

## ***“Racial bias” in the judiciary***

***The General Council of the Bar of South Africa in a recent media release expressed its strong support for a statement by the Chief Justice and the President of the Constitutional Court regarding reported criticism of the Bench in the trial and subsequent appeal of Dr Allan Boesak.***

This statement was a consequence of public comment by the spokesman for a political party, ascribing Dr Boesak’s conviction and prison sentence to racial bias in the judiciary.

The GCB’s media release reads as follows:  
“It is noted that the spokesman has

since stated that he was misquoted. If this is so, the serious nature of the reported remarks would doubtless warrant an immediate complaint to the editor of the newspaper concerned. We are not aware that this has happened. If the spokesman was accurately reported, it is important that what he said be corrected at the highest level.

Both President Mandela and President Mbeki have set an example in their relations with the judiciary. Both have accepted adverse judgments without vilification of the kind now reported.

Judges and their judgments are not free from criticism. Like the senior judiciary, the GCB believes however that constitutionalism in South Africa is not advanced by ill-informed and intemperate criticism of the kind reported.

***JJ Gauntlett SC  
Chairman: General Council of the Bar of South Africa  
25 May 2000”***

## ***Pius Langa Bar Scholarship***

The General Council of the Bar is pleased to announce that the Nedcor Group has agreed to sponsor an annual scholarship for pupils at constituent Bars of the GCB. The scholarship of R45 000 will be known as the Pius Langa Bar Scholarship, and

its recipients as Pius Langa Scholars.

The award will be made by a selection committee comprising a nominee of Justice Pius Langa, the GCB chairman (or nominee), and the chairman of Nedcor (or nominee). The scholarship

will be administered by the GCB, in consultation with Nedcor.

Pupils at all Bars have been invited to apply before 30 June 2000. It is expected that the first award will be made shortly.

## ***IBA Conference***

The biennial conference of the International Bar Association will be held in Amsterdam, the Netherlands, from 17-22 September 2000. As many as 3 000 lawyers are expected to

attend the conference, which will present approximately 120 working sessions, an extravagant social programme, and extensive networking opportunities.

Full programme and on-line registration available to view/download at [www.ibanet/Amsterdam.org](http://www.ibanet/Amsterdam.org). Also: tel +44(0)20 7629 1206 or fax +44(0)20 7409 0456.

## ***AFSA’S Arbitration Appeal Panel***

***Peter Volmink: member of the AFSA Steering Committee  
Cape Bar***

Arbitration is steadily gaining ground as the preferred means of resolving certain types of disputes including large commercial and administrative matters involving government or organs of state on the one

hand, and legal persons or individuals on the other. As a result of administrative red-tape and heavily burdened court rolls, it may take years to bring a court case to finality - thus increasing costs and anxiety levels for all the parties involved. These problems are not peculiar to our times. Voet already observed that “...it is a common thing for arbitrators to be approached with a

view to the termination of a suit and the avoidance of a formal trial. The reason is that resort is commonly made to such persons by those who are frightened of the too heavy expenses of lawsuits, the din of legal proceedings, their harassing labours and pernicious delays, and finally the burdensome

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## Chief Justice Mahomed

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of Pennsylvania, the University of Natal and the University of Cape Town. He has delivered a number of important addresses and has received an array of awards recognising his work in the field of human rights.

In his legal writing he has displayed a reach for principle above precedent. For him it is not enough that it is so, or has long been thought to be so. He has written of what he has called

“the tradition of thorough scholarship, pursuit of forensic excellence, capacity for rational thought, intense intellectual energy and unremitting discipline which barristers have always been expected to apply in the discharge of their briefs.”


These are the qualities he himself has displayed in his scholarship, lived out as it has been in a confluence of professional practice, legal writing and latterly, judicial work.

It is in his contribution as a judge that Ismail Mahomed has achieved the culmination of a life in the law, and made his third major contribution. Uniquely he served as the chief justice (for just over two years) simultaneously of two Southern African countries. He previously served as the Deputy President of the Constitutional Court and, less officially, as one of the most formidable forces within it. His judgments were marked by alluring alliteration and distinctive rhetoric. One brief excerpt must suffice:

“The South African Constitution is different: it retains from the past only what is defensible and represents a decisive break from, and a ringing rejection of, that part of the past which is disgracefully racist, authoritarian, insular and repressive; and a vigorous identification of a commitment to a democratic, universalistic, caring and aspirationally egalitarian ethos, expressly articulated in the Constitution.”

A matter of months before Ismail Mahomed was sworn in as a member of the Constitutional Court, our inte-

rim Constitution took effect. It was the advent of a constitutional state, in which it is only the Constitution that is supreme, to which Ismail Mahomed devoted his life to achieving and serving. The advancement of human rights, the regulation of the abuse of power, and the enabling of the ordinary and the vulnerable to live fulfilling lives will remain the challenges of the South African legal order which Mahomed strove to advance.

Ismail Mahomed remained a believer in the Bar as an independent referral profession to the end of his life. Indeed, as a judge he retained many of the qualities of a committed advocate: advancing his points with great forcefulness, to the extent that it sometimes seemed he was set on persuading counsel that they were wrong. Like Camus' Dr Rieu, he fought creation where he found it. 

## AFSA's Arbitration Appeal Panel

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and weary waiting on the uncertainty of law” (Voet 4.8.1. *Gane's translation*). Today, it is not uncommon to find standard arbitration clauses in most commercial contracts.

The award of an arbitrator is often agreed to be final and binding, and hence not appealable. But parties are increasingly resorting to the inclusion of an appeal process in the arbitration agreement. Some delay in the final determination of disputes is accepted

in favour of greater certainty derived from the appeal process.

To facilitate the exercise of this option, the Western Cape branch of the Arbitration Foundation of South Africa (AFSA), for instance, has established an illustrious arbitration appeal panel comprising retired Chief Justice Corbett, retired Judges of Appeal EM Grosskopf, Botha, Kumbleben and retired Judge President Friedman (who was himself previously a judge of appeal). The panel will be available nationally and in appeals involving parties further afield.

The principal benefits of such an arbitration appeal panel are obvious

and include a wealth of experience which will be brought to bear in determining the final outcome of disputes and ensuring a speedy resolution of matters. The panellists should be able to produce a ruling within a short period after the matter has been argued. As past experience of arbitration in this country has shown, an appeal tribunal could (by agreement) sit after hours or over week-ends to hear argument on a matter, and in doing so bring finality to major disputes in a matter of weeks.

For further information contact AFSA at the Cape Bar, telephone number (021) 424 5003 or Johannesburg, telephone number (011) 320 0600. 