

**Constitutional Litigation Unit**

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Your Ref:

Our Ref: MKekana171213JCIS

13 December 2017

**For the attention of :**

**Hon Charles Nqakula** Chairperson of the Joint Standing Committee on Intelligence  
PO Box 15  
Cape Town, 8000  
*Per Email:* [cnqakula@parliament.gov.za](mailto:cnqakula@parliament.gov.za)

CC: **Comelita van der Bergh** Secretary to the Chairperson  
PO Box 15  
Cape Town, 8000  
*Per Email:* [cvanderbergh@parliament.gov.za](mailto:cvanderbergh@parliament.gov.za)

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**JOINT STANDING COMMITTEE ON INTELLIGENCE'S ROLE  
REGARDING BI AND MULTILATERAL INTELLIGENCE SHARING  
AGREEMENTS**

Dear Hon Nqakula,

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.

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National Office:  
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Constitutional Litigation Unit:

J Love (National Director), T Wegerif (Deputy National Director), K Reinecke (Director: Finance), EJ Broster  
S Dass(Director), A Andrews, S Kahanovitz, WR Kerfoot, C Mathiso, M Mudarikwa, EL Roos, HJ Smith  
S Samuel (Director), TC Mbhense, A Turpin  
C McConnachie (Director), LK Jolobe, S Sephton  
N Fakir (Director), AF Ashton, LJD Liracher, APN Mehlo, SP Mkhize  
SG Magardie (Director), MJ Bishop, G Bizos SC, C du Toit, NMR Kekana, LK Siyo, ER Webber, WC Wicomb

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 the Joint Standing Committee has a statutory role in overseeing surveillance activities of the South African intelligence agencies the Legal Resources Centre believes you or the Committee 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 the Committee about intelligence sharing agreements into which they enter?
  - 5.2 Does the Committee's 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 the Committee's mandate articulated?
    - 5.3.2 Does the Committee have the power to evaluate the rules governing intelligence sharing?
    - 5.3.3 Does the Committee have the power to undertake individual or thematic investigations on your own initiative?
    - 5.3.4 Does the Committee have full access to information held by the intelligence services, including information from or related to intelligence sharing?
    - 5.3.5 Does the Committee 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 information to the Committee evidencing wrongdoing with respect to intelligence sharing?
    - 5.3.7 Can the Committee 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 the Committee hire security-cleared experts, including technology experts, to assist you in carrying out your oversight of intelligence sharing activities?
    - 5.3.9 Can the Committee make reports related to your oversight of intelligence sharing activities available to the public?
    - 5.3.10 Does the Committee 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 thank you for your attention to this matter and look forward to your response. We would further like to extend an offer to the honourable Committee to conduct a workshop on oversight of intelligence services focusing human rights during the first committee week of 2018.

Sincerely,

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

**LEGAL RESOURCES CENTRE**  
**Per: Mosima Kekana**