

Pius Langa Constitutional Court Oral History Project

Interview 1: 1st December 2011

Interview 2: 17th January 2012

Interview 3: 3rd February 2012

(All three interviews were substantively and substantially edited by the interviewee)

Interview 1:

Int This is an interview with Chief Justice Pius Langa and it's the 1st of December 2011. Pius, thank you so much for agreeing to participate in the Constitutional Court Oral History Project, we really appreciate you taking the time.

PL Thank you, it's a pleasure.

Int Thank you. Pius, I wondered if we could start by talking about early childhood memories and how you think certain events in your life may have configured to actually prepare you for life as an advocate and as a judge, eventually?

PL Well, I was born in Bushbuckridge, a small town in the part of the country that was known then, as Eastern Transvaal. The town is now located in Limpopo. My parents were there temporarily as my father was a pastor, having originated, together with my mother, at iNgwavuma in (KwaZulu) Natal. I have no recollection of the place of my birth because we left Bushbuckridge while I was a baby, travelled up north; my father was busy establishing other missions in places like Messina, Louis Trichardt briefly, Potgietersrust, and Pietersburg. The latter town is now known as Polokwane. I became conscious of things slightly in Messina, as a growing baby. I remember Potgietersrust. We occupied a mission house on the premises of my father's church. The building was also used as a school, but I was too young to be a learner then. I mixed with the learners but I can't say that I got any useful education there, until possibly the last year when we were just about to move to Pietersburg. Then we did move to Pietersburg. It was the big city in the northern Transvaal at the time. I started my schooling seriously then and we were there until 1949 when we moved down to Stanger in Natal. Of course by then I was a growing boy and attended school in Stanger up to standard six. From there I went to Adams College to do my secondary education, that is standard eight, or nine, as it was called at the time. For convenience and to avoid confusion, I will refer to it as Standard 9. That signalled one of the earliest miracles in my life. I am referring to the fact that I won a departmental bursary to study at Adams College at a time when my parents had decided, with much regret, that there was no way I could go on with my schooling as they just had no money to pay for my education any further.

My elder brother Sam (Langa) was training there as a teacher on borrowed funds. So I actually led a somewhat protected life while I was at college. It could be rough but I was protected by the fact that my elder brother was there looking after me. After 2 years at Adams College, 1954 and 1955, I had no option but to look for work, at the age of fifteen and sixteen. Adams College was quite famous the college itself. It was a mission institution established by the church, American Board. We had a progressive principal at the school and quite progressive teachers. It was just shortly before the implementation of the notorious Bantu education system, so I was fortunate in that respect. Our secondary education was under the auspices of the Natal Education Department. Looking for work was the hard part of my life because the fact that I had been born in Bushbuckridge, was endorsed in my identity document, otherwise known as a "dompas", with Bushbuckridge as my home district. Theoretically what it meant was that I had to find work in Durban within two weeks, otherwise the validity of my permit would expire. I would then be subject to be endorsed out of Durban and sent to Bushbuckridge, which was my fictitious home district. Getting work in two weeks was a well-nigh impossible challenge. So there I was, trudging the streets of Durban with my beautiful "merit" certificate, it was a first class pass in standard nine, thinking that employers would be falling all over themselves to employ me, but I found that work was not easy to get. I ended up not looking for clerical work or whatever, but just for any work. 1956 was spent looking for work and struggling with what was called then Native Affairs commissioners, to be allowed to look for work in Durban. You couldn't do that just like that because of the pass laws and the influx control regulations. They hit me very hard. In part there was no work, but the other part is that without a permit one could not even look for work. But somehow at the beginning of 1957, I was able to find work in a factory, a shirt factory making shirts. I spent three and a half years, working in the factory. I don't think I learnt much by way of making shirts because my work was distributing material among the machinists. But it was stable work, except when we were on "short time", meaning those periods when the work was not sufficient for us to work full days. We were weekly paid. At the end of 1960 I passed my matriculation, by private study. At about the same time I found work at a magistrate's office controlled by the Department of Justice as and was sent to a rural place, Impendle, where I worked for nine months. I was then transferred to Harding in the South Coast, my main job being to interpret in court. Of course, I was intrigued by what was going on in court. I could possibly trace my active interest in law and human rights from my work as a court interpreter and as a clerk in the Magistrate's Court at various magistrate's offices. In 1965 I was transferred to Camperdown then Howick, all in KZN until 1970. One advantage I derived from working at magistrate's offices and courts, and participating in court processes, was developing a growing love for law as a means of solving at least some of the problems that confronted our people. I could see things that were happening there: Magistrates and prosecutors dealing with issues, handling court personnel and the people who were accused of crimes and so on. There were things I did not like. The late sixties, early seventies, were

years where apartheid could be said to have been at its height. At its ugliest. Arrests of black people were common, and in the towns in which I worked as an interpreter or as a clerk – these were farm towns as well – I could see how ordinary people, mostly labourers and farm workers were dealt with in a manner devoid of any dignity and were ill-treated. My sense of fairness was in general outraged there was however very little one could do unless you occupied an influential position. Clerks and interpreters did not occupy an influential position; they were junior officials in a system structured to assert and maintain white superiority. The determination grew in me to develop myself to reach a position where I could wield some influence to change the way things were. I decided that I would use the law books and text books at these offices, Magistrate's Courts, to assist me in studying law. And I took my law studies from 1970, studied privately through the University of South Africa (UNISA), starting with the B Juris degree, which I finished in four years. I then embarked on studies for the LLB degree. as I wanted the highest academic status that I could get, and graduated in 1976. By then I had left Howick to work at Stanger and later Ndwedwe, where I served as a prosecutor and later as a magistrate. At last I was in a position where I could influence some of the things that took place at the magistrate's office. It was however not an easy time. It was at that time just prior to and including 1976 when my younger brothers Ben (Langa), Mandla (Langa) and Bheki (Langa), were involved in student politics. They were members of students' organisations and our home at KwaMashu became a hotbed of their and their friends' activities. Ben (Langa), a contemporary of the likes of Steve Biko, Barney Pityana, Abram Tiro, Strini Moodley and others of that era, was a serious proponent of the Black Consciousness philosophy. He loved the arts, wrote poetry and was crazy about music of which he had a huge collection of long-playing albums and involved himself with performing groups. Needless to say, Ben's (Langa) activities and those of Mandla (Langa) and Bheki (Langa) attracted the attentions of the apartheid government's security police and they were picked up from time to time, detained and subjected to spells of detention without trial for various periods, which included torture, solitary confinement and various kinds of maltreatment. My elder brother, Sam (Langa), was by this time teaching also at various places and spent very little time at our KwaMashu home. He was faced with problems connected with the implementation of Bantu education, which he had to teach. He was a member of a teachers' organisation called NATU, Natal African Teachers Union, and he was its secretary. He was also a vibrant rebel against Bantu education. I know that one of the things he and his fellow teachers were discussing, was the question whether it would be more useful to black learners for teachers to teach the poisonous stuff of Bantu Education or for teachers to opt out and boycott the entire education system. But he continued teaching and was transferred to various other schools. I admired him very much and learnt to appreciate the dilemma teachers like him found themselves in. I would listen to the debates and discussions they had and sympathised immensely with their frustrations. Sam (Langa) passed away in December 2003. Just to complete this part of the story, I should mention that

we had two sisters in my parents' household, Queen (Langa) and Thembi (Langa). The latter passed away in July 1992.

I was generally not at our KwaMashu home as I worked at the various places I have mentioned. Our father had passed away in 1972 and the keeper of the house was our mother. She, it was, who bore the brunt of the numerous abusive visits by the security police who were looking for my younger brothers, particularly after they had fled into exile. Before my brothers left and while Ben (Langa) was staying at the house, my mother had found a way to deal with members of the security police who came to search the house looking for incriminating material. They would knock loudly, usually at about 2am. As soon as she heard them arrive, outside, she would quickly collect materials that she found in the boys' room and set about hiding them. This was stuff that she suspected would get all of us into trouble. We used a stove in our township house, a bigish Welcome Dover coal stove, and she would shove the material into the stove compartment where fire is made. The police would search everywhere, but amazingly never inside the stove. My mother eventually passed away in February 1984.

For my part, I was an activist in the context of my work with the department of Justice. I was instrumental in establishing an organisation of civil servants in KwaZulu-Natal, just to be able to do things together, cohesively, and to fight things we did not like, and to improve whatever we could. But in 1976, as I said, I completed my LLB privately. My aim had always been to go out of the civil service and I resigned, I joined the Bar in Durban and practised as an advocate. I continued in the practice of law as an advocate until 1994 when I was appointed to the Bench as a Constitutional Court judge.

While all that was going on I had a family life. I married my wife, Thandekile (Beauty Langa) , in 1966. She was a nursing sister and she gave me a lot of space to move around, to play my role as, in particular, a political activist, because that demanded that I go to conferences and workshops trying to organise resistance to the apartheid dispensation. And we, during that time, were growing as a family. Eventually I had six children, two girls, Phumzile (Langa) and Phindile (Langa) and four sons, Vusi (Langa), Sandile (Langa), Phumlani (Langa) and Ndabo (Langa). Phindile (Langa) and Ndabo (Langa) are twins. Vusi (Langa) died in a car accident in 2004.

