

AFFIDAVIT

I, the undersigned,

Dianne Kohler Barnard

Hereby make oath and state that:

AD DEPONENT

1.

1.1 I, Dianne Kohler Barnard, am a member of the National Assembly of the Parliament of the Republic of South Africa.

1.2 Unless specifically indicated otherwise, the facts contained in this affidavit fall within my personal knowledge and are to the best of my belief both true and correct. I do however point out that I rely upon the veracity of the newspaper reports referred to, and that I am deposing this affidavit on the presumption that the reports are factually accurate. Other than what is reported in the newspapers referred to, I have no personal knowledge of the events.

AD PURPOSE

2.

2.1 This affidavit concerns possible criminal offences committed by Mr. Arthur Joseph Peter Fraser, the previous deputy director general for operations at the National Intelligence Agency (NIA), and the previous National Commissioner of Correctional Services.

- 2.2 I depose this affidavit in my capacity as a concerned citizen, and as a Member of Parliament representing a sizable constituency that is directly affected by the incidents detailed hereunder.
- 2.3 I previously submitted related charges against Arthur Fraser at the SAPS Durban Central station on 9 April 2009. It appears that no investigation was conducted into this matter, as evidenced by my Parliamentary Question to the Minister of Police on 23 September 2021. I trust that in bringing these expanded charges again, action will now be taken. See **Annexure A**.
- 2.4 It is my belief that the acts detailed hereunder warrant further investigation by the South African Police Services, with the view to criminal prosecution.

BACKGROUND – SPY TAPES

3.

- 3.1 The Acting National Director of Public Prosecutions, Mr. Mokotedi Joseph Mpshe stated on April 6th 2009 that the legal representatives of Mr. Jacob Zuma made available to the National Prosecuting Authority (NPA) “recordings of certain telephone conversations”.
- 3.2 In the same statement, Mr. Mpshe says “it was not clear whether the recordings had been intercepted legally or were legally in the possession of the defence”.
- 3.3 Mr. Mpshe also provides transcripts of some of the recorded conversations. These have been transcribed in media reports, and are widely available.
- 3.4 Mr. Hulley, who is the principal attorney of Mr. Zuma, has not denied that these tapes are in his possession, and stated on or around April 8th 2009, as reported by newspapers:

“[As] to where those tapes had actually emanated from, you’re mindful of the fact that an attorney has professional privilege and under those circumstances I am not at liberty to divulge any of that.”

Thus, Mr. Hulley has accepted that he is in possession of certain tape recordings.

- 3.5 Mr. Mpshe has, in addition, stated:

“The MPA decided to approach agencies that have a legal mandate to intercept telephone calls with a view to ascertaining whether they may have legally obtained recordings of the same conversations.

“The National Intelligence Agency (NIA) confirmed to the NPA that it indeed had legally obtained many of the same conversations which were obtained during the course of its investigation into the circumstances surrounding the production and leaking of the Browse Mole report.”

This implies:

- 3.5.1 At least some of the tape recordings may have been made legally.
- 3.5.2 In light of the fact that the Mr. Mpshe states that “many” of the conversations had been recorded legally by the state intelligence agency in question, at least some of the conversations presumably:
 - 3.5.2.1 did not originate from a state intelligence agency; or
 - 3.5.2.2 the state intelligence agency that legally made the recordings did not notify the NPA; or
 - 3.5.2.3 the state intelligence agency made the recordings illegally.

THE ALLEGED OFFENCES – SPY TAPES

4.

- 4.1 Sections 2 and 49(1) of the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 (‘the Act’) provide that no person may intercept, or authorise or procure any other person to intercept any communication in the course of its occurrence or transmission, except in certain limited circumstances as prescribed by the Act.
- 4.2 A request for an interception direction can only be provided by a judge designated by the Act, and under the limited circumstances referred to in 1.1. Section 16(5)(a) of the Act specifies various circumstances in which a judge may grant such an interception direction.
- 4.3 It appears that the content of the tapes, which has been widely documented in the press, falls outside the parameters of what is envisioned by the provisions of the Act referred to in 2.2. As such, it is necessary that an investigation is carried out into whether interception directions for each of the tapes were issued in accordance with the Act.
- 4.4 Any interceptions of communication that did not occur in line with the provisions of the Act ought to result in charges, as envisaged by sections 49(1) and 51(1)(b).

POSSIBLE ILLEGAL DISCLOSURE OF LEGAL COMMUNICATION INTERCEPTIONS

5.

- 5.1 In terms of section 42(1) of the Act, no person may disclose any legally intercepted communications, except in certain limited circumstances.
- 5.2 Mr. Fraser has been cited by three independent sources in the lead story of the *Mail & Guardian* newspaper on April 9th 2009 (pages 1, 2 and 3) as the person who passed on some or all of the tape recordings to Mr. Zuma's legal team.
- 5.3 If the source of the tape recordings, or some of the tape recordings, is a state agency then if Mr. Fraser or any other persons in said agency has passed on communication interceptions obtained legally (under an interception direction) to Mr. Hulley, or Mr. Zuma, or any other member of Mr. Zuma's legal team, then that individual may have violated section 42(1), and may thus be subject to legal sanctions as outlined in section 51(1)(b).

