

Chief Justice Pius Langa Memorial Lecture by Mr Jeff Radebe, Minister of Energy, Member of the ANC National Executive Committee, ANC National Working Committee and the South African Communist Party Central Committee, 16th March 2019

Today we meet in conversation over the sterling role of one of the shining stars of our times, the late Chief Justice Pius Langa. In him we celebrate a patriot, a member of the African National Congress in good standing, an underground political activist who directly interfaced with the highest levels of leadership in the liberation movement such as OR Tambo and Moses Mabhida.

From a personal note, he was my boss in the period that he was President of NADEL at the time we had other leaders such as Linda Zama. Furthermore I worked with him closely following my appointment as Minister of Justice and Constitutional Development in 2009. Therefore today I am here to participate in this public conversation about his life as a friend, a colleague and a comrade.

In recognition of his outstanding service to the people of our country, former President Thabo Mbeki bestowed on him the highest honour, the Order of Boabab in Gold.

Five days from today, the world will be celebrating the International Human Rights Day. It is a fitting tribute to the late Chief Justice Pius Langa that on this occasion we focus attentively on the core fabric of our claim to humanity. It is a fitting tribute to him that we should highlight through this public lecture his impeccable role in buttressing the very human rights freedoms that we collectively aspire for, as amongst others amplified by the International Human Rights Day.

Just this week on Tuesday, I had the distinct honour and privilege of participating in the ceremonies to exhume and rebury the mortal remains of the brother to Chief Justice Pius Langa, Comrade Ben Langa, whose tragic death left a gaping hole in the hearts of those who shared the trenches with him. Comrade Ben Langa paid the ultimate price to ensure human rights for all our people. It was tragic in the sense that his own comrade pulled the trigger on him due to the apartheid tactics of misinformation and causing havoc amongst comrades. And of course, on that occasion, the mortal remains of comrade Pius Langa's sister and parents were concurrently exhumed in KwaMashu and reburied at the Lalakahle Memorial Cemetery in Hillcrest.

The significance of this reburial is that it is part of the healing that the Langa family needed. The Missing Persons Task Team performed the exhumation, borrowing from their world renowned expertise in this regard. Amongst those performing the exhumation was a member of the Missing Persons Task Team who participated in the exhumation of the iconic international revolutionary Ernesto Che Guevara.

You would recall that the Missing Persons Task Team that operates under the auspices of the NPA was established as part of wrapping up the Truth and Reconciliation Commission. The aim was to ensure healing and closure for those who lost their loved ones under the dark clouds of the apartheid era. The Langa family tragically lost one of their own in Comrade Ben Langa and I believe the exhumation and reburial will contribute towards the journey of lasting healing.

Today I thought it appropriate that we should on this auspicious occasion of the public conversation around the life of the late former Chief Justice Pius Langa focus on the importance of healing the divisions of the past as amplified

in the preamble of our Constitution. This was one of the foremost priorities with which Chief Justice Pius Langa was preoccupied.

I would argue, as I believe many would also concur, that this healing is not just about the emotions of anger and grief but also the material conditions that in the first instance brought about the pains that the majority of our people suffered under the obnoxious system of apartheid.

In his contribution to the book: "A Transformative Justice; Essays in Honour of Pius Langa", Tim Fish Hodgson writes:

"These challenges do fall squarely within Chief Justice Langa's emphasis on the need for social transformation, which he described as 'indispensable to our society' because 'in South Africa – it is synonymous with reconciliation', and within Klare's broad definition of transformative constitutionalism"

Hodgson further asserts:

"If people do not properly understand the radically transformative nature of our constitutional revolution, they cannot possibly commit to being a part of realising the vision of a society based on the values of human dignity, equality and freedom. A crucial step in ensuring this occurs is ensuring that people have a reason to be interested in knowing about and engaging with the law in general and the Constitution in particular. The discourse on transformative constitutionalism is therefore in need of transformation so as to redirect its gaze from the law and the legal system to the people of South Africa."