I hark back to those times and to my grandchildren now, and realise how much of parenting I have missed out on. I am now experiencing the fun it is to play with my grandchildren and to avail myself to them. My activities, political and otherwise, were actually unfair on my family as I was most of the time busy with my work. This is in particular the time when I was practising as an advocate, that is, from 1977 until my appointment as a Judge in 1994. There was never a time when one was not busy, running around helping to get political demonstrators out on bail, intervening in violent confrontations

between political adversaries and between political demonstrators and the police, holding consultations in prisons and in police cells with activists who had been arrested and detained and organising and attending funerals and memorial services for activists who had been killed in conflicts with the police, or as victims of third force activities or in political and other violent confrontations. Weekends and public holidays were working days. I remember at least one Christmas Day that I spent at a police Station negotiating for the release of demonstrators who had been arrested. Over and above these, there were numerous meetings and consultations to attend to, some at my home. I dare say that had I not been fortunate enough to be married to my wife, I would not have been able to get involved in the activities I volunteered for. My wife however brought up my family, she brought up my children, while she kept the home fires burning while at the same time she was working as a nursing sister. Our activities took us all over the show, sometimes travelling together with her; at all times though I had the guarantee that I have a home to come back to. Except for my absences, we were a very close family. Can we pause?

(Interview stops and then resumes after a break)

Int Pius, you were at the point of telling us about how you had become involved in legal activism and you mentioned being married to your wife and she'd allowed you to pursue these activities, but then often they impacted on family life....

PL ...which was of course unfair on her, but she let me do it. It was fortunate that she shared my interests. We experienced the time of security police activities, whose members used to come to my parents' home, search the house, looking for banned books and literature, particularly after my younger brothers had left to go abroad. Ben (Langa), who came after me, died in politically tragic circumstances in 1984. He was killed and we, as a family, have not yet come completely to terms with this loss. His assassination was later to feature in the proceedings of the Truth and Reconciliation Commission (TRC). The relevant material forms part of the TRC records.

Mandla (Langa) and Bheki (Langa) were hounded into exile by the special branch. Fortunately they came back, but after many years in exile, when all political exiles were enabled to return. I should have mentioned that during his student days at Fort Hare, Mandla (Langa) had, like a lot of other university students at the time, walked out of Fort Hare university during student protests. Apart from his other activities, Mandla (Langa) is a writer and has produced a number of novels. He has a family and is a former Chairman of the Independent Communications Authority of South Africa (ICASA) and Chairman of Multi-Choice. And Bheki (Langa), the youngest. Bheki (Langa), the quietest, I suppose that is the lot of youngest children in a noisy family. He is presently South Africa's ambassador in China. He studied

Economics in Moscow (PhD) and has a Masters Degree in Economics from the University of Manchester. We see him from time to time when he is on leave.

Mandla (Langa) and Bheki (Langa) went into exile, separately, at about 1976. Ben (Langa) stayed in South Africa. As a student leader, Ben (Langa) carried on his activities from Fort Hare University where he studied and at Natal University. He did not complete his degree studies at Fort Hare, he and others walked out of the university, as did Mandla (Langa) later, during students' protests there. As a law student at Natal University, Ben (Langa) resided at the Alan Taylor residence where mainly medical students stayed. He however pursued studies in law, a path that was to later see him doing his articles in order to qualify as an attorney. When he died in 1984, he was working with a firm of attorneys in Pietermaritzburg. I'm just cleaning up before I talk about my practice as an advocate.

When I commenced my advocate's practise, I tended to be with political activists. Some of the meetings we attended were follow-ups from our clients and the work we did representing them. I helped in establishing trade unions, residents' associations and community organisations. It was a very active but also a very painful time. In general my work in court also brought me in contact with clients who were victims of the system. It was my work to support them. There were other advocates and attorneys with whom we worked together. I was involved in quite a number of political trials. As junior counsel, I would quite often work with senior counsel, for example, George Bizos, Ernie Wentzel, Ismail Mahomed, Denis Kuny. The type of cases I got involved in ranged from treason, terrorism, sabotage, murder, public violence. Some of the clients were people who had gone into exile and had come back on Umkhonto we Sizwe (MK) secret missions. Some of our clients, my clients, now occupy high political positions. For example, the current Minister of Justice, Jeff Radebe, Penuell Maduna, a former Minister of Justice, Nceba Faku, former Mayor of Post Elizabeth, Tony Yengeni, a leading member of Parliament and others. These are people who were charged under apartheid's notorious network of security legislation and regulations. The charges were of course politically motivated and structured with the intention of maintaining the oppressive, undemocratic and unjust governmental system. It was almost impossible to find loopholes through the security laws and our clients almost always ended up convicted and sentenced to many years in prison. More often than not, we considered ourselves, and our clients, fortunate to escape the death penalty, even though from time to time I would visit death row for consultations with condemned prisoners in an attempt to have their sentences changed to something else, or to prepare for their appeals. I cannot imagine any experience as depressing as that. It was during that time that I got involved with lawyer organisations, both here in South Africa and internationally. Internationally we were affiliated to the International Association of Democratic Lawyers. They would have conferences in places, which it was quite nice to leave South Africa for a short time and attend those

conferences and make a contribution there. and we established our own organisations. I was a member of the Democratic Lawyers Association (DLA) an organisation of progressive and democratic lawyers in KwaZulu Natal. Later, I became a founder member of the National Association of Democratic Lawyers (NADEL). I was its President for some six years, and that of course entailed a lot of movement, organising, encouraging lawyers to be part of the struggle for justice and democracy. Our principles included fighting discrimination, poverty, disempowerment and homelessness and we rendered support to people who found themselves victims of the apartheid system. NADEL (National Association of Democratic Lawyers) affiliated to the United Democratic Front (UDF) whose members were engaged in demonstrations and other activities designed to make the apartheid system ungovernable. My fellow members and I had to be available to apply for bail and try and generally keep them out of jails. I remember a number of Christmases, Christmas days, where I could not spend Christmas with my family but had to be up and down, going to police stations, trying to arrange releases for people in those circumstances. In 1994 oh, well before 1994, we had special activities, which deserve to be mentioned. One was the campaign for the release of Nelson Mandela and other political prisoners. It was called the Release Mandela Campaign. I and other members of NADEL (National Association of Democratic Lawyers) were very involved with that. We used to meet, discuss strategies, and how to make our representations to government. And at some stage one of the highlights of my activities was when I led an executive committee of NADEL (National Association of Democratic Lawyers) to go and see Nelson Mandela in prison. We had discussions with him there. That was close to the time when he was going to be released. But it was both exhilarating and humbling being served a meal by Nelson Mandela, the prisoner. He was using this portion of the house and he served us with food. When we offered to help with the catering, he refused saying we should sit down, "you are not a prisoner, I'm a prisoner" he would say. The visit itself was inspirational at that time. Not too long thereafter, the day for his release arrived. It was a highlight of my life and of the struggle in general when Nelson Mandela marched out of prison. And there I was, walking behind the great man, with a crowd of friends and comrades who had come to escort him out of Victor Verster Prison. That was a magical moment as he moved through the welcoming crowd to the City Hall, and as he made his speech there. The whole country was agog; we had never seen that kind of excitement as when (Nelson) Mandela was released. I will always be able to say, I was there. Another highlight of my life had come before then. That was taking part in preparations for the release of Nelson Mandela and other political prisoners. We had formed ourselves into a committee to look into every detail regarding the releases, from which cars they should be driven in to where they should be taken to and how they should be looked after.

Politically, the establishment of the United Democratic Front (UDF) in 1983 was an historical occasion of great significance. The venue was Mitchells Plain in Cape Town. As I have mentioned, NADEL (National Association of

Democratic Lawyers), my lawyers' organisation was an affiliate of the UDF, and it was exhilarating just being there, and witnessing the birth of this very important movement in our struggle against apartheid oppression. It was exciting to listen to people speak about freedom, rights and justice as something that was not only attainable but close. The central issue, apart from the general struggle against apartheid oppression, was opposing constitutional amendments that would extend the then racist parliament to a Tricameral parliament, still leaving out black people, Africans, but to include in the scheme Indians and Coloureds, etc. This had been an attempt by the regime to extend and maintain separation at a time when we should have been whittling it down. The idea was that the co-option of Coloureds and Indians into a separate parliament, would help lessen the ever increasing pressure on apartheid South Africa to achieve a democratic constitutional state. As it happened, the birth of the UDF (United Democratic Front) was one of the most important developments in the struggle to defeat apartheid oppression. So I can also say I was there. I listened to the speeches, of leaders like Allan Boesak, Trevor Manuel, Archie Gumede and others. I chaired one of the sessions when it came to electing presidents of the UDF. That is etched in my memory as one of the experiences I was very proud to be part of. The eighties to the nineties, that is the time when the activities of the UDF (United Democratic Front) were at their height, protests, demonstrations, organising, urging for the release of the imprisoned leaders, political prisoners, including and culminating in the release of Nelson Mandela. They were exciting times, times of activity in the political and in the legal sphere. They were also painful times because the system was very harsh with those who were arrested, detained, charged under a web of security laws. States of Emergency with harsh regulations were declared and many were detained without trial and some of them kept in punishing conditions of solitary confinement. Others died, were killed, while in detention. There was also activity coming from outside the borders involving members of Umkhonto we Sizwe who were on missions in South Africa; some of them were arrested and we had to be available to see what we could do to save them from the dire consequences of arrest in those circumstances.

