

IN THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

(Secretariat of the Commission, based in Banjul, The Gambia)

CASE NUMBER: **779/2022**

In the matter between:-

JACOB GEDLEYIHLEKISA ZUMA

COMPLAINANT

(Former President of the State Party)

AND

REPUBLIC OF SOUTH AFRICA

STATE PARTY

REJOINDER IN SUPPORT OF MERITS IN TERMS OF RULE 116(2)

CONTENTS

INTRODUCTION.....	2
GENERAL OBSERVATIONS.....	3
HIGHLIGHTING KEY MERITS.....	4
STATE PARTY'S OPPOSITION	7
Point 1: The complaint is without merit	7
Point 2: The complaint was instituted in bad faith	8
Point 3: The <i>Commission</i> does not have the required jurisdiction.....	9
Point 4: The relief sought in Part A is moot.....	10
Point 5: The <i>Complainant's</i> rights have not been violated	12

Point 6: The Constitutional Court acted lawfully	13
Point 7: The <i>Commission</i> cannot grant the relief sought in Part B	15
CONCLUSION	17

INTRODUCTION

1. The **Complainant** will proceed to make use of the definitions as formulated in his Submission on the Merits dated 16 January 2025. In particular, words or phrases used herein appearing in **bold italics**, have been defined before.
2. The *supra* referenced Submission on the Merits will herein be referred to as the "**Merits Submissions**".
3. The representatives for the **Complainant** received the respondent **State Party's** reply on the merits in terms of Rule 116(2) of the **Rules**, lodged by the Acting Chief State Law Advisor, Ms. R Brammer of the **State Party's** Department of International Relations and Cooperation (hereafter referred to as the "**Merits Reply**"), from the **Commission** on or about 6 May 2025 and wish to make the following rejoinder.
4. In instances where the **Complainant** has refrained from expressly addressing a specific point articulated in the **Merits Reply**, said point shall be deemed admitted, contingent upon its alignment with the contents of the **Merits Submission** or any other document previously submitted by the **Complainant** in the present case, and provided that it does not pertain to legal arguments.

5. In case any point in the **Merits Reply** contradicts a prior statement, that specific point is denied, and the burden of proof is placed on the **State Party**.
6. For brevity, at this point in time the **Complainant** will only deal with those matters he regards necessary without introducing new issues and respectfully request the **Commission**, if the interest of justice demands it, for the parties to provide supplementary written submissions and/or submit, within a fixed time-limit, any information, documents or material relevant to the examination of the complaint.

GENERAL OBSERVATIONS

7. The **State Party** essentially opposes the **Complainant's** Communication on the following grounds:-
 - 7.1. The complaint is without merit;¹
 - 7.2. The complaint was instituted in bad faith;²
 - 7.3. The **Commission** does not have the required jurisdiction;³
 - 7.4. The relief sought in Part A is moot;⁴
 - 7.5. The **Complainant's** rights have not been violated;⁵

¹ **Merits Reply**, para. 14

² *Ibid*

³ *Ibid*

⁴ **Merits Reply**, para. 16.2; Vol. 1: Complainant's Submission (21 February 2023), p. 2

⁵ **Merits Reply**, para. 16.3

- 7.6. The Constitutional Court acted lawfully and in the protection and promotion of the Bill of Rights (Chapter 2 of the **Constitution**) in making the impugned orders;⁶ and
- 7.7. Accordingly, the **Commission** cannot grant the relief sought in Part B.⁷
8. This rejoinder will deal with the **Merits Reply** as follows:
- 8.1. Highlighting Key Merits;
- 8.2. Addressing each one of the opposition points listed in paragraph 7 *supra*;
and
- 8.3. Conclusion.

HIGHLIGHTING KEY MERITS

9. The **Complainant** respectfully records that the **Commission**, in its decision on admissibility, has adequately and accurately summarised the relevant factual background of this matter, and avers that such summary constitutes the only factual matrix that is pertinent for determination at the merits stage.
10. In this regard, the **Complainant** further submits that the subject-matter of this Communication does not extend to the question of whether the **State Capture Commission** found *prima facie* evidence of any alleged criminal conduct by the **Complainant**. Those matters are presently *sub judice* in domestic fora and fall entirely outside the scope and jurisdiction of the present proceedings.

⁶ **Merits Reply**, para. 16.4

⁷ **Merits Reply**, para. 16.5

Consequently, the **Complainant** shall not make any submissions pertaining thereto and respectfully requests the **Commission** to uphold the **Complainant's** right not to address such allegations, as they bear no practical or legal relevance to the issues to be adjudicated in this Communication.

