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**JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY, POLITICAL INTERFERENCE
AND CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM**

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TO ALL MEDIA & TO WHOM IT MAY CONCERN

09 OCTOBER 2026

Dear Sir/Madam,

**RE: THE JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE, AND CORRUPTION IN THE CRIMINAL
JUSTICE SYSTEM ("THE COMMISSION") – IN CAMERA
APPLICATION OF DR N SIFOLO**

1. We confirm we act on behalf of the Commission of Inquiry.
2. We refer to the above matter and the attached application brought by the evidence leaders in terms of Rule 4.2 of the Rules Governing the Proceedings of the Commission, seeking an order that the evidence of Dr N Sifolo be heard in camera, accompanied by a signed Rule 4 notice.
3. Accordingly, please find attached the application and supporting affidavit of writer hereof. The said application is before the Chairperson and Commissioner's for a ruling and further directives, however same is being brought to your attention to allow you an opportunity to oppose same should you wish.
4. In the interests of openness and fairness, we hereby bring the application to the attention of the media and afford any interested media organisation an opportunity to oppose the relief sought, should

Directors:

Madimpe Mogashoa (Chairperson)
Donald Diale
Mari Wilsnach
Tammy Jantjies
Geraldine Burger
Curwin Pokpas

Consultants:

Samvu Gumede
Ian Petherbridge
Senior Associates:
Yajana Kilawan
Vumile Vundla
Mundia Mbao
Idah Maake

Associates:

Janet Ramokoka
Vongani Nghonyama
Sebushi Lelaka
Debrah Shamuyarira
Kutloello Magoro
Basimane Pooe
Miranda Mtsweni

Lefa Maphopha
Nondumiso Ngcobo
Thabiso Lesufi
Izahn Burger

Chief Operations Officer: Michelle Morgan

Office Managers: Nelisiwe Monashane
Mapule Boikanyo
Dimakatso Molekwa
Tarryn Hendricks

Finance Manager: Karen Greyling

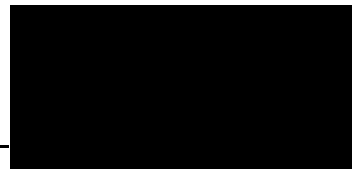
ICT Manager: Clement Tala

Co. Reg.: 2012/007603/21
VAT Reg.: 4640260487

it wish to do so.

5. In the circumstances, should you wish to oppose same, such opposition must be filed within 72 hours and be delivered to the Commission, thus allowing a reply for the Chairperson and Commissioner's to consider and provide a ruling on a date to be determined by the Chairperson.
6. Accordingly, please see attached application, together with founding affidavit and supporting affidavit in support of the said application,
7. We trust the above is in order.

Yours faithfully



Curwin Pokpas

EMAIL: 

**JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY, POLITICAL
INTERFERENCE AND CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM
ARISING FROM THE SPECIFIC ALLEGATIONS MADE PUBLIC BY LIEUTENANT
GENERAL NHLANHLA MKHWANAZI ON 6 JULY 2025**

**NOTICE IN TERMS OF RULE 4 OF THE RULES GOVERNING THE
PROCEEDINGS OF THE COMMISSION**

TAKE NOTICE THAT the Evidence Leaders have brought an application before the Commissioners for an order in the following terms, and in respect of the witness scheduled to appear from **13 October 2026**:

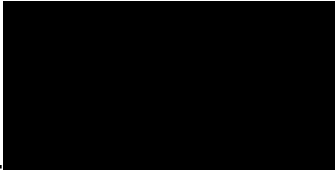
1. Condoning any non-compliance with the Rules of the Commission regarding the timeframes set for making applications of this nature.
2. Directing, in terms of the Rules of the Commission, that the Applicant's leading of evidence of evidence in anticipation of the appearance before the Commission, of Dr N Sifolo, be held *in camera*;
3. That the Chairperson shall specify in the order all other persons who will be permitted to attend the *in camera* proceedings.
4. Directing that the *in camera* proceedings, including any transcript, recording, or documentation, be treated as confidential, and that, subject to paragraph 3 of this order, all persons present during the *in camera* proceedings be prohibited from disclosing any information arising the hearing, subject to the directions of the Chairperson.

5. That such further and/or alternative relief be granted as the Chairperson of the Commission may deem fit.

PLEASE TAKE NOTE THAT the witness will rely on the founding affidavit attached hereto in support of the order sought.

TAKE NOTICE FURTHER THAT, should same be opposed, the media has 72 hours within which to note their opposition to the Commission.

DATED AT PRETORIA ON THIS 09th DAY OF OCTOBER 2026.



DIALÉ MOGASHOA ATTORNEYS
ATTORNEYS FOR COMMISSION
1ST AND 2ND FLOORS
MENLYN CORNER
87 FRIKKIE DE BEER STREET
MENLYN
PRETORIA
EMAIL: 

AND TO: ALL MEDIA

TO: WILLEM DE KLERK ATTORNEYS
ATTORNEYS FOR DAILY MAVERICK AND NEWS24
GREENSIDE 2034

LE VAL NORTH BLOCK
45 JAN SMUTS AVE
WESTCLIFF JOHANNESBURG
TELEPHONE: [REDACTED]
FAX [REDACTED]
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**IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF
CRIMINALITY, POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM
HELD AT PRETORIA**

In the application of:

**THE EVIDENCE LEADERS FOR THE
JUDICIAL COMMISSION OF INQUIRY INTO
ALLEGATIONS OF CRIMINALITY, POLITICAL
INTERFERENCE AND CORRUPTION IN THE CRIMINAL
JUSTICE SYSTEM**

Applicant

RE: EVIDENCE OF DR N SIFOLO TO BE HEARD *IN CAMERA*

**NOTICE OF MOTION
APPLICATION FOR THE EVIDENCE TO BE LED *IN CAMERA***

KINDLY TAKE NOTICE that the Applicant hereby applies to the Chairperson of the Commission, in terms of Rules 4.2 of the Commission's Rules, for an order in the following terms:

1. That the evidence of Dr N Sifolo, insofar as such evidence concerns or requires reference to information and documentation declassified for purposes of the Commission but not for general publication or public dissemination, be heard in camera;

2. That the Chairperson specify the persons who will be permitted to attend the in-camera proceedings;
3. That Dr Sifolo's statement, together with the annexures and documents referred to therein and/or any exhibits, which have been declassified for purposes of the Commission but not for general publication or public dissemination, be treated as confidential and not be published or disseminated, save as may otherwise be directed by the Chairperson;
4. That the transcript and recording of the in-camera proceedings, insofar as they contain or disclose such information, similarly be treated as confidential and not be published or disseminated, save as may otherwise be directed by the Chairperson; and
5. Granting such further and/or alternative relief as the Chairperson may deem appropriate.

TAKE FURTHER NOTICE that that the accompanying affidavit of **CURWIN NICHOLAS POKPAS** will be used in support of this application.

DATED AT CAPE TOWN ON THIS 09TH DAY OF OCTOBER 2026.

DIALE MOGASHOA ATTORNEYS

Attorneys for the Commission

1st and 2nd Floors

Menlyn Corner

87 Frikkie de Beer Street

Menlyn

Pretoria

Email: [REDACTED]

AND TO: ALL MEDIA

AND TO: WILLEM DE KLERK ATTORNEYS

Attorneys for Daily Maverick and News24

Le Val North Block

45 Jan Smuts Avenue

Westcliff

Johannesburg

2034

Tel: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]

**TO: THE CHAIRPERSON OF THE JUDICIAL COMMISSION OF INQUIRY
INTO CRIMINALITY, POLITICAL INTERFERENCE, AND
CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM.**

**AND TO: THE SECRETARY OF THE JUDICIAL COMMISSION OF INQUIRY
INTO CRIMINALITY, POLITICAL INTERFERENCE AND
CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM.**

**FOUNDING AFFIDAVIT
IN SUPPORT OF THE APPLICATION FOR IN CAMERA HEARING**

I, the undersigned,

CURWIN NICHOLAS POKPAS

Do hereby make oath and say:

1. I am an attorney of Diale Mogashoa Inc., the attorneys acting on behalf of the Judicial Commission of Inquiry into Criminality, Political Interference and Corruption in the Criminal Justice System ("the Commission"). I have been requested by the Evidence Leaders to depose to this affidavit in support of an application for the evidence of Dr N Sifolo to be heard in camera.
2. The facts deposed to herein fall within my personal knowledge, save where the contrary is stated or appears from the context, and are, to the best of my knowledge and belief, both true and correct.

THE COMMISSION'S RULES

3. Rule 4.2 of the Rules Governing the Proceedings of the Commission provides:

"In an appropriate case, the Chairperson may make an order that a hearing be held in camera or via electronic means. In such a case, the Chairperson shall specify in the order those persons who will be permitted to attend the hearing in camera or by some other means."
4. I respectfully submit that the evidence which Dr Sifolo is required to give presents an appropriate case for the exercise of the Chairperson's powers under Rule 4.2.

NATURE OF DR SIFOLO'S EVIDENCE

5. Dr Sifolo is the Acting Coordinator of the National Intelligence Coordinating Committee ("NICOC").

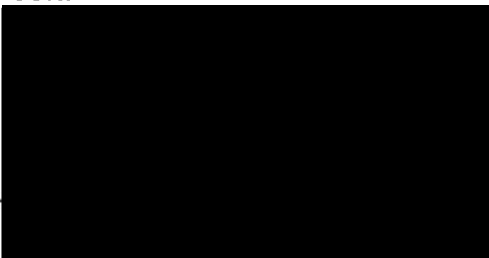
6. He is required to give evidence to the Commission concerning matters falling within NICOC's mandate and functions and, more broadly, the national intelligence structures and processes relevant to the Commission's Terms of Reference.
7. His evidence relates to classified material which has been declassified for use by the Commission but not for public dissemination. Accordingly, unless he is to testify in camera, it will not be possible for him to give most of the evidence that the evidence leaders want him to give.
8. The relevant evidence includes evidence of:
 - 8.1. the role, mandate, functions, composition, reporting lines and accountability structures of NICOC;
 - 8.2. the relationship between NICOC and other intelligence and security structures;
 - 8.3. the identification, assessment and reporting of threats relating to organised crime and criminal syndicate infiltration of the criminal justice system;
 - 8.4. National Intelligence Estimates and Intelligence Briefs relevant to the Commission's Terms of Reference, including threats identified and prioritised through those processes and the reporting of such threats to relevant role players;
9. This evidence is directly relevant to the Commission's mandate, including its investigation of allegations concerning the infiltration of law enforcement, intelligence and associated institutions within the criminal justice system by criminal syndicates, as well as its consideration of appropriate institutional reforms.

NEED FOR AN IN-CAMERA HEARING

10. The application is accordingly not made merely because Dr Sifolo's evidence concerns intelligence matters generally. It arises from the particular status of

the information and documentation which he is required to place before the Commission.

