Separation of Powers and Judicial Independence: Is Zuma government overriding the power of our courts to achieve transformation?[1]

Our courts have endeavoured to develop the concept of the separation of powers and have, indeed, had the opportunity of exploring the concept of judicial independence in terms of *section 165* of our constitution[2]. The concept of the separation of powers is important for South Africa, as the country was operating under the Westminster paradigm[3]. Successive apartheid governments have abused this system in order to fulfil their overall scheme of separating the races contrary to the precepts of Roman-Dutch law, which stated quite plainly that law was, colour blind.[4] Over the years many people have endeavoured to go to court in order to assert their rights that were accorded them in terms of the principles of legality under the common law and to give credit to the judiciary which had limited arsenals in stemming the tide of emasculation of rights, many victims of apartheid sought and obtained relief from the courts.[5]

---

[1] This paper was delivered at the conference Towards Africa Without Borders: From Theory to Practice; 5-8 July 2007 in Durban University of Technology and has been edited to include the new developments on the challenges of judicial independence under the Zuma government.

[2] Of the *Constitution Act 108 of 1996,* which provides that :

The judicial authority of the Republic is vested in the courts.

2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.
3) No person or organ of state may interfere with the functioning of the courts.
4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.
5) An order or decision issued by a court binds all persons to whom and organs of state to which it applies.

[3] The Westminster Paradigm holds that the people are sovereign rather than the Queen. In England the *Magna Carta* signed by King John in 1215 formed the basis of civil liberties in England and the rule of law and Parliament was said to be omnipotent.

[4] Martin Chanock (2001), *The Making of South Africa Legal Culture 1902-1936*: *Fear, Favour and Prejudice* Cambridge University Press

[5] Arthur Chaskalson (1989), 'Law in a Changing Society' South African Journal on Human Rights, Vol. 5 at 295 where he states: '…we will come to appreciate that we owe much to our judges…they have somehow…kept alive the principles of freedom and justice which permeate the common law…the notion that freedom and fairness are inherent qualities of the law lives on…This is an important legacy one which deserves neither to be diminished or squandered.'

Many people are of the view that judicial activism in general and the separation of powers in particular are inimical to the Pan Africanist agenda and that this was the exclusive preserve of the West. In arguing that this was not the case I will briefly outline the legal framework as well as citing case law on the subject. In the process of analysing the concept of the judicial independence it will also be clear that each branch of government is given the attention it deserves. It will be shown below that this was also the case in African systems before colonial rule. The author will also discuss the *Fourteen Amendment to the Constitution*[6] as well as the *Superior Court Bill*, which seek to give enormous power to the Chief Justice. The *White Paper on the Structure of the Court* will be discussed so that we remind ourselves that vesting power in one person or institution will lead to authoritarian polity as it happened in the past. Regard will also be had to the opinions of Idasa and other civil society organisations. The author will also look into the *First Certification*[7] judgment as well as the *Basic Structure* doctrine of the Indian jurisprudence. The above-mentioned amendment will be explored in details so that it will be ascertained whether it is in line with the constitutional provisions and the values that flow from this important instrument. In the final analysis the author argues that our constitution is in synch with the Pan Africanist project. The author contends that our constitution takes account of the values of *Ubuntu* against which a creative judiciary could work on. There are those like Waldron[8] and Tushnet[9] who hold that judicial independence is inimical to popular since this poses a counter-majoritarian dilemma. I am

---

[6] **1.** Section 165 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution), is amended by the addition of the following subsections:

> "(6) The Chief Justice is the head of the judicial authority and exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts, other than the adjudication of any matter before a court of law.
>
> (7) The Cabinet member responsible for the administration of justice exercises authority over the administration and budget of all courts.".

[7] In *re Certification of the Constitutional of the Republic of South Africa 1996(4) SA at 744*

[8] Waldron J (1990) *The Law* Routledge at 176

[9] Tushnet M (2001) *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative* Princeton University Press at 1-5

inclined to follow Ronald Dworkin's[10] right based where he correctly redefines democracy and holds that it is not about procedure but about substance of rights.

