

**IN THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
BASED IN BANJUL, THE GAMBIA**

COMMUNICATION NO: 779/2022

In the matter between :

JACOB GEDLEYIHLEKISA ZUMA

Complainant

and

REPUBLIC OF SOUTH AFRICA

State Party/Respondent

RESPONDENT'S SUBMISSION IN TERMS OF RULE 116

INTRODUCTION

1. The complainant, Mr Jacob Gedleyihlekisa Zuma ("Mr Zuma"), served as the fourth President of the Republic of South Africa (the "Republic" / "South Africa"), which is cited as the State Party in these proceeding, for two terms from 2009 to 2018.

2. Mr Zuma's presidency was marred by controversy, including five votes of no confidence in Parliament and unsuccessful impeachment proceedings,¹ culminating in his resignation on 14 February 2018.
3. At the height of the controversy was the *State of Capture* report,² issued by the Republic's then Public Protector, which found, *inter alia*, that Mr Zuma had improperly benefitted from state funds for upgrades to his private homestead in Nkandla. The report recommended that he appoint a commission of inquiry into state capture.
4. The findings soon became the subject of litigation in the Constitutional Court of South Africa—the Republic's apex court—which ultimately found that Mr Zuma had failed to uphold the Constitution.³
5. In 2018, after unsuccessfully challenging the findings of the *State of Capture* report in the High Court of South Africa,⁴ Mr Zuma established the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (“Zondo Commission” / the

¹ See *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* (CCT76/17) [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC) (29 December 2017).

² The *State of Capture* was a report by the then Public Protector Advocate Thuli Madonsela on 16 October 2016 in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and section 3(1) of the Executive Members Ethics Act and section 81 of the Public Protector Act, 1994 and can be found at this url: https://www.gov.za/sites/default/files/gcis_document/201611/stateofcapturereport14october2016_0.pdf (last accessed 27 March 2025).

³ See *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016).

⁴ See *President of the Republic of South Africa v Office of the Public Protector and Others* (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017).

“Commission”) to investigate fraud, corruption and state capture in South Africa’s public sector.

6. Mr Zuma’s reluctance—and ultimate refusal—to cooperate with the Commission and to testify led to the Commission seeking the intervention of the Constitutional Court to compel his participation.

7. This gave rise to a series of three Constitutional Court judgments, namely:
 - 7.1. *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Jacob Gedleyihlekisa Zuma*⁵ (“**compliance judgment**”);
 - 7.2. *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others*⁶ (“**contempt judgment**”); and
 - 7.3. *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State and Others*⁷ (“**rescission judgment**”).

⁵ *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 (Council for the Advancement of the South African Constitution, Ngalwana SC, the Helen Suzman Foundation Amicus Curiae)* [2021] ZACC 2; 2021 JDR 0079 (CC); 2021 (5) BCLR 542 (CC) (CCT 295/20).

⁶ *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 (Helen Suzman Foundation as amicus curiae)* [2021] ZACC 18; 2021 JDR 1391 (CC); 2021 (9) BCLR 992 (CC).

⁷ *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others* (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021).

8. Notably, Mr Zuma did not participate in or attend the proceedings in the first two matters. The first matter resulted in an order compelling him to appear before the Zondo Commission; while the second found him guilty of contempt of court for his failure and / or refusal to comply with that order.
9. In the third, Mr Zuma unsuccessfully sought to have the contempt judgment set aside.
10. The orders granted in these matters form the subject of Mr Zuma's complaint before this Honourable Commission.
11. The complaint consists of two parts.
 - 11.1. In Part A, Mr Zuma seeks urgent relief interdicting the Republic from imprisoning him pursuant to the above matters, and from interfering with any benefits to which he is entitled as a former President, pending the outcome in Part B.
 - 11.2. In Part B, Mr Zuma seeks an order setting aside the Constitutional Court's orders in the above three matters. He further asks that the African Commission on Human and Peoples' Rights (the "ACHPR") find that these orders violated his human rights and / or the rights of the people. Additionally, Mr Zuma seeks compensation for the alleged violations, in an amount to be determined by the ACHPR.