During that time also, there was what I would call activity of an academic nature. The time of the UDF (United Democratic Front) also meant that the hopes of the people were raised. Hopes of a new, just and democratic South Africa. Some of us took part in conferencing under the auspices of some of the universities. One of the institutes was the Centre for Applied Legal Studies (CALS) established by Professor John Dugard at the University of the Witwatersrand (Wits). Another was the Centre for Constitutional Studies at the University of the Western Cape. There were others as well, which made themselves available and supported initiatives to study and make proposals regarding a new constitutional dispensation for South Africa. We engaged one another in conferences where we would discuss, together with constitutional experts in South Africa and abroad, a future for South Africa. I was at the time a member of the ANC constitutional committee, and in that

capacity I and others would meet with ANC members in exile who were part of that committee. These were ANC members who had gone out of South Africa, who were not able to come back. In our meetings, there was a lot of discussion about what a future South Africa should look like. So when during the nineties, negotiations started in earnest, after the release of (Nelson) Mandela, there were frameworks and proposals of the basic structure of the new South Africa. A characteristic of the time is that while all these things were taking place, and while we were losing some of our best and closest friends and comrades through killings, assassinations and harassment of the first order, one never thought of stopping or playing it safe...

End of Interview One

Interview 2:

17th January 2012

Int ...with how your involvement came about with the National Peace Accord. You had spoken about the violence of the eighties and the early nineties, particularly in terms of your involvement as an advocate defending people, but in terms of the National Peace Accord, if you could talk about how that came about? And then if we could talk about your role in CODESA and from there your appointment. Would that be a good trajectory?

PL Yes, I've got to jog my memory, because some of these things are things I seldom think about. We have been moving all the time, moving to new terrains. Are we rolling?

Int This is an interview with Justice Pius Langa, and it's the second interview, and it's the 17th of January, 2012. Pius, thank you so much for agreeing to participate in the Constitutional Court Oral History Project, we really appreciate the generosity of your time.

PL Thank you.

Int In the previous interview, we had spoken about...we had stopped at the point where you'd been speaking about the violence of the 1980s as well as the violence of the 1990s, and helping comrades during that period. I wondered whether you could talk about your involvement in the National Peace Accord, how that came about?

PL I was based in KwaZulu-Natal. It was called Natal at the time. That is where the focus of the violence was although there were pockets of violence in other centres of South Africa and there were a number of people working to deal with that violence virtually throughout the country. But in KwaZulu-Natal we had to...we were engaged on a daily basis, with trying to ameliorate incidents of the violence, which was politically fomented. Township dwellers, like myself at the time, were very involved in a very real sense. Every day school children were being attacked at their schools, chased around and assaulted or killed by hostel dwellers. My children were among those who had to run the gauntlet, trying to escape those attacks by hostel dwellers. The attackers were grown men, mostly hostel dwellers, who would march through the township streets and attack homes. Mothers sometimes dressed their sons, our boys, in girl's clothing, to avoid them being collected and being forced to march with the hostel dwellers, their attackers. It was not only in the townships and informal settlements but the attacks were taking place in rural areas as well, in the South Coast, right down to Port Shepstone and beyond, in the north coast and in the Natal midlands. Foremost among the leaders of the UDF (United

Democratic Front) who sought to find solutions to the violence and to bring about peace, was Archie Gumede. He was an attorney who had a long history of being harassed by the apartheid regime. In the context of the violence, he devoted his life and his law practice to... to trying to intervene in the violence and to bring about justice and democracy. He travelled through the province meeting with people who could have influence in leadership positions. His stance was unpopular with some of the comrades, because he believed there should be ongoing discussions among the warring groups. If peace was to be achieved. Archie Gumede is hardly ever mentioned in the accounts of the struggle. But the truth is that he played a major role and sacrificed a lot of his time and his life to try and ameliorate what was happening then. He was elected as one of the co-presidents of the UDF (United Democratic Front) when it was formed, together with Albertina Sisulu.

Int That was 1983?

PL In 1983.

One of the strategies which later came to the fore was the National Peace Accord. There were good people who did their best to try and stop the violence. Some were colleagues, political activists, lawyers, members of the clergy, women's groups and many others of all persuasions. It was decided that a peace accord should be entered into. It would bring together all the parties, including the warring factions. The detail escapes me now, but it became a nationwide structure which played a very important role in pursuing peace and a cessation of hostilities. Its advantage was that it was able to have and maintain branches and tentacles in most parts of South Africa. There were men and women who were working almost exclusively with the National Peace Accord. One of the ways in which I became involved with it was as a member of the National Police Board, a structure that was designed to deal with the culture of members of the police force. This was in preparation of a police force for the future. The thing is, most of the violence, or a lot of the violence, particularly in KwaZulu-Natal, came from the police. Instead of being instrumental in stopping the violence, they were fostering it. They were part of the apartheid army against members of progressive organisations. A branch of the police that was particularly embroiled and complicit in the violence was the KwaZulu Police. They were a sinister creation, which was part of the KwaZulu administration.

Int Is this to do with the Third Force activities that were uncovered?

PL These were part of the Third Force activities. People, victims of violent attacks would run to police stations to seek their intervention but they would not get assistance. There were squads which devoted their activities to beating people up, and that was their contribution to the promotion of violence. "black on black violence" is how these incidents were commonly

referred to in official circles and news agencies. In reality most of it was state-inspired violence and thousands of lives were lost in its wake. We got to know that there were groups of people who underwent training in Third Force activities at the Caprivi Strip under the auspices of the South African Defence Force. They became a very potent element in further fuelling the violence. A number of people, lawyers, activists, church people and researchers, like Mary de Haas of the University of Natal, did great work exposing these nefarious activities. She and a few others became experts on the incidents of violence in KwaZulu-Natal. Working through NADEL (National Association of Democratic Lawyers), lawyers created branch offices at particular localities; NADEL (National Association of Democratic Lawyers) established offices at Empangeni and in Port Shepstone, flashpoints of violence, to facilitate quick local responses and intervention at the first sign of trouble. Activists and lawyers were employed to work at these facilities. As time went on and the violence escalated, at both the national and local levels, discussions were held to fashion mechanisms to ameliorate the worsening situation. These discussions involved the UDF (United Democratic Front) leadership, members of the police, representatives of the Inkatha Freedom Party, officials of the Department of Justice, the clergy, researchers and violence monitors, among others. The result was the creation of a structure, the National Peace Accord. Central to this agreement was a code of conduct and protocols established hopefully to be observed by warring groupings.

The failure of the police to stem the criminal acts of violence and to intervene positively and effectively naturally caused widespread dissatisfaction. They were criticised for the manner in which they worked; their role being seen generally as lacking impartiality and neutrality. It became widely accepted that they were an extension of the apartheid state's war against those who opposed and resisted apartheid's oppression which had manifested itself in the widespread violence. This conduct was blamed partly on the indoctrination and the culture to which the police were subjected. In recognition of this, the National Peace Accord provided for the creation of a National Police Board, the idea being that the Board would have meetings to make recommendations about aspects of police training and education. The idea was to imbue them with the sort of ethic and culture which we thought the police should have, consonant with the values of the new constitutional order. This was to try and do away with the rough edges, the bad habits which the police had developed or acquired under apartheid...I together with a number of other lawyers, human rights and political activists, academics and a number of high-ranking police officers were appointed as members of the Police Board. The Board met from time to time and we would discuss how the police should behave in a variety of circumstances. We would write stuff about how to make the new human rights culture a reality and this would be sent to leaders of the police force. The National Peace Accord lasted for a number of years. Its effect was quite significant because even when the first democratic elections were held, agreements that were made in terms of the Accord served as examples that

helped in laying the foundations of the codes to be followed by participants in the elections.

Int I'm also wondering, Pius, in terms of your involvement in the BLA (Black Lawyers Association) and NADEL (National Association of Democratic Lawyers), how that came about, and if you could talk specifically about the challenge of using law as an instrument of social justice during apartheid?

PL When I was admitted as an advocate in Durban...

Int This was during the early 19...?

PL That was 1977. Progressive lawyers had constituted themselves into an organisation in Natal, and it was called the Democratic Lawyers Association (DLA). It was dedicated to fighting apartheid, to bringing about democracy, to assisting people who got into trouble for acts of resistance against apartheid oppression and harassment. I joined the organisation and in time became an office-bearer in it. We had projects to assist and to defend people, both in the townships, the rural areas and in urban areas. The DLA (Democratic Lawyers Association) operated in Natal. There were other similar associations doing similar work in other provinces. There was one in Cape Town and another in the Transvaal area. Parallel to these organisations, whose membership was predominantly supporters of the Freedom Charter, was the Black Lawyers Association (BLA). This organisation concentrated on developing and improving the lot of black lawyers primarily. As an organisation, the BLA (Black Lawyers Association) was less overtly political. Their forte was in enhancing the education and training of black practitioners.

The legal system under colonialism and apartheid in South Africa was unashamedly and blatantly skewed in favour of the white population and against the majority blacks. These inequities and inequalities were glaringly and painfully obvious in most walks of life, no less so in the courts and in legal practice. If you were black, education, and legal education in particular was extremely difficult to acquire. Justice had, as it were, a white face, and that too was predominantly male. Just as the courts were manned by white people, legal practitioners were likewise, save for a very few exceptions, drawn from race groups other than black. The lawyers' organisations I have mentioned were accordingly not large but represented a growing population of practitioners who were not necessarily white. It was at about this time (the late 70's through the 80's) that another organisation, the Lawyers for Human Rights, was born. It was a progressive organisation also dedicated to the fight against apartheid and for democracy. Its membership was predominantly white, that being a reflection of the fact that white people constituted by far the biggest racial group among lawyers.