It is against the many atrocities occasioned by the intervening period between our colonial conquest and our ultimate political liberation in 1994, that the Constitution expressly enjoined us to heal the divisions of the past.

None other than the late Chief Justice Pius Langa understood this enormous task, as our country entrusted him with the highest responsibility, at the helm of our judiciary. His task and those of his colleagues was to ensure that justice was at the centre of all our transformation agenda. As Chief Justice Langa opened his constitution booklet as the text that guided all his work as Chief Justice of our Republic, the first words he encountered were those that reminded him of healing the divisions of the past. Likewise anyone who opens his or her constitution, glaring into your own eyes would be the text that was well positioned to give overall context to the rest of the text and spirit of the constitution.

I know some would assume this healing of the divisions of the past to be cosmetic yet in fact it is a surgery to remove the bullet instead of merely covering it with a bandage. Whilst it may be easier to bandage the wound with the bullet inside, the long term implications are a wound that never heals. In spite of the temporary pain, a surgical removal of the bullet is the only sure way to lasting healing.

It is against this backdrop that I thought I should make it my focus on this public conversation the importance and meaning of healing the divisions of the past as enjoined by the Constitution. Chief Justice Pius Langa understood this task very well, both in its contemporary and historical contexts.

Our constitution is in many respects a beautiful document that must be treasured by all generations to come. It is a codification of the soul of our nation, its genesis and its future. Those who believe that the Constitution is

indifferent to the comprehensive political and historical socio-economic challenges, must not have read its preamble that enjoins us to heal the divisions of the past. I will expound what this healing must entail as I suppose was in the mind of the drafters of our constitution.

What this means is that the law will fail in its course if those divisions are not healed. Before we could settle the political, social and economic disputes under a normalised democracy, we must be sure that none of the parties participate in such disputes disadvantaged by the conflicts of the past. That is why in some sense you cannot just compare western democracy to ours, as in our instance the fundamental socio-economic transformation is primary in many respects. If not attended to fully, that can pose serious threat to the very existence of our democracy and render our constitutionalism a mere lofty but useless ideal.

It is precisely for these reasons that as government we have embarked on the comprehensive radical socio-economic transformation of society. As the ANC, we recognised also that this must in fact assume a radical posture lest we transmit into the future the conflicts and divisions of the past against which the constitution expressly admonishes us to prevail and heal.

It is from this spirit and injunction by the Constitution in healing the divisions of the past, that we have Affirmative Action, Black Economic Empowerment and Gender Equality programmes. As the late Chief Justice Langa assumed his seat at the pinnacle of our judiciary, he understood these challenges very well. In this he left an impeccable legacy as the foremost jurist in our jurisprudence, that is, as the Chief Justice of our Republic.

After taking over in 1994, we endeavoured as the ANC government, to eradicate all apartheid laws and replace them with those consistent with the

Constitution. The healing of the divisions of the past had to be exemplified first and foremost in the removal of the laws that sustained the very legacy we sought to transform. In their place we enacted those laws that enable the new dispensation that flows from the promise of our new Constitutional democracy.

In navigating this transformation of our jurisprudence, Chief Justice Langa was amongst the pioneering jurists from whom we are forever indebted for the foundation of our constitutional democracy. Our democracy could stand or fall on the basis of the foundation that they laid and such was the delicate task entrusted to the generation of Chief Justice Pius Langa and Chief Justice Chaskalson before him. Taking over from Chief Justice Chaskalson, the second generation of justices led by Chief Justice Langa left an indelible imprint on our jurisprudence, taking over from these colossal giants and proving worthy of the mantle and baton passed on to them.

Chief Justice Langa's judicial philosophy has left a profound legacy in the South African judicial landscape which will remain a point of reference for our national and global jurists for many more years to come. Over 120 judgments were delivered by the Constitutional Court during his tenure as Chief Justice of the Republic. Not only did he participate in the majority of these judgments, but he also, like a true leader, led from the front, with impeccable attributes and foresight.

