

**Draft 2**

**Minister L N Sisulu, MP Speaking Notes**  
**Keynote Address at the College of Law: Department of Public,**  
**Constitutional and International Law at UNISA on the occasion of**  
**commemorating Youth Day**  
**Pretoria, 21<sup>st</sup> June 2022**

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*“Neoliberal democratic constitutionalism and the revolutionary potential of  
the youth”*

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Ladies and gentlemen

I feel greatly honoured to be invited to deliver the keynote address to the UNISA College of Law at this particular time.

Youth Day is a day to commemorate, remember, and honour not just a day but an entire generation. It is a celebration of righteous anger and undaunted hope, of a decision to take hold of history, wrench it out of the hand of the oppressor, and steer it into a new course toward a new future not yet seen

but firmly and absolutely beckoning in the horizons. It is also a celebration of the spirit of resistance, of courage and bravery.

It was a revolutionary spirit that swept from Soweto to Cape Town, through the Eastern Cape to KwaZulu-Natal, to Pretoria and points in between, waves of youthful determination that set the first fires of freedom burning in the hearts of a new generation.

Those were remarkable times, created by a remarkable generation. Who, after all, were those revolutionaries? They were young people, students at universities and high schools, youth from the townships, employed and unemployed, from across the country. They looked at our history of imperialism, colonialism, and apartheid, at the realities of centuries of oppression and dehumanization, at the history of land stolen, cultures denigrated and communities destroyed. They saw how apartheid was destroying their parents and elders and declared “No more!”

They emerged from a decade of brutal oppression from a white minority regime, fearful of the power of a people bent on freedom. They understood the meaning of Sharpeville and the Rivonia Trial; they saw their organisations banned, their leaders exiled and imprisoned, our people scattered, and all Black political activity relentlessly suppressed with laws unmatched in their draconian harshness. They saw the smug arrogance of Apartheid celebrating the creation of their apartheid republic as if apartheid had already won. Moreover, they decided “No more!” Intuitively, they understood themselves as heirs of our history of struggles, from 1520 along the banks of the Liesbeek River in now Cape Town to Sharpeville in 1960. The first Treason Trial the country experienced was in 1808 and you would trace a dotted historic link to the last Treason Trial in 1956. They remembered the massacres, from the

Seekoei River Massacre in 1775 to the Bulhoek Massacre in 1921 to the Sharpeville Massacre in 1960. They remembered the great Women's March in 1956, the Defiance Campaign, the Rivonia Trial and the banning and suppression of political activity in the country. They decided, "Now it is our time!" So they picked up the baton and ran with it.

Fifteen sixteen and seventeen years old, they put their aspirations, hopes and dreams on hold. They set aside their fears – even after what they had seen – cloaked themselves in the spirit of struggle. They made tremendous sacrifices not for themselves only, but for others, for the generations to come. They fought because they believed in a different future and loved their country and people. That is the generation and the spirit we are honoring, commemorating and celebrating today.

On this day we pay our respects to this generation, to honour them for their sacrifices and contributions to our struggle. Paying respect demands honesty from us, and we must admit that this Youth Day of 2022 is commemorated in times of great disillusionment, anger and confusion. Almost thirty years into our democracy, the feelings of being proudly South African have dissipated, leaving behind disappointment, disillusionment and deep anger born of a sense of betrayal. Even more dangerous, studies tell us, is the loss of trust, not just in politicians, but in politics, in our democratic processes and institutions, from elections to Parliament, from the justice system, the prosecution authorities, to the courts and to the police.

Politics is increasingly penetrating the law and money has become a yardstick in determining access to justice leaving a majority of our people not fully benefiting from what the law provides. A measure of justice is how it caters for the most vulnerable, the poor, the ones who are most likely to get the rough

end of the stick, because they cannot get the kind of defense that money buys. The judiciary and those at the helm of it is largely middle class and even though they may have come from the working class, their consciousness has changed. Those that have migrated to the middle class tend to see justice from the prism of the middle class and hence their jurisprudence can easily be interpreted as being anti-working class. So the question may be asked, why if you are economically successful the system treats you differently. Is this a question that you get the justice that you can afford? Is that what we now have in South Africa based on the experience that we are seeing now? This is an experience we are seeing – the bigger the corporates, the bigger the class in society, the bigger the favours.

