

How deferential to government are the courts?

The Democratic Governance and Rights Unit (DGRU) of the University of Cape Town held a discussion on two research reports in Cape Town on 2 October.

The research reports were titled 'The Constitutional Court and the separation of powers', prepared by DGRU researcher, Chris Oxtoby and 'Aspects of South Africa's Constitutional Court: The demographics of advocates appearing before the court and the court's impact on socio-economic rights', prepared by independent researcher, Michael O'Donovan.

According to DGRU, the issue of the separation of powers, and specifically how the doctrine has been applied by the courts, has been a hot topic in South Africa in recent years and has been raised regularly and assertively by certain members of the Judicial Service Commission in the interviews of prospective judges.

DGRU said that influential members of government have expressed criticisms of the courts for, it is claimed, exceeding their proper mandate and 'intruding' into the spheres of the legislature and the executive. 'When government announced plans to commission a review of the jurisprudence of the Constitutional Court and Supreme Court of Appeal, many commentators expressed concerns that this was linked to a push-back against the power of the courts' said the DGRU.

In this context, DGRU felt it was necessary to undertake a research project, examining the actual track record of the courts and how they have dealt with the issue of the separation of powers. DGRU then surveyed the decisions of the Constitutional Court between 2009 and 2013, with the aim of analysing the court's recent track record in light of the criticisms of 'overreach' levelled against it.

DGRU also completed a race and gender analysis of all advocates who have appeared before the Constitutional Court since 1995, and sought to measure the extent to which the judgments have advanced socio-economic rights of citizens.

At the time of going to print, the reports were not yet available to the public but would be published on the DGRU website soon. The website address is www.dgru.uct.ac.za.

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