



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre and Another**

**CCT 02/14**

**Date of hearing: 19 May 2014  
Date of judgment: 30 October 2014**

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#### **MEDIA SUMMARY**

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

Today the Constitutional Court handed down judgment dismissing an appeal against a judgment of the Supreme Court of Appeal. The matter concerned the extent to which the South African Police Service (SAPS) is obligated under domestic and international law to investigate crimes against humanity of torture allegedly committed in Zimbabwe.

In March 2008, the Southern African Human Rights Litigation Centre (SALC) submitted to the Priority Crimes Litigation Unit of the National Prosecuting Authority (NPA) a dossier documenting the alleged torture of members of the Movement for Democratic Change by Zimbabwean officials in Zimbabwe. The respondents, SALC and the Zimbabwe Exiles' Forum, requested that the NPA investigate these crimes, as the respondents believed the NPA and the SAPS had a duty to do so under the Implementation of the Rome Statute of the International Criminal Court Act (ICC Act) and South Africa's international law obligations. In June 2009, the Acting National Director of Public Prosecutions informed the respondents that the SAPS did not intend to initiate an investigation.

The respondents applied to the North Gauteng High Court, Pretoria for an order setting aside the decision not to investigate. The High Court granted the order. The Supreme Court of Appeal dismissed an appeal by the National Commissioner of the SAPS and the Acting National Director of Public Prosecutions. Both the High Court and the Supreme Court of Appeal held that under the ICC Act (which incorporates the Rome Statute into South African law), the South African Police Service Act and the Constitution, the SAPS must investigate the allegations of torture.

The National Commissioner of the SAPS approached this Court for leave to appeal against the Supreme Court of Appeal's decision. The National Commissioner submitted that, based on international law principles of state sovereignty and complementarity and the need for an accused's actual presence in South Africa before an investigation can commence, the SAPS is unable to initiate an investigation into the alleged torture. The respondents submitted that, while it is a prerequisite for prosecution, presence is unnecessary for initiating an investigation.

The Constitutional Court granted leave to appeal but dismissed the appeal. In a unanimous judgment written by Majiedt AJ, the Court concluded that the SAPS must investigate the complaint because under the Constitution, the ICC Act and South Africa's international law obligations, the SAPS has a duty to investigate the crimes against humanity of torture allegedly committed in Zimbabwe. The Court held that the duty to investigate international crimes was limited to instances where the country in which the crimes occurred is unwilling or unable to investigate and if, on the facts and circumstances of the particular case, an investigation would be reasonable and practicable.

In this instance, the Court found that there was no evidence that Zimbabwean authorities were willing or able to pursue an investigation and that it would be reasonable and practicable for the SAPS to investigate the complaint because of the proximity between South Africa and Zimbabwe, the likelihood that the accused will be present in South Africa at some point, and the reasonable possibility that the SAPS will be able to gather evidence that may satisfy the elements of the crime of torture. Furthermore, the Court held that whilst the principle of non-intervention in another state's territory must be observed, this would not be violated by an investigation conducted exclusively within South Africa. Given the urgency of this matter, the Court did not remit to the High Court, but rather issued an order requiring the SAPS to investigate the complaint.