11. To this end, the **Complainant** respectfully submits that, to date, the **Complainant** has not been convicted in any competent court of law for any of the allegations made against him in the Report of the **State Capture Commission**. The findings of that Commission, being investigatory and not judicial in nature, remain untested in any trial process and therefore do not constitute proof of guilt. The **Complainant** reiterates that any reference to such findings is irrelevant for purposes of the present Communication, which centres on violations of fundamental rights enshrined in the **African Charter** and not on the merits of unproven allegations.
12. The **Complainant** respectfully emphasises that the core of the present Communication has already been recognised and confirmed by the **Commission** in its decision on admissibility. As noted therein, the **Commission** expressly observed that the subject matter of the Communication concerns the violation of rights protected under the **African Charter**, including, *inter alia*, the denial of the **Complainant's** right to appeal the sentence imposed upon him, the procedural irregularity of such sentence having been imposed in absentia, and the constitutional infirmity arising from the Court acting without the requisite jurisdiction. The **Complainant** thus underscores that the **Commission** has already determined that these contentions raise serious

questions of law and fact, and accordingly has found that a *prima facie* case exists warranting adjudication on the merits.

13. This alone is clearly in direct violation of Article 7(1)(a) of the ***African Charter*** and reference was specifically made to the instances of violations and did Justice Jafta⁸, in his dissenting judgment in the ***Rescission Case***,⁹ even refer to the *Spisso*¹⁰ and *Dissanayake*¹¹ international cases in terms of the ICCPR where it was found that such actions as committed against the ***Complainant*** constitute violations of international human rights laws and to be declared as such. It is respectfully submitted that the same legal principles apply to this very complaint as well.
14. Where relevant, the ***Complainant*** has, under oath and in sworn affidavits submitted to the ***Commission***, fully set out his position on the processes followed by the ***State Capture Commission*** and the subsequent proceedings before the Constitutional Court. The ***Complainant*** respectfully requests the ***Commission*** to give due consideration to those affidavits, particularly in the context of the ***Rescission Case***, and to revisit the substance thereof insofar as it is necessary and relevant to the present merits proceedings.¹²
15. The ***Complainant*** further invites the ***Commission*** to consider, as part of the record, the contents of the earlier rejoinder filed in respect of the admissibility phase, especially regarding the parole and special remission of sentence

⁸ ***Rescission Case***, paras. 188 – 191

⁹ Annexure “D” Vol. 1, pp. 203 – 309

¹⁰ Vincencio Scarano Spisso v Bolivarian Republic of Venezuela CCPR/119/D/2481/2014 (Spisso) at para. 3.4

¹¹ Dissanayake v Sri Lanka CCPR/C/93/D/1373/2005 (Dissanayake) at paras. 2.3-2.5

¹² Vol. 1 (Rescission Application Bundle)

granted to him.¹³ These developments do not render the complaint moot, as already submitted, and should instead inform the **Commission's** assessment of the ongoing and residual legal effects of the violations alleged.

STATE PARTY'S OPPOSITION

16. Subsequently I deal with the main opposition by the **State Party** as pointed out in paragraph 7 *supra*.

Point 1: The complaint is without merit

17. Insofar as the **State Party** contends that the complaint is “without merit”, the **Complainant** respectfully submits that such assertion is unsubstantiated and inconsistent with the **Commission's** own findings in its admissibility decision. The **Commission** has already determined that the Communication raises serious and credible allegations regarding the violation of rights protected under the **African Charter**, including, but not limited to, Articles 7 and 26, thereby establishing a *prima facie* case.
18. The merits of the complaint are rooted in factual and procedural irregularities of the highest constitutional magnitude — namely, the incarceration of the **Complainant** without trial, the denial of the right to appeal, and the Constitutional Court's exercise of both original and final jurisdiction in the absence of a lawful hearing. These issues are not speculative or frivolous; they

¹³ Rejoinder Admissibility, pp. 5 – 8, *paras.* 17 – 27

implicate core human rights norms recognised under both the *African Charter* and international legal instruments to which the *State Party* has subscribed.

19. The *State Party*'s mere denial of merit, unsupported by a coherent legal or factual rebuttal of the violations alleged, does not displace the burden already discharged by the *Complainant* in demonstrating the *Commission*'s jurisdiction, the admissibility of the matter, and the legal significance of the rights violations suffered by the *Complainant*. Accordingly, the *Complainant* respectfully invites the *Commission* to disregard the *State Party*'s blanket dismissal and to proceed to a full and proper adjudication on the merits.