Formation of the National Association of Democratic Lawyers (NADEL)

We came together and decided that we should form a national organisation and that we should amalgamate. The notion to amalgamate was laudable but in the end proved to be impractical and it failed. There were similarities among the organisations and that is what had encouraged us to want to form one giant association of lawyers covering the length and breadth of the country. Just about the only thing that brought us together was our stand against apartheid and fighting against the poverty of the people. But we succeeded in co-operating. At one time, a short time, after forming the National Association of Democratic Lawyers we were all together, but after a few months or so, we split again. Black Lawyers Association went their own way. Most of those who came along with me, and Dullah Omar and people like that, were described as charterist people who believed in the Freedom Charter and the objects of the Freedom Charter. And that's how really we all went apart. At the time when the UDF (United Democratic Front) was formed, those who were with us were people who subscribed to the Freedom Charter mostly. But that was not the be-all and end-all. The thing that bound everyone together in movements and things were fighting the injustices and fighting for democracy. I think you'd find those strains in most of the activities of that time. My colleagues, those who actually stayed in the National Association of Democratic Lawyers, were those who actually believed that the way to go was the Freedom Charter way. And we were more involved with demonstrations, assisting people who were demonstrating, assisting them to free themselves to get out. We had a pro bono defences for them. Where we would not charge them at all, and so on and so forth. But the BLA (Black Lawyers Association) also developed separately in its own way. The role of the legal practitioners, like ourselves, and those in the Black Lawyers Association, became very important, also in formulating strategies when CODESA came along, and the multi-party democracy talks came along. Some of their members, some of our members became leading participants to assist in giving legal advice, and just show the way legally how things had to proceed. The background of most of us, particularly in NADEL (National Association of Democratic Lawyers), was that background which involved members of the ANC constitutional committee. Although when they came back from exile those members, or some of those members, did not want to identify themselves as the one on the other group. They were trying to bring two groups together, but that strain remained to now. We still have it.

Int I'm very curious, Pius, operating during the 1980s, where and how did black lawyers, whether it was BLA (Black Lawyers Association), NADEL (National Association of Democratic Lawyers), how did they then function in relation to what was perceived as white organisations, that were also having a human rights law, or public interest law framework?

PL The constitution of NADEL (National Association of Democratic Lawyers) did not state that it was a black organisation. It was formed as a non-racial organisation and operated as such. That is the platform on which we built our

struggles and our activities. That in fact was one of the differences with the BLA (Black Lawyers Association) whose focus was perceived to be on black lawyers. NADEL's (National Association of Democratic Lawyers) membership was, in the nature of things, predominantly black but there were also white members; and members of all racial groups. Then there was the Lawyers for Human Rights, a predominantly white human rights, lawyer's organisation. Its membership comprised of white progressive lawyers, although there was a sprinkling of blacks. There was co-operation among these organisations. There were members of LHR (Lawyers for Human Rights) who wanted to have and in fact held dual membership of NADEL (National Association of Democratic Lawyers) and LHR (Lawyers for Human Rights). There were/are other institutions, notably the Legal Resources Centre (LRC), and many of our members worked there. The fact is that there was a large measure of co-operation among lawyers' organisations and institutions working against a common enemy. BLA's (Black Lawyers Association) education projects served a very good purpose in the training and development of black legal practitioners. NADEL (National Association of Democratic Lawyers) on the other ran a few programmes designed to train practitioners in judicial work.

Int I'm wondering at what point, and how, your involvement came about in terms of the Constitution making process, in terms of CODESA?

PL Way back in the eighties, with institutions like CALS (Centre for Applied Legal Studies), and other institutions, I also had a research unit. Firstly at the University of Natal and then at University of Durban Westville. And there were a number of us who had the research units. Dullah Omar had one, the Constitution...what it was called (*RULCI – Research Unit for Legal and Constitutional Interpretation*)...but it dealt with the Constitution. It's still there at University of the Western Cape. So we had a number of these research units. And they became a springboard...my research unit became a springboard to assist people, our practitioners and our activists, who were lawyers, to leave the republic and meet with ANC members abroad. That was now within the...using the vehicle of the ANC constitutional committee. I would be central in assisting them, getting the funds and assisting them to go to Zambia where we would...Zambia or United Kingdom, to meet with other ANC lawyers who were in exile. So we had a number of those trips, a number of those conferences even within the country. We staged conferences where we discussed important issues, which would shape the face of constitutional development in South Africa. I mentioned CALS (Centre for Applied Legal Studies). CALS had many of those conferences. They staged them.

Int This was under John Dugard?

PL CALS (Centre for Applied Legal Studies) was started by John Dugard but this continued even after John Dugard had left. People like Dennis Davis and there were others as well. Then the discussion about the Constitution, what

South Africa should be like, started in those little groups and in those conferences. But most of us were engaged in those kinds of discussions, particularly within the confines of the ANC constitutional committee. So we talked about it. When Mandela was released, we were there, I mean, in those kinds of groups. So it was natural that we would form groups to support firstly the talks about talks, to support the discussions around constitutions and so on. And when the focus shifted onto actual negotiations and constitution-making, some of us found ourselves in groups that made it their business to make proposals concerning a democratic constitutional order. It was natural for members of these groups to be involved in visits to the ANC in exile and to engage in discussions regarding a future South Africa. I participated in many of those discussions and conferences, in particular as a member of the ANC constitutional committee.

Int The Committee that you were involved in, what was your specific task in terms of the Constitution making process?

PL With regard to the Constitution making process? I was involved at an earlier stage during the CODESA stage. There were groups which specialised in different aspects or themes, but there was a lot of shifting around too. One did not stay in one group. As a legal person, that was recognised and I would find myself more often than not busy with stuff related to that.

Int Pius, I wondered, in terms of the need for a Constitutional Court, I wondered whether you could talk about what you understood as the basic premise for the need for a Constitutional Court in South Africa?

PL The basic premise for the need for a Constitutional Court was, primarily, the fact that South Africa was embarking on a radically different direction from the past. There would be a new Constitution based on values entirely different from constitutions during apartheid and colonialism; a Constitution enshrining a Bill of Rights as a cornerstone of a new, all inclusive democracy. The legal and court systems in the old South Africa had failed to win the respect and esteem of the people. They had no legitimacy, based as they were on a discredited system. Accepting that the entire court system could not be swept completely aside, an effective response to all this had to be a new Court that would be the final guardian of the new Constitution. It made sense also for that Court to come into being simultaneously with a new system or procedure for the appointment of the judges. It would be a system that would have regard to the changed circumstances and ensure that the new judiciary would be one that is imbued with and subscribes to the new culture.

The scenario therefore was that a new mechanism to recommend the candidates for appointment as judges had to be devised. That's how the Judicial Service Commission came about. It was going to be an independent

body comprised of different disciplines. And the test was going to come with the establishment of the Constitutional Court. And because it was a new Constitution, and the old system had been discredited, it was more or less agreed unanimously that there had to be a new Court, a Court which would have all the characteristics that we thought a Court should have; a Court in the new South Africa. The agreement also was that the other courts had to remain. It so happened that it had to have...it was going to have eleven judges, but cases are going on all over South Africa and thousands of people appear in courts. So that Court, it was envisaged would be the highest Court in the land, and its function would also be to develop this culture of justice and democracy throughout South Africa. And making it the highest Court, of course, means that appeals, in one sense or another, the appeals judgments would influence all the other courts. So that is how it started.

Int Thank you for that, Pius. I wondered whether you could talk about your nomination, how that came about, and how you received the news, perhaps from Mr (Nelson) Mandela?

PL Yes, that was an interesting time. Of course it became known when nominations were open organisations and people could nominate who should be the judges of the Court. In terms of the Interim Constitution. the President of the country had to appoint the President of the Constitutional Court. President Mandela appointed Arthur Chaskalson to be the first President of the Constitutional Court. In terms of the Interim Constitution, four other judges, who were sitting judges in the old courts, would be appointed. Those four judges were indeed appointed by the President. They were perceived to be very progressive judges, whose records indicated that they subscribed to the culture and principles of the new constitutional order. That left six vacancies to contend for. The list of nominees was long, in the hundreds. This was whittled down, as I recall, to about a hundred and thirty-three, and then down again, until only about twenty-eight were left. At this time we already had the Judicial Service Commission. My name was there. But, you know, when we had our conferences, discussing our proposals and suggestions concerning the shape and structure of a Constitutional Court, or the shape and structure of a judiciary in the new South Africa, the discussions were quite academic. If I had to write a paper, and I did write a few (articles) about this, imagining what would be the best model for a democratic South Africa, there I did not imagine that I would also be there as a candidate or as one of the judges. It was just an academic exercise about what would be the best model. Suddenly I found myself among the more or less twenty-eight nominees who were called to come in to be interviewed. The interviewing process itself was a rigorous exercise.

Int This was before the JSC (Judicial Service Commission)?

PL Before the JSC (Judicial Service Commission). The JSC (Judicial Service Commission) was chaired by the Chief Justice of the time. Arthur Chaskalson was there as a member of the JSC (Judicial Service Commission). The interviews were held at the Civic Centre of Johannesburg, and the interviewees would go in one by one. I do not have a clear recollection of what went on there except that I was required to deal with the issues, the questions as they were put to me. I do not recall experiencing a strong sense that I must be appointed; I had a lot of respect for my colleagues who were being interviewed there. But I was very proud and it came as quite a high point in my life when I was told that I had made the short list that was recommended for the President to make his final selection of the six judges.

Int Pius, I wondered who broke the news to you and your memories of that experience?