Throughout history, the issue of separation of powers has been formulated, among others, by John Locke and Montesquieu and influenced by what Locke formulated Montesquieu[11]eloquently wrote:

""

> When the legislative and executive powers are united in the same person or body, there can be no liberty, because apprehension might arise lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.
>
> Again, there is no liberty, if the judiciary power be not separate from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.
>
> There would be an end of everything, were the same man or the same body, whether of the nobles or the people, to exercise those three powers, that of enacting the laws, that of executing the public resolutions, and of trying the cases of individuals.[7]

Indeed, it is clear that when Parliament enacted the constitution it had the above sentiments in mind; for to allow one institution and vest judicial power in the Chief Justice will on the face of it emasculate the judicial discretion of individual judges. It is contended that if we are, as a nation are complacent then the values that are enumerated in the constitution and the ones that we fought for so hard over the years will be lost. In other words the Constitution will be "worth infinitely less than the paper it is written on."[12] It is submitted that a reasonable inference can be drawn in the light of the above quotation that separation of powers ensures that there are check and balances. Even in the presence of moribund Parliament and the absence of strong civil society courts play a meaningful role in ensuring that the rights of ordinary people are not trampled upon. Giving courts power does not signify that the Executive as well as Parliament will be immobilised in the exercise of their duties. Each branch of government is important in its own right. Therefore, I agree with Hugh Corder when he says that we should not forget

---

[10] Omar I (1996) *Rights, Emergencies and Judicial Review* Kluwer Law International at 280
[11] Sam J Ervin, Jr (1970) *Law and Contemporary Problems*, Vol. 35 at 108-127
[12] This was articulated by Yacoob J in the context of socio-economic rights in the case of *Grootboom v Minister of Justice and others, 2001(1) SA 46 (CC)*

the painful history of apartheid. In this regard, Corder goes on to hold that 'it is widely accepted that it will be some time yet before the ravages of racism cease to affect the courts and the disproportionate impact on the administration of justice on certain sectors of the population. South African judges, as mentioned in the initial paragraph; with notable exceptions, practised executive-mindedness because many were constrained by the doctrine of parliamentary sovereignty where the will of the white minority carried weight. As such, this kind of parliamentary sovereignty was based on, therefore, on the racially exclusive bourgeoisie democracy.

Since 1994, this has to change since the judiciary had to reflect the demographics of South Africa. This was not without controversy. Following Waldron's formulation on judicial review, many argued that the constitutional court, the final arbiter in constitutional matters has eleven unelected judges who take decisions on behalf of 48 million people and yet there are not accountable to them. This is apparent when the courts takes an unpopular view, for example the death penalty case, however, it can be argued that as far as socio-economic rights are concerned the courts should be driving the socio-economic jurisprudence and they should also cooperate with government not be a lackey to it. During the past ten years the constitutional court has been correctly taken an active role in fashioning an appropriate jurisprudence as far as socio-economic rights are concerned. However, when the constitutional court was called upon to decide on the search and seizures carried out at President Zuma private homes it took an active role to the chagrin of the ANC Youth League, Cosatu, the Young Communist League and the South African Communist Party (SACP).[13] It is important to note the importance of judicial review and that the rule of law is crucial for South Africa.

According to Dial Diyana Ndima[14], the separation of powers is crucial for the delivery of quality democracy in South Africa because its constitutional designs ensures that none of the separate branches interferes with exercise of powers and perform the functions of the

[13] Politsweb online publication (2008) *Constitutional Court Rules against Zuma* http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71627?oid=95497&sn=Detail (Accessed on 26 August 2009)

[14] Dial Diyana Ndima (2001), *An assessment of the role of accountability in delivering quality democracy in South Africa*, Codicillus Vol.42 at 25.

other sister branches. South African government should be seen to be at the forefront of promoting this judicial activism in the Continent. Since for example, if our government can export and sell the idea of Growth and Redistribution Strategy in the form of Nepad so too will it be able to export the ideal of judicial activism and independence in the African continent by agitating for the establishment of the court of African Union on Human Rights to give meaning to the Charter of Human and People's Rights which was adopted in 1981.

Ndima refers to the *Executive Council, Western Cape Legislature and others v President of the RSA and others*[15] where the court "emphasized the importance of keeping Parliament to its constitutional limits." The court held that the presidential proclamation was invalid as Parliament did not have the power to delegate to him that "specific legislative function". He cites *SAAPIL v Heath and other (unreported decision)*[16] where the court declared that the separation of the judiciary from other branches of government is an important aspect of the separation of powers required by the Constitution and essential to the role of the court under the constitution. The court further held that under our constitution "it is the duty of the court to ensure that the limits to the exercise of public power are not transgressed. Crucial to the discharge of this duty is that the court be independent and be seen to be independent"[17].

