



Liberty Fighters Network

Est. 2016 - A voluntary association without gain (*Universitas*)

Office of the President: Reyno De Beer

Landline: +27(0)12 023 1976 / Cellular: +27(0)67 735 7288

Electronic Mail: reyno@libertyfighters.co.za

Website: www.libertyfighters.co.za / Telegram: @libertyfightersnews / Twitter: @LFN_SouthAfrica /

Facebook: Libertyfightersnetwork / YouTube: @LibertyFighters

Date: 26 April 2024

URGENT / STRICTLY CONFIDENTIAL IN NATIONAL SECURITY

ATTENTION: **CHIEF JUSTICE OF SOUTH AFRICA**

Chief Justice Raymond Zondo

c/o Mr. Sibusiso Mapossa (Registrar of the Constitutional Court)

Email: Mapossa@concourt.org.za

[BY EMAIL]

Dear Chief Justice

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS: FORMER PRESIDENT, MR. JACOB GEDLEYIHLEKISA ZUMA v REPUBLIC OF SOUTH AFRICA (CASE NUMBER 779/22); CONSTITUTIONAL COURT: INDEPENDENT ELECTORAL COMMISSION v FORMER PRESIDENT, MR. JACOB GEDLEYIHLEKISA ZUMA & ANOTHER

1. Liberty Fighters Network (LFN) is a recognised voluntary association without gain and herein represents our principal, former President, Mr. Jacob Gedleyihlekisa Zuma (“Mr. Zuma”), as his duly authorised representative in respect of a complaint lodged on his behalf against the state of the Republic of South Africa (RSA) with the African Commission on Human and Peoples’ Rights (ACHPR), an executive organ of the African Union (AU).
2. **Very Important:** You, Chief Justice, and everyone else under your jurisdiction handling this correspondence along with its enclosures, are respectfully urged to maintain strict confidentiality regarding the information contained herein. It is imperative that this data not be disclosed in any manner to the media or any unauthorised individuals, unless express written consent is obtained from the Secretariat of the ACHPR, the writer, or another party specifically designated by Mr. Zuma for such disclosure. Any unauthorised dissemination of the contents of this letter and its attachments, whether directly or indirectly, would constitute a violation of Article 59 of the African Charter on Human and Peoples’ Rights (“*African Charter*”), thereby also breaching the confidentiality of Mr. Zuma and any other individuals impacted by such disclosure. Such actions would render the responsible party liable to civil and criminal prosecution, or if pertaining to the state, potential international sanctions.
3. The intention of this correspondence is not to offer any submissions regarding the ongoing case involving the Independent Electoral Commission (IEC), Mr. Zuma, and the uMkhonto weSizwe Party. Rather, its purpose is to apprise you, Chief Justice, and the Constitutional Court of a matter of national security, the details of which will be elucidated *infra* in strict confidence.

4. Due to international confidentiality considerations, it is not feasible to raise this issue in any court documents that would subsequently become public records, as this would contravene the mandated confidentiality outlined in Article 59 of the *African Charter*.
5. It is evident to the writer that there is a disconnect within the state, as demonstrated by the IEC's filing with the Constitutional Court, indicating a lack of coordination. Unfortunately, it cannot be discounted that this may be a deliberate effort by certain elements within the state to compel Mr. Zuma into breaching confidentiality, potentially undermining his case before the ACHPR.
6. For the record, the writer had also confidentially notified the National Commissioner of Correctional Services, Mr. Thobakgale, during special representations regarding Mr. Zuma's return to prison and the subsequent remission decision. It should be noted that Mr. Zuma's legal team handling the IEC matter is entirely distinct from us handling the ACHPR matter, for reasons of Mr. Zuma's personal preference to keep local and international proceedings separate. Therefore, the legal team led by Adv. Mpofu SC is not authorised to offer any opinion on the ACHPR matter, and to the best of the writer's knowledge, they have not been provided with the complete record of proceedings before the ACHPR.
7. On 19 January 2022, LFN lodged a formal complaint on behalf of Mr. Zuma in respect of his belief that the direct imprisonment order dated 29 June 2021 by the Constitutional Court in the matter of *Secretary of the Judicial Commission of Inquiry*¹ under case number CCT52/21, was unlawful and invalid as it was in direct violation of various of his human rights established in terms of the *African Charter on Human and Peoples' Rights* ("*African Charter*") which the court respectfully was obliged to have considered – especially for the

¹ Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others [2021] ZACC 18

fact that it, *inter alia*, dictates that everyone has a right to a proper appeal process which was not afforded to him.

8. In a letter dated 15 March 2022, received by writer *via* electronic mail on 16 March 2022, the ACHPR Executive Secretary at that time, Ms. Lindiwe Khumalo, (“Ms. Khumalo”) confirmed that this complaint was lodged for Mr. Zuma. This letter is attached as Annexure “**A**”.
9. Further, in a letter dated 4 October 2022, received by writer *via* electronic mail on 13 October 2022, Ms. Khumalo confirmed that the complaint lodged for Mr. Zuma was seized by it. This letter is attached as Annexure “**B**”.
10. Moreover, in a letter dated 25 July 2023, forwarded to writer by electronic mail on 27 July 2023, Ms. Khumalo confirmed that the ACHPR would have proceeded to consider such complaint at its forthcoming session. This letter is attached as Annexure “**C**”.
11. The Republic of South Africa submitted its response to Mr. Zuma's complaint with a delay, received by the writer through the ACHPR on 18 January 2024, although it was allegedly completed by 26 October 2023. This comprehensive response, spanning 22 pages, was prepared by Adv. PA Stemmet, the Acting Chief State Law Advisor at the Department of International Relations and Cooperation, purportedly under the instructions of President Cyril Ramaphosa. The state's response is provided as Annexure “**D**” for reference.
12. Considering that Adv. Stemmet's response addressed a complaint that pivoted around three (3) judgments of the Constitutional Court, it was reasonably assumed by Mr. Zuma and the writer that the state would have sought your guidance, Chief Justice, on the content of that response to the ACHPR. It is therefore assumed that you, Chief Justice, are reasonably familiar with the response's contents, as it would be inappropriate for President Ramaphosa to instruct a response concerning Constitutional Court judgments without your input and guidance, Chief Justice.

13. As per the state's response by Adv. Stemmet, with your apparent full awareness, Chief Justice, in accordance with Mr. Zuma's complaint, the state maintains that President Ramaphosa's remission of the sentence effectively cleared Mr. Zuma's name of any criminal wrongdoing. Alternatively, it argues that the remission would result in the extinguishment of the imprisonment sentence itself. *Vide*: Paragraphs 21 – 31 of Annexure "D".
14. It reasonably appears as if the IEC was not aware of the state's position. In terms of Sections 181(1)(f) and 239 of the *Constitution of the Republic of South Africa, 1996* the IEC is a state institution or otherwise an "*organ of state*" and can therefore not have a different view as what the Republic's executive already formed on an international platform.
15. In received communication from the Secretariat of the ACHPR dated 20 March 2024, writer was informed by its current Executive Secretary, Mrs. Abiola Idowu-Ojo, that the ACHPR had considered the complain of Mr. Zuma at its 78th Ordinary Session held virtually 23 February to 8 March 2024 and decided to declare it admissible. Both this letter and the decision by the ACHPR are attached as Annexures "E" and "F", respectively.
16. In the Executive Secretary's letter (Annexure "E"), both the state, which would in this particular case include the IEC, and Mr. Zuma were specifically instructed as follow:-

Kindly note that, pursuant to Article 59 of the African Charter on Human and Peoples' Rights, the decision shall be kept confidential until the Activity Report of the Commission which includes the above-mentioned Communication is considered and authorized for publication by the relevant Policy Organs of the African Union.

17. The ACHPR has specifically found that Mr. Zuma has a *prima facie* case in that his rights were violated in terms of the *African Charter* by the state, *inter alia*, directly resulting from the decisions of the Constitutional Court. It is stated in paragraph 36 (Annexure "F") that:-

In the present Communication, the Commission observes that the subject matter of the Communication relates to the violation of rights protected in the African Charter, such as the contention that the Victim was not provided with an option to appeal the sentence, the procedure resulting in the sentence was issued in his absence, in addition to the fact that the Court did not have the required

jurisdiction.¹¹ Accordingly, the Commission is satisfied that a *prima facie* case exists in the present Communication.

