

# IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

**The State v Basson**

**CCT 30/03**

**Decided on 9 September 2005**

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## MEDIA SUMMARY

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*The following explanation is provided to assist the media in reporting this application and is not binding on the Constitutional Court or any member of the Court.*

On 2 December 2004, the Constitutional Court made an order refusing to allow the Institute for Security Studies (ISS) to present argument as a friend of the Court in an application for leave to appeal by the state in the case of *The State v Basson*. The ISS is a research organization which conducts research and engages in advocacy on matters concerning human security in Africa. The Court did not give reasons for its order then but indicated that its reasons would be furnished later. On 9 September 2005, the Constitutional Court furnished the reasons.

The Court emphasised that the admission of a person as a friend of the Court in proceedings before it is a matter which is within its discretion. The fact that all the parties agree to admission of the amicus will not necessarily be decisive. In exercising its discretion it will consider whether the argument sought to be advanced will be useful to the Court and is different from the argument advanced by the other parties.

The Court found that the central issue that the ISS sought to deal with, namely, the duty of the state to prosecute war crimes, had been canvassed in the written argument of the state. In addition the Court said that in criminal matters a court should be cautious not to allow the submissions of an amicus to stack the odds against an accused person. However, this is not an inflexible rule. Much will depend on what is in the interests of justice. On the facts of the case the Court considered that it was not in the interests of justice to admit the applicant as an amicus.