

mance. What SA requires are changes that will be directed at ensuring that our people, the poorest of the poor, those that come into contact with the law at levels lower than the High Courts, are provided with better chances of having their matters decided finally without the need to appeal. Their matters in most cases involve less money than others but the desire to know who is right (*wie heeft gelijk?*) is central. They go to the courts to seek justice. The only solution is to ensure that your court of first instance has the best and most experienced people. That reduces appeals or opportunities for appeals.

This Bill not only fails to introduce a system which ensures a strengthening of the lower courts but in addition introduces a further possibility for appeal and thus extends the chain of the judiciary to the detriment of poor people.

The Dutch system, which has an intermediate court as envisaged in this Bill, has the *Rechtbank* as the court of first instance. This court always sits with three judges comprising two permanent judges and an acting judge. From this court the matter may be taken to the *Hof*. Each *Hof* is responsible for a few provinces. From the *Hof* the matter goes to the *Hoge Raad*. Merging the lower courts with the High

Court and creating a strong court of first instance would go a long way in improving the quality of justice for poor people and reducing the opportunity for appeals. This would definitely reduce the load of higher courts and improve their judgments and the quality of justice for all our people.

The Dutch system aside, let us look at these changes from what we currently have.

Presently, lower courts may not hear constitutional matters. In non-constitutional matters, appeals from lower courts go to the High Courts. From there the matter will either go to the CC or the SCA. Notionally therefore we have three courts for both constitutional and non-constitutional matters. As it is, these courts are inaccessible to the majority of South Africans who do not have the financial means to litigate. Looked at from this angle the constitutional amendment is retrogression. Litigants in future may have to go through four different courts before the last word is spoken in any dispute (and what if the matter commences in a traditional court?). This is simply too much litigation, too heavy a burden on the fiscus and unaffordable to most South Africans. 

## STOP PRESS

# Sydney and Felicia Kentridge Award

Abram ('Bram') Louis Fischer QC, political activist and fearless champion of apartheid victims, renowned for saving former President Nelson Mandela from the death penalty in the Rivonia trial, not only was the first advocate to be posthumously reinstated to the Bar but also on 23 July 2010 became the first posthumous recipient of the GCB's prestigious Sydney and Felicity Kentridge Award for Service to Law in Southern Africa for his exceptional contribution to the development of the law in South Africa. The award is presented annually to a person who has made an exceptional contribution to the development of the law in Southern Africa.

The award ceremony was appropriately held in Bloemfontein where Fischer was born and later died, debarred and serving a life sentence for his efforts to help change the 'law as it was' to the 'law as it ought to be.' To quote Justice Chaskalson, Fischer's junior with George Bizos SC, in the Rivonia trial: '[Bram] served the law as an advocate by defending those who were the victims of injustice and he served the law at the political level by participating in the struggle to promote and secure a society based on laws consistent with justice.' Patric Mtshaulana SC described Fischer as a visionary who gives us hope for the future of this country and Africa and referred to Fischer's famous statement that 'the sun will rise.' [From the dock, Fischer had quoted the famous words of President Paul Kruger: 'With confidence we place our case before the whole world. Whether we are victorious or whether we die, freedom will

arise in Africa like the sun from the morning clouds.' (*Met vertrouwen leggen wij onze zaak open voor de geheele wereld. Hetzij wij overwinnen, hetzij wij sterven: de vryheid zal in Afrika rijzen als de zon uit de morgenwolken.*)]



Former Chief Justice Arthur Chaskalson (left) and Patric Mtshaulana SC, chairman of the GCB (right,) at the presentation of the award to Fischer's two daughters, Ruth Rice and Ilse Wilson. 

## GCB's annual general meeting in Bloemfontein on 23-24 July 2010

At the conclusion of the annual general meeting the Executive Committee was constituted as follows: Rashid Vahed SC (chairman), Ishmael Semenya SC (deputy chairman), Izak Smuts SC (vice chairman), Soraya Hassim (honorary secretary), Anthea Platt (assistant honorary secretary), Tayob Aboobaker SC, Jeremy Muller SC, Kgomotso Moroka SC, Gerrit Pretorius SC, McCaps Motimele

SC, Archie Findlay SC (*ex officio* as convener of the National Bar Examination Board), Roland Sutherland SC (*ex officio* as convener of the GCB Finance Committee) and Mbuyiseli Madlanga SC (*ex officio* as the GCB's representative on the Judicial Service Commission (who serves there with Izak Smuts SC as the GCB's other representative)).

A historic resolution was adopted at the AGM in terms of which equal governance provisions in relation to the partnership with Advocates for Transformation were entrenched in the constitution of the GCB. 