18. The writer has observed that the current bench of the Constitutional Court was effectively involved, either directly or indirectly, in the cases central to the ACHPR complaint. This situation presents a conflict of interest, as the matter is still pending before the ACHPR regarding the merits of the complaint while the Constitutional Court is now tasked with revisiting Mr. Zuma's entire imprisonment issue. This revisitation pertains specifically to the interpretation of the "*remission*", which is also a matter introduced by the state before the ACHPR for consideration. Notably, this introduction occurred before the IEC lodged its application in this court.
19. In line with the ACHPR complaint that the writer is authorised to address, it is the writer's humble opinion that while the Constitutional Court technically holds jurisdiction as the *apex* court to consider any matter brought before it, in this particular instance, it is respectfully submitted that, pending the final outcome of the international process, this court lacks the authorisation under International Law to currently or ever entertain the present matter brought by the state through the IEC against, *inter alia*, Mr. Zuma.
20. Should the Constitutional Court, as the institution primarily accountable for the apparent infringement of Mr. Zuma's rights, opt to proceed with hearing the matter brought by the IEC, it would be the very court constitutionally mandated to uphold the law that would be disregarding international law, including our continent's AU standards.
21. The writer cannot in good conscience allow Mr. Zuma to face the very court in which the ACHPR has *prima facie* views of rights violations. Therefore, the entire Constitutional

Court, with utmost respect, should consider “recusing” itself, not only you, Chief Justice, as the writer is aware would probably be requested by Mr. Zuma's legal team in the current pending matter.

22. Should the Constitutional Court proceed to address the matter, particularly in a manner that sets aside the Electoral Court's decision, it is impossible at this juncture for the Constitutional Court to ascertain whether it would indeed uphold the Electoral Court's decision, thus knowing the outcome in advance. Such actions would undoubtedly have an adverse impact on the state's case before the ACHPR.
23. Conversely, the court's independence would undoubtedly come under public scrutiny if it were to rule in favour of Mr. Zuma after the public is formally apprised of the ACHPR's pre-existing findings, where a *prima facie* case was established. This scenario might give the impression that the court is merely aligning its decision to appease the ACHPR. Given the recent intense scrutiny on the judiciary's independence, entertaining the IEC matter at this stage would not be advisable to affirm the court's impartiality.
24. Given the circumstances, it is respectfully suggested that the Constitutional Court consider issuing an interim order along the lines of “*pending the outcome between Mr. Zuma and the Republic of South Africa before the ACHPR under case number 779/2022, the matter is postponed sine dies and costs are reserved*”. If the Constitutional Court adopts an order aligned with this proposal, it would not need to provide specific reasons at this stage or reveal the confidential decision of the ACHPR. Furthermore, the court would not have to make immediate decisions regarding its jurisdictional challenges or the recusal of any part of the bench, thus safeguarding all involved parties and institutions while upholding the judiciary's independence and integrity.
25. For the record, if it transpires following the ACHPR's final decision that the Electoral Court's order was erroneous and Mr. Zuma had been improperly elected into a restricted office

post-elections, such effects can be retrospectively validated in accordance with the well-established *Oudekraal* rule endorsed by the Constitutional Court.

26. Therefore, out of respect for the pending matter before the ACHPR and in the interest of the People of South Africa, the decision of the Electoral Court should remain unchanged at this juncture until the Constitutional Court can address it in alignment with the final decision of the ACHPR.
27. Your urgent thorough consideration of this highly significant communication would be greatly appreciated, Chief Justice.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'R. De Beer', with a large, sweeping flourish extending to the right.

Reyno D. De Beer

President: Liberty Fighters Network

On behalf of our principal, Mr. JG Zuma

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
31 Bijilo Annex Layout, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (+220) 4410505 / 4410506; Cell (+220) 2304361 E-mail: au-banjul@africa-union.org ; Web www.achpr.org		

Ref: ACHPR/STC/COMM/.....204...../22
Date: 15 March 2022

Mr. Reyno D. De Beer
Counsel
Liberty Fighters Network
24 Lith Road
The Orchards, Pretoria, Gauteng,
Republic of South Africa
Phone: +27 78 174 5878, +27 12 023 1976
Email: reyno@libertyfighters.co.za

Dear Mr. De Beer,

Subject: Complaint by Jacob Gedleyihlekisa Zuma v Republic of South Africa


I write with reference to the Complaint submitted on 19 January 2022 against the Republic of South Africa, and to inform you that during its 70th Ordinary Session held from 23 February – 09 March 2022, the African Commission on Human and Peoples' Rights (the Commission), considered your request for provisional measures to be granted to Mr. Zuma.

In that regard, the Commission requests that you submit further/evidential information or certified medical records on Mr. Zuma's health status, demonstrating the need for the grant of the Provisional Measures, to enable it make a determination on the matter.

Please accept my best regards.

Sincerely,

Ms. Lindiwe Khumalo
Ag. Executive Secretary to the Commission

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
31 Bijilo Annex Layout, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (+220) 4410505 / 4410506; Cell: (+220) 2304261 E-mail: au-banjul@africa-union.org ; Web www.achpr.org		

Ref: ACHPR/STC/COMM/779/22/...955/22
 Date: 04 October 2022

Mr. Reyno D. De Beer
 Counsel
 Liberty Fighters Network
 24 Lith Road
 The Orchards, Pretoria, Gauteng,
 Republic of South Africa
 Phone: +27 78 174 5878, +27 12 023 1976
 Email: reyno@libertyfighters.co.za

Dear Mr. De Beer,

Subject: Communication 779/22 - Jacob Gedleyihlekisa Zuma v Republic of South Africa

I write to inform you that in accordance with **Rule 115 (5)** of the Rules of Procedure 2020, the Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) considered the above-referenced Communication and decided to be seized of it.

It should also be noted that, in line with **Rule 100** of the Rules of Procedure, the above Communication was considered by the African Commission on Human and Peoples' Rights (the Commission) sitting at its 70th Ordinary Session held from 23 February to 9 March 2022. Following its decision at plenary, the Secretariat sent a letter on 15 March 2022 requesting further information to demonstrate the need for the grant of Provisional Measures in the Complaint, but there was no response.

At the 72nd Ordinary Session held from 19 July to 2 August 2022, the Commission therefore decided not to grant the request for Provisional Measures, pending a possibility of reconsideration, should the Complainant submit the requested information within 30 days of its decision. This information however has to date not been provided.

Kindly be informed that the Complaint has been registered by the Secretariat as reflected in the subject caption above. Therefore, all future correspondences pertaining to this matter must bear this reference.

ra/ms//LK

Please note that pursuant to **Rule 116 (1)** of the Rules of Procedure 2020, you are further required to submit arguments and evidence on the Admissibility and Merits of this Communication within **sixty (60) days** of this notification.

Please accept my best regards

Sincerely,


Ag. Executive Secretary to the Commission





Ref: ACHPR/STC/COMM/779/22/...⁸⁰⁴.../23
Date: 25 July 2023

Mr. Reyno D. De Beer
Counsel
Liberty Fighters Network
24 Lith Road
The Orchards, Pretoria, Gauteng,
Republic of South Africa
Phone: +27 78 174 5878, +27 12 023 1976
Email: reyno@libertyfighters.co.za

Dear Mr. De Beer,

Subject: Communication 779/22 - Jacob Gedleyihlekisa Zuma v Republic of South Africa

The Secretariat acknowledges receipt of your letter on 14 July 2023. Please note that the Commission has taken note of the expiry of the deadline for the Respondent State to submit its observations on Admissibility and Merits and will proceed with the consideration of the Communication, in accordance with Rule 118(2) of the Commission's Rules of Procedure (2020).

