

Constitutional Litigation Unit

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Your Ref:

Our Ref: MKekana17/13/12

13 December 2017

For the attention of:

Dr Setlhomamaru Dintwe Inspector General of Intelligence

1 Lois Road
Menlyn
Bogare Building 1
Pretoria

Per Email:

**INSPECTOR GENERAL OF INTELLIGENCE'S ROLE REGARDING BI AND
MULTILATERAL INTELLIGENCE SHARING AGREEMENTS**

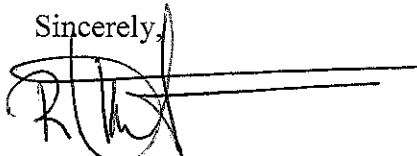
Dear Dr Dintwe,

1. I am writing in the course and scope of my work as an attorney at the Legal Resources Centre, regarding the Inspector General of Intelligence's role in monitoring or processing complaints regarding international intelligence sharing agreements concluded by the South African government.
2. The Legal Resources Centre a non-profit organization and registered law clinic acting in the public interest, with offices in Johannesburg, Cape Town, Durban and Grahamstown. The protection and promotion of the rights to privacy and free expression are part of this mandate, which includes ensuring the intelligence agencies of the state engage in lawful and proportionate secret surveillance of individuals within South Africa.
3. The effective oversight of secret surveillance is among the fundamental guarantees against a government's unlawful interference with the right to privacy. However, there is an alarming lack of effective oversight of secret surveillance in a range of countries around the world.

4. One area of particular inadequacy has been in monitoring bilateral and multilateral intelligence sharing arrangements. Intelligence sharing does not pose a risk *per se* to human rights. But non-transparent, unfettered and unaccountable intelligence sharing threatens the foundations of the human rights legal framework and the rule of law.
5. As you have a statutory role in overseeing surveillance activities of the South African Intelligence Agencies the Legal Resources Centre believes you may be in a position to provide information on the following questions:
 - 5.1 Is the executive or are the intelligence agencies required to inform you about intelligence sharing agreements into which they enter?
 - 5.2 Does your mandate include oversight of the intelligence sharing activities of the intelligence agencies that you oversee?
 - 5.3 Specifically:
 - 5.3.1 Where is this aspect of your mandate articulated?
 - 5.3.2 Do you have the power to evaluate the rules governing intelligence sharing?
 - 5.3.3 Do you have the power to undertake individual or thematic investigations on your own initiative?
 - 5.3.4 Do you have full access to information held by the intelligence services, including information from or related to intelligence sharing?
 - 5.3.5 Do you review decisions by the intelligence agencies to exchange information with partner agencies with poor human rights records?
 - 5.3.6 Can personnel of intelligence agencies disclose to you information evidencing wrongdoing with respect to intelligence sharing?
 - 5.3.7 Can you scrutinise intelligence budgets regarding the allocation and use of financial resources for intelligence sharing, including for joint surveillance infrastructure or for the provision of equipment and/or training?
 - 5.3.8 Can you hire security-cleared experts, including technology experts, to assist you in carrying out your oversight of intelligence sharing activities?
 - 5.3.9 Can you make reports related to your oversight of intelligence sharing activities available to the public?
 - 5.3.10 Do you cooperate with any other bodies to oversee the intelligence sharing activities of your government so as to harmonize policies and standardize the practice?
6. Can you share with us non-confidential work products reflecting any of the above?

7. We would further like to extend an offer to conduct a workshop on oversight of international intelligence with yourself and your staff in early 2018. We thank you for your attention to this matter and look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to be 'Mosima Kekana', with a long horizontal line extending to the right.

LEGAL RESOURCES CENTRE
Per: Mosima Kekana