11. The information and documentation referred to above are interwoven throughout Dr Sifolo's statement and the evidence that he is required to give. It is not practically possible to separate those portions of his evidence which concern such information and documentation from the remainder of his evidence without materially disrupting or limiting the evidence to be placed before the Commission. It is accordingly necessary that the entirety of Dr Sifolo's evidence be heard in camera.
12. I accordingly respectfully request that the Chairperson grant the relief sought in the Notice of Motion and direct that the entirety of Dr Sifolo's evidence be heard in camera, and that his statement, annexures, the transcript and recording of his evidence, and any related material containing or disclosing the information referred to above, remain confidential and not be published or disseminated, subject to any further direction of the Chairperson.



CURWIN NICHOLAS POKPAS

I certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath, and that he/she considers the prescribed oath to be binding on his/her conscience.

Thus signed and sworn to before me at CAPE TOWN on this 09TH day of October 2026, the Regulations Governing the Administration of an Oath or Affirmation having been complied with.

ILKE ANDREA KEARNS
 COMMISSIONER OF OATHS
 PRACTICING ATTORNEY, R.S.A
 8TH FLOOR, CONVENTION TOWER
 CNR. HEERENGRACHT & WALTER SISULU AVE
 CAPE TOWN CITY CENTRE, CAPE TOWN, R.S.A


COMMISSIONER OF OATHS

**BEFORE THE COMMISSION OF INQUIRY INTO CRIMINALITY, POLITICAL
INTERFERENCE AND CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM**

HELD AT PRETORIA

In the matter between:

**THE EVIDENCE LEADERS FOR THE
JUDICIAL COMMISSION OF INQUIRY INTO
ALLEGATIONS OF CRIMINALITY, POLITICAL
INTERFERENCE AND CORRUPTION IN THE CRIMINAL
JUSTICE SYSTEM**

Applicants

and

**AMABHUNGANE CENTRE FOR
INVESTIGATIVE JOURNALISM**
(amaBhungane)

First Respondent

DAILY MAVERICK (PTY) LTD
(Daily Maverick)

Second Respondent

MEDIA24 (PTY) LTD
(News24)

Third Respondent

RE: EVIDENCE OF DR N SIFOLO TO BE HEARD IN CAMERA

MEDIA RESPONDENTS' OPPOSING AFFIDAVIT

I, the undersigned,

STEPHEN "SAM" SOLE

do hereby make oath and state:

1. I am the Managing Partner of the amaBhungane Centre for Investigative Journalism, the First Respondent. I am duly authorised to depose this affidavit on behalf of the First, Second and Third respondents in opposing the application of the Applicants for the entire evidence of Dr Sifolo to be heard *in camera*.
2. I note that our usual attorneys of record, Willem de Klerk Attorneys, have not been in a position to assist us due to other pressure of work and given the very truncated timelines imposed by the Commission it has only been possible for us to secure alternative legal representation from Webber Wentzel on an urgent basis a few hours before this affidavit is due.
3. I note however that, should it be necessary, Adv Ben Winks, instructed by Webber Wentzel, is available tomorrow morning, 13 October, to argue the matter if required.
4. Given the extraordinary nature of the in camera application brought by the applicants regarding Dr Sifolo, we thought it necessary to submit an objection, given the centrality of the issues to be canvassed with Dr Sifolo and the enormous public interest therein.
5. I respectfully request that the Commission forgive any resulting lack of legal expertise or other errors and give due consideration to the arguments set out herein. I note also that I have drawn on a previous application prepared on our behalf to assist me in drafting this affidavit.
6. In the interests of brevity, we do not describe ourselves in more detail. We are all news media platforms with established backgrounds whose journalists who have won numerous awards for constitutionally meaningful and agenda-setting journalism. Their journalists have won numerous Taco Kuiper Awards and they are the publishers of articles that have had a profound impact on South Africa's democracy.
7. All of the respondents subscribe to the Press Council, are governed by the South African Press Code for Print and Online Media and are subject to the Jurisdiction of the Press Ombud. They are undoubtedly what our superior

courts have identified as the bearers of constitutional rights and obligations in terms of media freedom.

8. Given the plurality of media respondents and the need to comply with the Commission's timelines, I have been authorised to depose to this affidavit on behalf of the media respondents.
9. I note that the Amabhungane Centre for Investigative Journalism is a nonprofit organisation that advocates for the Constitutional values of openness, transparency, accountability and the public's right of access to information.
10. I note that we were co-respondents in the successful bid by the media respondents to oppose the *in camera* application made on behalf of Mr Suliman Carrim – which I believe may serve as a template for the resolution of this application.
11. Amabhungane has been involved in numerous successful actions in relation to such rights, including a number at the conflictual intersection between the public's right to know and to have officials held accountable and the claims of the State to secrecy, based on the supposedly inherent nature of intelligence and the assumed authority of classification.
12. One of the most notable of these was the landmark 2021 case *AmaBhungane Centre for Investigative Journalism v Minister of Justice*, in which the Constitutional Court of South Africa declared key parts of the Regulation of Interception of Communications and Provision of Communication-Related Information Act (RICA) unconstitutional and invalid. Six years later, there is still no new RICA Act, but the sky has not fallen.
13. Likewise, amaBhungane was a founder member of the Right2Know movement that challenged the 2012 introduction of the so-called "Secrecy Bill", the Protection of State Information Bill, which was intended to replace the Apartheid-Era legislation: the Protection of Information Act (PIA) of 1982 (Act 84 of 1982). The Bill sat on President's desk unsigned since late 2013, when

President Cyril Ramaphosa formally returned the Bill to Parliament in June 2020. He cited serious concerns that its provisions unconstitutionally infringe upon freedom of expression and the right of access to information.

14. When the Bill, which governs the state classification and declassification system, was introduced, it was widely accepted that the Protection of Information Act, which remains on the statute books, would not withstand constitutional challenge and therefore it was imperative for the functioning of the security services that the new Bill be passed without delay. Thirteen years later and there is no new Act and the legislation on the basis of which the State lays claim to its classification regime is almost certainly unconstitutional. Yet the sky has not fallen.
15. I make these preliminary points simply to sensitise the Commission to the fact that there should be no automatic deference given to the intelligence community regarding claims of confidentiality or of unspecified but ineluctable harm, should that deference not be forthcoming.

Introduction

16. This affidavit is filed in response to an application by CURWIN NICHOLAS POKPAS, for the attorneys acting on behalf of the evidence leaders in which he asks this Commission to close its doors to both the media and public when the Acting Coordinator of the National Intelligence Coordinating Committee ("NICOC"). Mr Sifolo gives evidence. The media oppose this extraordinary application for the reasons set out below.
17. In this affidavit we:
 - 17.1. Set out the facts that are germane to the submissions we make;
 - 17.2. Set out the legal position related to open justice and freedom of expression, including before the Commission;

- 17.3. Argue that Mr Pokpas has failed to make out, in any way, a sustainable case to shut the doors of this constitutional forum.
- 17.4. Propose a way forward similar to the procedure adopted in the case of Mr Carrim, which withheld public disclosure of legitimately confidential information, but still gave real content to the public accountability aspects of the Commission's mandate.

Background to the application by the Evidence Leaders

- 18. We submit that the information already placed before the Commission establishes – both as a reasonable legal conclusion and as a matter of strong public perception – that there is *prima facie* evidence of significant criminality, political interference and corruption in the criminal justice system. At least in respect of crime intelligence and the South African Police Service more generally, there is *prima facie* evidence of infiltration by organised criminal networks.
- 19. We submit that what is not yet before the Commission or the public is the burning question of how this was allowed to happen, especially by the parallel intelligence structures that are mandated and funded both to alert the State to such threats and to intervene to prevent such threats from gaining traction.
- 20. The clear inference from what has emerged – and noting that the Commission is reaching the end of its life – suggests that the broader official intelligence structures of the country have failed: either they have provided actionable warnings but have not been heeded; or they have been incompetent; or they have themselves been infiltrated and corrupted; or some combination of the above.
- 21. In any one of these cases, the role and responsibility of the joint intelligence structures is of the utmost public interest and importance. Mr Sifolo is the representative of the joint intelligence structures that are at the heart of this question. It is entirely contrary to the public accountability mandate of the Commission that he be allowed to do so entirely behind closed doors.

The legal position in respect of media access before the Commission

22. The proceedings of the Commission are governed by the Commissions Act 8 of 1947. Section 4 of the Act provides that all the evidence and address heard by a commission shall be heard in public, subject to the Chairperson's discretion.

23. The relevant provisions of this Commission's rules state that:

4. Hearings must be held in public

4.1. Subject to rule 4.2, the hearings of the Commission will be held in public and there must be physical attendance of all parties involved.

4.2. In an appropriate case, the Chairperson may make an order that a hearing be held in camera or via electronic means. In such a case, the Chairperson shall specify in the order those persons who will be permitted to attend the hearing in camera or by some other means.

4.3. At the request of the witness whose evidence is to be heard in camera, or, mero motu, the Chairperson must order that nobody may, directly or indirectly, disclose the identity of the witness who is to give evidence in camera.

24. In determining whether this is an "appropriate case" for the witness' testimony to be held *in camera*, the Commission will have to take into account the foundational constitutional importance of public legal proceedings.

25. These have been fleshed out in a series of decisions by South Africa's Constitutional Court, Supreme Court of Appeal, High Courts, as well as numerous other fora in which justice is dispensed. We refer to the following interrelated principles:

25.1. The right to freedom of expression, including freedom of the media,

25.2. The right to open justice.

25.3. The appropriate test for restriction of public and media access.

The right to freedom of expression, including freedom of the media

26. The right to freedom of expression is enshrined in section 16 of the Constitution and includes the freedom of the press and other media (in section 16(1)(a) of the Constitution) and the freedom to receive and impart information and ideas (in section 16(1)(b) of the Constitution). In its first judgment dealing with freedom of expression, the Constitutional Court articulated the values underlying the right as follows:

“Freedom of expression lies at the heart of democracy. It is valuable for many reasons, including its instrumental function as a guarantor of democracy, its implicit recognition and protection of the moral agency of individuals in our society and its facilitation of the search for truth by individuals and society generally. The Constitution recognises that individuals in our society need to be able to hear, form and express opinions and views on a wide range of issues.”¹

27. The Constitutional Court has stressed the crucial role that the media play in giving effect to the right to freedom of expression. The media do not merely act on their own behalf when they exercise the right to freedom of expression, but on behalf of all South Africans. Thus, in *Khumalo and Others v Holomisa*,² the Constitutional Court held as follows:

“The print, broadcast and electronic media have a particular role in the protection of freedom of expression in our society. Every citizen has the right to freedom of the press and the media and the right to receive information and ideas. The media are key agents in ensuring that these aspects of the right to freedom of information are respected. The ability of each citizen to be a responsible and effective member of our society depends upon the manner in which the media carry out their constitutional mandate. As Deane J stated in the High Court of Australia:

‘.....the freedom of the citizen to engage in significant political communication and discussion is largely dependent upon the freedom of the media.’