PL I think it was actually Arthur Chaskalson who phoned me, and there was a lot of excitement. Particularly when he convened the first meeting of members of the Constitutional Court. We met as colleagues. I think some of us were overawed by the whole experience. Certainly I was. One of the questions I had been asked, for instance, during the interview, was what I saw as the role of the Constitutional Court? My answer had to do with human rights, to bring about a culture of human rights and I think I spoke of decades of violations of human rights in South Africa. I may have mentioned the need to restore the dignity of the people whose rights had been severely violated by the apartheid system. To bring about equality and freedom. That would have been my answer, just thinking back to that time. And then a follow-up question was, do you think one court can do that? And my reaction there, my response there was, I actually think the Court would be swamped because of the degree of injustice that had engulfed our people. Because of the need, there would be many people wanting to come and knock on the door of the Constitutional Court to have their rights, to pursue their rights. (Arthur) Chaskalson's response to this was to ask me if I did not think that with strict rules of access this could be managed. I was sceptical because of what I saw as the gap between the corrective measures that we could take and the enormous responsibility that was being thrust on us. But it was a matter of great pride to me - not unmixed with apprehension - that we had been chosen to bring about these huge changes, to deal with these very difficult issues in the early days of South Africa's constitutional and democratic development.

Int Pius, before we go on to the first meeting and your memories of that first meeting, I wondered whether you could reflect on how your family...because you had spoken a great deal about the sacrifices your family had made in the first interview...I wondered whether you could talk about how they received the news of your appointment as a Constitutional Court judge?

PL

Ja. Well it would be family and friends. I had been travelling throughout the country trying to put out fires here, there, everywhere, being involved in long trials and short trials, significant trials, and trials which were significant possibly only to the people concerned. My family was seeing very little of me, and that was part of the reason that I was sceptical about the future ability of the Court to actually stem the tide, and be accessible to people who needed help. I had a very devoted partner, who sought nothing for herself but looked after the family, my children, and made sure that when I leave home too, I was reasonably equipped. I had peace of mind, not worrying over much about what would happen with the children, with her. She was independent and very proud of whatever achievements I had at that time. She trusted that we would make our way somehow and although she went through spells of worry that our luck might not last forever, she was generally confident that nothing but good would come to us. In 1981, I lost one of my best and closest friends, Griffiths Mxenge, an attorney who actually supported me when I went to the Bar. He was cruelly and brutally murdered by agents of the "system". His death in 1981 left a huge void in our struggles. (Griffiths) Mxenge had been an experienced and courageous campaigner for liberation, an outspoken worker for the ANC even though the organisation was banned and operated in exile. He undertook much political work including the legal representation of people charged with political offences and other victims of apartheid. He was the father, as it were, of progressive civic and residents' associations, particularly in the townships, and gave unstinting support and assistance to them. After his death, his wife Nonyamezelo (Victoria Mxenge), who was also an attorney, took charge of his practice and its activities. I helped support her in the same way as I had worked with her late husband, and she developed into one of the finest attorneys in support of the struggle. Barely four years after (Griffiths) Mxenge's death, she (Nonyamezelo Victoria Mxenge) was also attacked, at her home and butchered to death by apartheid's agents. I must mention that there were others in our townships, including some who were very close to me, lost their lives through violence, third force activities and misinformation by apartheid's agents. I count my late brother Ben (Langa) as one of those unfortunate victims. Some of the the people close to me would ask me whether I realised the dangers around me when friends and colleagues close to me were killed so brutally. Did I not realise that I was also possibly in line to meet the same fate. I had no proper response to that, except to say one had to do what had to be done. In that time, one was simply grateful if there were other people who were going in the same direction, who supported one. My family were apprehensive that anything could happen. But we were in what one may call a war situation. You would get up in the morning and go to work and were thankful if you do come back quite late, sometimes in the early hours of the morning. You would get back and get ready to go again and again and again. That was the life, and without the sort of support that I got from home, from my wife, and the children, supporting in their own way – they were small. She brought them up. I keep saying that I'm only discovering now how great it is to play with young children, and that's the experience my grandchildren are giving me. My own children were brought up by their

mother, as I have said. The fact is, without that that kind of support, I could not have done anything.

Int Pius, thank you for sharing that very emotional moment with me, I appreciate it....I wondered whether we could talk about your memories of that first meeting, I understand there was a long agenda and I wondered how meeting your colleagues, and your memories of meeting some of them perhaps for the first time?

PL Yes. It was a strange meeting actually, because firstly the premises where we were, this was rented premises. The equipment, and talking about seating arrangements and furniture and so on. We were much better it was a little later than when (Arthur) Chaskalson himself started and he went into a bare room with one chair.

Int And a huge safe (*laughs*).

PL Yes. Yes, and because he had to dictate to his secretary, he would walk around the room in his chambers, and the secretary would sit on the one chair. When we came together, it was more or less more organised, but there was an air of excitement, of being together, and the warmth and sense of collegiality. Already during that first meeting, Colleagues would just chip in with suggestions about how things should be done. These were helpful suggestions and we all felt we were included and had a part in planning the life of the new Court. This was a new family, and there was a warmth, a helpfulness about it. Our first set of Constitutional Court judges were people coming from different directions, different backgrounds even, different personalities. Some were hardened practitioners in court, others were outstanding academics. Of course people don't change their personalities; but each one brought what they were into that first and subsequent meetings. It was a coming together of hardnosed practitioners as well as some whose approach was diplomatic and sensitive. Each one brought what they had, practicality on the one hand and warmth on the other. Advocates, for instance, generally, are known to be very individualistic. We develop that because you work alone actually and you are responsible for your work. But there seemed to be an unwritten agreement that we are all putting bricks together in building something quite astounding. Something exciting, something which would have to last for decades and decades and decades. One thing we were very much aware of, and that came out during some of our first cases, including the certification case, was the real meaning of our judgments, the responsibility of taking part in those judgments. What was going to be the role of other people who came after us? How would they use those judgments? And what was the essence of what we're doing, laying those kinds of foundations. There was that sense of responsibility that you are actually building something which must last for a long time. And we actually talked about those things, you know. Not at the first meeting perhaps, not at subsequent meetings, but as we went

along. But I would say one abiding memory that I have was the respect which those participants in that first meeting, and subsequent meetings, the respect and helpfulness they paid to each other.

Int I'm curious, Pius, whether you'd met all those ten other judges prior to that first meeting, or were there some of them that you met for the first time?

PL I'm trying to remember them...

Int Yvonne (Mokgoro), Tholie Madala, Albie Sachs...

PL I'd met them.

Int Right. So there was no one that was new. Kate (O'Regan) perhaps?

PL Ja. No, no, there was no one that was absolutely new. I had not worked with some of them. I would say I had not worked with most of them. But I knew them. I'd interacted with people like (Richard) Goldstone, (Johann) Kriegler. I'd worked with Ismail Mahomed. I knew Laurie Ackermann, generally meeting him at conferences and there was a level of interaction. Kate (O'Regan), I'd met at an LRC (Legal Resources Centre) Trustees meeting. But some of them are people I just knew, who I'd met, but not done anything together. And then there were those who I had worked with at different levels.

Int I'm also curious, you mentioned about the respect that each person had for the other amongst the judges, but I've also been told that there were some very, very strong personalities on that Court, and sometimes strong personalities that led to being quite dismissive of other judges, as well as of counsel. And I wondered whether that had been your experience or observation at all?

PL There were strong characters. Take for instance a Judge like John Didcott, I'd appeared before him in the KwaZulu-Natal courts. He was a very interesting personality. I know among counsel in the division, some loved him intensely. Others feared him. They did not want to appear before him because he was capable of ripping them apart; such was his sharpness. There are a few who were very quiet, very mild-tempered in their language each time they spoke. Judges like Laurie Ackermann, gentleman to the core, but he would say what he wanted to say, and say it strongly. We were a variety of colleagues. ...I would say there would have been a difference in how we treated each other as colleagues, but that is not to say that there were no quarrels, or arguments, or heated words from time to time, because of the different personalities, strong personalities. But I think that spiced up the

whole existence of that early Constitutional Court group. How they treated counsel during arguments, now and again there would be a tendency to be tough on counsel. And we talked about these things because the virtue of having eleven people together, is that what I'm sensitive about or sensitive to, is not necessarily what everyone else is. So if I feel that somebody is being treated rather roughly, and we talk about it at conference or after court, or on a one-to-one basis, it has more effect. These were not pussycats, rather, they were strong personalities.

Int I wondered, Pius, not having been on the Bench before, what was your initial experience of having to appear where people who had been sitting judges and also your experience of working with eleven other people? As you said, advocates tend to work alone...

PL Yes. It takes a very little time to get used to, I mean, it helps also being in a situation where there are eleven judges. That's a big Bench. You get your time to get used to the atmosphere and to find yourself. I would imagine that some of us were probably quieter possibly at the beginning than others. But at no time...I mean, if you wanted to chip in and make your voice heard, because you see a point. When you are practising law and you are on the Bench, or you are part of an advocates group, certain things become compelling. You have something you want to get out of your chest and you do that. So ja, we, as time went on, blended. I had personally worked with some of the older judges, like Ismail Mahomed and Johann Kriegler. They treat you like a brother, and you felt you were a brother. He may be a bigger brother but you see, I would say the Bench was very accommodating to all the members of the Bench. And there was scope even there to grow.

Int You had an association with Ismail Mahomed, and I wondered in your memory of him, whether you could share your experience of him as a person, a colleague, both prior to coming to the Court and at the Court?

PL He was a very special person, very sharp. My memories of him, both as counsel and as a judge, and as a leader in the Court, is that he was Ismail (Mahomed) incisive mind, reacted very quickly to situations, he could see points, where some of us were still possibly toddling along, looking for answers. As I say, he was very incisive. Strong. Sense of humour in Court. He was a brilliant lawyer both during his practice days and whilst he was at Court. He had a nice turn of phrase. He was gifted, could use the English language as anything he wanted to say. He was very expressive. But you see, I'm discussing this particular...these traits with some reluctance, because all the eleven judges...or rather I should say ten...all the ten other judges had their own individual points, which speak well of them. You could write a eulogy in respect of everyone and it becomes invidious really to concentrate on just one colleague

Int Sure. The reason I ask about Ismail Mahomed is because he has passed away. I wondered also, there's a sense that when he was appointed he was very...there was much tension because he had expected to be appointed as President of the Court, and I wondered whether you were privy to some of these tensions?