The Commission has also taken note of the information on the imminent return of the Complainant to prison, but also notes that no evidence justifying urgent treatment of the case has been presented to the Commission, nor has a formal request for the granting of Provisional Measures in terms of the Rules of Procedure been filed. In this respect, kindly be informed that the Commission will deal with the Communication in the normal cause accordance with its Rules of Procedure and intends to consider it on Admissibility at one of its forthcoming sessions.

Please accept my best regards.

Sincerely,



Ms. Lindiwe Khumalo
Ag. Executive Secretary to the Commission

ra/prc/LK

IN THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
HELD IN BANJUL

COMMUNICATION NO.: 779/2022

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA

Complainant

and

REPUBLIC OF SOUTH AFRICA

Respondent

THE RESPONDENT'S SUBMISSION
IN TERMS OF RULE 116 (2)

INTRODUCTION

1. This submission is prepared in accordance with the provisions of Rule 116(2) of the Rules of Procedure of the African Commission on Human and Peoples' Rights (Rules of Procedure), and filed with the African Commission on Human and Peoples' Rights by the Department of International Relations & Cooperation on behalf of the Republic of South Africa, which is cited in this proceeding as the Respondent.

2. For ease of reference, the Respondent will simply refer to the parties as described more fully below as follows:
 - 2.1 Mr Jacob Gedleyihlekisa Zuma, who is represented in this communication proceeding by Mr Reyno Dawid De Beer (Mr De Beer) and/or Liberty Fighters Network will be referred to as "**Mr Zuma**";
 - 2.2 The Republic of South Africa, which is represented by the Department of International Relations and Cooperation shall be referred to as "**The Respondent**". and
 - 2.3 The African Commission on Human and Peoples' Rights shall be referred to in its abbreviation as "**The ACHPR**".

MATERIAL BACKGROUND

3. On or about 04 October 2022, the Respondent received a Note Verbale from the Secretariat of the ACHPR, in which the Respondent was notified that on 19 January 2022, the ACHPR received a complaint from the Liberty Fighters Network filed on behalf of Mr Zuma and against the Respondent.
4. Accordingly, the Secretary of the ACHPR considered the aforementioned complaint in terms of Rule 115(5) of the Rules of Procedure, and decided to be seized of it. Although, the complaint was initially received under the names of Liberty Fighters Network and Mr De Beer as the first and second complainants respectively, the Secretariat of the ACHPR registered the complaint as

“Communication – 779/22 – Jacob Gødleyihlekisa Zuma v The Republic of South Africa”, and requested Mr Zuma to submit his arguments on Admissibility and Merits to the ACHPR within a period of sixty days after receipt of that notification.

5. The sixty-day period during which Mr Zuma was required to comply with the directive of the ACHPR and submit his arguments on Admissibility and Merits lapsed on the 04th of December 2022. However, Mr Zuma elected to simply deliver his submissions on or about April 2023, after a period of four months since the deadline for the submission had expired.
6. As it is tradition, the ACHPR sought to notify the Respondent that the Secretariat had received Mr Zuma’s submission on Admissibility and Merits, and then request the Respondent to deliver its observations on the said submissions within a period of sixty days of receipt of that notification. However, an official note was transmitted by error to the Embassy of the Republic of South Africa in Dakar, Senegal on 05 April 2023.
7. After an exchange of communication between the Respondent and the ACHPR to clarify the matter, on 30 August 2023, the Secretariat acknowledged the error in communication, and afforded the Respondent an opportunity to submit its response to Mr Zuma’s submission on Admissibility and Merits within a period of sixty days, calculated from the date of receipt of the notification.
8. In that regard, the Respondent confirms that its reply to Mr Zuma’s submission will be filed within the prescribed statutory period as requested.

THE OVERVIEW AND PURPOSE OF THIS SUBMISSION

9. The purpose of this submission is to oppose Mr Zuma's communication, in which Mr Zuma seeks *inter alia* the following orders:

9.1. That the Respondent be ordered not to commit Mr Zuma to imprisonment resulting, directly or indirectly, from any one or more of the court matters referenced in item 6 Part B, pending the final outcome of his complaint;

9.2. That the Respondent be prohibited from withdrawing, hindering or obstructing any of the benefits that Mr Zuma is entitled to and those he had been provided with as the former President of the Respondent, pending the outcome of his complaint;

9.3. That the orders by the Constitutional Court under the following cases be reviewed in respect of their compliance to the African Charter on Human and Peoples' Rights (African Charter), and if found to be in violation, that they be set aside:

9.3.1. CCT295/20;

9.3.2. CCT53/21;

9.3.3. CCT52/21;

- 9.4. As a result of setting aside any one or more of the above orders, that it be declared that the Respondent violated the human rights of Mr Zuma on one or more grounds as set out in the African Charter.
10. It must be noted that the Respondent has elected to address only the above prayers, based on the reasons which shall be fully examined in the below paragraphs.
11. However, the Respondent kindly wish to pause and mention, that this complaint is simply malicious, lodged without *bona fide* intentions, but to attempt to convert the ACHPR into a court of appeal and/or review against the decisions taken by competent national courts. It is against this background that the Respondent duly submits with respect, that the complaint by Mr Zuma will ultimately burden this Honourable Commission.
12. The Respondent finds it innocuous to point out that the allegations made by Mr Zuma and/or on his behalf in his submissions are not in every respect true and correct, but to a certain extent are meritless and an abuse of the processes of the ACHPR.
13. In the below section, the Respondent will illustrate how the ACHPR has no jurisdiction to entertain Mr Zuma's complaint, and further that his complaint has failed to comply with the requirements under Article 56 of the African Charter.

THE RESPONDENT'S REPLY TO MR ZUMA'S SUBMISSIONS ON
ADMISSIBILITY AND MERITS

A. THE SEQUENCE OF EVENTS

14. On 29 June 2021, Mr Zuma was sentenced to 15 months' imprisonment by the Constitutional Court of the Republic of South Africa (Constitutional Court) for failing to adhere to a Court Order which directed him to appear before the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (Judicial Commission). The circumstances leading up to the sentence are fully set out in the Constitutional Court decision of *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* [2021] ZACC 18; 2021 (9) BCLR 992 (CC) (a copy of the judgment is attached to Mr Zuma's complaint)
15. However, for purposes of this submission, it is safe to state that Mr Zuma did not appear before the Judicial Commission on the dates as determined.
16. Accordingly, Mr Zuma commenced serving his sentence on 08 July 2021 at the Estcourt Correctional Centre in Kwa-Zulu Natal Province. However, on the 05th of September 2021, the National Commissioner of Correctional Services (Commissioner) resolved to release Mr Zuma on medical parole. In South Africa, parole is also a form of punishment which is served by an inmate within

the system of community corrections in terms of Chapter VI of the Correctional Services Act, No. 111 of 1998.¹

17. Aggrieved by that, the Democratic Alliance, Helen Suzman Foundation and Afriforum NPC instituted separate review applications against the decision of the Commissioner on various grounds in terms of the *Promotion of Administrative Justice Act, No. 03 of 2000*, which applications were heard on 23 November 2021 as one application by the Gauteng Division of the South African High Court, wherein on 15 December 2021 the Honourable Justice Matojane reviewed the decision of the Commissioner to place Mr Zuma on medical parole, and declared his decision unlawful, and set it aside.²

18. On or about the 15th of August 2022, the Commissioner and Mr Zuma appealed the aforementioned judgment before Supreme Court of Appeal of the Republic of South Africa. However, on 21 November 2022, the Supreme Court of Appeal granted the following orders:³

“[66] In the result I make the following order:

- 1. Paragraphs 5 and 6 of the order of the high court are set aside.*
- 2. Save for the above, the appeal is dismissed with costs.*

¹ Chapter VI of the Correctional Services Act, No. 111 of 1998.

² *Democratic Alliance v National Commissioner of Correctional Services and Others; Helen Suzman Foundation v National Commissioner of Correctional Services and Others; Afriforum NPC v National Commissioner of Correctional Services and Others* [2022] 2 All SA 134 (GP).

³ *National Commissioner of Correctional Services and Another v Democratic Alliance and Others (with South African Institute of Race Relations Intervening as Amicus Curiae)* (33/2022) [2022] ZASCA 159; [2023] 1 All SA 39 (SCA); 2023 (2) SA 530 (SCA); 2023 (1) SACR 492 (SCA) (21 November 2022).

