IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: CCT/52/21

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA	Applicant
and	
COMMISSION OF INQUIRY INTO STATE CAPTURE, FRAUD & CORRUPTION IN THE PUBLIC SECTOR, INCLUDING ORGANS OF STATE	First Respondent
RAYMOND MNYAMEZELI ZONDO N O	Second Respondent
THE MINISTER OF POLICE	Third Respondent
THE MINISTER OF JUSTICE & CORRECTIONAL SERVICES	Fourth Respondent
HELEN SUZMAN FOUNDATION	Fifth Respondent

FIRST AND SECOND RESPONDENTS' FURTHER SUBMISSIONS

TABLE OF CONTENTS

INTRODUCTION.....3

A RESCISSION APPLICATION 3

INTERNATIONAL LAW IN THE DOMESTIC SETTING 7

Rescission application 7

The status of the Covenant.....9

CONCLUSION 19

LIST OF AUTHORITIES.....20

INTRODUCTION

1 On 6 August 2021 this Court directed the parties to make submissions on two questions:

1.1 In light of section 39(1) of the Constitution, whether this Court is obliged to consider the United Nations' International Covenant on Civil and Political Rights ("**Covenant**") when interpreting sections 12(1)(b) and 35(3) of the Constitution.

1.2 If the answer to the first question is in the affirmative, the implications that articles 9 and 14(5) of the Covenant, read together with decisions of the Human Rights Committee have on the applicant's detention.

A RESCISSION APPLICATION

2 Before we turn to these questions, it is necessary to deal with the jurisdictional basis for the consideration of any international law precepts. This is a rescission application, not an appeal. The applicant cannot change the nature of the case simply by calling it a "reconsideration" application and vaguely invoking Rule 29 of this Court's Rules. It would be wrong for this Court to ignore the law on rescissions in considering the application. In fact, the case can only be decided by applying the framework of rescission under Rule 42 of the Uniform Rules of Court.

3 The applicant brought this case squarely under Rule 42.[1] The founding affidavit submitted that the word "error" must be understood to include "notions such as granting an unconstitutional order and/or reviewable errors of fact and/or law."[2]

[1] Record, p 2, para 1 of the Notice of Motion.
[2] Record, p 29, para 71.

4 This Court must decide whether or not the applicant has proved an error which vitiates the judgment as contemplated by Rule 42. If he has not, the application should be dismissed. An error for the purposes of Rule 42 has been considered in judgments of this Court.[3] A preferred different outcome on the merits does not constitute an error for purposes of Rule 42. There must be an error of fact in the manner in which the judgment was sought or granted which would have prevented the granting of the judgment. There is no basis for this conclusion on. the facts of this case.

5 The applicant argues for the "development" of Rule 29 of the Rules of this Court. It is unclear in what respects the rule is said to be deficient. It absurd to argue that the rule requires development simply because it does not contemplate the applicant's preferred outcome. It is also unclear in what specific manner the rule ought to be developed – the applicant seems to resort to a vague, imprecise assertion that each time this Court grants an order that some members of the Court disagree with over the interpretation of the Constitution, that should be regarded as an error capable of grounding a rescission. The proposition is an untenable one. One cannot develop rule 29 to embrace an appeal, or reconsiderations of this Court's final judgments. To do so creates a vortex of judicial uncertainty.

6 A general rule which sanctions the reconsideration of final judgments of this Court does grave damage to the Constitution and the standing of this Court as the apex court. There is always a party aggrieved by this Court's judgments. But the principle of *stare decisis* which underpins the rule of law requires that each party must accept adverse outcomes where they have heard a chance to defend themselves.

[3] See for instance: *Ferris and Another v FirstRand Bank Limited and Another* 2014 (3) SA 39 (CC) at para 13.

7 In the English House of Lords decision *In Re Pinochet*[4] the court "reconsidered" its judgment. However, the basis for the reconsideration was not a disagreement with the merits of the majority judgment. Nor did the court find that there was something amiss in its substantive reasoning in the initial judgment – which is what is being argued here.