This attests to his industry and work ethic as one of the prolific jurists of all time. His glowing judicial astuteness started to emerge during the early days of the Constitutional Court and thrived when he ascended to the helm of the Judicial Branch as the "first among equals". These judgments, together with many others delivered during the Chief Justiceship of the late Chief Justice

Arthur Chaskalson, another legalist of all time, depict the “golden era” of South African jurisprudence.

During my tenure as Minister of Justice and Constitutional Development, I had the privilege to commission the Report on the Assessment of the impact of the judgments of the Constitutional Court and the Supreme Court of Appeal on the lived experiences of South Africans. The report was aimed at providing an in-depth and balanced narrative of the inspiring jurisprudential journey from our sad past to the promised future. As the Executive, we shared the Judiciary’s passion led by Chief Justice Langa on the relevance of the law on socio-economic transformation. That alone proved that the three arms of the State must have in their design a mutually complimentary dovetail that promotes our constitutional democracy holistically.

The Report of the Assessment, which was released by my successor in the Justice portfolio Minister Masutha in November 2017, is a culmination of a series of transformation initiatives which the ANC Government has spearheaded in the quest to creating a judicial system that reflects our constitutional democracy.

Many of our eminent jurists, including some of the renowned retired Judges of the Constitutional Court, participated in the important Assessment project. This Report, which was initially received with skepticism in certain quarters when it was launched, gives useful insights into our evolving socio-economic jurisprudence into which Justice Langa and his generation contributed immensely. The Report attests to the difficult path that Justice Langa and his generation traversed from experimental jurisprudence to constitutional and precepts that constitute the foundation of our progressive jurisprudence.

The judgments of *Makwanyane*, *Soobramoney*, *Grootboom* and *Treatment Action Campaign Treatment Action Committee, Walker* and many others that have shaped our socio-economic jurisprudence continue to influence the rights discourse in country and in many other comparable jurisdictions.

Chief Justice Langa's constitutional conscience mind is engraved in all judgments he delivered or participated in.

For example, in *Bhe and Others v Khayelitsha Magistrate and Others*, Chief Justice Langa, displayed the requisite judicial activism to transcend an injustice of our past African custom which African women who were deprived of the right of inheritance from the estate of their deceased spouses.

In *Islamic Unity Convention v IBA* judgment, he reminded us of the importance of freedom of expression as guaranteed in section 16 of the Bill of Rights when he contended, and I quote:

“We have recently emerged from a severely restrictive past where expression, especially political and artistic expression, was extensively circumscribed by various legislative enactments. The restrictions that were placed on expression were not only a denial of democracy itself, but also exacerbated the impact of the systemic violations of other fundamental human rights in South Africa. Those restrictions would be incompatible with South Africa's present commitment to a society based on a “constitutionally protected culture of openness and democracy and universal human rights for South Africans of all ages, classes and colours”

It was his profound understanding of the constitutional journey and the intricacies of the right of freedom in the Constitution that earned him the honour of chairing the Press Freedom Commission in 2011.

It was his enduring passion for social justice that elevated him to the highest judicial office where he continued the transformation project underwritten by our Supreme Constitution.

From 2005 to 2009 he chaired the Judicial Service Commission and advanced the transformation of the Judiciary in relation to its racial and gender demographics.

In one of his renowned address on “Transformative Constitutionalism” – which he delivered at Stellenbosch University in 2006 (which is published in the *Stellenbosch law Review*) he had this to say, and I quote:

“Transformation is a permanent ideal, a way of looking at the world that creates a space in which dialogue and contestation are truly possible, in which new ways of being are constantly explored and created, accepted and rejected and in which change is unpredictable but the idea of change is constant. This is perhaps the ultimate vision of a transformative, rather than a transitional Constitution. This is a perspective that sees the Constitution as not transformative because of its peculiar historical position or its particular socio-economic goals but because it envisions a society that will always be open to change and contestation, a society that will always be defined by transformation.”.

