

# **002/12 Delta International Investments SA, Mr. AGL De Lange and Mrs. M. De Lange v. The Republic of South Africa**

**IN THE MATTER OF:**

**DELTA INTERNATIONAL INVESTMENTS SA, MR. AGL DE LANGE AND MRS. M. DE LANGE  
v.  
THE REPUBLIC OF SOUTH AFRICA.**

**APPLICATION 002/2012**

**DECISION**

**The Court composed of:** Gerard NIYUNGEKO, President; Sophia A.B. AKUFFO, Vice-President; Modibo T. GUINDO, Fatsah OUGUERGOUZ, Augustine S.L. RAMADHANI, Duncan TAMBALA, Elsie N. THOMPSON and Sylvain ORE- Judges; and Robert ENO - Registrar,

**In the matter of:**

**DELTA INTERNATIONAL INVESTMENTS SA, MR. AGL DE LANGE AND MRS. M. DE LANGE  
v.  
THE REPUBLIC OF SOUTH AFRICA.**

After deliberations,  
*makes the following decision ;*

- 1.** By an application dated 4 February 2012, received at the Registry on 8 February 2012, the Applicants, Delta International Investments SA, Mr. AGL De Lange and Mrs. M. De Lange, seized the Court with a petition against the Republic of South Africa, for alleged torture and violation of their rights to dignity, property, information, privacy and discrimination, contrary to the South African Constitution and the African Charter on Human and Peoples' Rights.
- 2.** In accordance with the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights (hereafter referred to as the Protocol) and Rule 8(2) of the Rules of Court (hereafter referred to as the Rules), Judge Bernard M. Ngoepe, member of the Court, of South African nationality, recused himself.
- 3.** Pursuant to the provisions of Rule 34 (1) of the Rules of Court, the Registrar, by letter dated 14 February 2012, acknowledged receipt of the application.
- 4.** The Court first observes that in terms of Article 5(3) of the Protocol, it may entitle relevant Non-Governmental organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34 (6) of this Protocol.
- 5.** The Court further notes that Article 34(6) of the Protocol provides that At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol. The Court shall not receive any petition under article 5

(3) involving a State Party which has not made such a declaration.

6. By letter dated 30 March 2012, the Registrar inquired from the Legal Counsel of the African Union Commission if the Republic of South Africa has made the Declaration required under Article 34 (6) of the Protocol.

7. By email dated 12 April 2012, the Legal Counsel of the African Union Commission informed the Registrar that the Republic of South Africa had not made such a declaration.

8. The Court observes that the Republic of South Africa has not made the Declaration under Article 34 (6).

9. In view of Articles 5(3) and 34 (6) of the Protocol, it is evident that the Court manifestly lacks jurisdiction to receive the Application submitted by Delta International Investments SA, Mr. AGL De Lange and Mrs. M. De Lange, against the Republic of South Africa.

10. For these reasons,

THE COURT,

Unanimously:

Decides that pursuant to Articles 5 (3) and 34 (6) of the Protocol, it manifestly lacks jurisdiction to receive the Application submitted by Delta International Investments SA, Mr. AGL De Lange and Mrs. M. De Lange, against the Republic of South Africa, and the Application is accordingly struck out from the general list of the Court.

Done at Arusha, this thirtieth day of March, Two Thousand and Twelve, in English and French, the English text being authoritative.

Signed:

Gerard NIYUNGEKO, President

Robert ENO, Registrar

In conformity with Article 28 (7) of the Protocol and Rule 60 (5) of the Rules of Court, Judge Fatsah OUGUERGOUZ appended a separate opinion to the present decision.