8 Instead, as explained in the Speech of Lord Browne-Wilkinson:

> *"This petition has been brought by Senator Pinochet to set aside an order made by your Lordships on 25 November 1998. It is said that the links between one of the members of the Appellate Committee who heard the appeal, Lord Hoffmann, and Amnesty International ("AI") were such as to give the appearance that he might have been biased against Senator Pinochet."* [Emphasis added]

9 Therefore, the factual basis for the reconsideration was the allegation that one of the members of the Court had an undisclosed conflict of interest, which was unknown at the time the judgment was given.

10 In South Africa, if it could be shown that one of the justices of this Court had an undisclosed link with one of the parties, that would constitute an error which would justify the rescission of the judgment. In fact this is precisely the conclusion arrived at by the House of Lords in *Pinochet*, which held:

> *"As I have said, the respondents to the petition do not dispute that your Lordships have jurisdiction in appropriate cases to rescind or vary an earlier order of this House. In my judgment, that concession was rightly made both in principle and on authority.*

[4] https://publications.parliament.uk/pa/ld199899/ldjudgmt/jd990115/pino01.htm.

In principle it must be that your Lordships, as the ultimate court of appeal, have power to correct any injustice caused by an earlier order of this House. There is no relevant statutory limitation on the jurisdiction of the House in this regard and therefore its inherent jurisdiction remains unfettered. In Cassell & Co. Ltd. v. Broome (No. 2) [1972] A.C. 1136 your Lordships varied an order for costs already made by the House in circumstances where the parties had not had a fair opportunity to address argument on the point.

However, it should be made clear that the House will not reopen any appeal save in circumstances where, through no fault of a party, he or she has been subjected to an unfair procedure. Where an order has been made by the House in a particular case there can be no question of that decision being varied or rescinded by a later order made in the same case just because it is thought that the first order is wrong." [Emphasis added]

11 The correct reading of the *Pinochet* case is that:

11.1 this Court would have jurisdiction to rescind or vary its own orders or judgments;

11.2 this power would apply where a party, through no fault of their own, have been subjected to an unfair procedure; and

11.3 there is no jurisdiction to change an earlier judgment simply because the Court considers it wrong.

12 There is no judgment, of which we are aware, where a superior court "reconsiders" its judgment because it believes the first one to be wrong. There is no case in which the minority judgment is simply replaced in the place of the majority where both views were debated and considered. It must be recalled that the applicant brought this application alleging an error. Now that he has failed to demonstrate the errors, he is apparently grasping at every possible straw, including the untenable reference to international law.

13 The applicant's case is really about this Court arriving at a wrong decision with which he disagrees. This is not a proper ground for rescission. It would be wrong for this Court to approach the two questions foreshadowed in the directions without taking into account the nature of these proceedings. The only jurisdictional basis to entertain these questions is whether an error has been shown. Since the applicant has not established grounds for rescission, the application should be dismissed.

INTERNATIONAL LAW IN THE DOMESTIC SETTING

Rescission application

14 Section 39(1) of the Constitution places an obligation on the Court to consider international law when interpreting the Bill of Rights. This includes the rights in sections 12(1)(b) and 35(3) of the Constitution.

15 International law operates at both the domestic and international spheres. Section 231 applies primarily in the international sphere. "An international agreement approved by Parliament becomes binding on the Republic. But that does not mean that it has no domestic constitutional effect. The Constitution itself provides that an agreement so approved 'binds the Republic'."[5]

16 Section 39(1)(b) focuses on the domestic sphere. It states that when interpreting the Bill of Rights, a court "must consider international law".

[5] *Glenister v President of the Republic of South Africa and* 2011 (3) SA 347 (CC) at para 182.