3. The first and second appellants are ordered to pay the costs of the first, second and third Respondents, jointly and severally, the one paying the other to be absolved.

4. The costs shall include the costs of two counsel where so employed.”

19. Subsequently, the Commissioner appealed the aforementioned Supreme Court of Appeal's Judgment to the Constitutional Court, but such an appeal was accordingly dismissed on 13 June 2023 on the grounds that the appeal had no reasonable prospect of success, and the decision of the Supreme Court of Appeal was upheld.

20. At this stage, it is safe to submit that Mr Zuma did report back at Estcourt Correctional Centre to continue servicing his imprisonment sentence.

21. However, shortly thereafter, on 11 August 2023 the President of the Republic of South Africa approved the following periods of special remission to the indicated categories of offenders, offenders placed under correctional supervision, parolees and day parolees who are or would have been incarcerated or serving sentences within the system of community corrections on 2023:

21.1. Probationers, Parolees and Sentenced Offenders are granted 12 months Special Remission of sentence, with the exception of *Inter alia* Sexual Offences, Murder, Attempted Murder.

22. A copy of the Proclamation Notice 133 of 2023 published in the Government Gazette of 11 August 2023 is attached hereto and marked as **ANNEXURE “ACHPR-1”**.
23. The decision by the President was necessary to alleviate overcrowding in the facilities of the Department of Correctional Services, which was made in accordance with the provisions of Section 84(2)(j) of the Constitution of the Republic of South Africa, which read as follows:

“84(2) The President is responsible for-

(j) pardoning or relieving offenders and remitting any fines, penalties or forfeitures.”

24. In light of the above, Mr Zuma complied with the requirement as per the decision of the President, and was accordingly released from prison following the remittance of his sentence.

B. THE ACHPR HAS NO JURISDICTION TO ADJUDICATE MR ZUMA’S COMPLAINT

25. It is the submission of the Respondent that the ACHPR has been called upon to entertain a matter of which its cause of action has ceased to exist, and as such, there is no longer any claim before the ACHPR for its adjudication.
26. In his complaint, Mr Zuma’s main prayer is for the Respondent be ordered not to commit him to imprisonment, pending the outcome of his communication to

the ACHPR. However, as illustrated above, his sentence of imprisonment was remitted by the President of the Republic of South Africa in terms of Section 84(2)(j) of the Constitution, 1996. Therefore, there is no complaint before the ACHPR to entertain and/or adjudicate upon.

27. This principle has been accepted and applied by our courts. In the decision of *Minister of Justice and Correctional Services and Others v Estate Late James Stransham-Ford and Others*, the Supreme Court of Appeal found that if a cause of action ceases to exist before judgment in the court of first instance, there is no longer a claim before the court for its adjudication.⁴ According to the court, mootness is the term used to describe the situation where events overtake matters after judgment has been delivered, so that further consideration of the case by way of appeal will not produce a judgment having any practical effect.⁵
28. Moreover, in the decision of the Constitutional Court in its decision of *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others*, held that:⁶

“(18) *A case is moot and therefore not justiciable if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law.*”

⁴ *Minister of Justice and Correctional Services and Others v Estate Late James Stransham-Ford and Others* (531/2015) [2016] ZASCA 197; [2017] 1 All SA 354 (SCA); 2017 (3) BCLR 364 (SCA); 2017 (3) SA 152 (SCA) (6 December 2016) at paragraph 26.

⁵ As above.

⁶ *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* (CCT10/99) [1999] ZACC 17; 2000 (2) SA 1; 2000 (1) BCLR 39 (2 December 1999), at footnote 18.

29. In its recent decision dated 08 February 2023, of *Minister of Tourism and Others v Afriforum NPC and Another*, the Constitutional Court held that a case is moot when there is no longer a live dispute or controversy between the parties which would be practically affected in one way or another by a court's decision or which would be resolved by a court's decision.⁷ **Importantly, the court found that a case is also moot when a court's decision would be of academic interest only.**⁸
30. In light of the above, the Respondent is of the view that this is a clear instance in which the issues before the ACHPR are wholly academic, and of which there exist no live dispute but an historical one. Accordingly, it is accepted that the ACHPR has no jurisdiction to entertain the merits of Mr Zuma's complaint.
31. Therefore, even if the ACHPR would adjudicate on this matter and decide on Mr Zuma's complaint, the Respondent submit, with respect that the decision of the ACHPR would be of no effect other than a mere declaration.

C. MR ZUMA'S FAILURE TO COMPLY WITH ARTICLE 56

32. Article 56(2) of the African Charter provides that the communications relating to human and peoples' rights referred to in Article 55 received by the ACHPR, shall be considered if they:⁹

⁷ Minister of Tourism and Others v Afriforum NPC and Another [2023] ZACC 7 (CC) at paragraph 23.

⁸ As above.

⁹ Article 56(2) of the African Charter on Human and Peoples' Rights.

“(2) are compatible with the Charter of the Organization of African
Unity or with the present Charter.”

33. This requirement entails the necessity that a complainant must make plausible claims that articles of the African Charter have been violated. Therefore, in order to make such plausible claims of violation, the complainant should attest in his/her complaint a fact pattern that demonstrates the potential of such violations, and stipulate those provisions of the African Charter that he believes have been violated.
34. This provision does not only deal with possible violation of concrete acts of harm, but also of legal or policy frameworks that deny or deprive rights, failure to take necessary positive steps, or inadequate remedial systems.
35. In the past, the ACHPR has declared communications inadmissible on this ground alone, such as in the decision of ***Seyoum Ayele v. Togo (1994)***, wherein the ACHPR ruled that the communication was inadmissible under Article 56 of the African Charter, due to the vagueness of the allegations.¹⁰ Furthermore, in the decision of ***Hadjali Mohamad v. Algeria (1994)***, the communication was found inadmissible because same does not state the human rights violations suffered by the author of the communication or the procedures engendered by such violations.¹¹

¹⁰ *Seyoum Ayele v. Togo* App. No. 35/89, Af. Comm. H.P.R. (Apr. 27, 1994), para. 2

¹¹ *Hadjali Mohamad v. Algeria* App. No. 13/88, Af. Comm. H.P.R. (Apr. 27, 1994), para. 2.

36. In this present communication, Mr Zuma has claiming that his rights as contained in Articles 1- 9, 13, 19 and 23 – 26 of the African Charter have been violated, but has failed to demonstrate how those provisions were violated by the Respondent. Basically, cutting and pasting those provisions of the African Charter. Moreover, the Respondent finds it difficult to respond to those paragraphs in his submission, because it is not clear how Articles 1 to 26 were violated.
37. Accordingly, it is against the above background, that the Respondent wishes to submit that the complaint by Mr Zuma is vague and as such, the ACHPR must find the communication inadmissible under Article 56 of the African Charter.

PRAYERS

38. WHEREFORE, the Respondent prays for the communication to be dismissed on the following grounds as detailed in this submission:
- 38.1. That, the ACHPR has no jurisdiction to adjudicate on Mr Zuma's complaint, on the ground that there is no longer any live dispute or controversy between the parties which would be practically affected in one way or another by the ACHPR's decision or which would be resolved by the ACHPR's decision;
- 38.2. That, the communication is inadmissible for the following reasons:
- (a) Mr Zuma's allegations and/or complaint is vague; and

- (b) The communication abuses process in that it raises human rights violations that have been addressed effectively and sufficiently by the South African Courts.
- 38.3. That Mr Zuma submission on Admissibility and Merits, which were delivered after a period of six months from the date of notification, must be rejected for failing to comply with the ACHPR directive; and
- 38.4. That Mr Zuma's prayers as contained in his complaint be dismissed.

SIGNED AT PRETORIA ON THIS 26TH DAY OF OCTOBER 2023.



