

IN THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
(Secretariat of the Commission, based in Banjul, The Gambia)

CASE NUMBER:

In the matter between:-

LIBERTY FIGHTERS NETWORK

FIRST COMPLAINANT

(A voluntary Association NGO)

REYNO DAWID DE BEER

SECOND COMPLAINANT

AND

REPUBLIC OF SOUTH AFRICA

STATE PARTY

**LETTER OF INTRODUCTION OF COMPLAINT RELATING TO ALLEGED HUMAN
RIGHTS VIOLATIONS WITH INCORPORATED REQUEST FOR URGENT RELIEF**

BE PLEASED TO TAKE NOTICE that the above-mentioned Complainants, properly identified hereunder, are lodging a formal complaint with incorporated urgent relief against the above-mentioned State Party in terms of Article 55 to the African Charter on Human and Peoples' Rights as follows:-

- a) The name, nationality and signature of the person or persons filing it; or in cases where the Complainant is a non-governmental entity, the name and signature of its legal representative(s)
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First Complainant is **LIBERTY FIGHTERS NETWORK**, a common law voluntary association functioning as a non-governmental organisation in the country of the State Party not for gain with perpetual succession and legal entity separate from its members with contacting details as follows:-

Representative: Mr. Reyno D. De Beer (President and Official)

Address:

████████████████████

██

Cellular Phone:

████████████████████

Landline:

████████████████████

Email:

██

Second Complainant is a 45 years old major male **REYNO DAWID DE BEER** a citizen of the State Party with identity number ████████████████████ serving as the President and Leader of the First Complainant and also the chosen representative of the latter residing at the address indicated *supra*.

- a) **Whether the Complainant wishes that his or her identity be withheld from the State**
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There is no such wish for identities to be withheld and full identity of the Complainant may be made known to the State Party.

- b) **The address for receiving correspondence from the Commission and, if available, a telephone number, facsimile number, and email address**
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Same as stated *supra*.

- c) **An account of the act or situation complained of, specifying the place, date and nature of the alleged violations**
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1. On Tuesday, 29 June 2021, the Constitutional Court of the State Party delivered judgment in the matter ***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*** in which the State Party's erstwhile President, **JACOB GEDLEYIHLEKISA ZUMA** (hereafter "**Zuma**"), was sentenced to 15 months imprisonment on the criminal charge of Contempt of Court without considering the African Charter or making a suspensive condition of implementation. The Complainants believe that this decision, made under very suspicious circumstances, was politically motivated. This complete judgment is hereby submitted with this complaint as Annexure "**A**".

2. As a social justice organisation and human rights activist, the Complainants foresee that this ruling will have an immediate negative impact on our South African citizenry where millions of people are **Zuma** supporters and many people believe that the Constitutional Court (and our other courts) may have lost some or all of their independence and that the courts have become an extension of Government, with officers of the court engaging in political role play and that, effectively, the State Party's formerly independent judicial system has collapsed and has been captured in the interest of and for political gain.
3. The Complainant have also now been openly threatened by the State Party's Supreme Court of Appeal (SCA) on Thursday, 1 July 2021 with Contempt of Court charges for having expressed their very own opinion in support of the fact that the Courts in the Party State are no longer constitutional independent organs. This threat by the SCA comes after the Complainants had been actively opposing the COVID-19 measures in the State Party since May 2020 and became voices against State Party corruption and violations of basic human rights as enshrined in the African Charter and the State Party's Constitution. All these applicable court challenges by the Complainants can be viewed on <http://www.saflii.org/> with the following references:-
 - 3.1 De Beer and Others v Minister of Cooperative Governance and Traditional Affairs (21542/2020) [2020] ZAGPPHC 184 (2 June 2020);
 - 3.2 Minister of Cooperative Governance and Traditional Affairs v De Beer and Others (21542/2020) [2020] ZAGPPHC 280 (30 June 2020);
 - 3.3 De Beer N.O and Others v Minister of Cooperative Governance and Traditional Affairs (21542/2020) [2020] ZAGPPHC 676 (23 October 2020);and

- 3.4 De Beer N.O and Others v Minister of Cooperative Governance and Traditional Affairs (21542/2020) [2021] ZAGPPHC 67 (19 February 2021).
4. This judgment by the SCA, which includes the threats against the Complainants in paragraph 119 thereof, is also attached as Annexure “**B**”.
 5. As per paragraph 119, and specifically footnote 42, of this SCA judgment it becomes plain that there is a direct link between the Constitutional Court judgment handed down against **Zuma** which very likely implies not only a political motivation but also attempts to intimidate anyone who is currently opposing the State Party in the way both **Zuma** and the Complainants have been doing in public; for different reasons.
 6. The further concern by the Complainants is the statement by the SCA in its judgment already stating that the alleged remarks were contemptuous in nature. Hence, if criminal prosecution would be instituted against the Complainants in either the Magistrates’ Court or the High Court, the SCA already would have made a ruling without any trial of whatsoever kind. It follows that both, a Magistrates' Court or a High Court, would be obliged to follow the directive given by the SCA. Due to the fact that the SCA serves as an appeal court, the matter cannot be enrolled before it which only leaves the Constitutional Court as the only court to serve as court of first instance, exactly as had happened in the **Zuma** matter.
 7. Thus, the Complainants are earmarked to also be found guilty of Contempt of Court based only on affidavits before the Constitutional Court without the option of a proper open court and public hearing.
 8. It is evident that the drastic judgment by our country’s highest Court in the **Zuma** matter, taken without proper consideration, immediately infected our matter as

well and ought to be revised by the Commission and that it should probably be referred to the African Court for Rescission.