17 In *S v Makwanyane*,[6] Chaskalson P explained that:

> *". . . In the context of section 35(1), public international law would include non-binding as well as binding law. They may both be used under the section as tools of interpretation. International agreements and customary international law accordingly provide a framework within which Chapter Three can be evaluated and understood, and for that purpose, decisions of tribunals dealing with comparable instruments, such as the United Nations Committee on Human Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the European Commission on Human Rights, and the European Court of Human Rights, and in appropriate cases, reports of specialised agencies such as the International Labour Organisation may provide guidance as to the correct interpretation of particular provisions of Chapter Three."*[7]

18 The Covenant (the ICCPR) has no independent and direct application to this case. The sole question to be considered is whether or not there is a basis to rescind or vary the judgment of this Court in *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* (CCT 52/21) [2021] ZACC 18 *(Zuma 2)*.

19 When examining this question, this Court should apply the provisions of Rule 42 and its own precedent on rescission applications. A rescission application is not a place to reconsider the merits in the same manner as an appeal.

20 While the applicant has argued for the direct application of the Covenant, it is unclear what is the jurisprudential basis for the direct application of the ICCPR to an application for rescission under Rule 42. Clearly the ICCPR does not define what an error is for

[6] *S v Makwanyane and Another* 1995 (3) SA 391 (CC).
[7] *Makwanyane* at para 35.

purposes of Rule 42. Our law adequately performs this function. The only instance where the ICCPR might be of possible relevance in a rescission application would be the common law in terms of Rule 31. Under the common law a court should consider whether an applicant for rescission has a *bona fide* defence to the application. However, the applicant must first show a reasonable explanation for the default.

21 The applicant cannot show any reasonable explanation for the default. In the absence of a reasonable explanation for the default, his alleged *bona fide* defence does not enter the equation. As such there is no basis to apply the provisions of the Covenant in rescission proceedings under Rule 42 read with Rule 29 of the Rules of this Court does not take the matter further. An expanded interpretation of Rule 29 would not transform the ICCPR into an instrument which carries domestic obligations. It would not, for instance, mean that any alleged failure to consider the terms of the ICCPR is an "error" as contemplated by Rule 42.

The status of the ICCPR

22 Courts are enjoined to consider both binding and non-binding international law when interpreting the Bill of Rights.[8] However, greater weight would be placed on international law that binds South Africa. This Court stated in *Grootboom*:

> "*The relevant international law can be a guide to interpretation but the weight to be attached to any particular principle or rule of international law will vary. However, where the relevant principle of international law binds South Africa, it may be directly*."[9] [Emphasis added]

[8] *Glenister v President of the Republic of South Africa and Others* at para 189.
[9] *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC) at para 26.

23 The ICCPR has no force of law in South Africa. It does not directly bind South Africa when acting domestically. It is relevant in interpreting the Bill of Rights, but it creates no self-standing rights and obligations, domestically. No one can approach a South African court alleging a breach of the ICCPR. The ICCPR is an instrument to interpret our domestic laws. When South Africa acts internationally, however, the ICCPR has direct binding effect. This is a crucial distinction – which the applicant's submissions completely elide.

24 A court cannot treat any rule of international law as directly applicable on the domestic front, unless it is incorporated into our municipal law.[10] Section 231(4) of the Constitution provides as follows:

> *"Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament*."

25 For an international convention to be incorporated into South African law, therefore, section 231(4) of the Constitution requires, in addition to the resolution of Parliament approving the agreement, further national legislation incorporating it into domestic law.[11] South Africa has ratified the ICCPR, but it has not incorporated into domestic law. This means that the Convention binds the Republic at an international level[12] but it does not create domestic rights and obligations.

---

[10] *Glenister* at para 98.
[11] *Glenister* at para 99.
[12] Article 2(1) of the Vienna Convention on the Law of Treaties: (b) "ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.

26 While section 39(1)(b) of the Constitution requires this Court to consider the ICCPR when interpreting the provisions of sections 12(1) and 35(3) of the Constitution, there is no obligation on the Court to depart from South African law on these provisions.

