

Address at the ceremony to mark the retirement of Chief Justice Arthur Chaskalson and the assumption of office of Chief Justice Pius Langa and Deputy Chief Justice Dikgang Moseneke

Houses of Parliament, Cape Town, June 10, 2005

Madame Speaker,
Chairperson of the National Council of Provinces,
Deputy Speaker, Deputy Chairperson and the other Presiding Officers,
Chief Justice and Deputy Chief Justice,
Outgoing Chief Justice Arthur Chaskalson,
Deputy President,
Leaders of our political parties,
Honourable Ministers and Deputy Ministers,
Honourable Members of Parliament,
Fellow South Africans:

When I spoke from this podium on February 11, to deliver the annual State of the Nation Address, I announced that with effect from June 1st, Chief Justice Arthur Chaskalson would retire from the bench. I said then that, "I trust that later this year, Parliament will give all of us an opportunity to bid this giant among the architects of our democracy the fitting farewell that the constraints of time today prohibit."

I would like to express my sincere gratitude to the Presiding Officers, the political leaders and the Honourable Members for responding to that request, which has given us the possibility to convene here today in what I am certain will, up to its conclusion, be a dignified ceremony that will communicate the respect of our people for our judiciary and the Judges we are privileged to honour today.

As we approached the day of his assumption of office, I requested the then Chief Justice-elect to advise me about the formal ceremony we would have to conduct, publicly to signal the changing of the guard at the apex of our judicial system. It transpired that nothing existed in our State Protocols providing for such a ceremony.

It is therefore the first time in the history of our country that we have convened as we have today. I would like to thank the Speaker of the National Assembly, the Chairperson of the National Council of Provinces, their Deputies, the leaders of the political parties, the Chief Justice and Deputy Chief Justice, the Minister and Deputy Minister of Justice, the Chief of State Protocol, the Director General in the Presidency and his staff for everything they have done to design today's proceedings, which set a precedent about what should happen in future when our country honours an outgoing Chief Justice and welcomes his or her successor.

This ceremony has been designed in such a way that it respects both the separation of powers that is entrenched in our Constitution, relating to the legislature, the executive and the judiciary, as well as co-operation among these centres of state power, without which our body politic would cease to exist. In this latter eventuality, ineluctably, mere anarchy would be loosed upon our world.

I believe that it is right and proper that we should convene as we have done today, bringing together the national legislature, the national executive and the judiciary to salute our compatriots who have served and will serve at the apex of the leadership of our judicial system.

This marks the culmination of a process of the appointment of the presiding judges of the Constitutional Court and the judiciary, which involves the three branches of our system of governance. It is therefore fitting that we should come together, as we have done today in the Houses of Parliament, finally to confirm to all our people our confidence in the fellow South Africans who had, and will have, the responsibility to lead our judiciary.

In this regard, speaking as the President of the Republic and the sponsor of the candidatures of our Chief Justice and Deputy Chief Justice, I would like to convey my profound gratitude to the Judicial Service Commission and the leaders of the political parties represented in our National Parliament, for their unanimous agreement that Justice Pius Langa and Justice Dikgang Moseneke should serve as our Chief and Deputy Chief Justices, respectively.

We meet here today to bid farewell to the outgoing Chief Justice, the Hon Arthur Chaskalson, and to welcome the new leadership of our judiciary, Chief Justice Pius Langa and Deputy Chief Justice Dikgang Moseneke.

In paying tribute to our recently retired Chief Justice, we draw inspiration from the Preamble to our Constitution, which states that:

"We, the people of South Africa, ...Respect those who have worked hard to build and develop our country: and

"Believe that South Africa belongs to all who live in it, united in our diversity."

Long before assuming the office of Chief Justice of South Africa, Arthur Chaskalson worked hard to lay the foundation for a South Africa that would truly belong to all who live in it, united in our diversity.

He dedicated his professional life to the defence of those who were regarded as sub-human, and accordingly treated as such by the legal system that prevailed then. He and his colleagues worked tirelessly, using the laws of the day, however deficient, to try to protect the rights of the poor and oppressed.