12. In the alternative, Mr Zuma asks that this matter be referred to the African Court of Human and Peoples' Rights (the "African Court").
13. This submission is prepared in accordance with Rule 116 (2) of the Rules of Procedure of the ACHPR ("Rules of Procedure") in response to Mr Zuma's complaint and is filed with the ACHPR by the Department of International Relations and Cooperation on behalf of the Republic ("Department"). The Department reiterates its request to make oral submissions.
14. The Department, on behalf of the Republic, submits that Mr Zuma's complaint is without merit, and has been instituted in bad faith. Further, the Department respectfully submits that the Honourable Commission and the African Court have no jurisdiction to grant the relief sought by the complainant.
15. Accordingly, the Department respectfully submits that this Honourable Commission should dismiss this complaint.
16. These submissions will demonstrate that —
 - 16.1. The ACHPR lacks jurisdiction to provide the relief sought by Mr Zuma;
 - 16.2. The relief sought in Part A is moot;
 - 16.3. Mr Zuma's rights have not been violated;
 - 16.4. The Constitutional Court acted lawfully *and* in the protection and promotion of the Bill of Rights in making the impugned orders; and

16.5. Accordingly, the ACHPR cannot grant the relief sought in Part B.

JURISDICTION OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

17. The Honourable Commission derives its jurisdiction from the African Charter on Human and Peoples' Rights (the "African Charter").
18. As set out in Article 45 of the African Charter, the ACHPR's mandate is to promote and protect human and peoples' rights under the conditions specified in the African Charter.
19. Further, Articles 50 and 56 (5) of the African Charter require the exhaustion of local remedies before a matter can be entertained in the ACHPR, and Article 60 obligates the ACHPR to draw inspiration from international law, including the Charter of the United Nations, the Charter of the Organisation of African Unity, the Universal Declaration of Human Rights, and other instruments adopted by the United Nations and by African countries.
20. The ACHPR's jurisdiction is limited to matters alleging violations of rights guaranteed under the African Charter by a State Party. It does not function as a court of appeal or review over lawful judicial decisions of domestic courts, nor does it entertain moot or hypothetical disputes.

21. Accordingly, the Department submits that this Honourable Commission lacks jurisdiction to entertain Mr Zuma's complaint as the issue in Part A is moot, and the impugned orders in terms of the relief sought in Part B were lawfully granted by the Constitutional Court.

MOOTNESS OF THE RELIEF SOUGHT IN PART A

22. Mr Zuma seeks an interdict preventing his imprisonment pursuant to the orders of the Constitutional Court. However, as will be demonstrated below—and as previously submitted by the Department on 26 October 2023—this matter is moot.

23. On 29 June 2021, the Constitutional Court found Mr Zuma guilty of contempt of court for failure and / or refusal to comply with its order in the compliance judgment, and sentenced him to 15 months' imprisonment.⁸

24. Despite this, Mr Zuma ultimately served less than two months in prison. On 7 July 2021 he handed himself over to the South African Police Services to commence his sentence⁹ and on 5 September 2021, he was released on medical parole by the National Commissioner of Correctional Services, Mr Arthur Fraser.

25. On 11 August 2023, the President of the Republic remitted Mr Zuma's prison sentence in terms of section 84(2)(j) of the Constitution.

⁸ Compliance judgment supra at para 142.

⁹ Rescission judgment supra at para 10.

