

**A CLARION CALL
TO
BASOTHO TO PROTECT INSTITUTIONS OF GOVERNANCE**

The letter PM/MIN/16/1 dated 5th July 2019 through which the Right Honourable the Prime Minister directs the President of the Court of Appeal to show cause why the Prime Minister may not advice that the President of Court of Appeal be suspended in terms of Section 125(7) of the constitution cites Section 125(7) out of context, undermines Section 125 (3), contravenes Section 118(2) of the constitution and is tantamount to an *Executive Overreach*. Therefore, Development for Peace Education(DPE) calls on all Basotho as individuals and through their different formal and informal formations to denounce the letter.

The principle of separation of powers espoused by the Lesotho constitution is cardinal to the good governance and should be defended. Besides defining the roles of organs of state authority, the main purpose of the constitution is to limit excessiveness and arbitrariness of the executive which is vested with enormous powers. In the Lesotho constitution, Section 118(2) which guarantees independence of courts in discharging their functions and freedom from any form of interference, is an example of such.

An Executive Overreach

For the Prime Minister to contemplate invoking his right to advice the King to suspend President of the Court of Appeal because the latter did not dispense his duties “well” in the matters related to the ABC case is seeking to act beyond prescribed powers. In terms of Section 125 (3) it is only on account of *inability* of the judge to dispense functions of his/her office as a result of *infirmary* of the body/mind or other cause or *misbehaviour*. The Prime Minister mentions none of these as forming part of his concern. Further in terms of Section 118 (2) the courts including that of the appeal shall be independent in their discharge of function and shall be free from interference unless such is provided for by the constitution. Any act of the head of executive of His Majesty’s Government suggesting impeaching the

judge for any reason other than inability to do work on account of infirmity of body/mind/other cause or misbehavior is an overreach. For clarity read Section 125(4). It is worse when the Prime Minister contemplates acting purely on the basis of *decisions* of the judge. By insinuation Prime Minister interferes with the freedom of the President of the Court of Appeal from any form of interference and directly encroaches on his right to make decisions without referral(independence). This is an overreach by the executive.

SECTION 125(7) QUOTED OUT OF CONTEXT

The Prime Minister contemplates invoking Section 125(7) to recommend suspension of the President of the Court of Appeal. The suspension contemplated in this section is not a primary but a subsequent act. It is only when the Prime Minister has put the question to investigate removal of the President of the Court of Appeal before the King and the tribunal has been set up in terms of Section 125(5) and (6) respectively that the Prime Minister may advise the King to suspend him/her in terms of Section 125(7). For the Prime Minister to contemplate use of 125(7) so prematurely and indeed without regard to other relevant sections can only expose the desired conclusion of the matter.

CONVERSATION OF HIGH JUDICIAL OFFICERS: A BASE FOR PRIME MINISTER'S CONCERN?

The Prime Minister states the premise for the letter as his concern for administration of justice where President of Court of Appeal has either committed or omitted things which led to the circumstances that have potential to bring administration of justice into disrepute. Reading the letter, it becomes clear that the Prime Minister uses the letter of Acting Chief Justice of the 27th May 2019 to the President of the Court of Appeal to substantiate his concern and nothing else.

Though the letter says this move is necessitated by the imperative of the Head of Executive to rescue and preserve reputation of the Judiciary, it has features of interference. The contents of the letter of ACJ are matters related to *performance of the function of the President of the Court of Appeal* neither inability nor misbehavior. Besides, the ACJ letter of 27th May was followed by the other two, the one by President of Court of Appeal

to ACJ dated 29th May 2019 and the other by ACJ to the President of Court of Appeal dated 30th May 2019. Clearly here two high judicial officers were talking about their work. Followed to the logical conclusion their conversation will go further and it is hoped that such engagement and dialogue shall yield necessary common understanding.

What is not clear is whether the Prime Minister was not aware of fullness of the conversation between ACJ and President of Court of Appeal for him to have picked only one out of the three letters and use it in this way. It is also not clear whether Prime Minister has his own reason to be concerned other than what is raised by ACJ to her colleague. If he does, why is his letter holistically based on the ACJ's letter? Had ACJ not started the conversation with her colleague, what reason would the Prime Minister have to be concerned about work of President of Court of Appeal?

Whatever the case may be, the contents of the letter of ACJ to President of the Court of Appeal are purely matters of functions of the judge which Prime Minister or anyone is barred from interfering with.

On the basis of this understanding, DPE

- (i) Calls upon the Rt Honourable the Prime Minister to withdraw his letter to the President of the Court of Appeal forthwith and not to proceed to advise the King on this matter;
- (ii) Appeals to the Attorney General to invoke Section 98 (2) (c) in case 98(2) (a) may not be adequate for the purposes of this matter of national importance;
- (iii) Calls on civil society organisations, business, labour movement, youth, women, interests' groups and individuals to make their voices heard on this situation, persuade the Prime Minister to withdraw the letter he wrote to the President of the Court of Appeal.

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