27 It is notable that there is no inconsistency between our Constitution and the ICCPR. South African law provides protections that are in line with the standard required by articles 9 and 14(5). This applies to persons sentenced and imprisoned for contempt of court. The applicant cannot show that he enjoys greater procedural and judicial protections in international law than under our Constitution. In fact, the opposite is true, as amply demonstrated by the judgment of this Court in *Zuma 2*.

28 Sections 12(1)(b) and 35(3) of the Constitution are the relevant provisions.

28.1 Section 12(1)(b) guarantees everyone the right to freedom and security of the person, which includes the right not to be detained without trial.

28.2 Section 35(3) guarantees every accused person the right to a fair trial. The right in section 35(3) includes other rights, among them the right to a public trial before any ordinary court,[13] and to an appeal or review by a higher court.[14]

29 These protections are far more extensive than those found in international law. We consider these next.

[13] Section 35(3)(c).
[14] Section 35(3)(o).

AMBIT OF THE ICCPR

30 Article 9 of the Covenant provides:

> *"1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
> *2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*
> *3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*
> *4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*
> *5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."*

31 In terms of Article 14(5):

> *"Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."*

32 Section 12(1)(b) of the Constitution is the lynchpin of the applicant's case. It guarantees the fundamental right of everyone the right *"to freedom and security of the person, which includes the right— ...(b) not to be detained without trial."*

33 The applicant's central argument – even though misguided – is that he is detained unconstitutionally insofar as his detention was not preceded by a criminal trial in which the rights in section 35 were observed. The argument is flawed for the reasons we have advanced in our main submissions.

34 International law contains no right similar to section 12(1)(b). Article 9(1) of the ICCPR provides that "*[n]o one shall be deprived of his liberty except on such grounds and in accordance with <u>such procedures as are established by law</u>."* [Emphasis added]. There is no right not to be detained without trial in the Covenant. The only other right which may be relevant is Article 9(3). But it applies only to persons arraigned on a criminal charge, which is, in any event, comparable to our section 35.

35 The question under the ICCPR is whether or not the detention of the applicant is *"in accordance with such procedures as are established by law."* This phrase is defined by the United Nations General Comment No. 35:[15]

> *"**Arbitrary detention and unlawful detention***
>
> *10. The right to liberty of person is not absolute. Article 9 recognizes that sometimes deprivation of liberty is justified, for example, in the enforcement of criminal laws. Paragraph 1 requires that deprivation of liberty must not be arbitrary, and must be carried out with respect for the rule of law.*

[15] https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en.

11. The second sentence of paragraph 1 prohibits arbitrary arrest and detention, while the third sentence prohibits unlawful deprivation of liberty, i.e., deprivation of liberty that is not imposed on such grounds and in accordance with such procedure as are established by law. The two prohibitions overlap, in that arrests or detentions may be in violation of the applicable law but not arbitrary, or legally permitted but arbitrary, or both arbitrary and unlawful. Arrest or detention that lacks any legal basis is also arbitrary. Unauthorized confinement of prisoners beyond the length of their sentences is arbitrary as well as unlawful; the same is true for unauthorized extension of other forms of detention. Continued confinement of detainees in defiance of a judicial order for their release is arbitrary as well as unlawful.

12. An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality."

36 The ICCPR is intended to prevent detentions which do not comply with the procedures laid down by the law. This is inapplicable here. A detention for contempt of court is part of our common law. The procedures followed in a detention for contempt of court are well known – they have received the imprimatur of constitutionality from this Court and the Supreme Court of Appeal. The applicant knew about the likely imprisonment for contempt of court. He was invited several times to participate in those procedures. He refused. There is no breach of Article 9(1) of the ICCPR.