POSSIBLE ILLEGAL DISCLOSURE OF LEGAL COMMUNICATION INTERCEPTIONS

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POSSIBLE THEFT OR POSSESSION OF STOLEN PROPERTY

7.

- 7.1 Neither Mr. Hulley nor Mr. Zuma is presently in the employ of the state.

- 7.2 If all or some of the communications interceptions in Mr. Hulley's possession have been obtained by a state institution, they would be classified information that is the possession of that state institution.
- 7.3 In light of 4.1 and 4.2, Mr. Hulley and/or others involved in Mr. Zuma's legal defence, may have committed the crime of theft or, alternatively, the illegal possession of stolen property.

INVOLVEMENT IN THE PRINCIPLE AGENT NETWORK

8.

- 8.1 During Arthur Fraser's tenure as deputy director for operations in the State Security Agency, he oversaw the establishment of the Principle Agent Network (PAN) He oversaw this programme from 2007 to 2009.
- 8.2 The PAN programme was plagued by serious irregularities and overspending of its allocated budget. Reports have also emerged that the network saw millions of rands of irregular expenditure and operated with high levels of nepotism and corruption.
- 8.3 I hereby request that further investigations be conducted into potential criminal offences relating to Mr Frasers involvement in the Principle Agent Network in terms of the Prevention and Combating of Corrupt Activities Act (12 of 2004).

MISREPRESENTATION OF QUALIFICATIONS

9.

- 9.1 On 20 February 2022, it was reported in the media that Arthur Fraser had lied on his CV by stating that he attended the University of London.
- 9.2 A subsequent investigation by Jacques Pauw revealed that Arthur Fraser had never attended the University of London, and that the institution does not offer a degree in Film and Video Production as was stated on Arthur Fraser's CV.
- 9.3 Fraser subsequently released a statement through his lawyer stating that he received the degree from the London of College of Communication. This however was not what

was stated on his CV when he applied for various high-level roles within the South African government.

9.4 I request that a full investigation is conducted into Mr Fraser's misrepresentation of his qualifications. I submit that his intentional misrepresentation of his qualifications has caused prejudice to South African society and may constitute the common law crime of fraud.

FURTHER POSSIBLE OFFENCES

10.

10.1 I submit that this affidavit contains a plethora of potential offences which should be carefully studied and analysed. I believe that a variety of further charges may arise in the course of an investigation. I hereby request that all further charges relating to Arthur Fraser be investigated for potential criminal prosecution.

11.

11.1 I hereby request that all above charges be investigated, and appropriate action taken against Mr Arthur Fraser to ensure that the rule of law is upheld.

13.

This is all I can declare.

DEPONENT: DIANNE KOHLER BARNARD

I CERTIFY THAT THIS AFFIDAVIT WAS SIGNED AND SWORN TO BEFORE ME AT _____ ON THIS _____ DAY OF _____ 2022. THE DEPONENT HAVING ACKNOWLEDGED THAT HE/SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT AND I CERTIFY THAT THE REGULATIONS IN TERMS OF SECTION 10 OF ACT 16 OF 1963, AS PUBLISHED UNDER

GN. R1258 OF 21 JULY 1972 AS AMENDED BY GN. R1648 OF 1977 AND GN. R1428 OF 1980 AND GN. R773 OF 1982, HAVE BEEN COMPLIED WITH.

COMMISSIONER OF OATHS

FULL NAMES : _____
DESIGNATION : _____
AREA : _____
ADDRESS : _____

ADDENDUM A

NATIONAL ASSEMBLY

FOR WRITTEN REPLY

QUESTION 2011

DATE OF PUBLICATION IN INTERNAL QUESTION PAPER: 27 AUGUST 2021
(INTERNAL QUESTION PAPER NO 19-2021)

2011. Ms D Kohler (DA) to ask the Minister of Police:

What is the status of the case with regard to the charges brought by Ms D Kohler against certain persons (names furnished) that was opened at the Durban Central Police Station on 9 April 2009 for being in possession of illegal, stolen recordings of intercepted telephone conversations?

NW2247E

REPLY:

All attempts to trace this case, by using the information provided, were unsuccessful and the case could, therefore, not be found. The Honourable Member is requested to provide any additional information, including the Case Administration System (CAS) number, if possible, which may assist in tracing this case.

Reply to question 2011 recommended/~~not recommended~~




NATIONAL COMMISSIONER
KJ SIOLE (SOEG)

GENERAL
SOUTH AFRICAN POLICE SERVICE

Date: 2021-09-16

Reply to question 2011 approved/not approved



MINISTER OF POLICE
GENERAL BH CELE, MP

Date: 22/09/2021