26. Although the High Court later set aside the medical parole decision —ordering Mr Zuma to return to prison— on 15 December 2021,¹⁰ and that subsequent appeals in the Supreme Court of Appeal and the Constitutional Court were unsuccessful; Mr Zuma did not return to prison after being released on medical parole until his sentence was remitted almost two years later.
27. As a result, Mr Zuma is currently not in prison and faces no imminent risk of incarceration arising from the contempt judgment because his sentence was remitted.
28. On 19 January 2022 when Mr Zuma first petitioned this Honourable Commission for urgent relief that is identical to the relief he seeks now in Part A, he had already been out of prison for four months and has not been imprisoned since.
29. Notwithstanding, on 21 February 2023 —more than a year later —he made a submission in terms of Rule 116(1) of the Rules of Procedure to this Honourable Commission in furtherance of his petition for the urgent relief.
30. On 26 October 2023, the Department responded to the complaint in terms of Rule 116 (2) of the Rules of Procedure, informing the Honourable ACHPR that

¹⁰ *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* (2021/45997; 2021/46468; 2021/46701) [2021] ZAGPPHC 814; [2022] 2 All SA 134 (GP) (15 December 2021).

the remission of Mr Zuma's prison sentence had extinguished the cause of action upon which this complaint was based. A copy of this submission is attached hereto as **ANNEXURE RS 1**.

31. Given these facts, the relief sought in Part A of Mr Zuma's complaint is perplexing.
32. There is no live dispute, no imminent imprisonment and no basis for engagement of the matter by the honourable ACHPR, especially on an urgent basis. Urgency is further negated by the relief sought relating to orders that were issued more than four years ago.
33. The ACHPR is being called upon to adjudicate an entirely academic and hypothetical issue.
34. This falls outside the ACHPR's mandate, and should respectfully be dismissed.

STATE CAPTURE AND THE PROMOTION AND PROTECTION OF HUMAN AND PEOPLES' RIGHTS

35. Following an investigation prompted by complaints from various members of the public, the Public Protector, in her *State of Capture* report, found that Mr Zuma likely violated the Executive Ethics Code by improperly allowing members of the Gupta family and his son to influence key government appointments —including

the removal and appointment of various Cabinet members (including the Minister of Finance) and board members in state-owned enterprises.¹¹

36. The report further observed that Mr Zuma likely turned a blind eye to allegedly corrupt practices by the Gupta family and his son, including pressuring banks to give preferential treatment of Gupta owned companies, and using his position as President to enrich himself and the Gupta family, ensuring their business received preferential treatment in state contracts, business financing and trading licenses.¹²
37. These observations, if found to be true, would mean that hundreds of millions of rands were looted from the public purse to unlawfully benefit a select few at Mr Zuma's behest—at the direct expense of millions of South Africans who rely on government funding for the realisation of their constitutionally protected socio-economic rights.
38. It is against this essential background that the ACHPR is respectfully called upon to appreciate the significance of the Public Protector's recommendation for the establishment of the Zondo Commission to South Africa's young constitutional democracy.
39. In the light of South Africa's deeply entrenched structural inequality, rooted in its colonial and apartheid past, the Constitutional Court has rightly emphasised that

¹¹ See Observations in *State of Capture* report supra from page 343.

¹² Id.

the progressive realisation of socio-economic rights is a constitutional imperative.¹³ This constitutionally imperative process is funded with public funds.

40. Just as the ACHPR exists to promote and protect human and peoples' rights, the Zondo Commission was established to serve a similar purpose—ensuring accountability in governance and the protection of public resources in South Africa.
41. By refusing to participate in the Commission's proceedings, Mr Zuma left the Commission with impossible choices:
 - 41.1. to do nothing in the face of such damning allegations that state resources were once again being looted to benefit a privileged few—a betrayal of the “never again” promise of our democracy;¹⁴ or
 - 41.2. to take unprecedented action in the unprecedented circumstances.
42. The nation watched with bated breath as to whether a single individual would be permitted to blatantly defy the Constitution, disregard a legally mandated

¹³ See, for example, *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000); *Minister of Health and Others v Treatment Action Campaign and Others (No 2)* (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC) (5 July 2002); *Mazibuko and Others v City of Johannesburg and Others* (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC) ; 2010 (4) SA 1 (CC) (8 October 2009) and *Khosa and Others v Minister of Social Development and Others, Mahlaule and Another v Minister of Social Development* (CCT 13/03, CCT 12/03) [2004] ZACC 11; 2004 (6) SA 505 (CC); 2004 (6) BCLR 569 (CC) (4 March 2004).