37 Article 5 of the European Convention on Human Rights is also relevant as it is worded in a similar manner to Article 9 of the ICCPR. The European Court of Human Rights has held that the term "such procedures as are prescribed by law", should be understood as follows in *Steel v UK* (1999) 28 EHRR 603 (App No 24838/94):

> *"54. The Court recalls that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 stipulate not only full compliance with the procedural and substantive rules of national law, but also that any deprivation of liberty be consistent with the purpose of Article 5 and not arbitrary (see the above-mentioned Benham judgment, pp. 752–53, § 40). In addition, given the importance of personal liberty, it is essential that the applicable national law meet the standard of "lawfulness" set by the Convention, which requires that all law, whether written or unwritten, be sufficiently precise to allow the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see the S.W. v. the United Kingdom judgment of 22 November 1995, Series A no.335-B, pp. 41–42, §§ 35–36, and, mutatis mutandis, the Sunday Times v. the United Kingdom (no. 1) judgment of 26 April 1979, Series A no. 30, p. 31, § 49, and the Halford v. the United Kingdom judgment of 25 June 1997, Reports 1997-III, p. 1017, § 49)."* [Emphasis added]

38 As such, the ICCPR requires compliance with national law. To meet the requirements of lawfulness, national law should be reasonably foreseeable. The possibility of detention should be predictable. An affected person should be allowed the right to legal representation if necessary. These elements were fully complied with in this case. Rescission cannot be granted on the grounds of non-compliance with the Convention.

39 Article 14(5) of the ICCPR guarantees the right to have one's conviction and detention reviewed by a higher court or tribunal. South African law also provides for a similar protection in section 35(3)(o), which guarantees the rights of accused persons the right "of appeal to, or review by, a higher court."

40 As explained in the United Nations' Committee's General Comment No. 32 (2007) *On the right to equality before courts and tribunals and to a fair trial*[16] the right is not offset where the highest court in a country imposes the detention sentence *"unless the State party concerned has made a reservation to this effect."*

41 Our Constitution expressly provides for direct access to the Constitutional Court. This is an issue which was debated by the justices in this case. Khampepe ADCJ held:

> "*The Constitution itself has, in its wisdom (or rather that of its framers), seen fit to take away the right of appeal in those instances where direct access is warranted. It is extraordinarily unlikely that direct access would be granted in the case of an ordinary criminal trial concerning an accused person. Indeed, if this were to happen, I would share my Sister's concern that it would constitute an infringement on the accused person's right of appeal in terms of section 35. But that is not the kind of matter that is before this Court in these proceedings. The true debate on appealability in this matter, then, turns on whether direct access is warranted. If it is, . . . (that is the end of the matter). The right of appeal simply does not arise. To suggest otherwise would contradict the very provision in the Constitution that permits direct access. I have already demonstrated that direct access is warranted*."[17] [Emphasis added].

42 Article 14(5) therefore adds nothing material to the debate exhaustively undertaken by the Court before it arrived at the decision in *Zuma 2*. As held in the *Pinochet* case a rescission is not the place to reconsider the correctness or otherwise of a judgment. A rescission exists to correct a procedural error in the manner in which a judgment was procured or granted. This is the basis on which the applicant has approached the Court.

---

[16] https://digitallibrary.un.org/record/606075?ln=en.

[17] *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* para 80.

Now that he has failed to prove rescission grounds, he cannot resort to the direct application of international law.

43 The case of *Vicencio Scarano Spisso v. Venezuela*[18] is of no help to the applicant. In this case the Human Rights Committee found that the detention of Mr Spisso conflicted with the provisions of Article 9 and Article 14 of the Convention. But that case must be seen in the light of the law of Venezuela. The Committee explained the factual basis of its judgment:

> *"The offence of contempt of court, as regulated under article 31 of the Protection of Constitutional Rights and Guarantees Act, is designed to punish persons who fail to execute final decisions granting constitutional protection (amparo), not interim measures, as in this case. However, the Constitutional Chamber interpreted article 31 broadly in order to reach the verdict of contempt of court for the alleged failure to comply with an interim protection decision, which does not constitute a determination of the merits in an amparo case."* [Emphasis added].