PL Well, some of the tensions were obvious. I was close to Ismail (Mahomed) and I know that he would have liked to be the first President of the Constitutional Court. But he and Arthur Chaskalson found a way to work together. One thing they shared was mutual respect for one another. And they did that deeply. Another thing they shared was the ethic of being colleagues. They shared that, both of them. They knew how to handle one another and they did. And we possibly knew about the tensions because we also were there when these two giants were there at the same time. And of course Ismail (Mahomed) was Deputy President (of the Constitutional Court) and they were able to lead, a form of co-leadership. And of course Ismail (Mahomed) did become Chief Justice and he moved on to Bloemfontein.

Int At the Supreme Court of Appeal...

PL At the Supreme Court of Appeal. At that time the Chief Justice was at the Supreme Court of Appeal, and the Constitutional Court was headed by the President of the Court. That was a great honour for him, but it was an honour deserved. I do know though that he would have wanted to be the first President of the Constitutional Court.

Int I've also understood that Tholie Madala was very reluctant to be appointed because he didn't feel he had significant experience. What was your impression of Justice Tholie Madala and what was your relationship with him over time?

PL I have told you that I am not particularly anxious to talk about individuals. They were each one of them outstanding colleagues in their own way. As far as Tholie Madala is concerned, I had enormous respect and admiration for him. He was rather quiet, dignified but his sharp sense of humour emerged from time to time. He was the sort of man you go to for advice, a father figure as it were, and he would give it to you. He had strong views of certain things and he did not shy away from expressing them. But I was not aware of his reluctance, alleged reluctance to be appointed. I can honestly say that I don't know about it. I do know he was proud to be a member of the Constitutional Court.

Int Sure. Okay. I also wondered whether you could talk about the organisation of the Court in the initial period? How the staff was organised, what it meant to

be walking into a building that was leased, and those experiences and memories?

PL Ja. What the judges did, was to divide themselves into committees, committee for this, committee for that. And quite early in the life of the Court a lot of attention had to be paid to the development of a new building, the Constitutional Court, and that spawned a number of committees: building committee, arts committee, security committee, library committee, researchers' committee, etc. So every one of us, more or less, were part of one committee or other. The committees would get together and at judge's meetings, which were quite often, committee leaders would report what their committees had been doing. And that is one area where you saw and marvelled at the energy your colleagues had. Because apart from court work itself strictly, they found time to work very productively in committees, or to lead those committees. So of course the President of the Court, (Arthur) Chaskalson, was a great organiser, and he was a very able administrator, and in terms of delegating duties, allocating functions and things like that, he did that very well. So that worked very, very well. But when we were talking about the new Court, planning it, almost all of us found that we had a lot to do.

Int What was your role in terms of committee work; what was your main area of responsibility?

PL As I say, when we started organising for the new Court, Albie (Sachs) was also planning, busy planning, his mind was attuned to the architectural aspects and the art, and organising the judges of the competition for what the building was going to look like. The aesthetics of the thing. I headed the building committee, which was an all embracing committee in the sense that we were all, to some extent, focusing on aspects of the building, but I was chair of the overall building committee over some time. There were times when this proved to be a lot of work, but the committee was always there and I had very helpful colleagues on the committee.

Int I wondered in terms of the Building Committee...?

PL There was the library committee, which made a huge contribution in the development of the Court's library. It developed into a great institution on its own in itself. And much credit should go to the leaders of these committees. The library committee is outstanding but there were other committees, which are also, you know, which contributed to a wonderful institution.

Int I know Laurie Ackermann and Kate O'Regan were part of the library committee. I wonder, Pius, when you were part of the building committee, was this both at Braampark as well as here at the new building? Or how did the building committee emerge and what its main function was?

PL The library committee?

Int The building committee.

PL The building committee. It was really to co-ordinate, that is once we had a picture in our minds of what the Constitutional Court building was going to be. All questions had to go through the committee itself. We had to approve things. Now you mentioned Laurie (Ackermann). The work of the building committee would have started with the paper work, the plans and their revisions of the drawings. This had to do with office space, choice of bricks, the size, shape and the design of the court room, common spaces, passages, etc. A person like Laurie (Ackermann), in particular, (Laurie) Ackermann, he would come study each phase with particular meticulousness; he would, for instance come up with observations and queries in relation to the drawings. These may be in the nature of minor changes that he notices on paper and he would raise a query. He was quite often correct. Such was his capacity to notice minute details. Every centimetre, every part, every measurement, he would go through everything with admirable attention. It seemed funny at the time and we made jokes about it, but it was also very gratifying to know that what had been agreed upon was going to happen because of people like him. It also demonstrated the level of co-operation among colleagues. One did not have to belong to the building committee, for example, to make a valuable contribution to its work.

Int In terms of the building committee, the actual chosen site, this site for the new Constitutional Court, what did you at the time think of this site?

PL The site was not chosen by the building committee as such, but by the entire Court. There were other alternative sites, but when we were presented with this site, I mean, this is something which would have been discussed at the judges' conference. The excitement of, the symbolism of the site. I mean, firstly of course you look at suggestions with scepticism. This is Hillbrow, is it going to be okay. We wanted to build the Constitutional Court where the people are: Soweto, Newtown, there were other possible locations; Midrand for one, there were a number of alternatives. But there was an argument for this particular site. Two arguments, Hillbrow, this would bring light to a more or less dark area, which was feared by most in Johannesburg. It would improve the city itself, the precinct; and the Old Fort speaks volumes in terms of symbolism, in terms of its history, the South African story. So, you know, and that was typical of my colleagues at the Court, tackling things with enthusiasm, once they espoused an idea, and actually being elated at being associated with that. So the history of the site played a major role, what was once a symbol of oppression and un-freedom, becomes a beacon of freedom, of liberation, and in fact this was the first building of the new era, the post

Constitutional era, firstly. Secondly, the amount budgeted by the government was not going to be enough, so we opened discussions with the province and the metro. There were agreements in relation to public-private participation and in terms of that too, the co-operation that emanated from that was very encouraging.

Int Pius, in terms of the relationship between the judges and the administration, the registrar of the Court, I wondered what your initial memories are of the working relationship that began to develop at the time?

PL Administration of the Court of course demands strong characters and much discussion about issues relating to on site.... We had people in administration who were experienced civil servants and who knew what buttons to touch in order to make things happen. That helped. Of course administrators differ. One would be very good, another would be weak, but I think predominantly we had a good administration.

Int In terms of the first case that was chosen, the *Makwanyane (S v Makwanyane and Another)* case, I wondered how you understood the choice of that case, given its important discourse in the public sphere, and also your memories of preparing for that first case?

PL Ja. That case was going to test how we work. It was going to test acceptance of the Court by the general public, and by the legal fraternity. The fact that we had, in that case, a number of teams who came to argue on their own point of view. The fact that it was more or less understood that this is a question, which the politicians should have solved, or ought to have solved. But they had wanted or deferred to the Court. They had passed this over, the idea being that issues concerning the death penalty had much to do with human rights, crime and punishment. Testing the values of the new Constitution against the beliefs or the expectations of people, weighing a sense of revenge and retribution against the value and dignity of human life. Also testing how far the Bill of Rights can go. Does it embrace issues relating to crime and punishment? It was the first case and naturally concepts such as Ubuntu were ventilated there. So the clash between this urge for retribution, for revenge, etc., against what the Constitution in itself says we should be in terms of the society we were striving to be under the new Constitutional order. So it had everything suffused in it, and it was a significant foray. It was a significant stance for any Constitutional Court. I think for any new democracy really. And the fact that, of course, just before that, we had about four hundred people sitting on death row. Even though the death penalty had been suspended due to a political arrangement. There was, however, an element of disquiet. So for us as judges it was a matter of responsibility. For me it was in itself a privilege to sit in a Court that was to listen to arguments for and against the death penalty. Some of us had taken part in campaigns against the death penalty before appointment as a judge. NADEL (National Association of

Democratic Lawyers) had a campaign for the abolition of the death penalty. but we were well aware that not everyone was convinced that this should be abolished. Particularly at times when crime was very high.

Int I'm also wondering what were some of the procedures that you followed in terms of the way in which cases and judgments were handled, the issue of the discussions around the table, the conferencing method as such, I wondered whether you could talk about those procedures?

PL Ja. Conferencing, of course, forms a large part of being a judge of the Constitutional Court. When we finish dealing with a matter in Court, we find time to sit around a round table and discuss the case. It is announced at that round table who is going to do the first draft of the judgment. Obviously that's taking into account the views around the table. The scribe would be from the majority group, and that is how we would get the first draft. If there are sharp differences and you know that there are going to be dissenting judgments, you might very well see that during that first conference, because of the force with which views are expressed and differences, and the sharpness with which the differences appear. Firstly, the geography of it is that there is no special chair for the President of the Court. He is just one of the judges. And even in walking into the court room, he walks ahead of everyone else and occupies the seat at the centre, and that is because apart from anything else he is chairing the proceedings, so he's in the middle. And the seating around the round table, you sit where you find a seat, and he sits where he finds his seat, because it's not designated seats. For him he chairs the conference from wherever he sits. What happens during those conferences is that everyone has the right to speak, voice opinions. Arguments may crop up, and we debate, real debates, people debate until it becomes clear sometimes that everyone agrees or do not agree. And that is where it emerges that we will have one or several judgment but we talk about issues and there may be other drafts coming. Colleagues who want to dissent from the main judgment can dissent, they write their own judgments and say they disagree with this or that; It happened often enough.