The Amnesty International further notes that the lack of judicial independence in China leads to "major obstacles" to the rule of law and this undermines the legitimacy and credibility of the judiciary. The report remarkably states that this has an "impact not only on the courts' ability to deliver justice today, but also prevent them from acting as a credible deterrent against commission of crimes in the future."[18] In the final analysis Amnesty International is of the view that lack of judicial independence "encourages human rights violators and others with financial and other forms of influence to believe

[15] *1995(10) BCLR 1289*
[16] *CCT 27/00* at 11
[17] See note 14 above at 25-26.
[18] See note 20 above

that they can continue to break the law and violate human rights with impunity".[19] The previous statement is universally true for David Blair[20] says that lack of the respects of court decisions in Zimbabwe stems from the fact that the ruling Zanu-PF believes that the courts' decisions are a stumbling blocks in the way of one party state. Consequently, many an activist in Zimbabwe cannot adequately assert their rights in courts since the legitimacy and credibility of the court have been lost in that country and the powers that be are prone to violate human rights[21]. In South Africa, it is submitted that the judiciary should be at the forefront in ensuring that their independence are safeguarded in accordance with the precept of the 1996 Constitution. Indeed, it is quite fortunate that we have a strong judiciary as well as a strong civil society that will ensure that judicial independence is not compromised. South Africa is also fortunate because we have prominent individuals who have eloquently articulated the need to uphold the rule of law as well as the values enumerated in section 1 of the constitution.

In praising John Dugard[22] , the late Chief Justice I Mahommed[23] says that law has restraint and justice. According to Mahommed CJ, the role that John Dugard and other "coterie of academics" played in dismantling the executive-mindedness of judicial officers was an important one; since it imbued lawyers with the fighting spirit that lead to the destruction of apartheid edifice. Free judicial officers give impetus to the new values enshrined in the constitution and its jurisprudence. Mahommed CJ went on to say that judicial independence ensures that the most vulnerable are protected under the constitution. The first danger in any democracy is to put pressure on the judiciary, as mentioned above, accords everyone rights and freedoms, especially those who were victims under the pre-constitutional era laws that were characterised by egregious discrimination and 'untold suffering'[24]. The cumulative effect of the lack of judicial

[19] See note 20 above
[20] David Blair (2003), '*Degrees in Violence: Robert Mugabe and the Struggle for Power in Zimbabwe'* Continuum International Publishing Group at p 56
[21] See note 7 above
[22] A well-known academic in the fight against social injustice and in the old days this brave and brilliant academic called for the resignation of judges if they were forced to implement apartheid laws since they were immoral.
[23] Address by the late Hon Mr Justice Mahommed on accepting an Honorary Doctor of Laws from the University of Cape Town on 25 June 1999. Printed in South African Law Journal, 116 (1999) at page 853.
[24] This is term which appears in the preamble to the 1996 Constitution

independence is that the most vulnerable will not benefit under the constitution, as they rely on judges to come to their defence when their rights are infringed by the government of the day and others who have financial might. It is submitted that if our present government is trying to override judicial independence, our liberal constitution 'will worth infinitely less than the paper it is written on'[25] as is the case in Zimbabwe.

Government of President Thabo Mbeki produced a *White Paper on the Structures of the Court.* In that the government has proposed that the Legislature will have power to give direction to the courts on procedure as well as matters of transformation. This has, no doubt, precipitated an avalanche of judicial criticism.

It is however noted that judicial independence is not without its critics as noted above. They point to the decision taken by the constitutional court in 1995 to abolish capital punishment contrary to majority sentiments. This leads to counter-majoritarian dilemma which Tashnet believes that it can only be cured by cooperation between the two institutions of government. It is clear from the foregoing that judicial independence should not be meant to emasculate the progressive work of government in passing transformative legislation and government should not seek to introduce measures that will frustrate the judiciary and the administration of justice. It is significant to discuss the new bills against the backdrop of what has been discussed.

