



## SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT

File Ref No: FS/2011/0009

In the matter between:

**Council for the Advancement of the SA Constitution**

**Complainant**

And

**South African Police Service**

**Respondent**

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### REPORT

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#### 1. Introduction

1.1. This Report contains findings of the South African Human Rights Commission (*"the Commission"*), pursuant to an investigation undertaken by the SAHRC into a complaint alleging the violation of the human rights of a citizen in the course of a public protest.

1.2. The Council for the Advancement of the South African Constitution (*"the Complainant"*) alleges, in a nutshell, that members of the South African Police Services (*"the Respondent"*) assaulted and/or caused the death of an unarmed

civilian who was one of a group of community members in Ficksburg in the Free State Province, engaging in a public protest against poor service delivery, fraud corruption, theft and maladministration by the local municipality.

1.3. In determining its role in this matter, the Commission determined that this set of facts gave rise to three (3) distinct possible causes of action:

1.3.1 **Criminal action** in respect of assault (alternatively any other competent charges) and/or murder (alternatively any other competent charges);

1.3.2 **Civil action** in respect of damages arising from loss of support to dependants of the deceased citizen (and any further ancillary relief);

1.3.3 A **Human Rights** investigation, into possible violations of Chapter II of the Bill of Rights.

1.4. The Commission determined that the parameters of its interest in this matter was a very specific and narrow one; it was **strictly limited to declaring and determining the nature, if any, of the human rights of parties that may have been violated** in the course of this incident.

1.5. Accordingly, this report should not be construed as making any legal conclusions on the criminal culpability or civil liability of the Respondents.

1.6. Where conclusions of fact or law are made in this Report that overlap or coincide with the conclusions made by the appropriate authorities in respect of civil and criminal actions, such conclusions are incidental similarities and should

not be construed as pre-judging the outcome of either of these judicial processes.

## **2. Mandate of the Commission**

- 2.1 The South African Human Rights Commission is an institution established in terms of Section 181 of the Constitution of the Republic of South Africa Act, 108 of 1996 (*"the Constitution"*).
- 2.2 The Commission and the other institutions created under Chapter 9 of the Constitution are described as *"state institutions supporting constitutional democracy"*.
- 2.3 The Commission is specifically required to:
  - 2.3.1 Promote respect for human rights;
  - 2.3.2 Promote the protection, development and attainment of human rights; and
  - 2.3.3 Monitor and assess the observance of human rights in the Republic.
- 2.4 Section 184(2) of the Constitution empowers the Commission to investigate and report on the observance of human rights in the country.

- 2.5 The Human Rights Commission Act, 54 of 1994, enables the work of the Commission, enjoins the Commission to conduct investigations into human rights violation allegations.
- 2.6 Section 9(6) of the Human Rights Commission, 1994 determines the procedure to be followed in conducting an investigation regarding the alleged violation of or threat to a fundamental right.

### **3 Detailed background to the Complaint**

- 3.1 On the 15 April 2011, the Commission received a complaint from the Complainant against the Respondent in respect of the latter's conduct during the policing and crowd control of a public protest by a group of community members in Ficksburg in the Free State Province on the 13 April, 2011.
- 3.2 The Complainant alleges that the conduct of the Respondent members amounted to improper use of force against an unarmed and defenceless citizen.
- 3.3 According to the Complainant, members of the Respondent repeatedly assaulted the deceased, Andries Tatane, an unarmed community member during a peaceful public protest; and that such assault resulted in the death of a citizen at the hands of the Respondent.
- 3.4 The Complainant further alleges that, in the result, the actions of the Respondent amounted to a breach of a number of human rights protected in the Bill of Rights of the Constitution of the Republic of South Africa.

- 3.5 The Complainant called upon the Commission to investigate the alleged violation of human rights.

#### **4 Preliminary Assessment of Complaint**

- 4.1 Upon receipt of the complaint, the allegations were assessed by the SAHRC to determine whether a *prima facie* case existed for further investigation to be conducted into human rights violations arising from the alleged facts.
- 4.2 As an outcome of the assessment, the Commission determined that the complaint gave rise to:
- 4.2.1 a *criminal cause of action* that fell outside the Commission's mandate. The Commission referred this aspect of the complaint to the Independent Police Investigative Directorate ('IPID')<sup>1</sup>, a statutory body entrusted with the duty to investigate a myriad of criminal offences committed by members of the South African Police Service including police brutality.
- 4.2.2 a *civil cause of action* in respect of a Dependants Claim for damages for loss of support and other ancillary relief. The Commission referred this aspect to the Legal Aid Board of South Africa (LASA).
- 4.3 The residual cause of action was that of the investigation into possible violations of human rights. It was this aspect that the Commission decided to accept jurisdiction over, with a limited, and specific interest in declaring the ambit of the

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<sup>1</sup> Formerly known as Independent Complaints Directorate ( changed its name in April 2012)

rights of the deceased and public protestors, measured against acceptable limitations to these rights, and making a finding of fact and law regarding any possible violation of same.

## **5. Motivation for pursuing investigation**

5.1 There are a number of reasons that motivated the Commission to undertake the investigation:

5.1.1 During pre-constitutional era public protests and demonstrations against the violation of human rights were often met by the use of force by law enforcement agents on defenceless citizens, frequently resulting in the loss of life;

5.1.2 In post-democratic South Africa, the Commission noted rise in the incidence of community protests within the Republic due to public discontent with municipal service delivery;

5.1.3 A growing policy inclination of the Respondent in post-democratic South Africa towards the use of force to maintain public order.

5.2 Drawing the strands of the afore-going reasons together, the Commission deemed it just and equitable to investigate the extent of violation of human rights by the conduct of the Respondents, if any, as an essential feature of a democratic society.

## **6. Methodology employed in the conduct of the investigation**

The Commission employed a number of methods during the investigation. These included desk-top research, interviews, written requests for responses, review of video footage.

### **6.1.1 Desk-top Research**

The investigation team conducted extensive legal research into the legal framework governing the Bill of Rights to identify the human rights that were affected in the course of the incident complained of; as well research into academic literature on best practices of policing, crowd management and the maintenance of public order in order to determine the parameters reasonableness of the limitations of these rights.

### **6.1.2 Interviews**

The investigation team conducted interviews with a random number of members of the Fiksburg community to obtain eye-witness statements to verify the factual allegations of the Complainant.

### **6.1.3 Review of Video Footage**

The Commission reviewed the video footage of the events of the 13 April, 2011 to verify the factual allegations of the Complainant.

