

JUDGE JOHN HLOPHE

The FW de Klerk Foundation is shocked - but not surprised - by recent comments about South Africa's judiciary made by Western Cape High Court Judge President, John Hlophe.

According to news reports Hlophe accused the judiciary "of being soaked in politics, battling to deal with transformation, and allowing apartheid-era judges to dominate the narrative". In a lecture to the University of South Africa's Department of Public, Constitutional and International Law (UNISA), which he delivered last week - after he had been found guilty of gross misconduct by the Judicial Conduct Tribunal - Hlophe described South Africa's law "as a white man's law imposed by colonialists and an infusion of English heritage and the Roman-Dutch law, which rendered it incapable of delivering justice for the common man".

Hlophe continued that "race is very important given our (apartheid) past. So any judiciary which is still white male-dominated can never be construed as legitimate".

One wonders where Judge Hlophe obtains his information? In fact, only 78 - or 34% - of South Africa's 255 judges are white and very few hold top judicial positions. Only six of the 20 judges of the Supreme Court of Appeal and none of the nine judges now on the Constitutional Court are white - although this might change when two Constitutional Court vacancies are filled later this year. There is only one white judge among the 16 top judicial office bearers in the country - Judge Denis Davis, the judge President of the Competition Appeals Court. The Chief Justice, the Deputy Chief Justice, the President of the Supreme Court of Appeal are black - and there is not a single white judge among the nine provincial judge presidents.

Judge Hlophe is also wrong about the "white man's law". South Africa's foundational law, the Constitution, was adopted by freely elected representatives of the South African people - who were overwhelmingly black. Since 1994 all the country's laws that have been adopted by a parliament that is also overwhelmingly black. Surely, if Judge Hlophe had had such serious problems with the country's system of law he should not have sworn the oath to uphold it or accepted appointment as a judge to administer it?

One suspects that his disenchantment with South Africa's system of law arises, instead, from the fact that after 14 years of serious complaints the legal system has finally found him guilty of gross misconduct. Recently the Judicial Conduct Tribunal found that Hlophe had attempted to "improperly influence" Justice Bess Nkabinde and Justice Chris Jafta in a pending case before the Court at the time, regarding Jacob Zuma. The tribunal ruled that Hlophe (in a classic example of a judge "soaked in politics"?) had "breached Section 165 of the Constitution" in that he attempted to "improperly influence" the two justices of the Constitutional Court to violate their oaths of office".

The truly remarkable aspect of Judge Hlophe's case is that despite the Tribunal's finding, the Judicial Services Commission - supposedly the guardian of the integrity of South Africa's judicial system - permitted him to participate in its deliberations on the appointment of judges to the Western Cape High Court. One also wonders why UNISA evidently had no problem with a judge, convicted of gross misconduct - and teetering on the brink of impeachment - delivering a lecture to its Department of Public, Constitutional and International Law?

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