Instead of judiciary being the last line of defense for the poor, evidence suggests it may be in cahoots with the elite against the very people it should be defending; the problem with the judiciary is it hasn't been above the fray where it should have been – what we are seeing is the politicization of the judiciary where you are creating fertile ground for judges to have favorites within the political space, which is what we should be moving away from – there should be just the Constitution and the world, the Constitution should not be used to advance individuals politically but rather then advancement of jurisprudence.

It is these challenges in the judiciary that are threatening the country's social cohesion. What is left is a shattering sense of dismay at the lack of accountability and inability to take responsibility, the atmosphere of impunity and transparent selectivity in who and what is judged and who and what are above the law.

This presents South Africa with the most treacherous political dilemma: the politics of the lesser evil. That is a precarious place to find ourselves in. The dismay is real because we are realizing that the problem is not simply persons.

The problem is systemic, a sub-culture structurally embedded in deep system fault lines, and our people are drowning in the bile it produces at every level of our society. Our young people feel that disappointment most keenly. Unemployment is the highest overall since 1994, youth unemployment is staggering at 66.5%. Education is still not accessible to everyone, and for even young people with a university degree, a job is not guaranteed, Large numbers never finish high school, and because of the traps of generational impoverishment, levels of crime and poor living conditions, the dropout rates are alarmingly high at 50%. This is a very precarious place we find ourselves in today.

\* Minister to add: When NADEL was formed ...

Decolonisation of the law has been a buzz phrase for some time and gallant attempts have been made to ensure that this underpins of our making and interpretation of the law. It is in the interpretation of the laws that we have found difficulty and in that between us who make the law and the interpretation of that law there lies a gulf. But it was Professor Shadrack Gutto who said we have to start with the mind. We need to consciously decolonise.

Let's just look at the logic behind our situation – we have been a repressed oppressed society for the last how many years and we imagine that by putting together a set of agreements we would automatically wake up one morning and the mindset of the oppressor would have changed his prejudice, his superiority complex and we would somehow wake up in a new world.

\*\* Minister to add: I myself have been subject to such misinterpretation.

We make laws but it is the interpretation that is important. We have been through this ... and the judiciary was shocked at our view of them, but that

interactin was necessary. From time to time you test the basis of our Constitutionality. And these are some of the tests we will have to content with from time to time.

\*\*\* Minister to add:

Change requires a deliberate process that can be measured. I am not a legal person but I have a lived experience about what comes naturally. I don't know if anyone has done an analysis of what measures we have put in place to effect change in the mindset and how to measure that. We can have the "best" set of laws but who interprets them is the most significant matter and we measure change in law by the interpretation of that law.

Laws are instruments that were deliberately crafted to oppress us and a measure of change would be to what extent the practitioners of that law have gone to change their mindset. Practiced law is common law and African legal system is called traditional law and traditional law is applied to Africans to appease them while common law – which is not common after all – is [what is practiced]. \*\* 2

Prof Gutto goes on to give a solution to our problems – decolonise the minds of the practitioners. Whites were never colonized so who is it therefore that needs to decolonise their minds? It is us black people. The onus is on us who have been colonized to free our minds. It is us black people on the bench who have to set themselves free of the bondage that we were brought up in.

So when I talk of some black people who still suffer from colonial mind it is because they are the door to our freedom – they are the important factor here. And Gutto asks the essential question – who is going to change if we don't? The students gave us a rude awakening in 2015.

A great deal of research has been done on this issue and I hope it can be infused in our curriculum. My son is studying law and I look at what he is studying and I worry.

The law in this country has been used as an instrument to keep black people in their place and to crush any attempt at resistance. The same fervor has not been used to advance black aspirations and rights! Our only hope has been that black judges will infuse our worldview into the law we inherited and use these laws to liberate black people from their subordination. Have we seen much of that? In fact quite the contrary. Apartheid judges were never called before the Truth and Reconciliation Commission for all the malicious judgments they have handed down. Some were known as hanging judges and simply got away with it because they are above scrutiny. Why? Our people were hung for demanding their freedom and nobody is held to account.