Int Pius, before we stop for this session, I wondered whether you could talk about the interesting aspect of working as a Constitutional Court judge, which was to have law clerks. I know you have had very many law clerks and you've had very good relationships, and they certainly affirm that. I wondered whether you could talk a bit about working with law clerks?

PL You met some of my old law clerks.

Int Yes, yes, sure.

PL You also met today, Alice Brown, who was the Ford Foundation representative in South Africa. Ford Foundation has always been a friend and supporter of the Constitutional Court and they assisted the Court, through the Constitutional Court Trust, in providing funding for specific projects. There were other funders as well, notably overseas, who liked this experiment of having law clerks attached to the Court. Initially each judge was provided with one clerk But because of the interest of people and institutions, regarding the whole project of researchers, it was decided to expand the project so that two researchers could be employed for each judge. This expansion helped the cause of transformation because rather than judges picking their clerks from the best universities, they could now get a second clerk from the previously disadvantaged universities. The project was a great initiative for two reasons. The judges found more time to do their work with the assistance of clerks who did the research. But secondly, the clerks themselves gained a lot of experience of working at the Constitutional Court, working with colleagues, other clerks, and creating a core of young people who would go out into the world and be ambassadors for this Court, for our jurisprudence, and for democracy in South Africa. We have these clerks now who have gone out and they are all over the world. From time to time they get together, to celebrate the fact that they have been here. We have found them very helpful, but they also have found the experience here to be wonderful. They become in demand. Some of them are brilliant people by nature, but this enhances that brilliance.

Int I know that, you may not want to mention specific law clerks, but I wondered whether in your experience the types of law clerks you chose, you found that they developed particular ways of working with you, what your experience was of that?

PL Well for the judge, and I'm speaking about myself, the experience of working with different clerks over a time, was an exhilarating experience, you get to study the person and the way they work. You get to debate issues, legal issues, with different people. You get used to your team of clerks for a year. The following year you start all over again with a new team, and you get exposed to wonderful differences and you get to realise... it's like a mirror of what future legal practice is going to be. You see it right here in your chambers. I found it an exciting experience , and I've treated my law clerks...or they have treated me kindly, as friends, and we keep on interacting even after they've left.

Int In terms of the work ethic of your chambers, one of the law clerks mentioned there was no such word as 'tired'. I wondered whether you could talk a bit about that work ethic that was created. Each chamber is different.

PL Well, I don't know, it's something I discovered myself quite late in my life. I told one or two people that up to until say a year ago, I did not know the meaning

of tired. The problem with law is that it's a never-ending journey. I still do it, I still have this habit of confronting a problem and working on it until I get to the other end of it. The way the clerks worked, the way I expected them to work, was that if one is given a task, the next stage is simply to present that as a finished product. There could be an intermediate stage where you want to say, these are my issues, I thought your views were possibly contrary to this, let's talk about it. Then we sit and debate and the clerk goes off and works on that. The next day or the next time you get to be together you have something more or less of a finished product. That's another thing you don't really have a finished product until a judgment actually goes out, because the best views, the best arguments, can be subjected to other arguments and they can be reviewed and changed.

Int Thank you so much, Pius and I hope that we have the opportunity of interviewing you again and talking specifically about cases, judgments and also your very important contribution as Chief Justice of the Constitutional Court.

PL I thought that was the end of it.

Int No, there's a much more important history that continues, so I wondered whether I could talk to you about your role as Chief Justice. We didn't get to that.

PL You know when I sit in this chair...

Interview 3:

3rd February 2012

Int This is an interview with Justice Pius Langa, and it's the 3rd of February, 2012. Pius, thank you so much for agreeing again, for the third time, to participate in the Constitutional Court Oral History Project, we really appreciate the generosity of your time.

PL I had no choice, you are so persuasive.

Int Indeed (*laughs*). I wondered, Pius, if we could start at the point where we left off which was to talk about your experiences of being Deputy Chief Justice initially?

PL Well, firstly the appointment of Deputy Chief Justice followed my appointment as the Deputy President of the Constitutional Court, which came quite unexpectedly. But as I learnt afterwards, my colleagues ganged up on me and they pushed that appointment, very much against my own inclinations and expectations. When it was raised with me I was really not given a choice. They had all agreed that I should be the Deputy President of the Constitutional Court. What I said at the time was, and that was true, was that when I was appointed a judge, that's all I ever wanted to be, a good judge, and I wanted to concentrate on that but it seemed my colleagues had other things in mind. So I took up that position. And when the whole situation changed the new arrangement for the Chief Justice was that he should be in the Constitutional Court, my position graduated to being Deputy Chief Justice. So there was no drama there it was just a natural translation of the position.

Int And in terms of your time as Deputy Chief Justice, how did you work with the Chief Justice, what was your relationship? Were there tensions at all and how would you have resolved them?

PL Well the idea was that the Deputy Chief Justice would assist the Chief Justice. Arthur Chaskalson is very good at delegating, and he delegated a lot, but he also worked a lot. He set an example by being extremely busy doing various things. It was in the nature of the job that some of the functions had to be delegated, and I just fell in, you know, in the position and did what I was supposed to do. It was exciting to be occupying that position and the relationship with my colleagues, the other judges of the Court, remained very smooth and we worked together. They were very co-operative. The position here with the judges, I may have said it previously, is that we all work on a principle of equality. So any judge who feels something has got to be done, they raise it, and either they do it or it's allocated to somebody else to do. But as Deputy Chief Justice, obviously I had to take part in administration, which

turned out to be a lot of work. Administration in an institution like this is quite taxing, but yes...

Int In terms of your appointment as Chief Justice, how did that come about? I understand that Arthur Chaskalson retired, and I wondered what was your experience of being Chief Justice of the Constitutional Court?

PL Yes, the correct designation is actually Chief Justice of South Africa.

Int Okay...

PL Who is also President of the Constitutional Court. Because in terms of functions the Chief Justice has to be the head the Constitutional Court. That entailed seeing to it that everything was flowing smoothly at the Court, including among the administrative staff. It involved allocating cases in terms of who was to write judgments and actually following up to ensure that the tasks that had been given are fulfilled. It involved chairing meetings of judges, be it in discussion about a case that had been heard or subsequent discussions and following up on who was to do what at any given time. It involved convening various meetings and also representing the Court in meetings with outside instances, for example, officials of the various State Departments, the Ministers and the President of the country. The functions of a Chief Justice also spread outside of this court to other courts. The Chief Justice has to be the chief judge of South Africa, to be chair meetings of the heads of courts. Heads of courts are are Judges President in the different divisions. I was already familiar with the functions of leading that committee of the heads of courts, because I had been a member of that committee while I was Deputy Chief Justice. Arthur Chaskalson saw to it that I would be inducted into that committee while I was Deputy Chief Justice and this carried on throughout. The functions of course are multifarious, that institution meant that all the Judges President would come to this committee with their problems and listen to other problems. If there were decisions to be taken in relation to administering justice throughout the country, it is that committee that would deal with the issue and we would discuss them and I would chair inaudible. That is how the issue of "racism" eventually developed and the investigation into racism in the judiciary ensued. And I, with the assistance with others, had to compile a report with regard to that. That report is in the archives of the judiciary.

Int What were some of the tensions and difficulties of writing that report?

PL The tensions and difficulties of course resolved themselves in terms of allocating functions to the heads of courts. That report essentially says that each Judge President must be vigilant, watch out, and if there is an issue of racism, or sexism, that has developed, there should be committees at the

local level. And of course that escalates...if the problem cannot be resolved, it escalates to a national level.

Int In terms of your time at the Court, what do you think have been some of the issues around, not just maybe overt racism or sexism, if there was any, but perhaps perceptions of racism? And gender discrimination?

PL The issue cropped up in the Western Cape where the Judge President of the division wrote a report and sent it to the Minister of Justice alleging racism, not only among judges, but also among members of the legal profession, some of them quite senior. That report created a furore and some of the judges who felt that they had been accused and wanted to vindicate themselves. And that is really where I came in together with other senior persons. The question was whether we would deal with each case individually or we would find an all-embracing solution for everybody. We eventually decided on finding an all-embracing mechanism to deal with the issues, I think that was the best decision at the time. We set up a mechanism to deal with individual cases and we gave directions how a matter should be dealt with should it arise. That seemed to put the lid on the whole furore at the time.

Int I wondered, Pius, in terms of actual perceptions of racism at this Court, at the Constitutional Court, or gender discrimination, how were those managed amongst the judges?

PL Let me say that we have always been very careful in dealing with tensions and possible tensions arising from racism or perceptions of racism and sexism, at the Court. We were always aware that we, as judges, come from different directions, from different communities, and from time to time, I think we did this twice or thrice, we would engage in, what I would call sensitivity training. In other words, we would get together, workshop these issues, encourage all the members, all the judges, to speak out if they felt that there was racism, sexism, and that they have been badly treated. We have had confrontations among the judges themselves, but these were manageable. But the idea of coming together in a workshop situation was to enable people to firstly realise that they've got to work together, and secondly, that most of the accusations, if there any, were perceptions, and these would be caused mainly by the fact that we come from different cultures and backgrounds. Sometimes the language I would use is not the language, which somebody from a different culture and different environment would use. The word "nonsense" for instance, in my culture you don't say somebody is talking nonsense unless you are being aggressive and are attacking that person. That in turn translates itself into a perception that so-and-so does not respect me.