ADVOCATE P.A. STEMMET
 Acting Chief State Law Adviser (IL)
 Respondent's Representative
 Department of International Relations
 & Cooperation,
 Or Tambo Building
 460 Soutpansberg Road,
 Rietondale
PRETORIA
 The Republic of South Africa
 E-mail: JeleM@dirco.gov.za
 Ref No: 10/6/3/1/ACHPR

TO:

**THE SECRETARIAT OF THE
 AFRICAN COMMISSION ON
 HUMAN & PEOPLES' RIGHTS
 BANJUL**

"ACHPP-1"

PROCLAMATIONS • PROKLAMASIES

DEPARTMENT OF CORRECTIONAL SERVICES

PROCLAMATION NOTICE 133 OF 2023

by the

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

SPECIAL REMISSION OF SENTENCE FOR CERTAIN CATEGORIES OF SENTENCED OFFENDERS, CORRECTIONAL SUPERVISION AND PAROLEES

In terms of Section 84(2)(j) of the Constitution of the Republic of South Africa, 1996, I hereby approve the following periods of special remission to the indicated categories of offenders, offenders placed under correctional supervision, parolees and day parolees who are or would have been incarcerated or serving sentences within the system of community corrections on 2023.

1. Probationers, Parolees and Sentenced Offenders are granted 12 months Special Remission of sentence, with the exception of the following crimes:
 - Sexual Offences;
 - Murder;
 - Attempted Murder;
 - Crimes against the safety of the State including sedition, high treason, sabotage and terrorism;
 - Offenders declared as dangerous by the court in terms of Section 286 A of the Criminal Procedure Act, 51 of 1997;
 - Lifers;
 - Violations under the Domestic Violence Act, 1998 (Act No 116 of 1998); and
 - Child Abuse;

- Gender Based Violence;
 - Armed robbery/robbery with aggravating circumstances;
 - Tempering, destroying or damaging of essential infrastructure;
 - Any attempt, inciting, soliciting or conspiracy to commit any of the above crimes;
 - Any other crime directly linked to any of the above-mentioned crimes (i.e. house breaking with the intent to steal and rape).
2. Offenders who are classified to be of low risk will receive additional 12 months special remission of sentence.
 3. Notably, all offenders, with the exception of categories mentioned in point 1 above, who were sentenced for violent crimes and have served close to the minimum required time for parole consideration will only be granted 12 months special remission of sentence;
 4. No person may benefit more than once from the 2023 Special Remission of sentence.
 6. A person who benefits from this special remission of sentence will be released within twelve (12) weeks from the date of announcement, in order to deal with the necessary administration in a responsible manner.
 7. The placement process for offenders under correctional supervision, parolees and sentenced offenders will be done in various phases, starting with the special category (Women, Children, elderly, youth and inmates with disabilities), and shall commence from the date of the proclamation, within 12 weeks from the date of announcement.
 8. Offenders who qualify for the special remission will provide a set of fingerprint and DNA samples which will be compared on the SAPS database as a prerequisite before placement.

Given under my Hand and the Seal of the Republic of South Africa at: Pretoria
this 10 day of August 2023.


PRESIDENT


MINISTER OF THE CABINET

DEPARTEMENT VAN KORREKTIEWE DIENSTE**PROKLAMASIE 133 VAN 2023**

deur die

PRESIDENT VAN DIE REPUBLIEK VAN SUID AFRIKA**SPEZIALE AFSLAG VAN VONNIS VIR SEKERE KATEGORIE VAN GEVONNISDE OORTREDERS, KORREKTIEWE TOESIG EN PAROLEES**

In terme van artikel 84(2)(j) van die Grondwet van die Republiek van Suid Afrika, 1996, magtig ek hiermee die volgende tydperke van spesiale afslag van vonnis aan die ondergenoemde kategorie van oortreders, oortreders onder korrektiewe toesig , parolees en dag parolees wie in aanhouding is of sou wees of vonnisse uitdien in die stelsel van gemeenskaps korrektiewe toesig.

1. Korrektiewe toesig, Parolees en Gevonnisde Oortreders word 12 maande Spesiale Afslag toegeken, met die uitsondering van die volgende misdade;
 - Seksuele misdade;
 - Moord;
 - Poging tot moord;
 - Misdade teen die veiligheid van die staat, ingesluit, sedisie, hoogverraad, sabotasie en terrorisme;
 - Oortreders verklaar as gevaarlike misdadigers in terme van artikel 296A van die Kriminele Prosedure Wet, 51 van 1997;
 - Lewenslange vonnisse;

- Oortreders van die Wet op Gesinsgeweld, 1998 (Wet no 116 van 1998);
 - Kinder mishandeling;
 - Geslags gebaseerde geweld;
 - Gewapende roof/roof met verswarende omstandighede;
 - Tempering, venietiging of beskadiging van noodsaaklike infrastruktuur;
 - Enige poging, aanhitsing, uitlokking of sameswering om enige van bogenoemde misdade te pleeg.
2. Oortreders wie geklassifiseer word as lae risiko, word 'n addisionele 12 maande toegeken.
 3. Ongeag, alle oortreders, met die uitsondering van die kategorie vermeld onder punt een hierbo, wie gevonnisd is vir gewelds misdade en wie naby is om die minimum vereiste tydperk uit te dien vir parool oorweging, sal slegs 12 maande afslag ontvang;
 4. Geen persoon mag meer as een keer baat by die 2023 Spesiale Afslag van vonnis nie.
 5. 'n Persoon wie baat by hierdie spesiale afslag van vonnis sal vrygelaat word binne 12 weke van die datum van die proklamasie, sodat die nodige administratiewe prosesse verantwoordelik hanteer kan word.
 6. The plasing prosesse vir korrektiewe toetsing, parolees en gevonnisd oortreders sal gedoen word in verskeie fases, beginnende met die spesiale kategorie (Vrouens, Kinders, Bejaardes; Jeug en oortreders met gestremdhede) en sal begin met die datum van proklamasie en voltooi word binne 12 weke vanaf die genoemde datum.
 7. Oortreders wie kwalifiseer vir die spesiale afslag van vonnis, moet 'n stel vingerafdrukke en DNA monsters verskaf vir vergelyking met die SAPS-data basis as 'n voorvereiste, vir plasing.

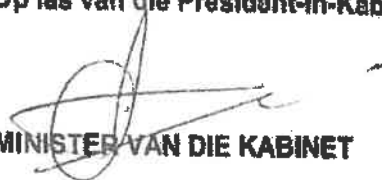
Ge onder my Hand en die Seël van die Republiek van Suid Afrika te
Pretoria, op hierdie 10 dag van Augustus 2023

PRESIDENT



Op las van die President-In-Kabinet

MINISTER VAN DIE KABINET





PRESIDENT'S MINUTE NO: 258/2023

**SPECIAL REMISSION OF CERTAIN CATEGORIES OF SENTENCED OFFENDERS,
CORRECTIONAL SUPERVISION AND PAROLEES**

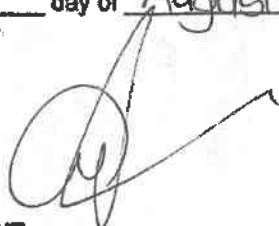
In terms of Section 84(2)(j) of the Constitution of the Republic of South Africa, 1996, I hereby approve, by means of the accompanying proclamation, the following periods of special remission to the indicated categories of offenders, correctional supervision, parolees and day parolees who are or would have been incarcerated or serving sentences within the system of community corrections on 2023.