Point 2: The complaint was instituted in bad faith

20. The *Complainant* unequivocally rejects the *State Party*'s allegation that the present complaint was instituted in bad faith. This claim is baseless, unfounded, and contradicted by both the procedural history of the matter and the findings of the *Commission* in its decision on admissibility. The *Commission* has already determined that the complaint meets the threshold requirements under Article 56 of the *African Charter*, including that it is not frivolous, disparaging, or manifestly ill-founded.
21. It is a well-established principle under international law, including in the jurisprudence of this *Commission*, that bad faith implies an intentional abuse of process or a wilful attempt to mislead the adjudicative body. No such conduct exists in this matter. The *Complainant* has consistently engaged the *Commission* in a transparent and procedurally diligent manner, submitting

timely filings, responding to procedural requests, and limiting the scope of the complaint to rights violations that fall squarely within the **Commission's** jurisdiction.

22. The allegations advanced in this Communication are serious and grounded in verifiable procedural and substantive irregularities committed by the **State Party** through its highest judicial body.
23. Accordingly, the **Complainant** submits that the complaint was instituted not only in good faith, but in pursuit of accountability, redress, and the preservation of the integrity of fundamental rights under the African human rights system. The **State Party's** attempt to discredit the motive behind this filing serves only to deflect from the gravity of the violations at issue and should be dismissed.

Point 3: The *Commission* does not have the required jurisdiction

24. In response to the **State Party's** assertion that the **Commission** lacks jurisdiction to review lawful judicial decisions of domestic courts or to entertain matters deemed moot or hypothetical, the **Complainant** respectfully submits that this mischaracterises both the nature of the present Communication and the mandate of the **Commission**. The **Complainant** does not seek to appeal a domestic judicial decision, but rather invokes the supervisory jurisdiction of this **Commission** under Article 45 of the **African Charter** to examine whether the conduct of a **State Party** — including through its judicial organs — has resulted in violations of guaranteed rights.

25. It is well established in the **Commission's** jurisprudence that it may examine the compatibility of domestic judicial processes and outcomes with the **African Charter** where allegations are made that such processes violated protected rights, particularly those under Articles 7 and 26. As held in Communication 313/05: Kenneth Good v. Botswana, the **Commission** is competent to assess whether the judicial conduct of a **State Party**, even when procedurally regular, amounted to a denial of fundamental rights, including the right to a fair trial and the right to an effective remedy.

Point 4: The relief sought in Part A is moot

26. The issue before the **Commission** is neither moot nor hypothetical. The violations alleged are concrete, completed acts — including the incarceration of the **Complainant** without trial, the denial of the right to appeal, and the imposition of sentence in the absence of jurisdiction — which continue to have ongoing prejudicial effects. These matters are directly justiciable under the **African Charter**, and fall squarely within the scope of the **Commission's** adjudicative function.
27. The **Complainant** respectfully submits that the **State Party's** contention that the relief sought in Part A of the Communication is moot is both legally and factually misplaced. While it is correct that the request for provisional measures — originally framed in Part A — was not granted at the time, this does not render the underlying legal issues or the broader prayer for relief moot.

28. The relief sought in Part A was aimed at preventing irreparable harm pending the **Commission's** final determination, but its purpose was not limited to temporary protection alone. The substance of Part A is inextricably linked to the merits of the complaint and serves as a foundation for assessing the ongoing consequences of the constitutional and procedural violations perpetrated against the **Complainant**. The fact that some events have transpired does not extinguish the legal relevance of the **Commission's** pronouncement on those issues.
29. It is well established that a matter is only moot if it no longer presents a live controversy requiring resolution. However, the violations suffered by the **Complainant** — particularly his imprisonment without trial, denial of the right to appeal, and the resulting reputational and legal consequences — continue to have enduring effects. These include stigma, diminished public standing, political exclusion by not allowing him to stand as a political candidate, and the ongoing application of a legal precedent that remains uncorrected by any judicial or political mechanism.
30. Furthermore, the **Commission** has, in prior jurisprudence, confirmed that it retains competence to pronounce on violations that have occurred where a finding of such violations may provide moral or reparative value, prevent recurrence, or establish accountability. As such, the prayers contained in Part A remain relevant and justiciable, particularly insofar as they relate to the broader claim for restitution, declaratory relief, and reparation.