(Close Quote)

In the same address Justice Langa juxtaposed the transitional phase between the Interim Constitution as a bridge towards the end state envisioned in the Final Constitution, which paraphrased as follows, (open quote):

“What is contended is that we should instead view the bridge of the interim Constitution as a space between an unstable past and an uncertain future. There is no preference for one side over the other, rather the value of the bridge lies in remaining on it, crossing it over and over to remember, change, and imagine new and better ways of being”. (Close Quote)

The legacies and contributions of Justices Langa, Mohamed, Chaskalson, Madala, Sikweya, and many of our forebears who traversed the journey will remain a guiding torch to the future envisaged by our Constitution.

Now allow me to take you a little back into the history of why we are here today as a country.

In the beginning there was colonial conquest. The defeat of the Bhambatha Rebellion significantly highlighted the ultimate subjugation of the African by the colonising settlers. I call them settlers here in historical context because that is what they were, a people against whom the African kingdoms fought to counter their invasion. It is in this context that we continue to sing: ***“Thina Isizwe esimnyama, sikhalela izwe lethu, elathathwa ngabamhlophe, mabawuyeke umhlaba wethu”.***

It is important on this occasion that we celebrate the life of the son of the soil, the late Chief Justice Pius Langa, that we do not tell lies nor revise our history to suit the current conjecture. This was long before the ANC and the SACP recognised what has been coined as the Colonialism of a Special Type. That

being that whilst the African kingdoms fought to defeat the settler colonial forces, the liberation movement later recognised whites as equal claimants with all other races and tribes of the citizenship of South Africa.

Significantly and relevant to today's conversation about the legal and judicial role of Chief Justice Langa was how colonialism took legal form.

You will recall that even the ultimate partitioning of Africa was concluded in the Berlin Conference as a legal treaty amongst the looting colonial forces.

Furthermore, once the British and the Afrikaners settled their own conflicts on the plunder of our country, they signed off the Treaty of Vereeniging in 1902. Now buoyed by this new found unity amongst the invading white settler nations, they joined forces to defeat whatever remained of African resistance leading to the defeat of the Bhambatha Rebellion in the first decade of the 20th century.

In 1909, having constituted a whites only parliament in South Africa, they passed the Union of South Africa Act which nailed the exclusion of Africans in particular and blacks in general from the right to vote and participate in the political, social and economic affairs of our country. In 1910, the Union of South Africa was formally instituted.

The enactment of the 1913 Land Act marked the beginning of concerted efforts at the marginalisation of the Black majority in South Africa through legal and forceful means. Around the same period, Africans led by Pixely Ka Isaka Seme recognised the need for African unity in the wake of the Bhambatha Rebellion.

This clarion call by Pixely Ka Isaka Seme paid dividends as Africans united to form the ANC in 1912. This was the beginning of the protracted struggle

between the colonisers and the masses of the people led by the African National Congress and later other liberation movements such as the Pan Africanist Congress of Azania and Black Consciousness Movement. There were also a host of other organisations amongst the religious bodies, the youth and workers. Other political organisations were the Indian and Coloureds organisations such as the Natal and Transvaal Indian Congresses and the African People's Organisation.

It was in this context that the unity of black people took foremost priority than ethnic courses, leading amongst others the signing of the Three Doctors Pact.

Many laws that are too many to mention here today, were passed, to buttress the system of apartheid. As you will recall, apartheid as government policy was instituted by the National Party government after they took over in 1948. All these were legal means to marginalise the black majority and buttress white supremacy.

Chief Justice Langa was fully aware of this history. He also understood too well in this context what was meant by the enormous task of healing the divisions of the past from a constitutional and legal perspective.

It is therefore important that neither in celebrating the Constitution nor the life of Chief Justice Langa must we present these as halo symbols devoid of the material conditions that would usher in a better life for all our people.

In celebrating and commemorating the life of Chief Justice Langa, we dare not be indifferent to what he stood for. Chief Justice Langa did not just stand for the text of the Constitution, but the transformative spirit that must see to it radical socio-economic transformation to heal the divisions of the past.

