



Response

11th August 2023

Another Blow to the Rule of Law

Some coincidences are simply too much of a stretch. Very few people will believe that the government's decision to remit the sentences of 9 400 non-violent, short-term prisoners, starting today, just happened to coincide with the return to prison of former President Jacob Zuma, himself one such non-violent, short-term prisoner.

Section 84(2)(j) of the Constitution gives the President the power to remit all penalties, including imprisonment, and such remissions of sentence are a normal and necessary mechanism within the criminal justice system. They allow the authorities to intervene for a range of reasons: to relieve prison overcrowding or to tackle the spread of disease among inmates; to release prisoners whose crimes – such as possession of small amounts of dagga – are no longer regarded as serious; and to celebrate major national occasions like the inauguration of President Mandela in 1994 and the 25th Anniversary of Democracy on Reconciliation Day in 2019.

Unlike most previous exercises of this presidential prerogative, however, this morning's one is not connected to any commemoration or moment of national significance. It was not announced in advance and it appears that Parliament was given no warning that it was to occur. While the latter may not strictly speaking be a requirement, government's failure to notify the legislature adds to the impression that this was a hastily-conceived move designed primarily with Mr Zuma in mind.

Given the widespread unrest and looting that took place in July 2021, following Mr Zuma's first incarceration, it is not surprising that government would have been worried about a repeat if and when Mr Zuma returned to complete his sentence, as ordered by the Constitutional Court. But such worries do not justify the misuse of a presidential prerogative, no matter that it be disguised as a general remission.

Mr Zuma's sentence followed a finding that he was in contempt of court for his refusal to abide by an order of the Constitutional Court that he must appear before the Zondo Commission of Enquiry into State Capture. Contempt of court itself undermines the rule of law because it evinces disrespect for, and assails the dignity of, the ultimate upholders of the law – the courts.

The decision effectively to cancel the remainder of Mr Zuma's sentence constitutes a further blow to the rule of law because it contradicts another of its key features – that everyone is equal before the law and must receive equal benefit and protection of the law, as section 9(1) of the Constitution puts it. The charade of including a few thousand other prisoners in the exercise does not alter this conclusion – they are benefiting from a transparent attempt to justify the special treatment being dished out to Mr Zuma, rather than him benefiting from the good fortune of belonging to a particular class of prisoner.

There have been many assaults on the rule of law connected with Mr Zuma's political career, both while he was President and in the years since. It is deeply disappointing that his successor, who has spoken often and eloquently of the need to change course away from that sorry history, should now be complicit in another such attack.

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