Point 5: The *Complainant's* rights have not been violated

31. The ***Complainant*** rejects the ***State Party***'s general denial that his rights have not been violated. This contention is directly contradicted by the ***Commission***'s own findings in its admissibility decision, wherein it expressly held that the Communication raises serious allegations involving Articles 7 and 26 of the ***African Charter***. The ***Commission***, having found a *prima facie* case, has implicitly recognised that the allegations are credible and warrant adjudication on the merits.

32. The ***Complainant*** has specifically alleged, *inter alia*, the following violations:
 - 32.1. **Article 7(1)(a)**: the right to be heard, which was infringed when the ***Complainant*** was sentenced to direct imprisonment without a trial;

 - 32.2. **Article 7(1)(b)**: the right to be presumed innocent, breached by the Court's summary finding of guilt on contempt without allowing a proper defence;

 - 32.3. **Article 7(1)(c)**: the right to defence, which was wholly denied when the Court refused the ***Complainant*** an oral hearing on the contempt charges;

 - 32.4. **Article 7(1)(d)**: the right to appeal, which was foreclosed by the Constitutional Court acting as both court of first and final instance;

 - 32.5. **Article 26**: the obligation of the ***State Party*** to ensure an independent and impartial judiciary, which is impugned where the highest court

summarily convicts and imposes custodial sanctions absent due process safeguards.

33. The record clearly shows that the Constitutional Court exercised original jurisdiction to sentence the **Complainant** without affording him a fair hearing, denied him the opportunity to appeal or have the matter reconsidered by any other court, and rejected the rescission application without an oral hearing. This cumulative conduct offends the minimum standards of procedural justice required under the **African Charter** and international human rights law.
34. The **State Party** has failed to rebut any of these allegations with evidence demonstrating that the **Complainant's** rights were respected in substance and procedure. Its mere denial, absent engagement with the specific Charter rights at stake, cannot stand as a valid defence.
35. Accordingly, the **Complainant** submits that the **Commission** must proceed to make a finding of violation in respect of the affected provisions of the **African Charter** and issue appropriate remedies.

Point 6: The Constitutional Court acted lawfully

36. The **Complainant** respectfully submits that the **State Party's** assertion that the Constitutional Court "acted lawfully" cannot, in itself, cure the violations of the **African Charter** identified in this Communication. Whether or not a domestic court follows national procedures does not absolve the **State Party** from its binding obligations under the **African Charter**, including those relating to due process, fair trial, and judicial impartiality. As established in Communication

334/06: Egyptian Initiative for Personal Rights & Interights v. Egypt, national legality does not supersede the **African Charter's** human rights standards. The **Commission** is competent to assess whether such domestic "lawfulness" is itself consistent with Charter obligations.

37. The **Complainant** contends that the very conduct of the Constitutional Court which the **State Party** claims to be lawful — namely:

37.1. initiating contempt proceedings *mero motu*;

37.2. acting as both court of first and final instance;

37.3. issuing a custodial sentence of 15 months without affording the **Complainant** a trial;

37.4. refusing an oral hearing in the rescission application;

37.5. and denying any avenue of appeal or review —

was in fact constitutionally anomalous and manifestly incompatible with Articles 1, 2, 3, 7 and 26 of the **African Charter**.

38. The **Commission** has already recognised in its admissibility ruling that the complaint raises serious concerns relating to lack of jurisdiction, absence of due process, and denial of appeal, all of which stand at odds with the **State Party's** claim of procedural regularity. A court's conduct cannot be considered lawful when it violates internationally protected rights. The right to be tried in one's presence, the right to be heard, and the right to appeal cannot be overridden by a national court claiming constitutional finality.

39. The **State Party** has produced no evidence that the **Complainant** was afforded a fair hearing in conformity with Article 7 of the **African Charter**. On the contrary, its reliance on the domestic finality of Constitutional Court decisions only confirms the absence of appellate safeguards — a core requirement under the African human rights framework.
40. The **Complainant** accordingly submits that the mere invocation of “lawfulness” under domestic constitutional arrangements cannot shield a State from scrutiny under the **African Charter**. The **Commission** must assess whether such lawfulness comports with the Charter’s standards, and if not, find that the **State Party** remains internationally responsible for the resulting violations.