¹⁴ This is a reference to President Nelson Mandela's inauguration speech, the full quotation is “Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another and suffer the indignity of being the skunk of the world.”

Commission of Inquiry –which itself cost the public nearly R1 billion— and in doing so, make a mockery of our democracy.¹⁵

43. Now, Mr Zuma asks this Honourable Commission to endorse the notion that he was entitled to subvert our democracy and hard-fought freedoms without consequence.

44. The Department humbly submits that this Honourable Commission simply cannot do so.

THE CONSTITUTIONAL COURT ACTED LAWFULLY IN MAKING THE ORDERS IN THE IMPUGNED CASES

45. The Department accepts that an order of imprisonment by the apex court is an exceptionally unusual measure. However, to fully appreciate the lawfulness of the order, it is crucial to understand the extraordinary chronology of events that led to it.

46. On 15 July 2019, Mr Zuma appeared before the Commission for what was scheduled to be five days of testimony. On the first day, he expressed the view that the Commission formed part of a decade’s long “character assassination”

¹⁵ Compliance judgment supra at para 35.

conspiracy against him.¹⁶ He testified for only two and a half days before leaving without permission, with his lawyers later complaining that he had been subjected to “relentless cross-examination”.¹⁷

47. Prior to this, in September 2018, the Chairperson of the Commission had invited Mr Zuma to respond on affidavit to evidence given by Ms Mentor and Mr Maseko. However, he failed to do so for over seven months.¹⁸
48. On 19 July 2019, Mr Zuma reached an agreement, later confirmed by the Chairperson, that he would no longer testify. Instead, in terms of the agreement, the Commission’s legal team would inform Mr Zuma’s lawyers of the Commission’s areas of interest in relation to each witness statement or affidavit requiring Mr Zuma’s response.¹⁹
49. The Commission’s legal team was to provide the areas of interest within two weeks from 19 July 2019.²⁰

¹⁶ See transcript of the session of 15 July 2019 on page 15 at line 20, found at this url https://www.statecapture.org.za/site/files/transcript/135/15_July_2019_Sessions.pdf (last accessed on 1 April 2025).

¹⁷ Compliance judgment supra at para 35.

¹⁸ Id at para 32.

¹⁹ Id at para 37.

²⁰ Id at para 38.

50. On 30 July 2019, the schedule of areas of interest was sent to Mr Zuma's legal team, and the Chairperson directed that Mr Zuma should return to testify from 14 to 15 October 2019 and again from 11 to 15 November 2019.²¹
51. What followed was a series of correspondences between Mr Zuma's lawyers and the Commission's legal team, during which Mr Zuma repeatedly committed to submitting affidavits that were never delivered; was granted extensions to make submissions; and excused from scheduled appearances for various reasons, including personal commitments and alleged illness.²²
52. After months of non-compliance, the Commission issued a summons on 9 October 2020, compelling Mr Zuma to appear as a witness from 16 to 20 November 2020.²³
53. In response, Mr Zuma unsuccessfully applied for the recusal of the Chairperson.²⁴
54. Despite these summons, Mr Zuma failed to provide further testimony, prompting the Commission to approach the Constitutional Court on 3 December 2020 for relief.

²¹ Id at para 39.

²² Id at paras 40 to 52.

²³ Id at para 46.

²⁴ Id at para 47.

55. On 29 December 2020, the Constitutional Court heard the matter in the compliance judgment. Mr Zuma did not attend these proceedings.²⁵
56. On 28 January 2021, the Court ordered Mr Zuma to comply with all summonses and directives lawfully issued by the Commission, appear and give evidence before the Commission on the dates determined by it, and declared that Mr Zuma did not have the right to remain silent in those proceedings.²⁶
57. In response, Mr Zuma released a public statement alleging that both the Commission and the Constitutional Court were victimising him.²⁷
58. Notwithstanding the Court's order, Mr Zuma again failed to appear before the Commission between 15 and 19 February 2021.²⁸
59. The Chairperson accordingly announced that contempt of court proceedings would be instituted against him, that same day, Mr Zuma issued another public statement in which he severely criticised the judiciary and confirmed that he would neither obey the Constitutional Court's order nor cooperate with the Commission.²⁹

²⁵ Id at para 29.