Following the production of the above-mentioned white paper, the government has tabled the *Judicial Conduct Tribunals Bill, Superior Courts Bill and Constitutional Fourteenth Amendment Bill.* According to Carthy Albertyn[26], criticism by the Chief Justice among others had necessitated the intervention of the President Thabo Mbeki , since these bills were tabled during a long summer recess so that the deadline for submissions was extended to May of 2006 in order for the public to air its views. The President was wise in extending the deadline since he was acting in accordance with the *Second Certification*

[25] See note 7 above.
[26] Carthy Albertyn (2006), '*Judicial Independence and the Constitutional Fourteenth Amendment Bill*, SAJHR Vol.22 at 126

case[27].Shameela Seedat[28] of Idasa informs us that, "with the deadline indefinitely extended" ,many organizations have made submissions to Parliament concerning the *Fourteenth Amendment Bill* and *the Superior Courts Bill*. These Bills have since been revilitised under the Zuma government.[29]

She continues to contend that the above-mentioned Bills introduce a number of important and useful changes but concentrate on the negative impact of the Bills in relation to the separation of powers in general and especially on judicial independence. She concedes that there is a need for the transformation in the administration of justice, since this is "rooted in apartheid", however she notes that "Idasa has expressed concern that the provisions" of these amendments "relating to court administration; interim orders; and the appointment of certain senior acting judges have the potential to undermine the independence of the judiciary."

Idasa is of the view that "amendments to the Constitution must be necessary and justifiable when tested against the founding values of the Constitution, and should not impose short-term solutions to problems that can best be solved through alternative and less intrusive means." [30]

Further according to Albertyn[31], concerns have been raised by the judiciary in relation of vesting too much power on the Chief Justice but nevertheless she concedes that the Chief Justice has a role to play as is discussed below she questions the wisdom of introducing a constitutional amendment to clarify the role of the Chief Justice.

---

[27] In *re Certification of the Constitutional of the Republic of South Africa* 1997(2) SA 97 (CC)

[28] Idasa's online Publication (2006) http://www.advocacy.org.za/index.asp?page=outputs.asp%3Fn%3D1%26PID%3D44%26OTID%3D4 (Accessed on 02 May 2007)

[29] Marian, N (2009) *Finalise Superior Court Bill: Zuma* The Citizen 7 June 2009
[30] See note 31 above
[31] See note 29 above

For Albertyn[32], the question that needs to be asked is whether these amendments are in line with the constitutional principles, especially, section 1 of the constitution. She continues to concede that section 1 says nothing about judicial independence. However, this section can be used since it makes reference to the important values such like democracy and the rule of law. Judicial independence is part and parcel of the rule of law. The *Fourteen Amendment* to the Constitution will have a cumulative effect on the constitution of this country, as judicial independence is important in any democracy. As judicial independence is important in strengthening our fledging democracy, government should be careful in matters concerning the judiciary. It is submitted that democracy means that the public should be involved in the decision making process pertaining to these constitutional amendments as per the *Second Certification* judgment *(supra).*

Dumisani Nyalunga[33] even asks the question: "are these proposed amendments necessary and justifiable". He goes on to hold that the proposed amendments should be seen as undesirable as they may violate the basic foundation, that is, section 1 of the constitution. He continues to submit that these amendments are unacceptable to the judiciary and comes to the conclusion that "there are no good grounds or plausible merit whatsoever for the proposed amendments."[34]

From the foregoing, it is submitted that the *Fourteen Amendment* is in conflict with section 1 of the constitution. This Amendment negatively affects judicial independence. Because of the importance of section 1, it is submitted that, the court should jealously guard against any amendments that impinge on this so important a section and ensure that any amendment on the constitution does not impinge on democracy as well as on the concept of the separation of powers.

[32] See note 29 above
[33] Dumisani Nyalunga (2006), 'The Merits of the Proposed Constitutional Changes in South Africa', International NGO Journal 1 at 25
[34] See note 37 above

Nyalunga seems to be advancing a Basic Structure doctrine argument as it was cogently articulated in the decision of *Keshavananda Bharti*[35], where the Indian Supreme Court held that:

"the basic structure of the Constitution is indestructible and beyond the amending power of the Parliament under Article 368. Basic features of the Constitution forming its basic structure include democracy, secularism, rule of law, judicial review, free and fair elections, and the essence of separation of powers, etc. Thus, civil liberties are firmly constitutionalised and judicialised in the Indian polity"

The Indian Supreme Court justices held that the constitutional remedy in Article 32 for the enforcement of fundamental rights is itself a fundamental right. Ambedkar J treated it as the soul of the Constitution; and Chief Justice Patanjali Sastri labelled the Supreme Court as the sentinel on the *qui vive* because of this jurisdiction.[36] It is submitted that as the values of section 1 are foundational, they form the basic structure of our constitution and as such they are indestructible and beyond the amending power of Parliament under the proposed *Fourteenth Amendment* or for that matter Superior Courts Bill that vests so much power in the Chief Justice.