Point 7: The Commission cannot grant the relief sought in Part B

41. The **Complainant** respectfully rejects the **State Party’s** contention that the **Commission** “cannot grant the relief sought in Part B” of the Communication. This contention is legally untenable and inconsistent with both the **Commission’s** mandate under Article 45(2) of the **African Charter** and the **State Party’s** own constitutional framework.
42. Firstly, the **State Party** has wilfully and expressly bound itself to the **African Charter**, not only by ratification but also by constitutional incorporation. In terms of section 231(4) of the **Constitution**, any international agreement ratified by

Parliament becomes law in the Republic unless inconsistent with the **Constitution** or an Act of Parliament. Furthermore, section 39(1)(b) of the **Constitution** mandates courts to consider international law — which includes the **African Charter** and decisions of its supervisory mechanisms — when interpreting the Bill of Rights. Nothing in the **Constitution** excludes the possibility that decisions of the Constitutional Court may be reviewed or reconsidered in light of the **State Party's** obligations under international human rights law.

43. Secondly, it is well within the **Commission's** mandate to recommend appropriate remedies, including the review of domestic decisions — even those of apex courts — where such decisions are shown to have violated Charter-protected rights. As held in Communication 250/02: Zegveld and Ephrem v. Eritrea and Communication 155/96: SERAC and CESR v. Nigeria, the **Commission** has repeatedly made findings of violations and recommended reparative measures including restitution, compensation, and institutional reform.
44. The relief sought in Part B — including a declaration of Charter violations, recommendations for damages, and the setting aside or reconsideration of the Constitutional Court's order — falls squarely within the **Commission's** protective functions. These recommendations are not binding in the judicial sense, but they are authoritative within the African regional human rights system, and the **State Party**, having ratified the **African Charter**, is legally and morally bound to give effect to such measures.

45. It is therefore misleading and legally incorrect for the **State Party** to claim that the **Commission** lacks competence to recommend that a domestic court decision, including one by its Constitutional Court, be revisited. To the contrary, such authority flows both from the **African Charter** and from the **State Party's** own **Constitution**, which does not elevate any domestic decision above scrutiny under international law voluntarily incorporated into its legal system.
46. Accordingly, the **Complainant** submits that the relief sought in Part B is justiciable, lawful, and appropriate, and that the **Commission** not only can, but must, issue recommendations consistent with its mandate under Article 45(2) to ensure that the **State Party** gives full effect to its Charter obligations. If not so, it should withdraw from its subscription to the **African Charter**.

CONCLUSION

47. In conclusion, the **Complainant** submits that the **State Party** has failed to adequately rebut the serious and substantiated allegations of multiple violations of the **African Charter** as raised in this Communication. The **State Party's** general denials, reliance on domestic legality, and unsubstantiated objections to the **Commission's** jurisdiction or remedial competence are insufficient to displace the compelling factual and legal basis upon which this complaint rests.
48. The uncontested procedural irregularities — including the incarceration of the **Complainant** without trial, the denial of the right to appeal, and the Constitutional Court's assumption of both original and final jurisdiction without affording a hearing — amount to clear infringements of Articles 1, 2, 3, 5, 6, 7,

8, 9, 13, 19, 23, 24, 25, and 26 of the **African Charter**. These infringements were compounded by the absence of any effective domestic remedy, which necessitated the **Complainant's** recourse to this **Commission**.

49. Accordingly, the **Complainant** respectfully prays that the **Commission**:

49.1. Declares that the **State Party** has violated the rights of the **Complainant** under the **African Charter**;

49.2. Issues appropriate recommendations including but not limited to restitution, public acknowledgment of the violation, and compensation;

49.3. Recommends that the **State Party** adopt appropriate measures to prevent recurrence, including a review of the relevant judicial processes and practices;

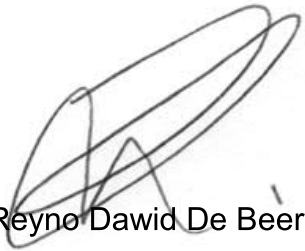
49.4. Orders that the decision of the Constitutional Court be reconsidered or set aside insofar as it conflicts with the **African Charter** and the findings of this **Commission**;

49.5. Grants any further relief that the **Commission** deems just and appropriate in the circumstances.

50. The **Complainant** affirms his continued commitment to the principles of the **African Charter** and thanks the **Commission** for its careful consideration of this matter.

RESULTANTLY the **Commission** is respectfully requested to kindly accept this rejoinder and to investigate, and/or proceed with this matter accordingly.

SIGNED at **PRETORIA** (GAUTENG, REPUBLIC OF SOUTH AFRICA) on this **6TH** day of **JUNE 2025**.



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