¹ *South African National Defence Union v Minister of Defence and Another* 1999 (4) SA 469 at para 7.

² 2002 (5) SA 401 (CC).

The media thus rely on freedom of expression and must foster it. In this sense they are both bearers of rights and bearers of constitutional obligations in relation to freedom of expression.³

“In a democratic society, then, the mass media play a role of undeniable importance. They bear an obligation to provide citizens both with information and with a platform for the exchange of ideas which is crucial to the development of a democratic culture. As primary agents of the dissemination of information and ideas, they are, inevitably, extremely powerful institutions in a democracy and they have a constitutional duty to act with vigour, courage, integrity and responsibility. The manner in which the media carry out their constitutional mandate will have a significant impact on the development of our democratic society.”⁴

28. It follows that when freedom of the press is abridged, it is the rights of all citizens that are abridged, and not merely the rights of the press. The Supreme Court of Appeal expressed this as follows in *Midi Television (Pty) Ltd t/a ETV v Director of Public Prosecutions (Western Cape)*:⁵

“It is important to bear in mind that the constitutional promise of a free press is not one made for the protection of the special interest of the press. The constitutional promise is rather made to serve the interest that all citizens have in the free flow of information, which is possible only if there is a free press. To abridge the freedom of the press is to abridge the rights of all citizens and not merely the rights of the press itself.”⁶

29. The matters that the Commission is dealing with are matters of manifest and profound public interest that the public have a right to be informed about, and that the media have a concomitant constitutional right and obligation to report on. In this regard, I can do no better than to quote Justice Madlanga’s own words in his opening statement of 17 September 2025:

The interest shown by the South African public in this investigation is not surprising. I say so because the allegations made by Lieutenant General Nhlanhla Mkhwanazi on 6 July 2025 concern a grave subject matter: the

³ At para 22. All underlining in this affidavit should be understood to be emphasis supplied by the respondents in amplification of their case.

⁴ At para 24. See also *South African Broadcasting Corp Ltd v National Director of Public Prosecutions and Others* 2007 (1) SA 523 (CC) at para 24.

⁵ 2007 (5) SA 540 (SCA)

⁶ At para 6.

subject of the alleged infiltration of, or exertion of undue influence on, the criminal justice system. If the allegations are proved to be true, that spells doom for South Africa's criminal justice system. A healthy criminal justice system is key to the rule of law and, in turn, to a functioning constitutional democracy.

30. We now address the second principle relevant to this application, the principle of open justice. It applies with equal force to the proceedings of the Commission as it does in relation to court proceedings.

The constitutional principle of open justice

31. Free speech goes hand in hand with the principle of open justice, a set of interrelated constitutional values, rights and obligations. In *S v Mamabolo*⁷ the Constitutional Court held as follows:

“Since time immemorial and in many divergent cultures it has been accepted that the business of adjudication concerns not only the immediate litigants but is matter of public concern which, for its credibility, is done in the open where all can see. Of course this openness seeks to ensure that the citizenry know what is happening, such knowledge in turn being a means towards the next objective: so that the people can discuss, endorse, criticise, applaud or castigate the conduct of their courts and, ultimately, such free and frank debate about judicial proceedings serve more than one vital purpose. Self-evidently, such informed and vocal public scrutiny promotes impartiality, accessibility and effectiveness, three of the more important aspirational attributes prescribed for the judiciary by the Constitution.”⁸

32. In *South African Broadcasting Corp Ltd v National Director of Public Prosecutions*,⁹ the Constitutional Court held that the principle of open justice springs from the foundational values of our Constitution: accountability, responsiveness and openness:

“Open courtrooms are likely to limit high-handed behaviour by judicial officers and to prevent railroad justice, to mention two of the risks of

⁷ 2001 (3) SA 409 (CC)

⁸ At para 29.

⁹ 2007 (1) SA 523 (CC).

secret justice. It is not surprising then that s 35(3)(c) of the Constitution includes as one of the aspects of the right to a fair trial the right to 'a public trial before an ordinary court.' Similarly, s 34 of the Constitution entrenches the right to have disputes resolved in a public hearing before a court. Far from being intrinsically inimical to a fair trial, open justice is an important part of that right and serves as an important bulwark against abuse."

Courts should in principle welcome public exposure of their work in the courtroom, subject, of course to their obligation to ensure that proceedings are fair. The foundational constitutional values of accountability, responsiveness and openness apply to the functioning of the judiciary as much as to other branches of government. These values underpin both the right to a fair trial and the right to a public courtroom (the principle of open courtrooms). The public is entitled to know exactly how the Judiciary works and to be reassured that it functions within the terms of the law and according to the time-honoured standards of independence, integrity, impartiality and fairness."¹⁰

33. Open justice fosters legitimacy and credibility in respect of adjudicative processes. Thus in *Shinga v The State*,¹¹ the Constitutional Court held as follows:

"Seeing justice done in court enhances public confidence in the criminal-justice process and *assists victims, the accused and the broader community to accept the legitimacy of that process.* Open courtrooms foster judicial excellence, thus rendering courts accountable and legitimate. Were criminal appeals to be dealt with behind closed doors, faith in the criminal justice system may be lost. No democratic society can risk losing that faith. It is for this reason that the principle of open justice is an important principle in a democracy."¹²

The test for prejudice in respect of public access to proceedings

34. The third media respondent was a party in the precedent-setting judgment regarding the broadcast of court proceedings. In that case, *Van Breda v Media24 (Pty) Ltd*,¹³ the Supreme Court of Appeal reconciled the above

¹⁰ At para 30 - 32.

¹¹ *Shinga v The State and Another (Society of Advocates, Pietermaritzburg Bar as Amicus Curiae); O'Connell and Others v the State* 2007 (4) SA 611 (CC) at para 26.

¹² At para 26.

¹³ *Van Breda v Media24 Limited and Others* (2017) 2 SACR 491 (SCA) at para 75.

constitutional principles. There are several important portions of that judgment we must reference here:

[46] It is thus important to emphasize that giving effect to the principle of open justice and its underlying aims now means more than merely keeping the courtroom doors open. It means that court proceedings must where possible be meaningfully accessible to any members of the public who wishes to be timely and accurately apprised of such proceedings.

35. Most importantly for present purposes is paragraph 75 of the judgment:

“A decision on whether to restrict broadcast of court proceedings raises same set of rights as occupied the attention of this Court in *Midi Television*. It follows that that same approach should apply, namely that courts will not restrict the nature and scope of the broadcast unless the prejudice is demonstrable and there is a real risk that such prejudice will occur. Mere conjecture or speculation ought not to be enough.

36. The full test set out by the Supreme Court of Appeal in *Midi TV*, is as follows:

In summary, a publication will be unlawful, and thus susceptible to being prohibited, only if the prejudice that the publication might cause to the administration of justice is demonstrable and substantial and there is a real risk that the prejudice will occur if publication takes place. Mere conjecture or speculation that prejudice might occur will not be enough.

Even then publication will not be unlawful unless a court is satisfied that the disadvantage of curtailing the free flow of information outweighs its advantage. In making that evaluation it is not only the interests of those who are associated with the publication that need to be brought to account but, more important, the interests every person in having access to information.¹⁴

¹⁴ At para 19.

37. The Supreme Court of Appeal expressly referred to less severe measures to protect the rights in question:

It should not be assumed, in other words, that once an infringement of rights is threatened, a ban should immediately ensue, least of all a ban that goes beyond the minimum that is required to protect the threatened right.¹⁵

38. The potency of the open justice principle explains why courts – even in national security cases such as the famous “nuclear secrets” case – *S v Geiges* – emphasise that “the Constitution ... permits only the narrowest demonstrably justifiable infringement of the right of access to open court proceedings”.¹⁶

Response to the Evidence Leaders’ case

39. Mr Pokpas’s application is perfunctory. In paragraph 4 of his affidavit he submits that the evidence which Dr Sifolo is required to give presents an “appropriate case” for the exercise of the Chairperson’s powers under Rule 4.2 – but with respect he hardly makes out such a case, except via an appeal to the “classified” nature of the evidence.
40. In paragraph 7 of his affidavit he avers that Mr Sifolo’s evidence “relates to classified material which has been declassified for use by the Commission but not for public dissemination. Accordingly, unless he is to testify in camera, it will not be possible for him to give most of the evidence that the evidence leaders want him to give”.
41. Firstly, Mr Pokpas does not provide any explanation as why the material was declassified only for the benefit of the Commission, which surely has many among its staff and Commissioners who are not in possession of the necessary security clearance. In any event, the Commission is to function, as

¹⁵ At para 20.

¹⁶ *S v Geiges* 2007 (2) SACR 507 (T) para 61.

a default rule, in public – any declassification for the Commission's purposes must surely contemplate that the Commission's work is meant for public consumption.

42. At the very least, given the central role that Nicoc plays and given its apparent failures, consideration ought to have been given to insisting that Mr Sifolo produce a public and a confidential version of his affidavit, such as was done in *Masetlha v President of the Republic of South Africa and Another* (CCT 01/07) [2007] ZACC 20; 2008 (1) SA 566 (CC); 2008 (1) BCLR 1 (3 October 2007).
43. Mr Pokpas's averment in paragraph 10 his affidavit that the information and documentation that Dr Sifolo is required to place before the Commission have a "particular status" is impermissibly vague – and smacks of the kind of presumed confidentiality that intelligence services like to hide behind.
44. Mr Pokpas's averment in paragraph 11 that such information and documentation are "interwoven throughout Dr Sifolo's statement and the evidence that he is required to give" such that "it is not practically possible to separate those portions of his evidence which concern such information and documentation from the remainder of his evidence without materially disrupting or limiting the evidence to be placed before the Commission" and that "therefore it is accordingly necessary that the entirety of Dr Sifolo's evidence be heard in camera" appears to be nothing more than a matter of convenience, rather than of necessity.
45. In paragraph 8 of Mr Pokpas's affidavit, he outlines the main thrust of what Dr Sifolo's evidence will deal with. On analysis, the claims of confidentiality over the whole subject appears untenable and unsustainable.
46. It is worth quoting paragraph 8 in full:

"The relevant evidence includes evidence of:

- 8.1. the role, mandate, accountability structures of NICOC; functions, composition, reporting lines and
- 8.2. the relationship between NICOC and other intelligence and security structures;
- 8.3. the identification, assessment and reporting of threats relating to organised crime and criminal syndicate infiltration of the criminal justice system;
- 8.4. National Intelligence Estimates and Intelligence Briefs relevant to the Commission's Terms of Reference, including threats identified and prioritised through those processes and the reporting of such threats to relevant role players;”

- 47. It is clear that 8.1 and 8.2 above are simply institutional arrangements that are largely likely a matter of public knowledge in any case.
- 48. With regard to 8.4 above, it is unlikely that broad National Intelligence Estimates contain much that is truly confidential. Many countries, such as the United States of America, routinely publish their national intelligence estimates, which generally contain broad threat assessments and intelligence priorities that are usefully part of a public conversation about state security and preparedness.
- 49. With regard to 8.3 above, this topic goes to the heart of the mandate of the Commission, and with due respect, there is major public interest in knowing the extent to which our security services have noticed and reacted to the threats already outlined at the commission.
- 50. It is significant that there is no reference to particular operational, source or method details, which the media respondents have in the past accepted as being necessarily confidential.