²⁶ Id at para 115.

²⁷ Contempt judgement at para 4.

²⁸ Id at para 5.

²⁹ Id.

60. Consequentially, the Commission again approached the Constitutional Court for direct access on an urgent basis, arguing that a court granting an order retains jurisdiction to ensure its enforcement.
61. On 25 March 2021, the Constitutional Court heard the matter in the contempt judgment. Mr Zuma, again, failed to participate in these proceedings.³⁰
62. On 9 April 2021, the Constitutional Court issued directives calling on Mr Zuma to file an affidavit regarding the appropriate sanction should he be found guilty.³¹
63. Mr Zuma did not file an affidavit, but instead addressed a letter to the Chief Justice on 14 April 2021, in which he stated that he did not seek a right to be heard by the Court and dismissed the proceedings as “political gimmicks” unworthy of judicial consideration.³²
64. On 29 June 2021, the Constitutional Court delivered contempt judgement in which Mr Zuma was found guilty of contempt of court for failing to comply with the order in the Compelling Order Case and sentencing him to undergo 15 months’ imprisonment.³³

³⁰ Id at para 9.

³¹ Id at para 63.

³² Id at para 72.

³³ Id at para 142.

65. This chronology demonstrates that Mr Zuma's imprisonment was the inevitable consequence of his persistent defiance of lawful processes. The alternative was for the Commission and the Constitutional Court to do nothing in the face of his blatant refusal to participate, thereby undermining the very purpose of the Commission and the allegations it sought to investigate.
66. At every stage, Mr Zuma was afforded ample opportunity to provide his version of events and respond to the serious allegations of state capture, but repeatedly refused. The Commission and the Constitutional Court pursued every available legal avenue to secure his cooperation, demonstrating extraordinary patience and procedural fairness.
67. Mr Zuma seeks to recast the situation as though it began in the Constitutional Court, disregarding the extensive efforts made to accommodate him and the legal obligations he chose to ignore.
68. Furthermore, Mr Zuma downplays the gravity of the allegations the Commission was established to investigate—allegations of corruption and abuse of power that had profound implications for governance and the rule of law in South Africa.
69. The orders in the impugned cases were therefore lawfully made, and no violations of rights occurred. If anything, the Constitutional Court's failure to act in response to these extreme events would have constituted a violation of the rights of millions

of South Africans, whose interests demand that the truth be uncovered and the integrity of judicial and constitutional processes be upheld.

70. Respectfully, Mr Zuma cannot complaint that he was imprisoned without regard to lawful judicial processes when he refused to partake in any.

THE ACHPR HAS NO COMPETENCE TO ACT AS A BODY OF APPEAL OR REVIEW

71. In respect of Part B, Mr Zuma is asking this Honourable Commission to find that by acting to protect and promote the rights of millions of South Africans —albeit to his inconvenience— his rights were violated.
72. This is simply untrue. Mr Zuma’s attempt to frame his complaint as a human rights violation is a deliberate mischaracterisation of the facts.
73. The relief Mr Zuma seeks in Part B does not concern any violation of his human rights, but instead requires the ACHPR to act as a supernational appellate or review body mandated to meddle in the lawful decisions of the highest judicial authority in South Africa.
74. The decisions in the impugned cases were made in accordance and compliance with the Bill of Rights of the Constitution of the Republic of South Africa, which is founded on the values of human dignity, the achievement of equality and the

advancement of human rights and freedoms, non-racialism and non-sexism, and the supremacy of the Constitution and the rule of law.

75. The Constitutional Court's rulings were not only lawful but necessary to uphold the rule of law and protect the socio-economic rights of millions of South Africans. To grant the relief sought by Mr Zuma in this complaint would be to disregard this Honourable Commission's own mandate and interfere with the legitimate exercise of judicial authority in a constitutional democracy.
76. Accordingly, the Department submits that this Honourable Commission should dismiss this complaint in its entirety.

