

STATEMENT ON CONSTITUTIONAL COURT DECISION COMPELLING ME TO APPEAR BEFORE THE COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE

I have received an overwhelming number of messages of support from members of the African National Congress and the public at large following the recent extraordinary and unprecedented decision of the Constitutional Court where it effectively decided that I as an individual citizen, could no longer expect to have my basic constitutional rights protected and upheld by the country's Constitution. With this groundswell of messages, I felt moved to publicly express solidarity with the sentiments and concerns raised with me about a clearly politicized segment of the judiciary that now heralds an imminent constitutional crisis in this country.

When the former Public Protector, Advocate Madonsela, stipulated the terms upon which the President would establish a commission of inquiry to look into allegations of state capture, she had recommended that the chairperson of the inquiry be appointed by the Chief Justice and not the president as is the normal and correct legal procedure. As the President at the time, I legally challenged this approach by the Public Protector stating that she was overstepping the powers of her office by imposing the decision to appoint a commission of inquiry on the president and by imposing how the head of that commission of inquiry should be appointed. The Public Protector stated that she made the recommendation of the appointment of a commission of inquiry because her term of office was ending and she would not have had sufficient time to complete her investigation into the complaints that had been lodged. This in itself was also legally problematic in that, the investigation was carried out by her office and not her as an incumbent in that office. Her successor

would have carried on with the work she had started as the work is that of the office of Public Protector and not the individual serving as the Public Protector at the time. She did not leave that office having completed every single investigation that was before her when her term ended but deemed it necessary that this particular investigation be referred to a commission of inquiry and not the other investigations that she had not completed at the time. It was clear then as is clear now that; given that this matter contained specific allegations against Zuma, it needed a different and special approach that would deviate from the law and the Constitution to ensure that Zuma was dealt with differently.

The High Court in Pretoria decided in favor of the Public Protector in that legal challenge stating, amongst other things, that the commission of inquiry as recommended by the Public Protector would be different in that it would only have such powers as are directly equal to the powers of the office of the Public Protector. What has subsequently transpired with the establishment and functioning of the Commission of Inquiry Into Allegations of State Capture is completely at odds with what the court stated as the envisaged purpose of this commission.

The Commission Into Allegations of State Capture led by the Deputy Chief Justice, has followed in the steps of the former Public Protector in how it also has continued with creating a special and different approach to specifically deal with Zuma. The chairperson of the commission, unprovoked, has called special press conferences to make specific announcements about Zuma. This has never happened for any other witness. Recently the commission ran to the Constitutional Court on an urgent basis to get the Constitutional Court to compel me to attend at the commission and to compel me to give answers at the commission, effectively undermining a litany of my constitutional rights including the right to the presumption of innocence. I have never said that I do not want to appear before the commission but have said that I cannot appear before Deputy Chief Justice Zondo because of a well-founded

apprehension of bias and a history of personal relations between the Deputy Chief Justice and myself. I have taken the decision by the Deputy Chief Justice not to recuse himself on review as I believe his presiding over the proceedings does not provide me the certainty of a fair and just hearing.

The recent decision of the Constitutional Court also mimics the posture of the commission in that it has now also created a special and different set of circumstances specifically designed to deal with Zuma by suspending my Constitutional rights rendering me completely defenceless against the commission. This conjures up memories of how the apartheid government passed the General Laws Amendment Act 37 in 1963 which introduced a new clause of indefinite detention specifically intended to be used against then PAC leader, Robert Sobukwe. The parallels are too similar to ignore given that Sobukwe was specifically targeted for his ideological stance on liberation. I on the other hand am the target of propaganda, vilification and falsified claims against me for my stance on the transformation of this country and its economy. The Commission of Inquiry Into Allegations of State Capture should have been rightly named the Commission of Inquiry into Allegations of State Capture against Jacob Zuma as it has been obviously established to investigate me specifically.

With the recent decision of the Constitutional Court one cannot help but wonder why it is that Chief Justice Mogoeng initially informed me that this commission would be chaired by Judge Desai but shortly thereafter changed this decision and informed me that the commission would be chaired by Deputy Chief Justice Zondo instead.