Classification or a “particular status”

51. Our courts have held that the mere fact that documents or evidence relate to matters that are 'classified' is not determinative of whether or not they should be accessible to the media and the public, especially when they are the subject of legal proceedings.
52. In *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services (Freedom of Expression Institute as Amicus Curiae) In re: Masetlha v President of the Republic of South Africa and Another (Independent CCT38/07) [2008] ZACC 6; 2008 (5) SA 31 (CC); 2008 (8) BCLR 771 (CC) (22 May 2008)* Moseneke, DCJ as he then was held at paragraph 53: "In my view, the mere fact that documents in a court record carry a classification does not oust the jurisdiction of a court to decide whether they should be protected from disclosure to the media and public."
53. In our respectful view, the Commission is similarly empowered to regulate its own process and is not obliged simply to accept the say-so of Nicoc that its evidence MUST be heard in camera. Section 3 of Commissions Act indeed empowers commission to regulate its access to documents and witness testimony in the same manner as a High Court – meaning that, as in the *Independent Newspapers* case, the Commission is not bound by a "classified" label and is empowered to ensure the public has access to any testimony or documentation, whether classified or not.
54. In the event that any of the items set out in paragraphs 8.1 – 8.4 are indeed classified, it seems clear that such a classification is not justified by any real national security interest. In *Makwakwa v Minister of State Security*, the Supreme Court of Appeal held that a classified document that had been leaked to a newspaper could not be restrained from publication, since "the Minister had failed to discharge the onus to establish that national security would be implicated by the release of the report".¹⁷ Similarly, Dr Sifolo has failed here to discharge the onus of showing why any of the items of

¹⁷ [2024] ZASCA 41 (5 April 2024) at para 49.

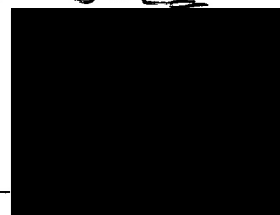
information he will be testifying about actually harm national security (whether they are classified or not).

55. For the above reasons the media respondents ask that the Commission refuse the application for an in camera hearing of Dr Sifolo's evidence.

A less restrictive alternative

56. It is clear from the previous example of Mr Carrim, that a less restrictive middle ground is available to the Commission and the Evidence Leaders.
57. In that case, in relation to medical privacy, the documents and the confidential material were not disclosed to the public or the media, but the discussion and analysis and questioning of them was in the public glare.
58. This served a very necessary purpose of placing witnesses and their credibility in the light. Given the much greater importance to the overall terms of the Commission of this witness, Dr Sifolo, we respectfully request the Commission to adopt a similar approach.

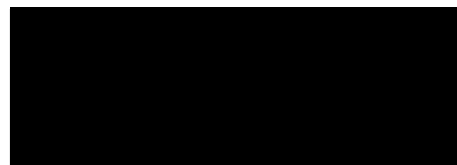
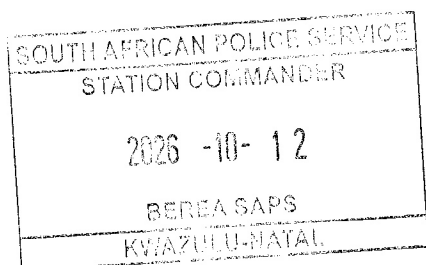
STEPHEN SOLE



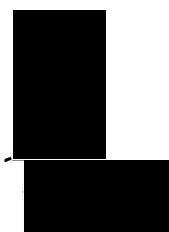
DEPONENT

I certify that this affidavit was signed and sworn to before me at DURBAN
on this the 12th day of OCTOBER 2026 by the deponent who acknowledged

that he knew and understood the contents of this affidavit, had no objection to taking the prescribed oath, and considered this oath to be binding on his conscience.



COMMISSIONER OF OATHS



**IN THE JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY, POLITICAL
INTERFERENCE AND CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM**

HELD AT PRETORIA

In the matter between:

THE EVIDENCE LEADERS

APPLICANT

and

**AMABHUNGANE CENTRE FOR
INVESTIGATIVE JOURNALISM NPC**

1ST RESPONDENT

DAILY MAVERICK (PTY) LTD

2ND RESPONDENT

MEDIA24 (PTY) LTD

3RD RESPONDENT

RESPONDENTS' SUPPLEMENTARY OPPOSING AFFIDAVIT

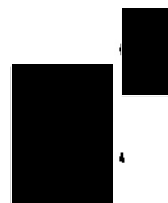
I, the undersigned,

STEPHEN PATRICK "SAM" SOLE

hereby state under oath:

INTRODUCTION

1. I am an adult male journalist and the Managing Partner of amaBhungane Centre for Investigative Journalism NPC ("**amaBhungane**"), the first respondent. I am duly authorised to depose this affidavit on behalf of each of the respondents in



opposing the Evidence Leaders' application for the entire evidence of Dr N Sifolo to be heard *in camera*.

2. The contents of this affidavit fall within my personal knowledge, unless indicated otherwise, and are, to the best of my knowledge and belief, true and correct.
3. I deposed to the original opposing affidavit delivered on behalf of the respondents on 12 October 2026, and understand that the respondents have been afforded an opportunity to supplement that affidavit, which we hereby do.
4. We have explained in the original opposing affidavit that the Evidence Leaders' application makes assertions of security risks that are so vague, perfunctory and implausible that they cannot be accepted as a legitimate basis for concealing the entirety of Dr Sifolo's evidence from the public. The Evidence Leaders seem to rely solely on the fact that (many of) the documents involved are "classified". We have already explained why that is bad in law as a basis for limiting open justice.
5. We have also indicated that there are less restrictive alternatives available to the Commission to address any genuine security risks. But we did not indicate what those alternatives might be.
6. This affidavit outlines:
 - 6.1. additional considerations weighing in favour of openness;
 - 6.2. the application's lack of particularity about the relevant documents; and
 - 6.3. a proposed less restrictive alternative.

ADDITIONAL CONSIDERATIONS

7. There is presently a national scandal playing out in the Pretoria High Court under Case No [REDACTED], in which the Inspector General of Intelligence, Mr Imtiaz Fazel, seeks to have his suspension and the revocation of his security clearance reviewed and set aside.
8. Mr Fazel alleges, inter alia, that these steps taken against him flow from unlawful conduct by the National Intelligence Coordinating Committee ("**NICOC**"), which Dr Sifolo leads. He alleges that he is being retaliated against for, among others, investigating the procurement of covert properties by Police Crime Intelligence.
9. A sample of the recent press coverage related to these proceedings is attached marked "**A**".
10. We submit that this is a factor weighing heavily in favour of transparency.
11. Another consideration is that there are still several unanswered questions about malfeasance in the intelligence services that was partially revealed at the Zondo Commission.
12. The proceedings at the Zondo Commission also demonstrated that, with limited safeguards to protect personal safety and ongoing operations, open ventilation of malaise in the intelligence ecosystem is not only possible but healthy for the system itself.
13. As one commentator put it, "the Zondo report is a globally significant example of radical transparency around intelligence abuses. But it lacks the detailed findings and recommendations to enable speedy prosecutions. It also fails to address the

broader threats to democracy posed by unaccountable intelligence." We attach a copy of this article marked "B". The relevant parts of the Zondo Commission's Report will be relied on in legal argument.

14. For these reasons, we submit that more transparency, not less, is imperative in the proceedings of the present Commission.

LACK OF PARTICULARITY REGARDING THE RELEVANT DOCUMENTS

15. There is a further difficulty. The respondents have not been provided with any indication, even in general terms, of the nature, number and volume of the documents that Dr Sifolo intends to rely upon, nor of the particular portions thereof that are said to require protection from public disclosure.
16. In the absence of such information, it is impossible for the respondents, as well as the Commission, to assess whether the concerns relied upon by the Evidence Leaders are justified, and how they can appropriately be addressed through measures less restrictive than excluding the public from the entirety of Dr Sifolo's evidence.
17. We accordingly submit that, to the extent that reliance is placed on specific documents or categories of information, those documents or categories should be identified with sufficient particularity to enable proper consideration of whether any confidentiality concerns arise and, if so, whether they can be addressed through targeted measures such as redaction, anonymisation, or other limited restrictions.

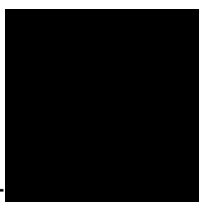
18. Should such information be provided, and should it appear necessary to do so, the respondents may seek permission to place further evidence before the Commission dealing specifically with the documents or information sought to be withheld from public scrutiny.

A LESS RESTRICTIVE ALTERNATIVE

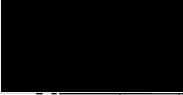
19. There is obviously a need to protect the personal safety of intelligence operatives and the viability of existing intelligence operations.
20. For that reason, we propose that the names of operatives and other persons of interest, and the dates and places of specific operations (to the extent that they are still relevant to ongoing matters), be redacted from Dr Sifolo's affidavit and any other documents he may present to the Commission. Names can easily be replaced with codenames, which may then be used during Dr Sifolo can employ during his oral evidence.

CONCLUSION

21. For the reasons set out in the original opposing affidavit and this supplementary affidavit, we respectfully submit that the application for total secrecy should be refused, and a less restrictive alternative be put in place.


DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking an oath, and that he considers the oath to be binding on his conscience. Thus signed and sworn to before me at DURBAN on this the 15th day of October 2026.



COMMISSIONER OF OATHS

**SINOXOLO FEZEKA MBATHA
PRACTISING ATTORNEY
271 PROBLEM MKHIZE ROAD
DURBAN, 4001
COMMISSIONER OF OATHS R.S.A.**

amaBhungane | Fazel misconduct probe stalls as secret service billions go unchecked



Suspended Inspector-General of Intelligence Imtiaz Fazel (centre), National Assembly Speaker Thoko Didiza (left), and, from left, Nicoc members Lieutenant General Dumisani Khumalo, Dr Ntandazo Sifolo, Khumbudzo Ntshavheni, Lieutenant General Thalita Mxakato and Ambassador Tony (Gab) Msimanga. Fazel's 9 June letter to Parliament raises fresh questions about Nicoc's role in the revocation of his security clearance and the JSCI's handling of his case. Supplied/GCIS

- Very little progress has been made in the probe into alleged misconduct by suspended Inspector-General of Intelligence, Imtiaz Fazel.
- Fazel says the Joint Standing Committee on Intelligence initially presented it as an active investigation, but then appeared to concede no substantive investigation had been completed.
- A central allegation concerns the role of the National Intelligence Coordinating Committee in the revocation of Fazel's security clearance – something he contends is legally flawed.

