



## **CRITICISM OF THE JUDICIARY AND INDIVIDUAL JUDICIAL OFFICERS**

Recently, Judges have been subjected to what appears to be gratuitous and serious allegations – both inside and outside Parliament – of among other things, bias, corruption and bribery. Such allegations, when made in the public domain without substantiation, are not simply counter-productive but also have the ability to erode the integrity of the Judiciary as an institution. Made often enough and outside constitutionally mandated fora, the public may grow accustomed to such allegations, and genuine cases may go uninvestigated.

An Independent Judiciary is one of the cornerstones of our Constitutional Democracy. Indelibly carved into s165(2) of our Constitution, it is a core part of the system of checks and balances that is the bedrock of every Constitutional State in its necessary quest to hold both Parliament and the Executive to account.

The Judiciary is not above the law. It is subject to the Constitution and the law. Comprising men and women from varied backgrounds and with a varied socio-political and economic view of the world, the Judiciary is not an homogeneous body. Where any person should believe that any Judge has failed to comply with the law including the Constitution, any person has the right to complain to the Judicial Service Commission (JSC) so that the specific conduct against the specific Judge may be investigated and, if found wanting, appropriately censured.

It is equally important that South Africans have confidence in an Independent Judiciary because, without that confidence, the very fabric of our society and the rule of law may wither away. Such a result is good for nobody.

Because Judges are human, they may err. That is why there is a system of appeals and reviews to higher courts that is built into South Africa's justice system. If that should fail for reasons of alleged misconduct on the part of a Judge, the appropriate next step is to report such conduct to the JSC and allow it to do its constitutionally mandated duty.

Criticism of judgments is a sign of a healthy and active Constitutional Democracy. Unsubstantiated personal attacks on a Judge for a judgment s/he has handed down are, however, antithetical to a Constitutional Democracy. The JSC is the appropriate forum for challenging the conduct of a Judge. Where a member of



the public is uncertain about the proper procedure to be followed, there are organizations of legal practitioners that are available to assist in the public interest.

PABASA therefore calls upon all political parties, leaders of society and all citizens in general, to follow appropriate channels for raising genuine complaints against judges, instead of resorting to gratuitous personal attacks on the Judiciary or individual judicial officers.

Nasreen Rajab-Budlender  
Chairperson

2 March 2021

For enquiries please contact:

Adv Zinhle Buthelezi  
Secretary General  
PABASA  
0825750820