

## Statement on the independence of the judiciary by former Chief Justice Arthur Chaskalson and Advocate George Bizos SC

**W**e are concerned about the tone of the debate around the contemplated trial of Mr Jacob Zuma. We do not wish to say anything about whether he should or should not have been charged, or the substance or lack of substance of the charges against him; those are matters beyond our knowledge. Our comments are directed to one issue only and that is the implication from some of the statements that have been made that our judiciary as a whole lacks the independence and integrity to ensure that Mr Zuma will receive a fair trial.

An independent judiciary is one of the pillars of our democracy. Statements questioning the independence and integrity of our

judiciary are without substance and are calculated to undermine our democracy.

An example of this, recently given prominence in the media, which to our knowledge has never been denied, are comments attributed to a spokesperson for Cosatu, who is reported to have said:

'It does not matter who the judge is, we do not believe the judiciary will be able to be objective. The trial against Zuma is a politically motivated exercise...and he has been subjected to trial by public opinion for the past seven years. We have been convinced for some time that he will not get a fair trial... workers will not allow the NPA and whoever is handling them to abuse its powers in this matter'.

Guilt or innocence cannot be established by rhetorical statements. The question whether Mr Zuma is guilty or innocent must be decided by the courts and not by his detractors or his supporters; so too, the question whether or not he gets a fair trial is a matter for the judiciary.

Putting pressure on the courts by making serious allegations of partiality, uttering threats of massive demonstrations, and expressing opinions in intemperate language, are harmful to the judicial process, to our constitutional democracy, and to our country's reputation.

We appeal to all political leaders and their supporters, to opinion makers, commentators and the media, to let the courts decide on these issues. We are confident that they will do so without fear or favour. That is their constitutional duty and there is no reason to believe that it will not be discharged.'



## Attack on the judiciary

During January 2008, attacks on the judiciary and other institutions of state by supporters of the ANC were taken up by the national working committee of the ANC, which questioned the integrity of Deputy Chief Justice Dikgang Moseneke. Certain comments by Justice Moseneke at his 60th birthday celebrations were criticised. He reportedly told guests that he had dedicated his life to working for an egalitarian society. 'I chose this job very carefully,' he was quoted as saying. 'I have another 10 to 12 years on the Bench and I want to use my energy to help create an equal society. It's not what the ANC wants or what the delegates (to the Polokwane conference) want; it is about what is good for our people.' The committee said, inter alia, that these remarks showed 'disdain' for the ANC delegates who attended the party's conference in Polokwane in December 2007, and Justice Moseneke was likened to opposition political parties and 'untransformed' apartheid-era judges.

Justice Moseneke subsequently issued the following statement:

'Yesterday (16 January 2008), Chief Justice Pius Langa and I held a meeting with the African National Congress Deputy President, Kgalema Motlanthe. The meeting was held at the Constitutional Court at the request of Mr Motlanthe following a letter by the African National Congress to the Chief Justice and following press releases of the African National Congress concerning a statement I made at the celebration of my 60th birthday.

On that private occasion, I made a wide ranging statement on my personal journey and public life thus far. The statement lasted approximately 12 to 15 minutes. With reference to my appointment to the bench, I said that it is a privilege which I considered very carefully before accepting and that I had another 10 to 12 years on the bench and wanted to use my energy to help create an equal society, something I had fought for, and will continue to do so, for the rest of my life.

Talking in the context of social justice and equality required by our constitutional democracy, I emphasised that we must all strive to achieve what is good for all our people. There is nothing in what I

said which is inconsistent with my responsibility as a judge and as a citizen.

In a statement to be issued today (17 January 2008), the African National Congress accepts that, understood in its proper context, no ill was intended by the statement I made concerning the African National Congress.

I welcome the statement of retraction to be issued by the African National Congress as well as its expression of confidence in my integrity and the confidence of the African National Congress in the courts of our country to uphold the law and to safeguard the rights of all citizens.

We will all do well to remember that in our constitutional democracy, underpinned by the will of the people and the rule of law, judges are not answerable to any political or other organisation, but are answerable to the will of the people as expressed and formalised in the Constitution and the laws of the Republic.

In conclusion, I reaffirm my commitment, to serve with integrity, as I did in the past, in the judiciary of our country, subject only to the Constitution and the law which I must and will continue to apply impartially and without fear, favour or prejudice.'