Our parents faced the death sentence for demanding their own rights. Had it not been for the outstanding progressive lawyers such as Advocate Bram Fischer and Advocate George Bizos we would have had many dead leaders. For those prosecutors and judges, the law was a bludgeoning tool. Solomon Mahlangu did not kill anyone but he was hung, aged 23! Shameful history that our judiciary has had and those who suffered in their hands. We would have hoped for a speedy transformation of the judicial mindset.

“Hi Mzansi: Have we seen justice?” was the title of a piece I wrote in January this year and I am sure many of you have read it and formed your own opinions. This piece elucidated divergent views and caused political tsunami. Press conferences, articles, and media appearances by Professors, ex-judges, media personalities, politicians, ANC veterans, commentators, and men and

women of letters. Even the President of the Republic got involved. I met with the President on this matter the outcome of which is now public knowledge.

What was most astonishing was to watch the then Acting Chief Justice take umbrage and declare that ALL black judges had been insulted. He went on to list himself, all the black judges of the constitutional court, all the black judges of the Supreme Court of Appeals, and the Judge Presidents of the various divisions – to my horror I must say. To my horror because I have great respect for all these eminent judges. But was this accusation true or was it just a misinterpretation of the English language? Or misreading of points of fact.

Were all Black Judges insulted in my opinion piece in January 2022? And was the article an attack on the judiciary and the constitution? Judge for yourself as these questions are ventilated here.

Allow me to give you some background to where my thoughts culminated in this article. I am in Spain attending a UN Tourism Conference and I have been asked by a black lawyers fraternity in the Eastern Cape to pay tribute to an admired and much loved former Chief Justice Pius Langa and of course I prepare the speech. I read a number of documents and came across a gem in my reading. The Black Lawyers Association had by 1984 come to the conclusion that there needs to be a decolonisation of the law conference so that come freedom, we can Africanise our laws. I was struck by this visionary perspective. Unfortunately the conference did not take place because I am certain we would not be where we are, had we taken this route. Justice Langa articulates this vision very eloquently in one of his interviews on the law as do many other black legal minds.



Of all the responses to the article I wrote – I am grateful to the Law Faculty here that has invited me to come and discuss those matters that were raised in my article. When the furore arose from all around I was certain that with all the negativity and deliberate misinterpretation that the backlash was largely a political one. I am certain the article flew right over the likes of Cosatu’s leaders and I was quite certain that a whole lot of other people were whipped up to respond. And they were vulgar. Some insignificant Zimbabwean also desperate for political recognition. Some saying I should be locked away for 20 years. What would they gain from that? They would be dead by then. But there certainly was a heightened interest and it was the voice of a political clique rattled about their own situation.

So any view that I was leading a campaign is wrong or at best, premature. I wrote the article - the fifth in a series of articles that has occupied me for some time. I am in a good space now to do some introspection when I was shifted to this portfolio. Dali Mpofu posted what I thought was a silly comment, “He said when you get moved to Tourism, when the country is in lockdown, you know what it means” Silly Dali!!

I have been accused of not respecting the Constitution. That is rubbish. The Constitution we have is a negotiated middle ground and it has undergone many changes and adaptations. The Constitution has already been amended 17 times since it came into force in December 1996.

[Constitution First Amendment Act](#), 1997 (Act 35 of 1997)

[Constitution Second Amendment Act](#), 1998 (Act 65 of 1998)

[Constitution Third Amendment Act](#), 1998 (Act 87 of 1998)

[Constitution Fourth Amendment Act](#), 1999 (Act 03 of 1999)

[Constitution Fifth Amendment Act](#), 1999 (Act 02 of 1999)

[Constitution Sixth Amendment Act](#), 2001 (Act 34 of 2001)

[Constitution Seventh Amendment Act](#), 2001 (Act 61 of 2001)