More evidence has emerged of a seemingly chaotic scramble by South Africa's intelligence apparatus to neutralise the now-suspended Inspector-General of Intelligence (IGI), Imtiaz Fazel.

A newly emerged letter, penned by Fazel, dated 9 June and addressed to Parliament, contains fresh allegations against the National Intelligence Coordinating Committee (Nicoc) and the Joint Standing Committee on Intelligence (JSCI), reports amaBhungane.

The letter, for the first time, implicates Nicoc in Fazel's suspension by President Cyril Ramaphosa on 14 October last year. It also reveals that the JSCI had told Ramaphosa in February this year that its investigation into Fazel's alleged misconduct, which originally justified his suspension, had been "restarted".

In doing so, the JSCI has seemingly abandoned the basis of its initial recommendation for Fazel's removal – four months after the fact.

Fazel's letter, seen by amaBhungane, is addressed to National Assembly Speaker Thoko Didiza and her deputy, Annelie Lotriet.

"On 15 April 2026, I wrote to the chairperson of the JSCI [Sylvia Lucas]. I expressed concern that, despite having informed the president on 20 September 2025 that it was investigating my conduct, and despite that supposed investigation having formed the basis for my suspension by the president, the JSCI now appeared to accept that no such investigation had in fact been conducted," wrote Fazel.

READ | Crime can't be classified 'top secret': MPs won't let executive block them from seeing IGI

Fazel's letter also indicates that Nicoc, an umbrella body of security agencies, had an alleged irregular involvement in the revocation of his security clearance, a development that paved the way for the subsequent push to remove him.

"On 12 December 2025, President Ramaphosa informed me that the JSCI had recommended that I should be removed from my position following a decision by Nicoc to permanently revoke my security clearance. Nicoc is [mainly] comprised of the State Security Agency (SSA), the Crime Intelligence Division of the South African Police Service, Defence Intelligence (DI), and the Coordinator of Intelligence – the intelligence services for which I have oversight responsibility.

"I also pointed out [to Lucas] that the JSCI had relied on Nicoc's decision to permanently revoke my security clearance when it recommended my removal from office, notwithstanding the absence of any legal authority on Nicoc's part to take such a decision. Despite its expertise, the JSCI has not explained why it believed that Nicoc had the authority to permanently revoke my security clearance."

READ | SSA revoked Intelligence inspector general's top-level security clearance

In his letter, Fazel also indicates that while the president had been told one thing – that the investigation had been "restarted" – Fazel himself was effectively told that these things, unfortunately, just take time.

"On 21 April 2026, the chairperson of the JSCI informed me that the investigation had been delayed by 'preparatory processes' and the 'gathering of information'. I was told that, once the committee had considered the information before it, the specific allegations of misconduct would be communicated to me, and I would be afforded an opportunity to respond. The chairperson also said that the delays were not attributable to bad faith and that the committee remained committed to minimising any prejudice arising from them... I noted that no explanation had been given for the committee's delays. Nor was any explanation given as to why, more than seven months after the JSCI informed the president that I was being investigated, the matter remained at a preliminary stage."

Last month, amaBhungane reported on an explosive court application by Fazel to overturn his suspension and the withdrawal of his security clearance, challenging Ramaphosa, Didiza, the JSCI and Minister in the Presidency Khumbudzo Ntshavheni (among others) to provide evidence that he was behind the leaking of confidential information.

Critically, Fazel's papers provide context into why he may have been targeted in his removal from office, having led several probes into the country's intelligence structures while facing systematic resistance in doing so.

This is outlined in a dramatic letter he drafted to Ramaphosa just two weeks before his suspension last October.

In Fazel's version of events, he had begun to shake the security services' tree – putting a target on his back.

READ | Ramaphosa suspends Inspector-General of Intelligence Imtiaz Fazel following complaint

On 22 July 2025, two weeks after KwaZulu-Natal police commissioner Nhlanhla Mkhwanazi broke rank in his now famous press briefing, the JSCI informed Fazel that it was investigating three complaints against him: (i) a complaint received from Nicoc, acting on a report received from an intelligence service; (ii) a complaint received from DI; and (iii) a complaint related to the disclosure of classified information about a property procured in Durban by Crime Intelligence for operational purposes.

On at least one front, the third one above, Fazel has been publicly vindicated.

As part of the wider complaints against Fazel, the JSCI is probing whether he was behind the leaking of a classified report into SAPS Crime Intelligence (CI), implicating the unit's head, Dumisani Khumalo, and suspended SAPS national commissioner Fannie Masemola.

According to various reports and public statements, Fazel's probe into CI, which was initiated in January 2025, following a referral by former police minister Senzo Mchunu, focused on the procurement of covert properties.

It also addressed issues related to security clearances and the hiring of Dineo Mokwele as a Brigadier to head the Technical Support Services division of CI in April 2024.

Earlier this month (11 August), the Investigative Directorate Against Corruption's (IDAC) Drushantha Ramsamy testified before the Madlanga Commission of Inquiry, alleging that Mchunu arranged for someone to fly and meet with now-suspended IDAC chief investigator Dylan Perumal, to hand over the IGI's classified report.

All I know is that the Minister sent the report that IGI refused to give us to Mr Perumal. And in terms of the Act and the mutual legal assistance that we usually give them, it is not proper procedure.

In other words, if the report was leaked, it was not by Fazel but rather by Mchunu.

Approached for comment, Mchunu said: "At this stage I would not want to respond, but I will issue a statement on this topic and other matters in due course."

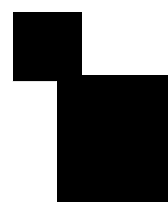
Presidency spokesperson Vincent Magwenya would not be drawn to comment on aspects of Fazel's letter to Parliament related to Ramaphosa.

"This matter is in court. Therefore, we are not going to publicly engage over it until those court processes are completed."

Nicoc acting coordinator Dr Ntandazo Sifolo didn't answer specific questions put to him by amaBhungane about Nicoc's alleged decision to "permanently" revoke the IGI's security clearance, claiming Nicoc could only account to the JSCI.

"It is in this respect that the National Intelligence Coordinating Committee wishes to kindly submit that it is unable to comment on intelligence-related or classified matters. We are therefore not in a position to provide any detail on the matters raised in your enquiry. This is consistent with the statutory framework governing the intelligence services, including protection of information legislation."

You can access his full response [here](#).



Didiza confirmed that she had received the letter from the IGI and said she had engaged with the JSCI on the issues raised therein.

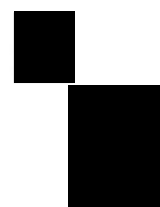
READ MORE | Crime Intelligence cut crimefighting budget to fund R120m property purchases – IGI report

Questioned about whether she was concerned that the IGI has been on suspension for close to a year without any update into the investigation of his alleged misconduct, Didiza said: “The JSCI will be meeting this week to, among other things, to deliberate on this matter [sic].”

Despite a back-and-forth between the IGI, the president and the various intelligence structures, one thing is evident: the upwards of a billion rand held within the secret service accounts for CI, DI and the SSA have, for more than a year, been without oversight, all while the fate of the IGI hangs in the balance.

This story was produced by the amaBhungane Centre for Investigative Journalism. Sign up for their newsletter;

;



SSA revoked Intelligence inspector general's top-level security clearance

news24.com/citypress/news/ssa-revoked-intelligence-inspector-generals-top-level-security-clearance-20251018-1208

Abram Mashego

October 18, 2025



Inspector General of Intelligence Imtiaz Fazel was suspended by President Cyril Ramaphosa pending a parliamentary investigation into his conduct.

Supplied

- Inspector General of Intelligence Imtiaz Fazel was suspended by President Cyril Ramaphosa pending a parliamentary investigation into his conduct, after having his top-level security clearance revoked by the State Security Agency.
- Fazel's report recommended corruption charges against police commissioner Fannie Masemola and other senior crime intelligence officials.
- The suspension comes amid accusations that Fazel leaked sensitive documents to the media and allegations from KwaZulu-Natal's police commissioner that his office was part of a plot to derail investigations into a Gauteng drug cartel.

Inspector General of Intelligence Imtiaz Fazel had his security clearance revoked three weeks before his suspension.

Two weeks ago, City Press learnt that the State Security Agency (SSA) had revoked Fazel's top-level security clearance and allegedly launched an investigation into leaks of sensitive documents from his office to the media.

The SSA has revoked his security clearance, and this means he can't perform oversight over crime intelligence. They [crime intelligence] have accused him of leaking information regarding his investigation into the purchase of five crime intelligence buildings.

Highly placed security cluster source

The revocation of security clearance meant Fazel couldn't handle any documents that were classified, thus making him ineligible to perform his duties as an overseer of the intelligence cluster.

Last week, Nomsa Mlambo, office manager at the office of the Inspector General of Intelligence, said the inspector general did not have any comments at this stage.

This week, President Cyril Ramaphosa's spokesperson Vincent Magwenya announced that Fazel had been suspended pending a decision after an investigation into his conduct by Parliament's joint standing committee on intelligence.

The JSCI [joint standing committee on intelligence] has informed President Ramaphosa that it has received a complaint about the conduct of the inspector general and that the committee will conduct an investigation in line with the Intelligence Services Act.

Vincent Magwenya

Magwenya said the act provided that "if the inspector general is the subject of an investigation by the [committee], he or she may be suspended by the president pending a decision in such an investigation".

Inspector general's report

This week, News24 reported that acting Police Minister Firoz Cachalia had referred an explosive report by the Inspector General of Intelligence to the committee before Fazel was suspended.

Fazel's report is critical to the criminal investigation into the alleged role of police commissioner Fannie Masemola, crime intelligence head Dumisani Khumalo, acting crime intelligence supply chain head Brigadier Janse van Vuuren, finance and administration services head Colonel Samantha Mayekiso, and crime intelligence chief financial officer Major General Philani Lushaba.

Fazel's report recommended that Masemola be charged with corruption and contravention of the Public Finance Management Act. The report found that he had colluded with Khumalo and approved a global deviation without following procurement regulations and abused slush funds from the secret service account of crime intelligence to acquire properties.



Acquired properties:

- A 23-bedroom facility with a presidential suite (Veroy Boutique Hotel) in Pretoria North for R34.4 million, including R4.5 million in transfer costs. This procurement was approved on 17 September 2024.
- A 75-bedroom facility with en-suite bathrooms (Kyalami Lodge) in Midrand for R48.25 million, including R8 million in transfer costs. This procurement was approved on 17 September 2024.

Sources within the security cluster revealed that Cachalia had briefed Ramaphosa about the contents of Fazel's findings and recommendations in August.

Magwenya did not dispute the briefing by Cachalia on the report.

I don't comment on every meeting or engagement between the president and ministers. So, I won't comment on this one either.

