

THE INDEPENDENCE OF SOUTH AFRICAN JUDGES: A CONSTITUTIONAL AND LEGISLATIVE PERSPECTIVE

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SUMMARY

Judicial independence is fundamental to democracy. It is in that context that this paper considers whether the existing constitutional and legislative mechanisms provide sufficient judicial independence to South African judges. In so doing, the paper focuses on impartiality, judicial appointments and security of tenure. It also discusses the sensitive matter of complaints and disciplinary proceedings against judges and their removal from office. The issue of the remuneration of judges is also explored. In discussing the challenges facing judicial independence some incidents that have appeared to compromise such independence are highlighted. These include the controversial appointments of Advocate Mpshe as an acting judge in the North West Province in 2010 and Judge Heath as the Head of the Special Investigative Unit (SIU) in 2011. The never-ending controversy surrounding the Cape Judge President John Hlophe and his alleged attempts to improperly influence two Constitutional Court judges in a case involving President Jacob Zuma is also highlighted. Another issue that has brought judicial independence into sharp focus is the June 2015 visit to South Africa of Sudan's President Omar al-Bashir, who was on a warrant of arrest from the International Criminal Court (ICC) for genocide and war crimes in the Darfur region of Sudan. A decision by the North Gauteng High Court on his presence in South Africa and the attacks on the judiciary made by various government officials as a result are discussed. Several conclusions are drawn but in the main, it is generally concluded

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that the constitutional and legislative framework adopted by South Africa sufficiently insulates judges from improper influence. However, there have been several notable challenges that particularly relate to judicial appointments and how the JSC has handled certain matters. Irresponsible and uninformed political statements by politicians and unwarranted political attacks on the judiciary by government are also a source of great concern. These challenges could and should be construed as threats to judicial independence, and need to be comprehensively and properly addressed.

KEYWORDS: Judiciary; judicial independence; legislation; Constitution; impartiality; bias; judicial appointments; security of tenure; remuneration; complaints; courts.