[Constitution Eighth Amendment Act](#), 2002 (Act 18 of 2002)  
[Constitution Ninth Amendment Act](#), 2002 (Act 21 of 2002)  
[Constitution Tenth Amendment Act](#), 2003 (Act 02 of 2003)  
[Constitution Eleventh Amendment Act](#), 2003 (Act 03 of 2003)  
[Constitution Twelfth Amendment Act](#) of 2005  
[Constitution Thirteenth Amendment Act](#) of 2007 (Act 23 of 2007)  
[Constitution Fourteenth Amendment Act](#) of 2008  
[Constitution Fifteenth Amendment Act](#) of 2008  
[Constitution Sixteenth Amendment Act](#) of 2009  
[Constitution Seventeenth Amendment Act](#) of 2012

This is because our daily experience demanded a re-think. It was a compromise and beyond that it is a living document and therefore required to change as we grew and as we experienced problems. If it's a living document it has to grow with our society.

I have used my freedom of speech to express my views from an African perspective and I stick to that view. My views are not informed by party slate politics but from my experience in government. I have spent the better part of my life in government, making laws and using laws to defend government positions, so mine is not a view that seeks to play to the gallery, it is one that comes from practical experience of our own shortcomings as government. We have had the opportunity as government to explore the views of the executive in a meeting that former President Zuma arranged with the judiciary and ourselves in August 2015. I presented Cabinet's position on behalf of my colleagues, which is what I have put in my article.

The Judiciary felt somewhat offended by what they perceived was rough language, but we never the less had a very cordial, maybe somewhat, abrasive discussion and both came away more enlightened about each other's views. The views I have expressed in that article are not new and didn't come down like a bolt of lightning. I except a few of the criticisms but the rest were

completely off the mark - full of venom and hot air. Some so over the top that it was clear the argument had become political as opposed to scholarly or even analytical.

I penned my thoughts, in distress at the sorry state of black people particularly black Africans under our much praised constitution, which governs every aspect our lives. In frustration at the slow pace of redress after centuries of suffering. Everyone has the freedom of speech to ascribe motives to my article, or to personally attack me, or to question why I have been in government for years and haven't changed the system? Well I have and the record is there for those who care to know and dig a bit deeper. It does not bother me, because I have been in the trenches all my life and fought for our people.

I am here to repeat my assertion that language has a history and it is used within its particular context. Steve Biko's language is that of Black consciousness and black American language is largely based on their experience of slavery. That is known language, contextualising what is conveyed. I found the language of some black/African American scholars very apt and I used it. Only those who want to nit-pick will isolate language from the context of what was conveyed. No insults were used there, but language that contextualises and more aptly carries through the full flavour of a language. We call ourselves black, but I have yet to see someone black. We call other people white, but we all understand what the context is, just racial descriptions with no basis, but it's the language we have all taken on board.

"She must rot in jail." I will not rot in jail. That is nonsense. Now to come to the substance of the article I wrote, as I said earlier I am not a lawmaker but law also involves interpretation.

Why do I mention some black judges in general? It is because of their lived experiences as black people in the country, and their assumed sensitivity to the plight of the poor and marginalized. Many of them come from such a background and should know better. That is why those who happen to be insensitive are randomly addressed. Are there some white judges who are more sensitive than their black counterparts to the plight of black people? Absolutely.

But poverty in South Africa is a black cause. We have the singular dishonour of being the most unequal country in the world, firmly drawn along racial lines for decades up till today. To drive home the point, If we say there are good people in South Africa, does it mean all South Africans are good? If we say there are mentally colonized Africans in the judiciary, is it true or false?

If in general terms we say there are good judges and bad judges in the judiciary, is it true or false? Is criticising the bad judges in general terms an attack on the judiciary?

The thrust of the article 'Hi Mzansi, have we seen justice?' is an article about economic disequilibrium in today's South Africa. It was what we all agree are the evils that plague South Africa: Poverty, inequality, and unconscionably high unemployment especially among the youth. It was about the intransigent absence of any Economic Reconciliation, which most critics have conveniently ignored and framed as an attack on the judiciary and as questioning the legitimacy of the constitution.