9. The immediate fear is that due to this seemingly reckless finding by the Constitutional Court, there are wide-spread media reports according to which many people are prepared to take up arms if **Zuma** is committed to prison. By all indication, even the veteran *Mkonto We Sizwe* soldiers have apparently positioned themselves around the homestead of **Zuma** at Nkandla, KwaZulu Natal.
10. This last date for **Zuma** to surrender himself for committal to a State Correctional Facility is this coming Sunday, 4 July 2021.
11. The **Zuma** judgment by our apex Court is left open for broad criticism, especially after it made a series of recent constitutional blunders questioning the Court's independence. There are currently two matters pending before the Commission lodged by the First Complainant implicating the judiciary of the State Party. One matter has already been seized under case number 708/19 and another pending seizure under case number 291/2021.
12. It is evident, with the Chief Justice of the Constitutional Court, Mogoeng Mogoeng, historically stating in the national media on Friday, 13 September 2019, that he will ensure that everyone who openly criticises judges and making claims of corruption on social media will be hunted down by the National Police Commissioner to identify those who exercise freedom of expression, the independence of our judiciary has clearly come under fire.
13. Not only have two judges of the Constitutional Court openly delivered a much warranted human rights aligned minority judgment, but further, one day after the **Zuma** judgment was delivered the author, Acting Chief Justice Khampepe,

announced her resignation. This all happened after our Chief Justice Mogoeng Mogoeng took permanent leave March 2021 from his duties ending September 2021.

14. This matter is clearly acute, deserving urgent intervention by the Commission for interim relief to suspend the implementation of the judgment against **Zuma**, pending the Commission investigating the background thereof and further, whether or not there is any confirmed intimidation against human rights activists, such as the Complainants and/or granting of alternative urgent relief.
15. The State Party is not yet ready to enforce this judgment and/or able to prevent a potential chaos which the Constitutional Court and the SCA would be responsible for. We thus beg the Commission for its urgent intervention in this highly threatening issue, affecting all the people of our country and where the possibility of an impending civil war at this point cannot be ruled out.
16. Please note that we shall be able to support our allegations made in this complaint with written and verbal evidence, confirming same which can be provided to the Commission in due course. The purpose of this document is only to summarise the complaint in order for the Commission to determine jurisdiction, consider urgent relief and whether to seize the communication.
17. And/or alternative evidence in support can be presented to the Commission on further request.

d) The name of the victim, in a case where he or she is not the Complainant

Not only is **Zuma** a victim to serve imprisonment any day now, but the Complainants are also victims. In fact, all people in the State Party are prospective victims and for that reason the Complainants act in public interest.

e) Any public authority that has taken cognisance of the fact or situation alleged

- 1) The Constitutional Court of the State Party
- 2) State President
- 3) Cabinet
- 4) Parliament

All of these entities are now obliged to follow the judgment under contention.

f) The name of the State(s) alleged to be responsible for the violation of the African Charter, even if no specific reference is made to the article(s) alleged to have been violated

State Party: **Republic of South Africa**

- 1) Alleged violations, *inter alia* but not limited to, the following:-

Article 1

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 7

1. Every individual shall have the right to have his cause heard. This comprises:

- a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
- b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
- c) the right to defence, including the right to be defended by counsel of his choice;
- d) the right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

Article 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

Article 9

1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 10

1. Every individual shall have the right to free association provided that he abides by the law.

2. Subject to the obligations of solidarity provided for in Article 29 no one may be compelled to join an association.

Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

2. Every citizen shall have the right of equal access to the public service of his country.

3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

Article 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

Article 20

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status

and shall pursue their economic and social development according to the policy they have freely chosen.

2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

Article 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

Article 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.

2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that:

a) any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter;

b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

Article 24

All peoples shall have the right to a general satisfactory environment favourable to their development.

Article 25

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

Article 26

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

h) Compliance with the period prescribed in the African Charter for submission of the Communication

These alleged violations are current and ongoing and affect all our people; it is serious.

i) Any steps taken to exhaust domestic remedies, or if the applicant alleges the impossibility or unavailability of domestic remedies, the grounds in support of such allegation

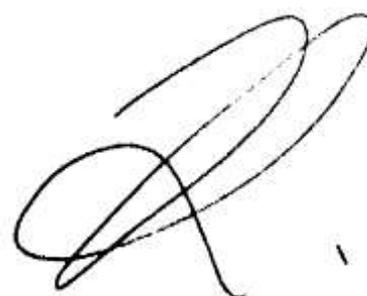
This matter was dealt with by the Constitutional Court which is the highest court in the State Party and constitutionally the State Party must adhere to its judgments, leaving this Commission as the following option to challenge the verdict of it.

j) An indication that the complaint has not been submitted to another international settlement proceeding as provided in Article 56(7) of the African Charter

No such referral was done as far as we are aware and after all local remedies have been exhausted we have now referred this matter to this Commission only.

RESULTANTLY the Commission is respectfully requested to please accept our complaint in the interest of all our people.

SIGNED at **PRETORIA (GAUTENG, REPUBLIC OF SOUTH AFRICA)** on this **2ND** day of **JULY 2021**.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

pp. Complainants

Represented by: Mr. Reyno Dawid De Beer

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Republic of South Africa

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[BY EMAIL]