Deputy Chief Justice Zondo in dismissing the application to recuse himself was again frugal and expedient with the truth in how he contextualized and defined the nature of the personal relationship we had. Perhaps by western culture's standard of defining kinship he may be correct if the yardstick is of family events attended or family invitations issued. I had relied on his own

personal integrity, which now seems very compromised, to disclose to the public the extent to which I have repeatedly intervened financially in matters pertaining to the maintenance of the child whose details he has already divulged. I had relied upon his own sense of integrity as a person and a judicial officer to remember that he had on several occasions asked people such as Mr. Manzi to speak to me on his behalf regarding his judicial appointments and personal aspirations to be considered by me as president for his elevation to higher courts during my tenure as president. I had relied upon his own sense of integrity as a person and a judicial officer to remember that we had met at my Forest Town residence to discuss the nature of our relationship and the risks that were inherent in the public knowledge of our past association given the offices we both occupied at the time. I had relied upon his own sense of integrity as a judicial officer to be mindful of the fact that he and my estranged wife Thobeka are very close confidants and that I am a point of convergence in key aspects of their lives respectively. I had relied on his own sense of integrity as a judicial officer not to be a witness and judge in an application where he is central to the dispute. He literally created a dispute of fact in an application about him and continued to adjudicate the matter where his version was being contested by me. Again, a special and different set of legal norms were employed because they were targeting Zuma. This violation of sacrosanct legal principles went unnoticed simply because it was being used against Zuma.

It is clear that the laws of this country are politicized even at the highest court in the land. Recently at the State Capture Commission, allegations made against the judiciary have been overlooked and suppressed by the chairperson himself. It is also patently clear to me that I am being singled out for different and special treatment by the judiciary and the legal system as a whole. I therefore state in advance that the Commission Into Allegations of State Capture can expect no further co-operation from me in any of their processes going forward. If this stance is considered to be a violation of their law, then let their law take its course.

I do not fear being arrested, I do not fear being convicted nor do I fear being incarcerated. I joined the struggle against the racist apartheid government and the unjust oppression of black people by whites in the country at a very young age. As a result, I was sentenced in December 1963 to serve 10 years on Robben Island at the age of 21. Thereafter, I continued to be at the forefront of the liberation struggle within the ranks of the African National Congress and Umkhonto weSizwe in exile until my return to South Africa in the early 90's. In all the years of struggle, I had never imagined that there would come a time when a democratic government in South Africa built on Constitutional values would behave exactly like the apartheid government in creating legal processes designed to target specific individuals in society. Witnessing this carries a much more amplified pain when realizing that it is now a black liberated government behaving in this way against one of their own. The notion of divide and conquer against the ANC has never been a more apposite truism than in the current politics of South Africa. This brings to mind what the great Pan Africanist philosopher Frantz Fanon wrote of post-colonial nations in his work titled *The Wretched of the Earth* saying:

"If this suppressed fury fails to find an outlet, it turns into a vacuum and devastates the oppressed creatures themselves. In order to free themselves they even massacre each other. The different tribes fight between themselves since they cannot face the real enemy- and you can count on the colonial policy to keep up their rivalries"

The wrath visited upon me as an individual knows no bounds as my children and those known to be close to me have been specifically targeted and harassed to the extent that they all have had their bank accounts closed for no particular reason other than that they are known to be associated to me. The government and the justice system have turned a blind eye to these and many other injustices simply because they target Zuma. Anything bearing the name Zuma can enjoy no legal rights or protection in this country as the grand

agenda to have special and different laws that only apply to Zuma continues to manifest.

In the circumstances, I am left with no other alternative but to be defiant against injustice as I did against the apartheid government. I am again prepared to go to prison to defend the Constitutional rights that I personally fought for and to serve whatever sentence that this democratically elected government deems appropriate as part of the special and different laws for Zuma agenda.

JG ZUMA

1 FEBRUARY 2021