The mention of the Constitution and rule of law was only tangential, to the extent that the rule of law and the constitution is foundational and fundamental to how wealth and poverty is arranged and distributed. The Natives Land Act of 1913 is a case in point. Now we have a constitutional democracy. How the Constitution is interpreted in our courts becomes vital. It is worth mentioning that the courts should get credit for many landmark rulings in favour of the poor to ameliorate the harsh conditions they find themselves in. But at the end of the day, we are all judged by results.

Consequently, the courts do make law, and if the result is unsatisfactory after 28 years, must we not have a second look at how we can aid the courts through judicial reform and a reform of the constitution? Absolutely. The judiciary is not untouchable and the South African Constitution is not a holy script.

I am fully mindful I am raising issues which are uncomfortable for many. We must be hard on ourselves if we are to move forward as a nation. We must rise to the occasion which is littered with difficulties. We must think and act anew.

Wendell Griffen, a Circuit Judge for the Sixth Judicial Circuit, Fifth Division in Arkansas, (United States of America), as a rejoinder to my 'Hi-Mzantsi article,' open our eyes and make the following observations and assertions, and I quote: "In all times, the law is the handmaiden of those in power. Only in extraordinary circumstances will courts and legislatures break with this traditional role and reach out to the dispossessed, usually in ways that benefit those without power in small ways and the short run. In large ways and the long run, the seemingly remedial actions of law stabilize and are legitimate

even when, as is often the case, the powerful are most active in their opposition to these modest reforms".

Michael Eric Dyson's observation about the "willed forgetfulness of our racial past" that enables most White people and many Black people" to "re-enact a pantomime of social civility through comfortable gestures of racial reconciliation," and Derrick Bell's observation that "Blacks and Whites who challenge the racial status quo are seldom hailed as heroes in their own time," are as true now as when they were made in 1997. That explains why right-wing politicians, judges, religious figures, journalists, neo-fundamental capitalist colonizers and imperialists, and white supremacists are trying to stop teaching, learning, writing, and discourse about the history of racial injustice, including critical race theory, in colleges, universities, and otherwise.

Unisa as an institution and the department host this event should feel free to extrapolate this point. Judge Griffen, concurring with me, goes as far as to assert that "Black people in the United States and Indigenous people in South Africa and elsewhere have always known that the long pattern of domestic terrorism against our communities, places of learning and worship, our burial places, and our historical sites is a basic aspect of white supremacy and domination. At the same time, the descendants of Indigenous and formerly enslaved Africans who asserted our inherent rights of dignity, equality, and freedom from oppression have always recognized how White colonizers and their descendants used Black lackeys as agents of pacification. In the early years of the last Century, Booker T. Washington served that purpose. At the end of the last Century and currently, judges such as Justice Clarence Thomas and religious figures such as Tony Evans serve that purpose".

We cannot say South Africa does not have that kind of Judge. In agreeing with my Hi-Mzantsi musing, Judge Griffen makes the following analogy:

“Black people suffered and continue to suffer because of centuries of slavery, segregation, and discrimination perpetrated under "the rule of law." A generation ago, Randall Robinson wrote about what the United States owes Africans and African Americans for the damage. After quoting the long-settled legal principle that a party wronged by unjust acts is entitled to recompense, so the wrongdoer is not unjustly enriched, Robinson wrote:

“The thinking must be that the case that cannot be substantively answered is best not acknowledged. Only in the case of Black people have the claims, the claimants, the crime, the law, the precedents, and the awful contemporary social consequences all been roundly ignored. The crime – 246 years of an enterprise murderous both of a people and their culture – is so unprecedentedly massive that it would require some form of collective insanity not to see it and its living victims. Hence, the United States government and white society generally have opted to deal with this debt by forgetting that it is owed.

America accepts responsibility for little that goes wrong in the world, least of all the contemporary plight of black Americans. Nevertheless, many, if not most, whites still cannot or will not see it (a behaviour accommodated by all too many uncomplaining blacks). Moreover, until America can be made to do so, it is hard to see how we can progress significantly in our race relations. So, all this raises a question. Why is there no public reaction to these statements, bearing out my own views on these matters? Why is it that when men say it, it is all good, but when a woman says it, there are howls of indignation, screams of shock, and streams of abuse?