1. Correctional Supervision, Parolees and Sentenced Offenders are granted 12 months Special Remission, with the exception of the offenders convicted of the following crimes:
 - Sexual Offences;
 - Murder;
 - Attempted Murder;
 - Crimes against the safety of the State including sedition, high treason, sabotage and terrorism;
 - Offenders declared as dangerous by the court in terms of Section 286A of the Criminal Procedure Act, 51 of 1997;
 - Lifers;
 - Violations under the Domestic Violence Act, 1998 (Act No 116 of 1998); and
 - Child Abuse;
 - Gender Based Violence;
 - Armed robbery/robbery with aggravating circumstances;

Page 1 of 3

- Tempering, destroying or damaging of essential infrastructure;
 - Any other crime directly linked to any of the above-mentioned crimes (i.e. house breaking with the intent to steal and rape);
 - Any attempt, inciting, soliciting or conspiracy to commit any of the above crimes.
2. Offenders who are classified to be of low risk will receive additional 12 months.
 3. The 2023 Special Remission of sentence will not be applicable to any Correctional Supervision, Parolee and Sentenced Offender, or Day- Parolee who:
 - Are certified as mentally-ill and is detained in accordance with the Mental Health Care Act, 2002 (Act No 17 of 2002): Provided that this special remission of sentence will be applicable as soon as such person is decertified and re-admitted to a correctional centre;
 - Was declared as dangerous in accordance with the Criminal Procedure Act, 1977 (Act No 51 of 1977);
 - Sentenced for Tempering, destroying or damaging of essential infrastructure.
 - Are serving a sentence for all sexual related offences and was sentenced to life incarceration; or
 - Escaped/absconded or who evaded the justice system after being released on bail pending appeal and was still at large on the date of announcement.
 4. No person may benefit more than once from this Special Remission of sentence.
 5. A person who benefits from this special remission of sentence will be released within twelve (12) weeks from the date of announcement, in order to deal with the necessary administration in a responsible manner.
 6. The placement process for correctional supervision, parolees and sentenced offenders will be done in various phases, starting with the special category (Women, Children, elderly, youth and inmates with disabilities), and shall commence within 12 weeks from the date of announcement.
 7. Inmates who qualify for the special remission will provide a set of fingerprint and DNA samples which will be compared on the SAPS database as a prerequisite before placement.

Given under my Hand and the Seal of the Republic of South Africa at: Pretoria
this 10 day of August 2023.



PRESIDENT



MINISTER OF THE CABINET



ACHPR
African Commission on
Human and Peoples' Rights

Human Rights our
Collective Responsibility

Ref: ACHPR/STC/COM/779.22/280/24
Date: 20 March 2024

Mr. Reyno D. De Beer
Counsel
Liberty Fighters Network
24 Lith Road, The Orchards, Pretoria, Gauteng,
Republic of South Africa
Email: reyno@libertyfighters.co.za

Dear Mr. De Beer,

Re: Communication 779/22: Jacob Gedleyihlekisa Zuma v. South Africa

I write to inform you that during the 78th Ordinary Session, held virtually from 23 February to 08 March 2024, the African Commission on Human and Peoples' Rights (the Commission) considered **Communication 779/22: Jacob Gedleyihlekisa Zuma v. South Africa**, and declared it admissible. The decision is herewith attached.

Kindly note that, pursuant to Article 59 of the African Charter on Human and Peoples' Rights, the decision shall be kept confidential until the Activity Report of the Commission which includes the above-mentioned Communication is considered and authorized for publication by the relevant Policy Organs of the African Union.

The Commission will proceed with the consideration of the Communication on Merits, in accordance with Rule 120(3) of the Rules of Procedure (2020), and the relevant decision will be communicated accordingly.

Please accept my best regards.

Sincerely,

Mrs. Abiola Idowu-Ojo
Ag. Executive Secretary to the Commission





ACHPR
African Commission on
Human and Peoples' Rights

Human Rights our
Collective Responsibility

**Communication 779/22: Jacob Gedleyihlekisa Zuma v.
South Africa**



Hon. Commissioner Remy Ngoy Lumbu
Chairperson,
African Commission on Human and
Peoples' Rights (ACHPR)



Mrs. Abiola Idowu-Ojo
Executive Secretary (Ag)
African Commission on Human and
Peoples' Rights (ACHPR)

Communication 779/22: Jacob Gedleyihlekisa Zuma v. South Africa

Summary of the Complaint:

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received a Complaint on 19 January 2022 from Mr. Reyno D. De Beer (the Complainant), on behalf of Jacob Gedleyihlekisa Zuma (the Victim), against the Republic of South Africa (the Respondent State), a State Party to the African Charter on Human and Peoples' Rights (the African Charter).¹
2. The Complainant submits that during the tenure of the Victim as the President of the State Party, he established a Judicial Commission of Inquiry to investigate allegations of corruption against himself and other parties, called the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (the Judicial Commission). Towards the end of 2020, the Judicial Commission lodged a direct access application to the Constitutional Court in which it requested the Court to make certain declaratory orders to, *inter alia*, compel the Victim to cooperate with the Judicial Commission.
3. The Complainant avers that it would have been within the sole jurisdiction of the State's superior court system to address the dispute regarding the Victim's alleged non-cooperation; however the Constitutional Court chose to entertain the application, regardless of the fact that the Judicial Commission had created its own urgency by, *inter alia*, failing to issue summons to appear against the Victim. The Complainant further avers that, in entertaining the Judicial Commission's application, the Constitutional Court confirmed its bias towards the Victim, knowing that the Victim's right to appeal against the judgment would have been taken away.
4. The Complainant submits that the operations of the Judicial Commission violated the Victim's human rights, and furthermore failed to provide the Victim certain information which he had requested in order to prepare his testimony before it. The Complainant further submits that neither the Judicial Commission nor the Constitutional Court had the required jurisdiction to entertain any matter relating to the original mandate of the Judicial Commission.
5. The Complainant submits that the Constitutional Court heard the matter on 29 December 2020, and its judgment was delivered on 28 January 2021 in which it held that the Victim should obey all summons and directives lawfully issued by the Judicial Commission of Inquiry, and further was directed to appear and give

¹ South Africa ratified the African Charter on 09 July 1996



evidence before the Commission on dates determined by it.² The Complainant further submits that judgement implied that in the event the Victim would violate the order, he would have to appear before the Constitutional Court to face contempt of court allegations, thereby denying the Victim's right to appeal.

6. The Complainant submits that the entire crusade against the Victim ended in a judgment dated 29 June 2021, in which the Constitutional Court sentenced the Victim to imprisonment for 15 months for the crime of contempt of court.
7. The Complainant contends that the Victim was not provided with an option to appeal the sentence, the procedure resulting in the sentence was issued in his absence, in addition to the fact that the Court did not have the required jurisdiction and acted as a Court of first and last instance, which resulted in the Victim being subjected to imprisonment without trial.³
8. The Complainant further submits that, taking into consideration that the judgment had been made without a trial and without the Victim's presence, the Victim lodged an application for rescission on 02 July 2021, in an attempt to highlight the mistake made by the Constitutional Court. While awaiting the outcome of the rescission application, the Victim handed himself to the Police Services on 07 July 2021, to serve his imprisonment. The Complainant avers that on 17 September 2021, the Constitutional Court dismissed the Victim's application.
9. The Complainant states that the Victim was released on medical parole on 05 September 2021; however, the decision of the Parole Board was contested, and on 15 December 2021, the High Court declared this decision unlawful. Accordingly, the Victim had to return to prison.

Articles alleged to have been violated:

10. The Complainant submits that the Respondent State has violated Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 19, 23, 24, 25 and 26 of the African Charter.

Prayers:

² Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v. Jacob Gedleyihlekisa Zuma [2021] ZACC 2 - Case CCT 295/20, 28 January 2021

³ Letter of Introduction of Complaint relating to alleged human rights violations with incorporated request for urgent relief, paragraph 3



11. The Complainant requests the African Commission on Human and Peoples' Rights (the Commission) to:
- i. Grant provisional measures in order to prevent irreparable harm to the Victim, by ordering the State Party to suspend operation of the Constitutional Court's order dated 29 July 2021, pending the outcome of the Communication before the Commission and in the interest of justice;
 - ii. Order the Respondent not to commit Mr. Zuma to imprisonment, directly or indirectly, pending the final outcome of the complaint;
 - iii. The Respondent State be prohibited from withdrawing, hindering or obstructing any of the benefits that Mr. Zuma is entitled to and those he has been provided with as the former President of the Respondent State, pending the outcome of his complaint;
 - iv. The orders by the Constitutional Court under the following cases be reviewed in respect of their compliance to the African Charter on Human and Peoples' Rights (the African Charter), and if found to be in violation, that they be set aside: CCT295/20, CCT53/21, CCT52/21;
 - v. As a result of setting aside any one or more of the above orders, that it be declared that the Respondent violated the human rights of Mr. Zuma on one or more grounds as set out in the African Charter;
 - vi. That as a result of the declaration of human rights violations, the Victim be awarded compensation in such amount and currency as determined by the Commission and that it be paid within 30 days after granting of the request;
 - vii. That the compensation award, such an amount will increase in line with the annual inflation rate of the State Party over the period the matter was considered until date of final payment;
 - viii. That the compensation award, bears interest at 15% per annum from date of lodgment of this complaint on 19 January 2022 until date of final payment.

