



INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

" dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights "

11 November 2003

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President of the Republic of South Africa
Union Buildings, West wing, 2nd Floor, Government Avenue
Pretoria
Republic of South Africa

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Your Excellency,

The International Commission of Jurists (ICJ) consists of jurists who represent all the regions and legal systems in the world working to uphold the rule of law and the legal protection of human rights. The ICJ's Centre for the Independence of Judges and Lawyers (CIJL) is dedicated to promoting the independence of judges and lawyers throughout the world.

We are writing to you to express our concern at the arrest on 30 October of Mr. Hendrik van der Walt, Chief Magistrate of the Groblersdal Magistrates' Court. Mr. van der Walt's arrest constitutes a form of harassment that is incompatible with the independence of the judiciary.

Chief Magistrate van der Walt was arrested by a Police Director and detained for six hours for having "obstructed the ends of justice". According to the information we have received, the apparent reason for his arrest was his decision to close the case of a traffic officer and a Police administrative staff member on 27 October on the ground that their case dockets were not available.

During his six-hour detention, Mr. van der Walt was forced to remove his shoelaces, tie and belt. Allegedly, there was no arrest warrant pending on the Magistrate.

Arresting a Magistrate for the content of his rulings constitutes an improper interference with the independence of the judiciary and a form of harassment. In this sense, we would like to draw your attention to the *United Nations Basic Principles on the Independence of the Judiciary*, which were endorsed by the UN General Assembly in 1985. According to the *Principles*, a State must ensure the independence of the judiciary and refrain from interfering, in any

way, with the judicial process. This includes judges' right not to be arrested or prosecuted for the content of their rulings. The said *Principles* state:

Principle 1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

We therefore request your Government to ensure Mr. van der Walt's immunity from prosecution for his rulings. We furthermore urge you to fully investigate this matter with a view to instituting disciplinary or other appropriate proceedings against those responsible for this Magistrate's arrest.

Please receive, Your Excellency, the assurances of my highest consideration.

Ernst Lueber
Acting Secretary-General

Cc: HE Mr. Pitso Motwedi

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