Brookes informs us that in Bosnia-Herzegovina the constitution does not permit amendments that "eliminate or diminish any of the rights and freedoms referred to in Article II of this Constitution."[37] It is clear that the international trend is moving towards accepting the Basic Structure doctrine, even though in other parts of the world this doctrine has not been clearly spelt out as in India and in Germany. The sentiments expressed by the German and Indian judges should, it is contended be sufficient guide for our courts to use in interpreting the foundational values enshrined in section 1. The constitutional court should be at the forefront of formulating formidable jurisprudence

---

[35] AIR 1973 SC 1461 and see also http://www.pucl.org/tarkunde/verma-06/lecture.html (Accessed on 10 May 2007)

[36] See note 39 above

[37] See note 41 above

and the justices in that court should be driving and leading the constitutional discourse around this issue.

Even in countries like the United Kingdom where the independence of the judiciary had a unique meaning the coming into effect of the *Human Rights Act* and the reform of the House of Lords have given judicial independence a new meaning according to the precepts of unwritten British Constitution. A meaning, no doubt, which will be in synch with the sentiments expressed in European Union's Human Rights Instruments.[38]

As our constitution is autochthonous[39], it is wise to look at the system of governments under pre-colonial rule. Many people are of the view that governance in terms of African culture is anathema to the Bill of Rights, as African culture put an accent on communitarian rather than individual rights. In the case of *S v Makwanyane*[40], Sachs J refers to the *ubuntu* that people of Southern Africa had during those times in matters concerning capital punishment in regard to the capital crime. He notes that a person who was convicted of murder would not be sentenced to hang as was and still the case in other foreign jurisdictions that have constitutions with an entrenched Bill of Rights.

If we look at governance and culture of ama*Swati* especially *tiNkhundla* [41]system, Joshua Mzizi[42] informs us that according to this tradition a King is a King because of his people. Therefore, it was difficult for the Swazi King to impose his totalitarian rule as is the case today. The King could not overturn the decision taken by his council. I respectfully submit that the concept of the separation of powers is not foreign to Africa.

---

[38] Stevens R (1999), *A loss of Innocence? Judicial Independence and Separation of Powers*, Oxford Journal of Legal Studies vol. 19 at 365-402

[39] I owe much gratitude to Professor G E Devenish for the use of this term for he believed that our constitution sprung from the native soil.

[40] 1995(3) SA 391 (CC)

[41] *TiNkundla* system is somewhat similar to the right of royal nobles and other peers to hold a seat in the House of Lords; please note that *tiNkundla* is a siSwati word.

[42] Tinkhundla System in Swaziland (2007) http://unpan1.un.org/intradoc/groups/public/documents/IDEP/UNPAN003346.pdf. (Accessed on 15 May 2007) and http://www.crisisgroup.org/home/index.cfm?id=4089&l=1 (Accessed on 15 May 2007)

Khanya Motshabi and Shereen Volks[43] inform us that African chiefs wielded some powers but that did not mean that they ruled dictatorially. According to tradition, so they continue, the chiefs could not rule without consulting their subjects through councils. Good governance with integrity meant that the chiefs' decision was based on the advice of the council. A chief could consult the Council on the controversial question affecting the nation. If the council overturns the decision of the chief or the policy thereof, that decision was final.

In some parts of the *North West,* a chief could appear in court and pay a fine during *lekgotla*[44] sessions*;* people's decision was of paramount importance. It is clear that nowadays, people can be viewed as the legislature whilst the King could be equated to the President of the Country. It is submitted that in the final analysis that judicial independence was a common feature in pre-colonial Africa.[45]

It is also clear from reading T R Nhlapho's[46] article that *Human Rights* and *Good Governance* were not foreign to Africans. It is submitted that using Human Rights to ensure good governance and public debates were important pillars of African polity. Accordingly, it is submitted that separation of powers was also important in pre-colonial Africa.