NO BASIS FOR COSTS OR REFERRAL TO THE AFRICAN COURT

77. Mr Zuma further seeks an award of compensation in an amount and currency to be determined by this Honourable Commission. In the alternative, or addition to the relief sought in Part B, he requests that this Honourable Commission refer his complaint to the African Court.
78. These requests are wholly untenable.

79. By seeking monetary compensation, Mr Zuma treats this matter as if it were a commercial dispute in which he is entitled to contractual or delictual damages arising from the alleged human rights violations.
80. The Department respectfully submits that even if monetary compensation were a permissible remedy in these circumstances, Mr Zuma would not be entitled to it, as no human rights violation has been established.
81. Furthermore, Mr Zuma fails to stipulate the basis on which this Honourable Commission should refer his complaint to the African Court. He merely asserts that such a referral should be made, without any supporting argument.
82. The Department submits that the onus rests on Mr Zuma to establish that a referral to the African Court is a competent and justifiable remedy in the context of this complaint. In the absence of any substantive basis for such a referral, there is no basis for the Department to engage with the request nor for this Honourable Commission to grant the relief sought.

CONCLUSION

83. Mr Zuma was afforded every reasonable opportunity to participate in the Zondo Commission and respond to the serious allegations made against him. Instead, he repeatedly refused to engage, defied court orders, and publicly undermined the

judiciary. His imprisonment was not a result of political persecution or a violation of his rights but rather the inevitable consequence of his own choices and the lawful enforcement of the rule of law.

84. The Constitutional Court and the Commission took extraordinary measures, within the bounds of legal and constitutional frameworks, to secure his participation. Mr Zuma now seeks to recast the issue as though it began with his contempt proceedings, conveniently ignoring the extended period of due process that preceded them.
85. The Department has respectfully demonstrated that this Honourable Commission has neither the mandate nor the competence to sit as an appellate or review body over the lawful decisions of South Africa's highest court, particularly where those decisions were made in accordance with a constitutional framework that upholds and protects human rights.
86. Mr Zuma's complaint does not demonstrate any violation of his fundamental rights. On the contrary, it was his own defiance that necessitated the measures taken against him. To accept his version would be to ignore the constitutional obligations of the Republic to protect the rights of millions of South Africans who would have suffered had the courts done nothing in the face of such extreme conduct.

87. Accordingly, the Department humbly submits that this Honourable Commission should dismiss Mr Zuma's complaint in its entirety.

SIGNED AT PRETORIA ON THIS 05TH DAY OF MAY 2025.



Ms R Brammer

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TO:

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

" ANNEXURE RSI "

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 Gedleyihlekisa 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.



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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)(f) 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

SPESIALE 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 Gevonnisd 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. Die plasing prosesse vir korrektiewe toesig, 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

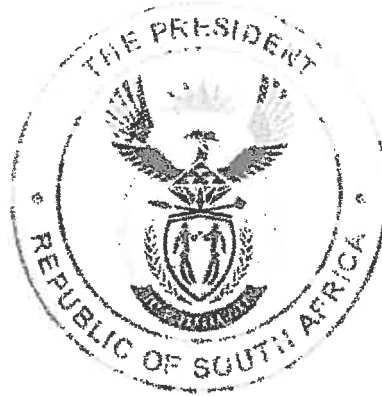
PRESIDENT



Op las van die President-in-Kabinet

MINISTER VAN DIE KABINET





PRESIDENT'S MINUTE NO: 258/2023

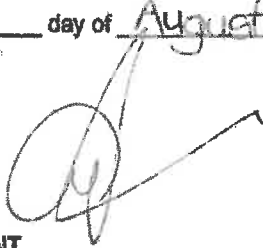
**SPECIAL REMISSION OF CERTAIN CATEGORIES OF SENTENCED OFFENDERS,
CORRECTIONAL SUPERVISION AND PAROLEES**

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;

- 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