Speaking about the significance of the period following the end of the Second World War, a period when, according to him, "humanity appeared to seek a new mutation, ... a humanity that had come so perilously close to its own annihilation", our former Chief Justice, Ismail Mohamed, said that:

"A defensible and durable civilisation can only sustain itself legitimately and effectively if it recognises the inherent dignity of every member of the human family".

Arthur Chaskalson's lifelong work is a testimony to his belief in the inherent dignity of all people.

In the past eleven years of our democracy, the judiciary has not shunned its role to become part of the construction of a South Africa that recognises the inherent dignity of all its citizens.

We too are citizens of a country that came "perilously close to its own annihilation".

It was through the efforts of progressive lawyers such as Arthur Chaskalson, acting together with all other progressive forces in our country, that we were able to pull ourselves away from the abyss.

Because of his refusal to give up when some of the best among us lost hope in the promise of a better future, he served as one of the experts that assisted in drafting our Constitution.

After assuming the office of the President of the Constitutional Court of South Africa, Arthur Chaskalson worked with distinction to restore the credibility of a judiciary that had been totally discredited in the eyes of the majority, during the apartheid years.

He steered the judiciary at a time when it was grappling with defining its proper role in a democracy, a matter that we will continue to engage as our democracy matures.

Speaking about this matter in April 2000, in an address on the role of the judiciary in a democratic state, Justice Rosalie Silberman Abella, a judge of the Court of Appeal of Ontario, Canada, referred to the "historically erroneous premise that judicial institutions do not form part of the democratic framework..."

She went on to say that:

"While all branches of government are responsible for the delivery of justice ...the judiciary has a different relationship with the public. It is accountable less to the public's opinions and more to the public interest.

This means that the occasional judgement will collide with some public expectations, which will, inevitably, create controversy. But judgements that are controversial are not thereby illegitimate or undemocratic; they are, in fact, democracy at work".

What Arthur Chaskalson did during his years as a fighter for liberation and an architect of the new South Africa constituted the democracy at work of which Justice Abella spoke.

On June 1, 2005, acting in terms of the Constitution, I appointed Justice Pius Langa as the successor to Arthur Chaskalson. On the same date, I also appointed Justice Moseneke as the Deputy Chief Justice.

I take this opportunity to wish them well as they lead the judiciary during this, the Second Decade of our freedom, confident that they will accomplish their mission with distinction.

We face continuing challenges with relation to the judiciary, principal among them being its transformation. Among others, gender disparity within our judicial ranks remains a matter of concern.

The issue of the role of the judiciary in a constitutional state with a history such as ours also continues to pose a challenge.

I believe that the new leaders of our judiciary will help us successfully to respond to these challenges, as well as continue to create the space for these and other matters to be debated, confident that, in the words of former Chief Justice Mahomed,

"A viable and credible constitutional culture evolves most effectively within the crucible of vigorous intellectual combat and even moral examination (of judicial officers)".

The debate about the role of the judiciary in South Africa should never be portrayed as an intention or desire to interfere in any manner with its independence. It is not. Happily, I know that the leadership of our judiciary agrees with us in this regard.

Among other things, the struggle we waged, with Justices Chaskalson, Langa and Moseneke as our fellow combatants, was precisely about the convergence of the concepts of the law and justice, and therefore the need for an independent judiciary that would ensure that law and justice would not stand in opposition to each other, as they did in our country for many centuries.

I am honoured to extend to Justice Arthur Chaskalson, an Esteemed Member of the Order of the Baobab, the heartfelt thanks of our diverse and united nation for everything he has done to restore to all our people their freedom, dignity, and esteem among the peoples of the world.

On behalf of our nation, I wish him and his dear wife, happiness, long life, and success in their future endeavours. I trust that the nation will still have the privilege to access their wisdom and experience as we continue our journey towards the formation of the South African, African and world society to which they dedicated their lives.

I thank him, Chief Justice Pius Langa, Deputy Chief Justice Dikgang Moseneke, their spouses, and all other judges and eminent guests present in the House today for the privilege they have accorded all of us to salute them, to thank them, to wish them well during this unique ceremony in the history of our country.

I extend the nation's best wishes and message of confidence to them all.

I thank you.