In conclusion, it is submitted that separation of powers and judicial independence goes hand in hand with separation of powers in a democracy and it is significant to give courts latitude as Didcott J notes:

"The Supreme Court is not a branch of the civil service structurally and notionally. Nor, except perhaps in the loose sense, has its anything to do with the apparatus of the State. It is a separate, distinct and complete limb of the Constitution, that is, judges happen to be paid from the public funds, and of necessity therefore by the State, it is neither here nor

[43] Motshabi, K and Volks, S (1991), *Towards Democratic Chieftaincy: Principles and Procedures*, Acta Juridica at 105-106.
[44] *Lekgotla* is a seTshwana word which refers to the Council meeting. Nowadays, Cabinet meetings are referred to as Cabinet *lekgotla.*
[45] See note 49 above
[46] Nhlapo, TR(1991), *African Traditions and Human Rights: Friends or Foe*, Acta Juridica at 139

there. So too is the Speaker of the House of Assembly. So too is the Leader of the Official Opposition, so for that matter, is the every member of Parliament…The judicial authority of the Republic belongs not to the Minister not to the Department of Justice, but to the Supreme Court as a whole and to it alone."[47]

This above quotation vividly shows that even though South Africa was labouring under the Westminster paradigm judges could find a way to find in favour of individual liberty. During a decade leading up to the formal destruction of apartheid; a cursory look at the decisions of the courts informs us that judges were well aware of this concept of judicial independence. Indeed, it has been said that the South African legal professional standards were nothing but the best[48]. It is submitted that since some judges exercised some measure of judicial independence that quickened the pace of reform and the judges contributed immensely to the destruction of apartheid.

It should now be clear in the light of the above sentiments that a judge that reports to his political principals or to a political party will render his judicial independence absolute and the vulnerable will not benefit under the constitution. In our land we should not vest all judicial powers in one person like the Chief justice; judges should defend their rights to take decisions without fear or favour.

The *Fourteenth Amendment* should be looked at with circumspection having regard to section 1 of the constitution together with African culture of *ubuntu*[49], as in terms of public discourse consideration, every reasonable South African is for the concept of the separation of powers. Government should ensure that judges decide cases without fear or favour since that will come a long way in ensuring that the administration of justice and the decisions thereof are respected. In the final analysis the government does not need a constitutional amendment to effect changes on the structures of the court since that will be overriding the judicial independence. It is apparent therefore that by introducing the

[47] Thring J(1999) *Judicial Independence* South African Law Journal, vol. 116 at 859-860
[48] See note 3 above
[49] *Ubuntu* is an isiZulu word, which refers to a deep philosophy of human inter dependence; hence a person is person through other human beings.

above-mentioned Bills the government is overriding the power of our courts. The constitutional amendment will be at odds with the sentiments expressed in the lofty ideals of *Ubuntu,* Pan Africanism and the emasculation of the judiciary in South Africa and Africa in general. Moreover, it will be difficult for the proposed African Court on Human Rights to construe Human and People's Rights under the African Charter. It is important to note that the Zuma government should promote cooperation between the two branches of government without detracting from their independence. This means that the courts should not shy away from speaking its mind and taking decisions that are contrary to government thinking even though that might pose a counter-majoritarian dilemma. I would like to argue that the role of the developmental state as advocated by President Zuma and his supporters, should know that there's no development without empowering the judiciary and this is in synch with the Pan Africanist project.

Bibliography

Albertyn C (2006), '*Judicial Independence and the Constitutional Fourteenth Amendment Bill*, SAJHR Vol.22

David Blair (2003), '*Degrees in Violence: Robert Mugabe and the Struggle for Power in Zimbabwe'* Continuum International Publishing Group

Chanock M (2001), *The Making of South Africa Legal Culture 1902-1936*: *Fear, Favour and Prejudice* Cambridge University Press

Chaskalson A (1989), 'Law in a Changing Society' South African Journal on Human Rights, Vol. 5

Ervin S J, Jr (1970) *Law and Contemporary Problems*, Vol. 35

Omar I (1996) *Rights, Emergencies and Judicial Review* Kluwer Law International

Marian, N (2009) *Finalise Superior Court Bill: Zuma* The Citizen 7 June 2009

Motshabi, K and Volks, S (1991), *Towards Democratic Chieftaincy: Principles and Procedures*, Acta Juridica

Ndima D (2001), *An assessment of the role of accountability in delivering quality democracy in South Africa*, Codicillus Vol.42

Nhlapo, TR(1991), *African Traditions and Human Rights: Friends or Foe*, Acta Juridica

Nyalunga D (2006), *The Merits of the Proposed Constitutional Changes in South Africa*, International NGO Journal 1

Stevens R (1999), *A loss of Innocence? Judicial Independence and Separation of Powers*, Oxford Journal of Legal Studies vol. 19

Tushnet M (2001) *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative* Princeton University Press

Thring J (1999*) Judicial Independence* South African Law Journal, vol. 116

Waldron J (1990) *The Law* Routledge