These divisions of the past are still evident in the socio-economic configuration of our country. As the ANC government we recognised the strides that the generation of Chief Justice Langa attained in redressing the jurisprudence by repealing apartheid era laws and replacing those with laws consistent with the Constitution. We also recognised that the socio-economic legacy of apartheid stood in contrast to the promise of the same very constitution.

That is why we then embraced on the occasion of celebrating the ANC centenary, in national conference, the resolution that characterised as our collective marching orders the attainment of radical socio-economic freedom as the Second Phase of our National Democratic Transition. As stated in the National Development Plan, our main agenda is to defeat the trio challenges of poverty, unemployment and inequality, all of which have a web interlink, one to the other, in a complex self-replicating vicious cycle.

This vicious cycle that replicate poverty, unemployment and inequality along racial and gender lines is what stand in contrast to the injunction of the constitution that enjoins us to heal the divisions of the past.

Let me caution that this reality of poverty, unemployment and inequality assuming the defaults of apartheid design along race and gender must not be taken lightly. This is a long term threat to the very sustainability of our constitutional democracy. When the law fails in its intent to enact justice, the people will reject it as they did with the laws of apartheid. Injustice even against the claims of the best constitution in the world will surely result in the instability of the State and justifiably so.

It is inconceivable that any amongst us may find it their mission to convince the people to accept a framework that does not bear the fruits that it

promises. Hodgson speaks to this, as I will later make direct reference to his quote.

In having these public conversations over past heroes and heroines such as Chief Justice Langa, we must take such as stern reminder of the call to action in line with the legacies of their lived examples.

As the ANC, a party entrusted by the people since 1994 to lead on national transformation, we know too well that the promise of a better life cannot be postponed or delayed any longer. That is why as the ANC we must recognise the need to move with speed in accelerating radical socio-economic transformation. The triple challenges of poverty, unemployment and inequality must be attended to with the greatest of urgency.

It is only when the wealth of our country is reflected in the racial and gender demographics of our people that we can claim to have made adequate strides in healing the divisions of the past.

As the ANC government, we can look back and recognise so much that we have done to improve the lives of our people. Electricity connection has drastically improved since 1994, inspite of the current challenges of load shedding that I am confident we will also be able to address. Bursaries and loans for higher education now cover all students who cannot afford fees. Government has built more houses for the poor than any government in the past 25 years. School kids from poor families now have free basic education and in addition many also are provided meals whilst at school. Social grants for poor children have been expanded to ensure all deserving children are covered. Health is accessible by all our people irrespective of income.

We are the first to acknowledge that social transformation has limited scope of impact hence the importance of radical socio-economic transformation as a comprehensive wayforward. In this sense our people must be their own liberators from poverty, unemployment and inequality, with the State playing a leading developmental role. It is an economy that enables the participation by all our people that will result in a better society.

On the occasion of this memorial lecture in tribute to Chief Justice Pius Langa, we must remind all and sundry that the call to heal the divisions of the past is not only a responsibility of any single person or organisation. None amongst us must stand on the side lines of history and make it our mission to merely level criticism. As the President appropriately quoted the late Bra Hugh Masekela, we too must lend a hand. All of us must join in action and say “thuma mina”.

Madiba had his long walk to freedom. All of us must curve our own walks to freedom. Today it is not about political freedom but socio-economic freedom from poverty, unemployment and inequality. All of us must leave a legacy that answers the call of the Constitution to heal the divisions of the past. Chief Justice Pius Langa understood that the law and the constitution from which it flows, is the headway to such healing. But he too also understood too well that the law as a text cannot be divorced from the comprehensive radical socio-economic transformation. That is what in fact the Constitution saliently refers to when it talks of the healing of the divisions of the past.