Vincent Magwenya

City Press understands that a major factor in the actions against Fazel related to negotiations he was engaged in with the Independent Police Investigative Directorate (Ipid) over a memorandum of understanding between the two institutions.

Significant players in Cabinet and the intelligence sector – who are said to be distrustful of Ipid – were apparently unhappy with Fazel's move, saying it would compromise state security .

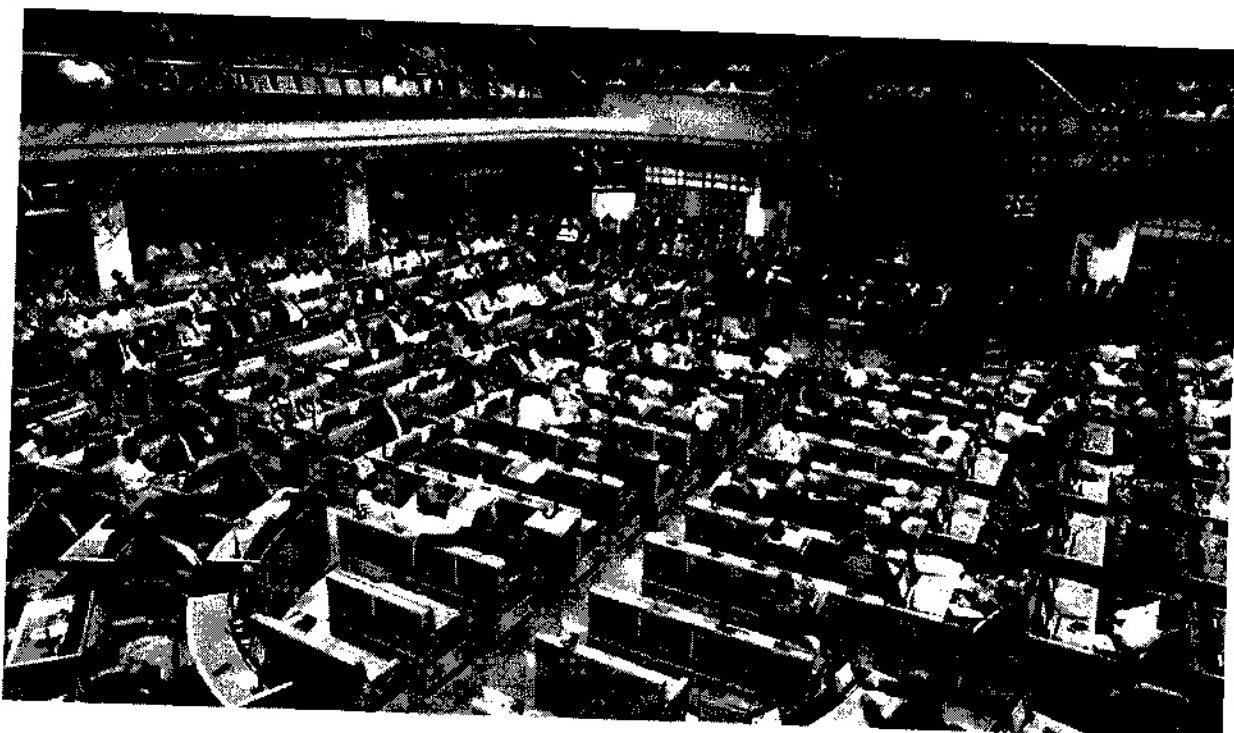
KwaZulu-Natal police commissioner Nhlanhla Mkhwanazi, a close ally of Masemola and Khumalo, told the Madlanga commission of inquiry that Fazel's commitment to investigate allegations that crime intelligence had made two dubious multimillion-rand property purchases was evidence that the office was part of a plot to scupper the investigation into the Gauteng drug cartel.

Shortly afterwards, Fazel told News24 that he looked forward to appearing before the commission to directly address Mkhwanazi's "outrageous" and "ridiculous" allegations against his office.

The SSA had not responded at the time of publishing.



How Nicoc was in disarray and ex-ministers meddled in its affairs



The National Intelligence Co-ordinating Committee told Parliament that the committee was in disarray. Picture: Nardus Engelbrecht/Independent Newspapers

National Intelligence Co-ordinating Committee (Nicoc) head, Gab Msimanga has urged parliamentarians to fix gaps in the law and allow the structure to do its work without meddling from ministers.

Msimanga said former ministers of State Security had meddled in the affairs of Nicoc, and one former minister even tried to reduce Nicoc into a unit in his office.

Those days should belong in the past and not be allowed in the current framework, he said.

Msimanga, who was briefing the ad hoc committee on the General Intelligence Laws Amendment Bill on Tuesday, said the hands of Nicoc were also tied, as it cannot do certain things unless they were approved by the State Security Agency (SSA).

The General Intelligence Laws Amendment Bill was tabled in Parliament a few months ago and it came as a result of the recommendations of the Sydney Mufamadi Report and Sandy Africa Report into the intelligence agencies.

Both reports have depicted a dysfunctional intelligence service and poor state of affairs in intelligence agencies.

The Mufamadi Report had recommended the separation of the foreign branch and the domestic branch.

In her report, Africa found that intelligence agencies failed to get on top of the situation before the July 2021 riots broke out.

Msimanga said Nicoc has been under pressure in the last few years.

"During the reign of the fourth administration, one minister of Intelligence attempted to reduce Nicoc into a new unit in his office. Of course, that is the history I am referring to. That was illegal. The same illegal way that SSA was created through a proclamation, instead of national legislation," said Msimanga.

"If the minister concerned had powers, he would have dissolved everything because he just wanted a few people in his office and the rest must go to Musanda (SSA headquarters). We then thought that it was important that kind of history should not repeat itself because when I was appointed in 2017, when I got there, I found Nicoc in disarray."

He said he knows the Joint Standing Committee on Intelligence wants Nicoc to have more powers, particularly around intelligence agencies that fail to comply with the legislative mandate.

That was being addressed, said Msimanga, adding that some of the challenges Nicoc faced was that sometimes SSA was not giving them information.

It depended who was the director-general of SSA, he said.

He said when he came to Parliament, members of the Joint Standing Committee on Intelligence were aware of the challenges faced by Nicoc.

It was important that there was stability of Nicoc.

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Politics



General Intelligence Laws Amendment Bill: National Intelligence Coordinating Committee briefing

Meeting Summary

Video

The Committee met in Parliament to receive the National Intelligence Coordinating Committee's (NICOC) input on the General Intelligence Laws Amendment Bill (GILAB). NICOC proposed various inputs on the Bill, including an amendment to its powers, human resources and financial management, and reporting of the Office of the Coordinator, among other things. NICOC's inputs demonstrated the need for stronger legislative reforms to ensure the entity's independence, which will guarantee its functionality.

NICOC shared how former State Security ministers had interfered in its operations, with one even attempting to downgrade NICOC to a unit in his office. NICOC also expressed concern about its lack of independence and how it negatively impacted its effectiveness. It was mentioned that the NICOC Coordinator did not have the power to appoint staff in their own office, as all appointments were made at Musanda (State Security Agency headquarters). Furthermore, appointments were often overruled by members of the appointment board who ranked lower than the Coordinator, even though Ambassador Msimanga was on the same level as the Director-General. Some of the officials sitting on the appointment board at Musanda held assistant director positions.

The Members were shocked and outraged that Ambassador Msimanga had no independence to appoint staff in his office. They welcomed NICOC's inputs but suggested that the proposals compiled during previous discussions at the JSCI (Joint Standing Committee on Intelligence) should be reviewed and considered to strengthen the committee.

Meeting report

The Chairperson welcomed everyone present and announced apologies from the absent members.

National Intelligence Coordinating Committee (NICOC) Presentation

Ambassador Tony Msimangaa, Coordinator, NICOC, presented the organisation's submission and indicated that it did not take the opportunity lightly. It had spent time interrogating the draft Bill with an emphasis on NICOC's mandate. He quoted an observation from the 2018 High-Level Panel Review Report into the State Security Agency, which was led by Professor Sydney Mufamadi: "It is important to understand the crucial place that NICOC occupies in the overall intelligence value chain, at least as conceived by the founders of our constitutional democracy and post-apartheid intelligence dispensation. It is meant to be the key interface between the agencies that collect intelligence and the clients who need to make use of it, ensuring all source input into the intelligence picture, and effective processing and evaluation of the assessment – a product that goes to the policymakers."

It is against this backdrop that the mandate of NICOC was either accepted, neglected, or undermined by proposals to reinstate the fundamental constitutional imperatives that were made to the draft bill. Our approach was not to tamper with the mandate and/or proposals by the SSA but rather to ensure that NICOC's mandate was not fiddled with as well as to guard against the possible repeat of history albeit in the legislated manner this time around.

During the reign of the fourth administration, one Minister of Intelligence attempted to reduce NICOC into a unit in his office. This was illegal, the same illegal way that the SSA was created through a proclamation instead of national legislation. In this regard, NICOC did submit inputs to the SSA team that was working on the legislation. However, some inputs were omitted. Thus, his expression of gratitude for this opportunity is informed by the understanding that had we not been given an opportunity, some critical interventions in their inputs would not have been considered. We know and understand that the JSCI would like NICOC to have more powers in the national intelligence structures that do not comply with the legislative mandate.

He assured Members that once the process of regulation has been finalised, the entity will have the necessary legislative avenue to address matters of non-compliance. Some of the challenges faced by NICOC depend on who is in charge as a Director General who decides to give intelligence information to NICOC and at times they would withhold the information.

NICOC Submission on GILAB

Dr Ntandazo Sifolo, Head of Research and Analysis, NICOC, took Members through the entity's proposed amendments to the Bill.

(See Presentation)

The Ambassador shared that at one point, NICOC was reduced to just a section in the Office of the Minister. If the Minister had the power, he could have dissolved the whole organisation because he wanted a select few people in his Office. It was important to ensure that history did not repeat itself, as when he was appointed as the Coordinator, he found NICOC in disarray. The first time he went to the JSCI, the committee members present told him they would kick him out and send him away like his predecessors. This was due to the past challenges that NICOC had faced, with ministers meddling and bringing in staff and dumping them in NICOC. Thus, it was critical for the future and stability of NICOC and the Office of Ambassador Msimanga that its functions and responsibilities remained intact, and no one could change NICOC's fate with a stroke of a pen. NICOC needs the support of the JSCI.

Discussion

The Chairperson welcomed the submission and asked about the difference between ring-fencing the NICOC budget and the Office of the Coordinator.

Ms D Kohler-Barnard (DA) said over the years, on numerous occasions, Members have called for various bits of regulations to strengthen the NICOC. These have been raised several times in the Committee, but do we have a list of proposals that we made to NICOC over the years? She believed that would assist the Committee a great deal because a lot of what has been said by NICOC is not far off from what Members had raised and discussed in their list of proposals.