Procedure:

12. The Secretariat received the Complaint on 19 January 2022.
13. During the 70th Ordinary Session, held virtually from 23 February to 09 March 2022, the Commission considered the request for provisional measures and requested the Complainant "to submit further evidential information or certified medical records on the Victim's health status, demonstrating the need for the grant of provisional measures." On 15 March 2022, the Secretariat transmitted a letter to the Complainant requesting additional information on the Victim's health status to enable the Commission decide on the matter.
14. Given the Complainant's failure to respond to the request for additional information, during the 72nd Ordinary Session, held virtually from 19 July to 02



August 2022, the Commission decided not to grant the request for provisional measures, with the possibility of reconsideration should information be provided by the Complainant.

15. On 04 October 2022, the Parties were informed of the Commission's decision to be seized of the matter. The Complainant was informed of the Commission's decision regarding provisional measures, and further was requested to present evidence and arguments on the admissibility and merits of the Commission within two months of the notification, in accordance with Rule 116(1) of the Commission's Rules of Procedure.
16. On 14 February 2023, Complainant requested an extension of time to transmit submissions on admissibility and merits. The Complainant's submissions were subsequently received on 05 April 2023, and transmitted to the State on the same date.
17. On 31 October 2023, the Respondent State's submissions on admissibility and merits were received by the Secretariat. On 19 February 2024, the Secretariat received the Complainants rejoinder on the State's submissions.

Admissibility:

The Complainants Submissions on Admissibility

18. The Complainant primarily addressed the admissibility of the Communication with regard to Article 56(5) submitting that, the fact that the Victim had his complaint ventilated to the Constitutional Court, where even organs of State must accept its orders, means that all local remedies were exhausted.⁴ The Complainant further submits that even if the Victim might find some loophole contained in the law to follow a process claiming damages from the State Party, for its ongoing human rights violations committed against him and the failure of the State Party to protect him from the Courts further violating his human rights, such a matter will have to be heard by the same Courts where, in accordance with the precedent system of *stare decisis*, they all must follow the judgments of the Constitutional Court.⁵
19. The Complainant submits that any other local remedy, if any, would not be legal, would be ineffective and subject to the discretionary powers of the organs of State. This would not be considered as a "remedy" in terms of the African Charter.

⁴ Volume 4: Heads of Argument in Support of Submission on Admissibility in terms of Rule 116(1) with incorporated urgent relief, paragraph 16

⁵ Id, paragraph 17



20. The Complainant avers that the Communication is based on allegations of violating provisions of the African Charter which the Commission has the mandate to promote and protect, further the object of the Communication falls under the Commission's mandate and, as a result, the Complainant submits that the Communication is compatible with the African Charter and therefore admissible.
21. In conclusion, the Complainant opines that the Commission has personal (*ratione personae*), material (*ratione materiae*), temporal (*ratione temporis*) and territorial (*ratione loci*) jurisdiction to declare the Communication admissible.

The Respondent State's Submission on Admissibility

22. The Respondent State filed submissions on admissibility only with respect to Article 56(2), submitting that this requirement on admissibility entails the necessity that a Complainant must make plausible claims that Articles of the African Charter have been violated. The State further submits that to make such plausible claims of violation, the Complainant should attest a fact pattern which demonstrates the potential of such violations, and stipulate the provisions of the African Charter which have been violated.
23. The State avers that this provision does not only deal with possible violation of concrete acts of harm, but also of legal or policy frameworks that deny or deprive rights, failure to take necessary positive steps, or inadequate remedial systems.
24. The Respondent State referred to **Seyoum Ayele v. Togo (1994)**, where the Commission declared the communication inadmissible due to the vagueness of the allegations, in addition to **Hadjali Mohamad v. Algeria (1994)** which was declared inadmissible because the Communication did not state the human rights violations suffered by the author of the communication.
25. The Respondent State avers that the Victim claimed his rights as contained in the African Charter have been violated, but failed to demonstrate how those provisions were violated by the State. Accordingly, the Respondent State submits that the communication is vague, and as such should be declared inadmissible.

The Complainant's Additional Submissions on Admissibility



26. The Complainant denies that the Communication has failed to comply with Article 56 of the African Charter. The Complainant notes that the State Party alleges this stating that the complaint is "vague."
27. The Complainant contends that properly delineating the background of the complaint serves to directly correlate each of the alleged violated Articles and facilitates a clear connection between these Articles and the sequence of events leading to the filing of the complaint.
28. The Complainant avers that the original complaint submitted to the Commission outlines the background and directly refers to violations of the Victim's fundamental rights enshrined in the African Charter. The Complainant submits, for example, that it is undisputed that the Complainant was imprisoned by order of the Constitutional Court, which is the apex court of the State Party without, *inter alia*, being present and having access to a further appeal process This alone is clearly in direct violation of Article 7(1)(a) of the African Charter.

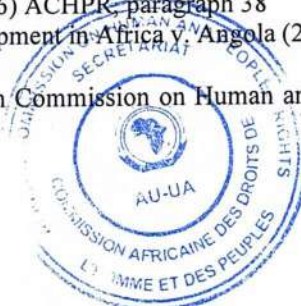
The Commission's Analysis on Admissibility

29. Article 56 of the African Charter sets out seven requirements that a Communication brought under Article 55 of the African Charter must satisfy in order to be admissible, which apply conjunctively and cumulatively.⁶
30. With regards to the submissions from the Parties on the admissibility of the Communication, the Commission must satisfy itself that the criteria under Article 56 have all been met. Accordingly, whereas in the present Communication, the submissions of the Complainant and the State only relate to Articles 56(5) and (2) respectively, the Commission will proceed to determine whether all the requirements on admissibility have been met on the basis of "the information at its disposal," as held by the Commission in **Institute for Human Rights and Development in Africa v. Angola**.⁷
31. In relation to the requirement in Article 56(1) of the African Charter, which provides that Communications "should indicate their authors even if the latter requests anonymity." In "**Diomessi and Others v. Guinea** the Commission interpreted this requirement to mean that authors must give their full identity, whereas in **Bariga v. Nigeria**, the Commission further interpreted this requirement to include the author's contact address."⁸

⁶ See Communication 304/2005: FIDH & Others v. Senegal (2006) ACHPR, paragraph 38

⁷ Communication 292/04: Institute for Human Rights and Development in Africa v. Angola (2008) ACHPR, para 34

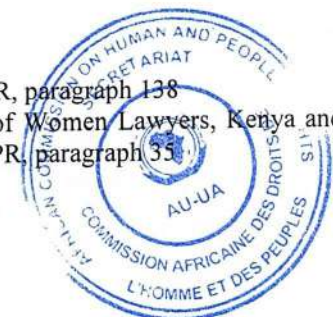
⁸ Sabelo Gumedze, Bringing communications before the African Commission on Human and Peoples' Rights, African Human Rights Law Journal (2003) p.129