But I say it, and I will continue to raise these issues because I believe this is a way to honour those young people who stood up on June 16, 1976, and so courageously led the assault on the apartheid edifice.

So, how do we honour that brave generation of freedom fighters on this day? We honour them by returning to the politics of decency, honesty, integrity, courage, and virtue. I keep on saying this, for this is what we need, now more than ever.

In an authentic sense, 1994 was our response to that generation: their hopes and dreams, aspirations and expectations, struggles, and sacrifices. Our declared readiness to govern was meant to be a response to them and the generations to come, to all of you sitting here today. We made a sacred pledge to our people, built on respect and trust. A better life for all does not only mean material things, not just housing, school buildings, infrastructure, and jobs. It also means together embracing those values we can all live by, as individuals, as communities, and as a people. Those values give our lives meaning, direction, and purpose.

In the Bluebook 21st edition. Karl E. Klare, on Legal Culture and Transformative constitutionalism in 1998, wrote the following:

"By transformative constitutionalism, I mean a long-term project of constitutional enactment, interpretation, and enforcement committed (not in isolation, of course, but in a historical context of conducive political developments) to transforming a country's political and social institutions and power relationships in a democratic, participatory, and egalitarian direction. Transformative constitutionalism connotes an enterprise of inducing large-scale social change through nonviolent political processes grounded in law".

I am consciously aligned with Karl E. Klare's philosophy. One has in mind a transformation vast enough to be inadequately captured by the phrase 'reform,' but something short of or different from 'revolution' in any traditional sense. In the background is an idea of a highly egalitarian, caring, multicultural



community governed through participatory, democratic processes in the polity and large portions of what we now call the 'private sphere.'

Now, living in a constitutional democracy, all actions of parliament and the executive are subject to decisions made by these judicial officers. The three branches of STATE are co-equal and co-responsible for the state of the country, without apportioning blame. In many cases, the judiciary has the final say. Furthermore, to quote a prominent Irish Judge, Sir James Mathew, at the turn of the 20Th Century: "Justice is like the Ritz Hotel (five stars). It is open to the rich and the poor."

Thus, you will find that various well-funded non-governmental legal formations quickly rush to court when their interests are threatened. They have the resources and the will to fight laws inimical to their interests through direct legal actions or Amicus Briefs. Perhaps it is time to question the influence of dark money on Judiciary outcomes in our beloved country and debate on amicus transparency. Moreover, as the African proverb goes, a snake always gives birth to something long.

Poverty in South Africa is difficult not to talk about. We have the greatest dishonour of being the most unequal country in the world, firmly drawn along racial lines for decades up till today.

The thrust of the musing Hi Mzansi, have we seen justice? was purely about economic disequilibrium in today's South Africa. It was about the intransigent absence of any Economic Reconciliation, which most critics have conveniently ignored and framed as an attack on the judiciary and questioning the Constitution's legitimacy. It was what we all agree are the evils that plague South Africa: Poverty, inequality, and unconscionably high unemployment, especially among the youth.

To reiterate, the mention of the Constitution and the rule of law was only tangential to the extent that the rule of law and the Constitution is foundational and fundamental to how wealth and poverty are arranged and distributed. The natives land act of 1913 is a case in point. Now we have a constitutional democracy. How the Constitution has been interpreted in our courts becomes vital. It is worth mentioning that the courts should get credit for many landmark rulings in favour of the poor to ameliorate the harsh conditions they find themselves in. However, at the end of the day, we are all judged by results. If the result is unsatisfactory after 28 years, must we not have a second look at how we can aid the courts through judicial reform and a reform of the Constitution? Absolutely. The judiciary is not untouchable, and the South African Constitution is not a holy script. What is so difficult to understand about this? Is the Africanisation of the law a swear word?

