

Travelling Down the Road to Discord

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During the Apartheid era we saw the courts packed with those magistrates and judges who delivered verdicts which toed the Apartheid line, under the pretext of upholding 'the laws of the land'. They delivered some of the harshest sentences, since the ending of Nazism! Many of us will remember the infamous findings during the Biko Inquest or the findings of almost all the major political trials. All that changed with the ending of Apartheid

One of the great gems, as we moved from being a pariah apartheid state to a modern peoples' democracy, was the creation of one of the most comprehensive and democratic CONSTITUTIONS in the world. Thanks to the far seeing Nelson Mandela stalwarts of the ANC, that by 1996, the CONSTITUTION, with all its safeguards, was in place. It was the supreme power in the land, with powers to strike down any attempts to unconstitutionally modify or replace any existing law. Each one of us, and even Parliament was subject to its jurisdiction. The creation of the Constitutional Court (Concourt) was to make it the final arbiter of any challenge to the CONSTITUTION. We can only be grateful to the great minds who helped to craft a CONSTITUTION that served as an affirmation of humanity and to ensure that we would have every safeguard for the flourishing of democracy.

It seems that we have again come full circle. All that is about to change once again. The new leaders of the ANC want to assert their own vision of seeing Parliamentary and executive power as the supreme power of the land. That will serve to make the CONSTITUTION subservient to Parliament. President Zuma has said that, "***We don't want to review the Constitutional Court...We want to review its powers.***" Pray, do tell us Mr President, why do you want to undermine the very CONSTITUTION which ensures that our democracy remains above the reach of any government, even the present one? Let us gently remind you Mr President that when you took office of the presidency, you swore 'to obey, observe, uphold and maintain the constitution and the laws of South Africa'. Civil society expects, nay, demands, that you abide by the solemnity of your oath.

We ask of you to heed the statements of the Black Lawyers Association when they say "...the executive (in Parliament) showed a lack of basic appreciation of the tenets underlying the separation of powers (of the executive, the legislature and the judiciary). It went on further to scathingly state, "...that the executive (Parliament) displays such ignorance of the rule of law and a penchant for the apartheid days of parliamentary sovereignty with its untrammelled powers, which have so scarred many South Africans"

Government has to understand that South Africans deserve a fiercely independent Constitutional Court and openly transparent institutions as a means to secure its democracy, for which a very high price has been paid in every possible way.

We, the people, are secure in the knowledge that the CONSTITUTION IS THE HIGHEST POWER IN THE LAND AND NOT THE EXECUTIVE OR PARLIAMENT. Any watering down of the CONSTITUTION or the negation of the Constitutional Court will only take place at the cost of the destruction of democracy. South Africa cannot afford any tampering of the Constitutional Court. If it does come to pass, it will come at an astronomical cost. Let us hear more voices raised for the advancement and deepening of our democracy.

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