44 By contrast South African law recognises a civil contempt as an amalgam of the civil procedure with punitive elements. The standard of proof is criminal whereas the procedure is the motion procedure. In the *Spisso* case, the flaw with the approach of the Constitutional Chamber was to apply contempt procedures to an interim protection decision in breach of its own law which permits contempt of court only after the merits have been determined. This much is apparent from this conclusion:

> *"7.9 Bearing in mind the author's observations, which the State party has not challenged, that the provision on which his conviction was based criminalizes non-compliance with final amparo decisions,*

[18] *Vicencio Scarano Spisso v Venezuela*, case No. 2481/2014.

> *but not non-compliance with interim measures, as well as the fact that the provision does not specify the competent body or the procedure for determining whether an offence has been committed, the Committee concludes that the trial and conviction of the author for contempt in respect of the interim measures imposed on him by the Constitutional Chamber violated his right to a hearing by a competent tribunal, in keeping with article 14 (1) of the Covenant."* [Emphasis added]

45 This is not the case here. The applicant's case had reached finality. The applicant knew this. He elected not to comply with a final order of this Court. He was also afforded enough opportunities to contest the grounds for the contempt of court and the sentence sought to be imposed.

46 The case of *Young v. United States ex rel. Vuitton et Fils*[19] referred to by the applicant, is of no help to the Court. The question was whether or not it was proper for a judge to "*make[] the initial decision to proceed with a contempt prosecution*". This is not the case here. The application to hold the applicant in contempt was brought by the Commission, not by the Court. The function of the Court was adjudicative. It is absurd to imply that when the Court adjudicated the case, it did not act impartially.

47 The African Court of Human and People's Rights has rightly held that a person who deliberately absents themselves from their trial cannot complain later about an unfair trial:

> *"83. The Applicant having refused to appear before the Court, the Court in conclusion holds that the hearing before the High Court in the absence of the*

[19] *Young v. United States ex rel. Vuitton et Fils*, 481 U.S. 787 (1987).

Applicant <u>does not constitute a violation of his right to have his cause heard</u>. ”[20]
[Emphasis added]

CONCLUSION

48 Nothing material turns on either Article 9 or 14 of the ICCPR. The question remains whether or not the applicant has proved rescission grounds. When the two articles are examined on their merits, they do not provide a basis for the rescission.

49 South Africa's domestic law provides more extensive protections than the ICCPR. If the South African Constitution was complied with, as held in *Zuma 2*, it is impossible to conclude that international law was violated.

50 References in the applicant's heads of argument to "pride", "pettiness" of this Court and the alleged failure of this Court to provide the applicant "an impartial court of disinterested prosecution" are regrettable. Yet they have become a characteristic feature of the applicant's unfortunate rhetoric towards this Court and its members. Costs are, once again, warranted in this case to vindicate the standing and authority of this Court.

T N NGCUKAITOBI SC
N MUVANGUA
Counsel for the First and Second Respondents
Sandton Chambers, 18 August 2021

[20] *Paulo v Tanzania* (020/2016) [2018] AFCHPR 14; (21 SEPTEMBER 2018).

LIST OF AUTHORITIES

Conventions

1. United Nations' International Covenant on Civil and Political Rights.
2. Vienna Convention on the Law of Treaties.

Domestic Case Law

3. *Ferris and Another v FirstRand Bank Limited and Another* 2014 (3) SA 39 (CC).
4. *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC).
5. *Glenister v President of the Republic of South Africa and* 2011 (3) SA 347 (CC).
6. *S v Makwanyane and Another* 1995 (3) SA 391 (CC).
7. *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 [Zuma 1].*
8. *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 [Zuma 2].*

International/Foreign Case Law

9. *Paulo v Tanzania* (020/2016) [2018] AFCHPR 14; (21 SEPTEMBER 2018).
10. *Vicencio Scarano Spisso v Venezuela*, case No. 2481/2014.
11. *Young v. United States ex rel. Vuitton et Fils*, 481 U.S. 787 (1987).