At the beginning of this conversation, I alluded to the fact that when Chief Justice Pius Langa opened his Constitution booklet, he was first and foremost met by the text on the healing of the divisions of the past. Now I want to further say that in fact the entire constitution is dedicated to both the healing

of these divisions and laying a lasting framework that in the words of Nelson Mandela:

“Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another and suffer the indignity of being the skunk of the world.

Let freedom reign!

The sun shall never set on so glorious a human achievement!

God bless Africa!”

So as Chief Justice Pius Langa closed his Constitution booklet at the end of his life, he would have been content that he ran his race faithfully and fully, in contributing towards healing the divisions of the past in our country.

As I conclude, allow me to reiterate four points. Firstly that the healing of the divisions of the past is a radical socio-economic call, albeit founded on the text and spirit of our constitution. Secondly that the healing of the divisions of the past is essentially a collective task by political parties, government, the private sector, NGO’s, the youth and all and sundry. Thirdly, that the healing of the divisions of the past will have succeeded when the challenges of poverty, unemployment and inequality no longer reflect the apartheid design defaults of race and gender. Fourthly and lastly, that the divisions of the past are a threat to our constitutional democracy and unless healed, then the text of our constitution will be rendered a useless lofty ideal.

Allow me once more to thank the organisers of this prestigious occasion and for allowing me to share perspectives in tribute to this outstanding legal eagle, son of the soil and gallant fighter for our freedom and democracy, Chief Justice Pius Langa.

When we declare that today South Africa is a better place than it was in 1994, it is because of the selfless work of fellow patriots, great and small, such as the late Chief Justice Pius Langa. He left an indelible clarion call to action by all of us. As we recognise that the apartheid legacy lingers on in various respects, he speaks to us from his grave to soldier on and deliver on the constitutional promise of a healed nation and a better life for all.

In paying his tributes to the late former Chief Justice Pius Langa, one of his outstanding contemporaries Justice Albie Sachs wrote in the same book "A Transformative Justice: Essays in Honour of Pius Langa":

"I find it hard to speak about Pius in the past tense. Some time has passed since he died, and yet I still feel a bit haunted by his memory. His influence was deep and pervasive, connected with the very special qualities he had as a person. He was subtle in the most positive sense of the word, balanced in his thought, nuanced in his expression, and naturally gracious in his inter-personal relations. You always felt that his poise and courtesy came not from adhering to the maxim, drummed into us as boys, that manners maketh the man. On the contrary, his composure stemmed from having engaged in deep reflections on a turbulent life, on decades of having been involved in the struggle within the Struggle, and on his conviction that human dignity was not something to be argued for but something axiomatic to be achieved, the only issue being how best to do so"

Those years of struggle that Justice Albie Sachs alluded to were amongst others spanning the period of our constitution drafting years. In those formative stages of our constitutionalism, former Chief Justice Langa was part of the ANC's Interim Constitution Drafting Committee. And this was no coincidence.

Together with his siblings such as Mandla and the late Ben, the Langa family gave its all towards attaining our freedom and democracy.

The architects of our constitution were clear in their collective thinking, that the dawn of our constitutional democracy cannot be sustainable unless it is premised on healing the divisions of the past. It is for this reason that these thoughts were captured in the preamble of the constitution to guide all subsequent interpretations of its various declarations. Chief Justice Pius Langa lived to fulfil this constitutional promise of the multifaceted healing of our nation as Chief Justice of our Republic and Head of our Constitutional Court.

I therefore concur with those who penned various articles in tribute to the former Chief Justice Pius Langa. That being that any tribute to him must essentially be through pursuit of transformative justice, which is in line with the injunction bestowed on all of us from the preamble of the Constitution. This is to ensure healing of the divisions of the past in their various multifaceted manifestations.

Transformative Justice must mean removing altogether the legacy of apartheid with the tentacles of both its legal and socio-economic roots. And replace this apartheid legacy with the new constitutional framework that promise rule of law and a better life for all, with radical roots running even ever deeper than ever before.

As Martin Luther King jr wrote in his book "Strength to Love", there can never be peace without justice!

I thank you!