32. In the present Communication, the Commission observes that the identity and the address of the Complainant has been provided, in addition to the name of the Victim being represented in the Communication. Accordingly, the Commission finds that the requirement under Article 56(1) of the African Charter is fulfilled.
33. In relation to the requirement of Article 56(2) of the Charter, the Commission has interpreted it as including compatibility with the Constitutive Act of the African Union or the African Charter, in addition to compliance with the four aspects of its competence, namely competence *ratione personae, materiae, temporis* and *loci*.⁹
34. In its submissions, the Respondent State submitted that the Communication should be declared inadmissible due to the vagueness of the allegations, further contending that the Complainant should attest a fact pattern which demonstrates the potential of such violations. The Complainant, however, avers that the original complaint submitted to the Commission outlines the background and directly refers to violations of the Victim's fundamental rights enshrined in the African Charter.
35. In assessing this contention, the Commission refers to its jurisprudence in **Priscilla Njeri Echaria (represented by Federation of Women Lawyers, Kenya and International Center for the Protection of Human Rights) v. Kenya**, in which it held the following:
- "It would appear that what is mainly contested by the Respondent State is the material jurisdiction (ratione materiae) of the African Commission. The African Commission has jurisdiction over a Communication in this respect, which alleges the violation of rights guaranteed in the African Charter. The subject matter of the Communication must relate to the violation of a right protected in the African Charter and the Complainant is only required to establish a prima facie violation. In assessing whether a prima facie case exists, the African Commission only needs to be satisfied that the facts before it points to likelihood that a right protected in the African Charter has been violated."¹⁰*
36. In the present Communication, the Commission observes that the subject matter of the Communication relates to the violation of rights protected in the African Charter, such as the contention that the Victim was not provided with an option to appeal the sentence, the procedure resulting in the sentence was issued in his absence, in addition to the fact that the Court did not have the required

⁹ Communication 467/14: Ahmed Ismael and 528 others v. Egypt (2015) ACHPR, paragraph 138

¹⁰ Communication 375/09: Priscilla Njeri Echaria (represented by Federation of Women Lawyers, Kenya and International Center for the Protection of Human Rights) v. Kenya (2011) ACHPR, paragraph 35



jurisdiction.¹¹ Accordingly, the Commission is satisfied that a *prima facie* case exists in the present Communication.

37. The Commission therefore observes that the present Communication has been brought against South Africa, a State party to the African Charter, that the Complainant has standing to bring the action, and further the Complainant alleges violations of rights protected by the Africa Charter, which reportedly occurred on the territory of the Respondent State. Lastly, the Commission finds that neither the pleas in law, nor the claims contained in the Communication, infringe any of the principles adopted under the Constitutive Act of the African Union.
38. Consequently, the Commission concludes that the Communication complies with the provisions of Article 56(2) of the African Charter.
39. With respect to Article 56(3) of the African Charter, which provides that Communications shall be considered if they are not written in disparaging or insulting language directed at the State concerned and its institutions, or to the Organization of African Unity, the Commission has not observed any insulting or disparaging language in the Communication, and accordingly finds that Article 56(3) of the Charter has been complied with.
40. In relation to Article 56(4) of the African Charter, the Commission takes note of the fact that the Communication includes judgements of the Constitutional Court of South Africa, among other documents. In light of the fact that there is no evidence that any of the information provided is based exclusively on news disseminated through the media, the Commission consequently finds that the requirement of Article 56(4) has been met.
41. Article 56(5) of the African Charter requires that Communications be submitted after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged. In this regard, the Commission notes that it is a generally accepted principle in international law that before an international body is approached, the applicant must exhaust all available legal domestic remedies.¹² The Commission further notes that in order to meet the exhaustion requirement, "a victim must have obtained a final decision from the highest court to which

¹¹ *Supra* note 2

¹² Chidi Anselm Odinkalu and Camilla Christensen, 'The African Commission on Human and Peoples' Rights: The Development of its Non-State Communication Procedures,' Volume 20 Human Rights Quarterly 1998, Pg.256. *See also*, Communications 54/91: Malawi African Association v. Mauritania; 61/91: Amnesty International v. Mauritania; 98/93: Ms. Sarr Diop, Union Interafricaine des Droits de l'Homme and RADDHO v. Mauritania; 164/97, 196/97: Collectif des Veuves et Ayants-droit v. Mauritania; 210/98: Association Mauritanienne des Droits de l'Homme v. Mauritania



recourse is available,” as noted in **Romy Goornah (represented by Dev Hurnam) v. Mauritius**¹³

42. With regards to the present Communication, the Commission takes note of the fact that the Constitutional Court of South Africa is the highest court in the country’s judicial system, as stipulated in Article 167(3)(a) of the Constitution of the Republic of South Africa.
43. Further, from the information provided by the Complainant, following the decision of the Constitutional Court which declared that the Victim was guilty of the crime of contempt of court for failure to comply with an order made by the Court and which sentenced the Victim to undergo 15 months’ imprisonment,¹⁴ the Victim submitted an application to the Constitutional Court for rescission of its decision, in accordance with Section 167(6)(a) of the Constitution which allows a litigant to approach the Constitutional Court directly.¹⁵ The Constitutional Court granted the Victim’s request for direct access, noting the following: *“Of course, it would be inappropriate for any other court to entertain a rescission application pertaining to an order made by this Court. Similarly, although direct access is only granted in rare and exceptional circumstances, rule 42(1)(a) would never find operation in respect of an order of this Court without direct access being granted.”*¹⁶
44. In its decision on the application for rescission, the Constitutional Court held the following:
- “At the outset, to avoid confusion, it is important to appreciate the difference between an appeal and a rescission application. A disgruntled litigant can appeal an order of the High Court or the Supreme Court of Appeal. However, as the apex Court of the Republic, orders of this Court are immune from appeal. A litigant may, however, seek the rescission of an order of court, including of this Court, where certain grounds have been met.”*¹⁷
45. From the information provided in the present Communication, the Commission notes that, following the decision of the Constitutional Court, the Victim submitted an application to the same Court, in light of the fact that *“the Constitutional Court, as the highest court in the Republic, is constitutionally enjoined to act as the final arbiter*

¹³ Communication 596/16: Romy Goornah (represented by Dev Hurnam) v. The Republic of Mauritius (2017) ACHPR, paragraph 53. *See also* Communication Procedure, Information Sheet No.3, pg.6.

¹⁴ Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v. Zuma and Others [2021] ZACC 18 - Case CCT 52/21, 29 June 2021

¹⁵ Constitution of the Republic of South Africa

¹⁶ *Supra* note 12, paragraph 49

¹⁷ *Id.*, paragraph 9



*in litigation.*¹⁸ Accordingly, the facts of the case indicate that the Victim sought remedy from the highest and final Court in the country.

46. In light of the above, the Commission finds that, by submitting an application for rescission in the Constitutional Court, which is the highest and final court in the Respondent State, the Victim fulfilled the requirement of exhausting local remedies, and therefore the criterion under Article 56(5) has been met.
47. Article 56(6) of the African Charter provides that the Commission shall consider Communications which “are submitted within a reasonable period from the time domestic remedies are exhausted, or from the date the Commission is seized of the matter.” In **Darfur Relief and Documentation Centre v. Sudan**, the Commission noted that whereas the African Charter does not provide for what constitutes “a reasonable period of time,” neither has it defined reasonable time, each case is treated on its own merits.¹⁹ In **Tsatu Tsikata v. Ghana**, the Commission held that it estimates the timeliness of a Communication from the date that the last available local remedy is exhausted by the Complainant.²⁰
48. In the present Communication, the Commission notes that the decision of the Constitutional Court with which the domestic remedies were exhausted, was decided on 17 September 2021 and that the Complaint was submitted to the Commission on 19 January 2022, which is approximately four months after the exhaustion of domestic remedies. Based on this, the Commission finds that the requirement under Article 56(6) has been met.
49. Article 56(7) of the African Charter stipulates that Communications received by the Commission shall be considered if they “do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.” In the present Communication, the Commission has not found evidence which indicates that the issues and claims have been brought before, or settled, by any other international forum and accordingly finds that Article 56(7) of the African Charter has been satisfied.

Decision of the African Commission on Admissibility

50. In view of the above, the African Commission on Human and Peoples’ Rights:

¹⁸ *Id.*, paragraph 1

¹⁹ Communication 310/05: *Darfur Relief and Documentation Centre v. Sudan* (2009) ACHPR, para 75

²⁰ Communication 322/2006: *Tsatu Tsikata v. Ghana* (2006) ACHPR, para 51



- i. The communication admissible, as it complies with all the admissibility requirements provided for in Article 56 of the Charter;
- ii. Orders the notification of the decision to the parties and the continuation of the procedure at the merits stage.

Adopted during the 78th Ordinary Session, held virtually from 20 February to 08 March 2024

AACHPR