Ultimately the debate surrounding the article has been like the classic tale of the seven blind men who went looking for an elephant. How they "saw" the elephant depended on where they touched it. The one who touched the tail said the elephant was a giant snake. The one who touched the sides said it was a big wall. The one who touched the legs said it was a big tree. Unfortunately, in our scenario, not many have cared about the big elephant in the room – the subject of Economic Reconciliation and reparations. No one even refers to the main reason the article was written, encapsulated in the quote of the tremendous economic justice fighter Sampie Terreblanche.

I will recap the original article to focus our attention:

"There are excellent reasons why the late Sampie Terreblanche, renowned economist and fighter for justice, kept insisting on a new Truth and Reconciliation Commission focusing on economic justice and reparations. But

obviously, his voice, like other voices calling for economic justice, economic restoration, and economic reparations as essential for reconciliation, has been consistently ignored by those with the power to give effect to these calls."

Are we not doing the same here by ignoring the main point of that article? Selecting small portions and framing them as "attacks" that required a burning at stake? Blinded by fog, are we not gas-lighting the public about the real issue? The real issues are economic reconciliation and reparations, judiciary reform, land, and constitutional review.

Let me briefly observe the South African judiciary and the areas requiring reform. The late Chief Justice of the United States Supreme Court Justice Stephens once remarked, and here I quote:

"It is the confidence in the men and women who administer the judiciary system that is the true backbone of the Rule of Law. It is the Nation's confidence in the Judge as an impartial guardian of the Rule of Law."

The judiciary exists because of public trust and confidence in the system. Judges in most liberal democracies such as ours are unelected. Therefore, public confidence and trust in the judiciary are premised on believing that the judges will be fair, impartial, ethical, and apolitical. The appearance of impartiality is paramount to the dispensation of justice.

That the ascendancy to the ANC presidency by President Ramaphosa saved South Africa from eternal abyss and damnation is hugely unfortunate. Against this backdrop, there was consternation concerning the utterance by Chief Justice Zondo regarding the outcome of the ANC elective conference in 2017. Perhaps there is a need for more, not less, debate on ethics, accountability, and code of conduct for the constitutional court. There is also a need to develop

disclosure rules through a Disclosure Act for all judiciary officers to root out ethics issues.

Let me tell you now for what it is worth. I stick by every word I wrote on that “Hi Mzansi – have you seen justice”. Freedom of speech is part and parcel of the freedom we fought for, gave our lives for, shaken by raw nerves to speak the truth a whole mob was mobilized to interpret the article on the Constitution. Some went off at a tangent in their response, paid agents of the status quo. There was NO attack on the Constitution nor is the Constitution an immutable truth. It was crafted as a compromise and as such we accepted it. That does not make it perfect, which is why we allowed a clause to make provision for amendments. Why else would we allow for amendments if it was holy written. Some jumping on the bandwagon put out nonsensical arguments that I swear by the Constitution as that instrument that guides the parameters of our aspirations. I swear by what it represents and the reason it is amended 25 times indicates that it is not a holy write.

## **Conclusion**

When the President asked to see me about the matter it was a very cordial meeting and we looked for the offending parts and we found it – “Blacks with colonized minds”. I asked why would that be so offensive and pointed out that I received colonial education for a better part of my life and I consciously struggle to unlearn and so should all of us search our minds and unlearn that which propagates colonized behaviour so that we can free the younger generation.

The face of visionless, directionless leadership, of those self-serving in positions of trust, has filled many of our young people with deep despair about our condition and the future of our country. However, our conditions today should not deflect from the truth about the conditions faced by the youth

generation under apartheid, and how they turned those conditions of oppression and despair into a condition of resistance and hope by creating a space for their agency in the ongoing fight for justice, freedom and dignity. It should awaken in all of us that same determination and selflessness, the sacrificial commitment we saw in the youth of the 1976 revolution, because that is what is needed today, now more than ever.

To the younger generation – chart your own way to complete decolonization. We have given you freedom to the extent that we could – your job is to march on until all negative vestiges of colonial era are a thing of the past. We have done our part, the rest is yours. Go on and complete the work – we have given everything to bring us to where we are. You have your struggles cut out for you – every generation has its own hill to climb and I have confidence in you!

Good luck!

I thank you.