It would be important to have a conversation with NICOC about some of its proposals and they have come up with more proposals over the years which should be run past NICOC.

The Chairperson noted the proposal.

Mr B Magwanishe (ANC) referred to the appointment of staff and sought clarity if it meant that the Minister would have to approve the appointment of PAs and most junior officers. He felt that these appointments could be left to the Coordinator. He did not understand why the Minister had to approve an appointment of PAs and junior staff members.

Mr D Stubbe (DA) thought the proposals were positive. Concerning the appointments, he felt that the process should be within Ambassador Msimanga and the Minister should be responsible for only approval.

Mr T Loate (COPE) also commented on the appointment of staff and said the word 'may' has been used. He wondered if there was a thought that word could lead to strong limitations in the exercise. If Ambassador Msimanga *may* determine it does not mean that he *must* determine.

The Chairperson agreed with the proposal because if the Minister appoints, he can also dismiss. He thought this was what was also happening in the Office of the IGI. It would pose a danger to NICOC if the Minister could come to NICOC and dismiss people.

Ms Kohler-Barnard asked NICOC why it did not use the word 'must' because it is attempting to strengthen itself, yet they are giving the Minister the final say in the matter. Ambassador Msimanga *must* determine the structure and the Minister can oversee it. Thus, the wording should be changed to *must*.

The Chairperson felt that was the Committee's consensus. We must always go back to ask why we are doing this and we must not compromise on some of the issues. Members were all there and saw what happened and they must be firm on these proposals.

Mr Stubbe commented on the function of the Agency and that the proposal is to insert supply intelligence regarding any such threat or opportunity to NICOC and it was earlier mentioned that some information would fall through the cracks and not go through NICOC, or it was rather kept from NICOC. He lambasted this practice and said that all agencies in the intelligence structure *must* supply NICOC with information or intelligence.

The Chairperson noted the proposal and said that the legal representatives can explain the issue of *may* and *must*. Secondly, he has always said that NICOC is like a baby without teeth and now they are trying to give NICOC some teeth.

Mr Masemola commented on the appointments and said that there is consensus that Ambassador Msimanga must appoint his staff, but the ideal situation is where NICOC has the final say on appointments, promotions, and demotions. Currently, NICOC can advertise a post, interview, and appoint but the final say will be within the SSA's appointment board which may support or dismiss the appointment. Additionally, it is the same with performance and IPMS, NICOC can determine these on its own, but the final say or the 'bell curve' may be determined by the SSA. Top management at NICOC can determine who deserves the bonuses, but the final say is with the Accounting Officer. If NICOC gets these powers, it will assist a great deal.

There is an appointment board at SSA, which intends to look at the fairness of the process at Musanda (SSA headquarters) and extends to spending centres. NICOC's human resource function is centralised at Musanda, and when NICOC provides a list of proposed appointed candidates, the board will have a final say and at times it would overrule the decision taken by NICOC. The people making these decisions are often not part of the recruiting panel at NICOC.

Mr Loate said that in any given structure, senior people are the ones who evaluate the performance of their subordinates. Thus, he thought NICOC was saying the senior evaluates and someone else elsewhere makes a final decision although that person does not report to them.

Ambassador Msimanga said the situation is currently very problematic and abnormal. He is at the DG's level, but in his office, he cannot even approve a Personal Assistant, which is done at Musanda. When posts are advertised, they are done so through Musanda. HR consultants from Musanda would come to NICOC and sit with the team and conduct interviews. Once the interviews are done, the team decides on the best candidates. When it goes back to Musanda PB (Placement Board), they can decide if they are not pleased with the recommendation or approval of Ambassador Msimanga and overrule his decision. These people are far lower in his rank – there would be assistant directors who sit on that board and overrule his decision. The same applies to the budget of his Office. This creates a lot of problems for NICOC and undermines the Office of the Coordinator.

The ideal situation is for NICOC to be independent even in determining its budget and appointing staff. Currently, everything is happening at Musanda and it is also dependent on who the DG is at the time.

Mr Magwanishe expressed his concerns over the appointment process. He cited an instance where a candidate was recommended by NICOC, but the board decided to appoint someone else. He felt that this could result in the candidate in question taking the government to court because the board was not part of the interviews, and thus, the decision was irrational and arbitrary. He believes that it only takes one such incident to land the government in trouble. He also mentioned the Arthur Fraser judgement where the Parole Board had recommended against granting parole, but Mr Fraser overruled it, which was found to be illegal by the court. Although the legal advisors can provide guidance, he believes that such actions could be dangerous.

Mr Stubbe recalled what Ms Kohler-Barnard mentioned earlier about the deliberations in the JSCI and how Members saw the way forward for NICOC and the Office of the Inspector General that they should be independent. The previous deliberations were accompanied by a list of proposals and some of those proposals could be included in NICOC's submission to strengthen the Office of the Coordinator.

Ms Kohler-Barnard lambasted the SSA and said we have the *tail wagging the dog* and it is the same situation that the ICD (Independent Complaints Directorate) found itself in before it became the IPID (Independent Police Investigative Directorate). She wanted to know if there was some way to make the relevant changes and make a recommendation for the independence of NICOC until such time that legislation can be produced to make it fully independent. Juniors overriding a Director General is outrageous and unheard of. NICOC gave input to the SSA which then promptly removed it -this is gatekeeping and protecting the territory. Members must be mindful of this, and it cannot be allowed because it is also what the SAPS did with IPID previously.

The Chairperson said that Members are the ones that can come up with legislation. It is Members who can make it happen and NICOC can be invited to provide input. The High-Level Review Panel was completed in 2018. They were not even halfway in implementing the recommendations and Members must revisit the objective of its establishment. It is up to the Committee to make this work and it must take up the cause.

Mr Stubbe said that in deliberations, Members must assess how the suggestion fits in with their oversight role because there must be oversight. The oversight role is with the JSCI and we need to clear that out and where it fits in.

Dr Sifolo said that ring-fencing of the budget is still dependent on what Musanda wants if this is not legislated. This is also linked to the appointment of staff. Within the service there is a Ministerial delegation of power and direction of payment, so junior members in terms of rank are often appointed at a particular level such as M5 or M6 and Ambassador Msimanga is M6 in terms of the structure which means there are certain positions that he will approve without going to the Minister in terms of the practice of ministerial delegation of power. The senior positions are where they had hoped the Minister could be consulted and seek concurrence for approval. The Coordinator's Office does not have legal expertise and relies on Musanda and occasionally you may not like what you receive and try to make sense of what is going on. The issue of *may* and *must* was also something debated by the team who assessed the inputs and they decided to allow the legal minds to explain this and they would not temper with it due to implications in the legal language. He expressed gratitude that the legal minds of the JSCI would be brought in to assist.

Ambassador Msimanga said that what has been proposed would assist in satisfying the Defence Intelligence and SAPS-CI because one of the challenges he found was the reluctance and they felt that NICOC is more like SSA as everything is done in Musanda. The issue of reluctance to supply the information, which was dealt with, was also based on that. These anomalies should be corrected so that it can be seen as a real Committee and that the Office of Ambassador Msimanga can make decisions including the appointments of staff.

Mr Magwanishe said that he was not comfortable with the response because it created legal uncertainty. It creates some discretion, and it has created a situation where it has been used in a manner that does not benefit NICOC. The law should be specific and there must be certainty in dealing with the appointment of staff in the Office of the Coordinator. This power must reside with

the Coordinator, not the Minister.

Mr Loate suggested that 'may' could be replaced by 'shall'. These words often disempower instead of strengthening the people who must account.

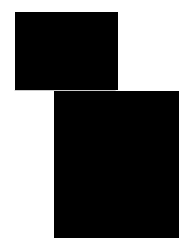
Mr Nathi Mjenxane, Parliamentary Legal Advisor said that he has noted the deliberations in the Committee and when providing advice for drafting will come up with the appropriate terminology to distinguish between what is obligatory and discretionary. Additionally, he noted the principle as agreed by the Committee presented by NICOC.

Some of the issues on independence touch on other legislation, which are not before the Committee, particularly on Financial Management and reporting. Time will be required to design the requirement to meet what is desired by the Committee.

The Chairperson noted the response and encouraged NICOC to write to the Committee if it felt that anything substantive needed to be inserted. He also appreciated how Ambassador Msimanga was not holding back and was transparent about what happens at NICOC.

Ambassador Msimanga thanked the Chairperson and Members and indicated that his Chief of Staff would correspond with the Committee if any substantive amendments needed to be made.

The Chairperson declared the meeting adjourned.



Zondo Commission's report on South Africa's intelligence agency is important but flawed

South Africa's judicial probe into state capture and corruption, the Zondo Commission, has concluded that the State Security Agency was integral to the capture of the state by corrupt elements. These included former president **Jacob Zuma's** friends, the Gupta family.

The agency has been unstable for some time. Previous investigations have made findings to improve the performance of civilian intelligence. Yet problems relating to poor performance and politicisation persist. They escalated during Zuma's tenure.

The commission's hearings were remarkable for an institution that had become used to operating secretly. Spies testified in detail, and in public, about what had gone wrong at the agency during the Zuma era (May 2014 to February 2018). Some did so at great personal risk.

I have researched intelligence and surveillance, and served on the High Level Review Panel on the State Security Agency. In my view, the Zondo report is a globally significant example of radical transparency around intelligence abuses. But it lacks the detailed findings and recommendations to enable speedy prosecutions. It also fails to address the broader threats to democracy posed by unaccountable intelligence.

Covert operations

The commission heard evidence pointing to fraud, corruption and abuse of taxpayers' money at the agency. It also heard how the Guptas benefited from these abuses. The agency shielded them from investigations that indicated they were a national security threat.

The most significant recommendation is that law enforcement agencies should further investigate whether people implicated in the report committed crimes. The commission expressed particular concern about covert intelligence projects that appeared to be "special purpose vehicles to siphon funds". It made specific reference to three people who should be investigated further.

The first is former director-general **Arthur Fraser**, for his involvement in the Principal Agent Network. This was a covert intelligence collection entity outside the State Security Agency. It has been controversial for over a decade after investigations pointed to the abuse of funds.

The second person is former deputy director-general of counter-intelligence **Thulani Dlomo**. He was responsible for the Chief Directorate Special Operations, a covert structure which the report says ran irregular projects and operations that could well have been unlawful.

The most significant of these was Project Mayibuye, a collection of operations designed to counter threats to state authority. In practice, they and others sought to shield Zuma from a growing chorus of criticism of his misrule.

The commission found that the project destabilised opposition parties and benefited the Zuma faction in the ruling African National Congress.

The third person is the former minister of state security, **David Mahlobo**. The commission found that he became involved in operational matters instead of confining himself to executive oversight. It also found that his handling of large amounts of cash, ostensibly to fund operations, needed further investigation.

According to the commission, Mahlobo's predecessor, Siyabonga Cwele, did the same by stopping an investigation into the Guptas and their influence on Zuma's administration.

