or

(ii) involves an unreasonable or unnecessary exercise by that Service of any of its powers.

(d) As soon as practicable after receiving a report referred to in paragraph (a) and a certificate of the Inspector General referred to in paragraph (c), the Minister responsible for the Service in question shall, subject to Section 4(2), cause the report and certificate to be transmitted to the Committee.

28. It was on this basis that the JSCI directed the IG to deal with the certification as provided for in Section 7(11) of the Act.

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29. To the best of my recollection, the IG did not revert to the JSCI regarding this issue until my departure from Parliament on 15 June 2018.

Ad paragraph 1.7

30. I confirm that the JSCI received the report from the Principal Agent Network ("PAN") and that the Committee engaged with the report at one or more of its meetings.

Ad paragraph 1.7.1 – 1.9.2

31. The information and the details requested in these paragraphs is classified as confidential and thus cannot be divulged. I attach as Annexure "CN4" a copy of the letter dated 2 June 2021, received from the Parliamentary Legal Advisor on the JSCI, pursuant to a request for information, which my attorneys had requested.
32. In addition, as stated elsewhere in this affidavit, I am precluded in terms of the provision of Section 5(1) and (2) of the Act, from providing details of the work of the Committee.

Ad paragraph 1.10 – 1.11

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33. The annual report submitted to Parliament does not provide details of the work that relates to confidentiality. This is in keeping with the dictates of section 5(1), which provides that *"The Committee shall conduct its functions in a manner consistent with the protection of national security"*. An annual report once tabled in Parliament, becomes a public document. Consequently, if it were to contain full details of the work of the Committee, this would be in contravention of the provisions of Section 5. Furthermore, Section 6(3) provides that *"Nothing shall be included in any report of the Committee, the inclusion of which will be more harmful to the national security than its exclusion will be to the national interest"*.

Ad paragraph 1.12

34. I have pointed out elsewhere in this affidavit that my tenure as Chairperson of the JSCI ended on 15 June 2018; thus, I am unable to provide any information regarding the activities of the Committee beyond the period I spent at the JSCI.

Ad paragraph 1.13 – 1.13.5

35. The JSCI made a case for the reconstruction of the state security agencies given the many weaknesses within the entity which the JSCI became aware of (Page 12 of the Annual Report of the JSCI dated 12 December 2018).

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36. The JSCI made meaningful recommendations as can be gleaned from paragraph 9 of its report dated Wednesday, 12 December 2018. Therefore it cannot be correct that the JSCI ignored the recommendations of the IG.

37. To the extent that the details of the inner workings of the Committee could not be published in the annual report, I am not in a position to do so in view of the provisions of section 5(1) and (2) of the Act.

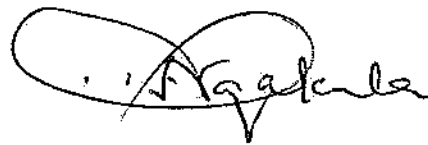
Ad paragraph 1.14 – 1.14.3

38. The recommendations of the High Level Review Panel on the SSA was informed by the findings of the JSCI.

39. In terms of Section (2)(a) of the Act, the Committee shall consist of 15 members of Parliament appointed on the basis of proportional representation. In a report dated 12 December 2018 on page 6 thereof, the ANC had 9 members while the opposition parties had 7. It is simply disingenuous and opportunistic to blame the ANC and the purported factionalism within the JSCI, as contributing to unsubstantiated grounds for its purported ineffectiveness. Moreover, as I have stated elsewhere in the affidavit, I can only account for the 21 months period in which I was the chairperson of the JSCI.

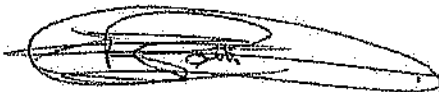
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40. The suggestion that the Committee is divided and unable to articulate a coherent and collective response on the state of intelligence in the country is unfortunate for its lack of appreciation of the law.
41. The JSCI made meaningful contributions to the President and Parliament.



CHARLES NQAKULA

SIGNED before me at Moscow on this 28 the day of JUNE 2021, the deponent having sworn that the contents of this affidavit are both true and correct, acknowledged that the deponent knows and understands the contents of this affidavit, that the deponent has no objection to taking the prescribed oath and that the deponent considers the prescribed oath to be binding on the deponent's conscience.



COMMISSIONER OF OATHS



CAPACITY: FIRST SECRETARY, ADMINISTRATION

ADDRESS: SOUTH AFRICAN EMBASSY.
129 GRANATNY PEREULOK.
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RUSSIAN FEDERATION.