



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 "

2 February 2004

President

Justice Arthur CHASKALSON, South Africa

Vice-President

Lord William GOODHART, United Kingdom

Executive Committee

Dr. Rajeev DHAVAN, India

Justice John DOWD, Australia (Chairperson)

Prof. Jochen A. FROWEIN, Germany

Ms Gladys Veronica LI, Hong Kong

Dr. Hipolito SOLARI YRIGOYEN, Argentina

Prof. Yozo YOKOTA, Japan

Other Commission Members

Prof. Abdullahi AN-NA'IM, Sudan

Dr. Alejandro ARTUCIO RODRIGUEZ, Uruguay

Justice Solomy BALUNGI BOSSA, Uganda

Ambassador Julio BARBOZA, Argentina

Justice Ian BINNIE, Canada

Prof. Alexander BRÖSTL, Slovakia

Prof. Juan Antonio CARRILLO SALCEDO, Spain

Prof. Antonio CASSESE, Italy

Ms Christine CHANET, France

Lord COOKE OF THORNDON, New Zealand

Dato' Param CUMARASWAMY, Malaysia

Dr. Dalmo DE ABREU DALLARI, Brazil

Prof. Vojin DIMITRIJEVIC, Serbia and Montenegro

Ms Louise DOSWALD-BECK, Switzerland

Ms Vera DUARTE, Cape-Verde

Prof. Paula ESCARAMEIA, Portugal

Ms Elisabeth EVATT, Australia

Dr. Gustavo GALLÓN GIRALDO, Colombia

Mr Stellan GÄRDE, Sweden

Prof. Ruth GAVISON, Israel

Prof. Jenny E. GOLDSCHMIDT, Netherlands

Ms Asma JAHANGIR, Pakistan

Ms Asma KHADER, Jordan

Prof. David KRETZMER, Israel

Prof. Kazimierz Maria LANKOSZ, Poland

Prof. Ewa LETOWSKA, Poland

Mr Kathurima M'INOTI, Kenya

Ms Karinna MOSKALENKO, Russia

Dr. Adnan B. NASUTION, Indonesia

Dr. Pedro NIKKEN, Venezuela

Prof. Manfred NOWAK, Austria

Dr. Margarita RETUERTO BUADES, Spain

Prof. Andrei RICHTER, Russia

Justice Michèle RIVET, Canada

Sir Nigel RODLEY, United Kingdom

Mr A.K.M. SADEQUE, Bangladesh

Mr Claes SANDGREN, Sweden

Mr Jerome SHESTACK, U.S.A.

Prof. Anne-Marie SLAUGHTER, U.S.A.

Mr Raji SOURANI, Palestine

Prof. Daniel THÜRER, Switzerland

Prof. U. Oji UMOZURIKE, Nigeria

Prof. Vilenas VADAPALAS, Lithuania

Prof. Theo VAN BOVEN, Netherlands

Dr. José ZALAQUETT, Chile

Mr. Bulelani Ngcuka
National Director of Public Prosecutions
Victoria and Griffiths Mxenge Building
140 Corner of Westlake and Hartley Streets
Silverton
Republic of South Africa

Fax: +27 12 804 7300

Dear Mr. Ngcuka,

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 situation of Mr. Graham Travers, a Magistrate of the Regional Division of Northern Transvaal. We believe that the decision by the National Prosecuting Authority not to initiate any more cases at Mr. Travers' court is an unlawful interference with the independence of the judiciary.

Mr. Travers suffers from fascia-scapula-humeral muscular dystrophy. His condition, which is documented and was known when he became a judge in 1990, has steadily deteriorated. As a result of his condition, it takes longer for Mr. Travers to fulfil his duties. In particular, he writes at a slower pace than normal.

According to the information we have received, on 22 October Mr. Travers, who is the presiding officer at Court 12 (sexual offences court), heard from certain prosecutors that he was going to be assigned to another court. Furthermore, he was informed that prosecutors had received instructions from their Senior Prosecutor not to begin any new trials in front of Mr. Travers. The justification put forward by the Prosecuting Authority was Mr. Travers' alleged low finalisation rate of court cases.

On 25 October, two witnesses were due to attend Mr. Travers' court in order to give evidence. However, and following instructions

from the Chief Prosecutor at Pretoria, the prosecutor told the witnesses not to attend the hearing.

We believe that the National Prosecuting Authority's decision not to initiate any new cases in front of Mr. Travers amounts to a *de facto* suspension without following the appropriate legal procedures and, as such, constitutes an unlawful interference in the independence of the judiciary. In this regard, 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:

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.

Principle 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.

A vital component of the independence of the judiciary is that every judge must remain in office until he or she retires or is removed or suspended on valid grounds and following a procedure established by law. In particular, the *Principles* state:

Principle 18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

Principle 19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

Under the South African Magistrates' Act of 1993, it is the Magistrates Commission that may provisionally suspend a Magistrate from office on specific grounds established by Parliament. In the present case, the Magistrates Commission has taken no action.

We have been furthermore informed that Mr. Pruis, the President of the Regional Court in which Mr. Travers serves, has allegedly refused to recognise Mr. Travers' special needs for accommodation on a number of occasions. As a disabled person, Mr. Travers has, apart from the rights guaranteed to every human being, special rights that are inherent to his condition. In particular, he has the right to work. As the UN General Assembly proclaimed in Article 7 of its resolution 3447 (XXX), entitled *Declaration on the Rights of Disabled Persons*:

Article 7. Disabled persons have the right to economic and social security and to a decent level of living. They have the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.

We therefore request that the National Prosecuting Authority cease interfering with Mr. Travers' work and respect the independence of the judiciary. We furthermore

request that all efforts be undertaken to accommodate Mr. Travers' special needs stemming from his condition.

Please receive the assurances of my highest consideration.

Ernst Lueber
Acting Secretary-General

Cc:

HE Mr. Pitso Motwedi
Chargé d'affaires
Permanent Mission of the Republic of South Africa
to the UN Office in Geneva
Rue du Rhône 65
1204, Geneva
Switzerland

Fax: 022 849 5432

Dr. Penuell Mpapa Maduna
Minister of Justice
Presidia Building, 8th Floor, Room 8.1, corner of Pretorius and Paul Kruger Streets
Pretoria
Republic of South Africa

Fax: +27 21 467 1730

Advocate Lawrence Mushwana
Public Protector
Sinodale Centre
228 Visagie Street
Pretoria
Republic of South Africa

Fax: +27 12 322 5093

Judge Bernard Ngoepe
Chairperson of the Magistrates Commission
c/o Transvaal Provincial Division
High Court of South Africa
Vermeulen Street
Pretoria
Republic of South Africa

Fax: +27 12 326 4940