The commission concluded, based on overwhelming evidence, that Zuma and Cwele did not want the investigation to continue. Had it continued, it could have prevented at least some of the activities that led to the capture of the state by the Guptas and the loss of billions in public money through corruption.

Recipe for abuse

The commission also addressed some of the deeper factors that predisposed the State Security Agency to abuse.

One of these was the amalgamation of the domestic intelligence branch, the National Intelligence Agency, with the foreign branch, the South African Secret Service, into a new entity, the State Security Agency, in 2009.

The commission found that the amalgamation had disastrous consequences, as it allowed most of the abuses it examined to happen. The two entities were merged in terms of a presidential proclamation. Yet the constitution requires intelligence services to be established through legislation. This meant that until legislation was introduced in 2013, the security agency operated without a clear legal basis.

It was highly centralised, allowing a super-director-general to control all activities. This made abuse easier for an appointee with corrupt intentions. The agency was also based on a state security doctrine, rather than a people-centred doctrine. This doctrinal shift prioritised the protection of the state from criticism, and the president more specifically, rather than the security of society. Ministerial political overreach into operational matters heightened the potential for abuse.

The commission also found that the Joint Standing Committee on Intelligence, the Inspector General of Intelligence and the Auditor General had failed to exercise proper oversight. This meant the external checks and balances on the State Security Agency were weak to non-existent.

Weighing the Zondo report

The struggle for more accountable intelligence has been strengthened through the Zondo report's exposure of abuses. But many of the findings and recommendations are vague and general. The commission could have been more specific about upgrading the Inspector General's independence, for instance. Likewise the Auditor General's capacity to audit the agency.

The commission could also have made more of the evidence presented to it. And it could have been more categorical about when it thought criminality had occurred. At times, the report does little more than restate the recommendations of previous enquiries.

These include an investigation into the Principal Agent Network programme in 2009, providing prima facie evidence of criminality.

Another is the report of the 2018 High Level Review Panel, which showed that the agency had been politicised and repurposed to benefit Zuma.

An important gap in the Zondo report relates to the infiltration and surveillance of civil society, and the agency's broader threat to democracy.

Little is made of the fact that, according to a recently 2017 declassified performance report, the agency claimed to have infiltrated Greenpeace Africa, the Right2Know Campaign, trade unions and other civil society organs.

The spies masqueraded as activists. They reported back to the agency on supporter strengths, main actors, ideology, support structures and agendas. The report's author, a security agency member, boasted about these and other accomplishments, such as infiltrating the social media networks of the Western Cape #freesmustfall student movement.

Looking ahead

In the preparations to investigate and prosecute wrongdoers responsible for the abuses by the State Security Agency, its infiltration of civil society must not be allowed to fall under the radar. It must receive as much attention as all the cases of grand corruption that are going to keep the National Prosecuting Authority busy.

Otherwise, the social forces that could potentially bring deeper and more meaningful changes to society may remain targets of state spying, as has been the case elsewhere.

Written by Jane Duncan, Professor, Department of Communication and Media, University of Johannesburg

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**IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF
CRIMINALITY, POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM
HELD AT PRETORIA**

In the application of:

**THE EVIDENCE LEADERS FOR THE
JUDICIAL COMMISSION OF INQUIRY INTO
ALLEGATIONS OF CRIMINALITY, POLITICAL
INTERFERENCE AND CORRUPTION IN THE CRIMINAL
JUSTICE SYSTEM**

Applicant

and

**AMABHUNGANE CENTRE FOR
INVESTIGATIVE JOURNALISM NPC**

First Respondent

DAILY MAVERICK (PTY) LTD

Second Respondent

MEDIA24 (PTY) LTD

Third Respondent

RE: EVIDENCE OF DR N SIFOLO TO BE HEARD *IN CAMERA*

**REPLYING AFFIDAVIT
APPLICATION FOR THE EVIDENCE TO BE LED *IN CAMERA***

I, the undersigned,

CURWIN NICHOLAS POKPAS

Do hereby make oath and say:

1. I am an attorney of Diale Mogashoa Inc., the attorneys acting on behalf of the Judicial Commission of Inquiry into Criminality, Political Interference and Corruption in the Criminal Justice System ("the Commission"). I am duly authorised to depose to this affidavit on behalf of the Evidence Leaders.
2. The facts deposed to herein fall within my personal knowledge, save where the contrary is stated or appears from the context, and are, to the best of my knowledge and belief, both true and correct.
3. I have considered the opposing affidavit deposed to by Mr Stephen Patrick Sole on 12 October 2026, together with his supplementary opposing affidavit dated 15 October 2026, delivered on behalf of the Respondents.
4. This affidavit is delivered in reply to both affidavits. I do not intend to respond individually to each allegation or submission contained therein, but rather to set out the central position of the Evidence Leaders in response to the issues raised by the Respondents insofar as they are relevant to the relief sought.
5. At the outset, I wish to make clear that the Evidence Leaders recognise the importance of the principle of open justice, the public interest in the Commission's proceedings, and the role of the media in reporting on those proceedings. The Evidence Leaders accordingly have sympathy for the position advanced by the Respondents.
6. However, the difficulty confronting the Commission is not simply whether the evidence of Dr Sifolo ought, as a matter of preference or public interest, to be heard publicly. Rather, it concerns the limitations attaching to the declassification of the information and documentation which he is required to place before the Commission, and the Commission's inability to vary or override those limitations.

THE NATURE OF THE EVIDENCE AND THE RELEVANT DOCUMENTATION

7. The Respondents contend, amongst others, that the founding affidavit does not adequately identify the nature of the information and documentation concerned, nor establish why the entirety of Dr Sifolo's evidence should be heard in camera.
8. As explained in my founding affidavit, Dr Sifolo is required to give evidence concerning the National Intelligence Coordinating Committee ("NICOC"), including its role in the identification, assessment, prioritisation and reporting of intelligence relating to organised crime and the infiltration of the criminal justice system.
9. In response to the Respondents' criticism regarding the alleged lack of particularity, I provide a high level description of the principal documentation upon which Dr Sifolo's evidence will be based and in respect of which he will be questioned.
10. The documentation comprises
 - 10.1. four National Intelligence Estimates issued over the years 2022 to 2025;
 - 10.2. 11 (eleven) NICOC Intelligence Briefs and a Special Report.
11. The documents in paragraph 10.2 above were issued over the period January 2025 to July 2025 and deal directly with issues relating to the infiltration of the criminal justice system by organised crime syndicates.
12. The statement of Dr Sifolo extends over 25 pages. The principal exhibit bundle which contains the documentation referred to in paragraph 10 above runs to 536 pages as presently indexed. The questioning of Dr Sifolo will focus on this documentation.
13. Importantly, the documents in the exhibit bundle have been declassified for the limited purpose of their use by the Commission. They have not been declassified for general publication or public dissemination.
14. The distinction is material. The declassification permits the Commission to receive and consider the information for purposes of discharging its mandate.

It does not authorise the Commission to make the documents or their contents available to the public at large.

THE LEGAL SIGNIFICANCE OF THE LIMITED DECLASSIFICATION

15. The Respondents contend that the mere classification of information cannot, without more, justify a departure from the principle of open justice. They further suggest that the Commission ought independently to consider whether the disclosure of the information would prejudice national security.
16. The Evidence Leaders do not suggest that the mere fact that information concerns intelligence matters automatically justifies its exclusion from public scrutiny. Nor is it disputed that the principle of open justice is an important consideration in determining whether proceedings ought to be held in camera.
17. However, the Respondents' contentions do not engage with the legal realities of the Commission's position. The Commission is not a High Court. It has no power to set aside a decision to classify information or to vary a decision on the terms on which classified information is declassified. That being the case, the situation before the Commission presents it with three choices:
 - 17.1. To apply urgently to the High Court to review and set aside the decisions to declassify the exhibits on terms which prevent those exhibits and (indirectly) any questioning in relation to the exhibits from being heard publicly;
 - 17.2. To refuse to hear the evidence of Dr Sifolo in camera, with the practical result that it will not be able to question him on any of the documents in the exhibits bundle; or
 - 17.3. To hear the evidence of Dr Sifolo in camera, maintaining a complete record of the questioning of Dr Sifolo and the documents to which it relates.
18. The first option is undesirable for the following reasons:



18.1. It would divert the time and focus of the Commissioners and evidence leaders away from their core task and into a collateral dispute over the terms of declassification of documents on which it needs to question Dr Sifolo. The Commission has already had to deal with three urgent applications brought by witnesses seeking to avoid testifying before the Commission. These urgent applications have been extremely disruptive and have diverted significant resources of the Commission from the Inquiry that the Commission is established to conduct.

18.2. There is no guarantee that the application would succeed, and even if it did succeed, it would not obviate the need for at least some of the evidence of Dr Sifolo to be given in camera.

18.3. It would interfere with the timetable of the Commission and would disrupt the proposed evidence schedule not only of Dr Sifolo, but also of other witnesses who are to be called to deal with issues arising out of the evidence of Dr Sifolo and the documents in his exhibit bundle. It would almost inevitably require those witnesses to be called after 9 November when the Commission resumes calling witnesses in public. Given the tight constraints on the Commission's evidence time, this is likely to require the displacement of other witnesses and to interfere with the ability of the Commission to finish hearing evidence in December.

19. The second option is self defeating.

20. That leaves the third option as the only desirable option available to the Commission.

20.1. It allows the evidence of Dr Sifolo to be heard, and to be heard without disrupting the program of the Commission and diverting evidence leaders and Commissioners from their primary task.

20.2. It similarly allows the Commission to hear the evidence of other witnesses who are to be called to deal with issues arising out of the evidence of Dr Sifolo and the documents in his exhibit bundle.

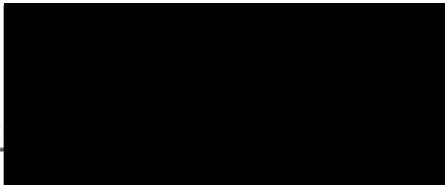


20.3. It preserves a full record of this evidence and the documents. If the applicants or any other parties wish to have access to the relevant evidence and documents, they can apply to the High Court to grant it appropriate relief in relation to the evidence and documents.

20.4. Apart from the fact that the High Court has the necessary powers to regulate access to the documents and evidence, it will be performing such an exercise retrospectively with reference to a fixed record of evidence and documents. This is much more desirable than attempting prospectively to regulate the national security and intelligence consequences of potential questioning in relation to documents and topics.

CONCLUSION

21. In the circumstances, the Evidence Leaders stand by the request for the in camera ruling in the notice of application.


CURWIN NICHOLAS POKPAS

I certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath, and that he/she considers the prescribed oath to be binding on his/her conscience.

Thus signed and sworn to before me at PRETORIA on this 16TH day of October 2026, the Regulations Governing the Administration of an Oath or Affirmation having been complied with.


COMMISSIONER OF OATHS


Siphelile Victoria Mkhwanza
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