Int Thank you so much for that, Pius. I wondered in terms of your time as the Chief Justice, particularly here at this Court, what your experiences were in terms of just general day-to-day running of the Court and some of the difficulties and tensions?

PL My term as Chief Justice coincided with a change in the way the courts or the judiciary in South Africa was administered. It coincided with political tensions regarding the executive trying to put in legislation, which was going to control, or affect or exert some control over judges. So part of my work was to deal with that, to sit in committees or task teams, to decide together with others whether particular forms of legislation were suitable for judges. And we had a number of meetings, which were not always on the friendliest level but there were disagreements sometimes with members of the executive, who did not see eye-to-eye with our concepts of the independence of the judiciary. There was a time when we felt that the administration seemed to be encroaching on the issue of the independence of the judiciary. As leader of the judiciary, I had to lead those debates, assisted, even though he had retired, by former Chief Justice Arthur Chaskalson, and many other members of the Bar. We attended conferences where we made speeches about what it really meant to have an independent judiciary. But we also formed task teams to debate these issues with members of the executive to see if there could be common ground. My term expired while we were still busy with those kinds of debates. Coincidentally, my retirement from active service coincided with a reshuffling in the cabinet and the ushering in of an administration in the Justice Department that was more in tune with the concepts of the independence of the judiciary that we had been arguing for.

Int You also were responsible for developing the office of the OCJ (Office of the Chief Justice) to some extent, and I wondered whether you could talk about those processes?

PL I would say the beginnings of that was during our time, Arthur Chaskalson's and my time, as Chief Justice. It however made rapid advances in the time when Judge Sandile Ngcobo was Chief Justice. That development progressed to the creation of the Office of the Chief Justice and the translation of that into a department. It was in that context that Justice Chaskalson and myself were requested to assist in helping with strategies for further development. Where should it be located? The Judicial Service Commission, who should control that? In whose offices should it be? And so on and so forth. It was during my time and during the time of Arthur Chaskalson that those issues came very sharply to the fore. Now after we left, the political administration also changed, and it became easier with the new Minister of Justice. That's how the OCJ (Office of the Chief Justice) happened to be what it is now. There's still some way to go though for full administrative autonomy but considerable progress has been made. The Office of the Chief Justice has now been developed into a department of State.

Int Pius, in terms of the time that you've been at the Court, from its inception to when you retired, what were some of the key cases or judgments that you sat in, and what did you feel were ones that you really grappled with?

PL The arrangement was that all the judges dealt with all the cases and the decisions were those of the Court. There was of course scope to disagree, and dissenting judgments were allowed. Even where colleagues agreed, there might be instances when a particular judge wished to express him or herself or to highlight certain things or nuances differently. As to the overall effect of our judgments, I would say there was a sense of the permanence, namely, that our decisions were precedent-setting. This came to the fore very much at the time of the *Certification of the Constitution (Certification of the Constitution of the Republic of South Africa)* case when, among other things, we debated the question what was the meaning of the decisions that we give? What will happen to a new Constitutional Court after we have left? Would they be obliged to agree with our decisions? But there were many cases. What distinguished the Constitutional Court from other courts and from the Supreme Court of Appeal, is that once a decision was made by the Constitutional Court, it became a national decision. There was a time, for instance, when during Nelson Mandela's time as President, during the early days of the Court, where the President, thus (Nelson) Mandela, had been promulgated some legislation and its constitutionality was challenged (*Executive Council of the Western Cape Legislature and Others v President of the Republic of South Africa and Others*). The Court held that he was wrong in doing that and that was struck down. At that time his popularity was riding high, and the question was, dare we actually go against this very popular President and strike his legislation down? For us there was only one question; if the President was wrong, that was the end of the matter. But he set the tone, he went to the media and announced that the Constitutional Court has spoken, and its decision must be obeyed. That became the way succeeding members of the executive had to work. Some of the notable cases had to do with a variety of things. The *Treatment Action Committee ((Minister of Health and Other v Treatment Action Campaign and Others)* case, the case which dealt with prevention of mother to child infection of HIV. The matter resulted in a wider distribution of Nevirapine. It had groundbreaking effects on legislation and on socio-economic rights and many issues around HIV. Then there were other cases. I would say one of the biggest cases (*Certification of the Constitution of the Republic of South Africa*) was the time when our Court had to certify the new Constitution, and when, at the first attempt we sent the draft constitution to the Constituent Assembly because we found that it did not comply with the Constitutional Principles. The Assembly revised it and brought it back. Of course the death penalty matter (*S v Makwanyane and Another*), which was the first matter we heard, was a big and very significant matter, and it was going to have reverberations throughout many parts of the world, and get referred to in other jurisdictions. It was unique and resulted in all the judges writing their separate concurring judgments in addition to subscribing to the

main judgment. But it marked the area of the Constitutional Court in terms of dealing with matters, what its functions were going to be, and that is basically to adjudicate, even on difficult matters without fear or favour. One of the issues in that case (*S v Makwanyane and Another*) was the popularity of the death penalty among some sections of the population whether that should affect our final judgment. We took the view that our job was to interpret the Constitution as we saw it, and that is really what we did. One of the big issues in South Africa is the subject of socio-economic rights, and that's one aspect which makes our Constitution so outstanding. We have dealt with many cases on socio-economic rights. Some of them become big cases, others are hardly mentioned anywhere. But the trend in each one of them is to come to the assistance of people who are hard done by the socio-economic situation in the country. We have said that South Africa has a beautiful Constitution and the Constitution itself requires us to bring about a situation where social justice is part of the ethic of society. We regard ourselves as having a responsibility to deal with and to bring about dignity to all sections of the population. We are always painfully aware of our unequal past and we are very much aware that it is our responsibility to push the entire society towards a situation where the values of equality, human dignity and freedom would be accessible to all.

Int The three cases that often are discussed from the Constitutional Court is the *TAC* (*Minister of Health and Other v Treatment Action Campaign and Others*) case, which you've mentioned, *Soobramoney* (*Soobramoney v Minister of Health (Kwa-Zulu-Natal)*) and the *Grootboom* (*Government of the Republic of South Africa and Others v Grootboom and Others*) cases. I wondered whether you could talk about some of the difficulties and challenges of adjudicating cases like the *Soobramoney* (*Soobramoney v Minister of Health (Kwa-Zulu-Natal)*) and the *Grootboom* (*Government of the Republic of South Africa and Others v Grootboom and Others*) case?

PL Yes, it's...the *Soobramoney* (*Soobramoney v Minister of Health (Kwa-Zulu-Natal)*) case was...confronted the Constitutional Court with a limit to what it could also do. In interpreting the Constitution and listening to what the contending parties are saying, their own interpretations, we come up against a situation where our interpretation of the Constitution really becomes the last step. And in the *Soobramoney* (*Soobramoney v Minister of Health (Kwa-Zulu-Natal)*) case of course, one of the issues was whether we could assist Mr Soobramoney who was dying of kidney failure. The context was that the State itself did not have a kidney dialysis facility to cater for everyone who needed it. A policy had been adopted that the facility would be made available to persons who could improve enough, so that they could get kidney transplants. But those who could not, who were beyond that stage, were condemned to a life of waiting, as it were, waiting to die. And (Mr) Soobramoney fell into the latter group, and the question was whether the Court could do anything about it. I think one of the issues was, what is emergency treatment? Would the dialysis contraption constitute emergency treatment to a person whose

condition would not improve and the effect of it would simply have been to prolong his life while he continued to deteriorate until he died. The question facing the Court was whether this case constituted emergency treatment, in which event the State would have been obliged to supply it. Although it was heart-breaking, the decision of the Court was that he fell outside the ambit of emergency treatment as envisaged in the Bill of Rights, but access to health care. The *Grootboom (Government of the Republic of South Africa and Others v Grootboom and Others)* case, also brought about certain aspects of how far we can go as a Court. We can make rules, we can make orders, but after all is said and done, the people on the spot have to implement those orders. And the issue there was whether the State had a policy to deal with emergency cases like Mrs Grootboom's, and we ordered that there should actually be a plan to cater for emergency cases. The ruling of the Court was an advance in what was accepted as socio-economic rights in South Africa. And then it is for later cases to build on those principles.

Int Thank you for that, Pius. In terms of the critics of people who have tried to advance socio-economic rights to the Court, they've argued that the Constitutional Court hasn't done enough to satisfy the socio-economic rights. And one of the issues that comes up is the lack of direct access. I wondered whether you could speak to that?

PL Yes, direct access is provided for in the Constitution. People can come, in terms of the Constitution, directly to the Court. That opens a gate. Of course it means that nobody can actually be deprived of the facility to approach the Court on any matter. The case of *Soobramoney (Soobramoney v Minister of Health (Kwa-Zulu-Natal))*, for instance, came to us by way of direct access. The case did not have to go through the succession of courts, and eventually then come here. Direct access enables people who could be quite powerless to approach us, but enables them to have their day in court. There is a sifting mechanism, because the Court would otherwise be swamped if all matters were to go directly to the Constitutional Court. The need is so great, there are so many people who would all want to go to the Constitutional Court for finality at the earliest time possible. Such easy and ready access would however deprive other courts of the experience to deal with issues because every dispute would go to the Constitutional Court. As it is, the other courts can deal with matters swiftly and speedily. The Constitutional Court however reserves to itself the ability to deal directly with matters that are exceptional and urgent. And it's easier to approach the other courts than to come directly to this Court. It can't happen all the time, it's got to happen when it's necessary. It's much better now than when we started, under the interim Constitution, when the Supreme Court of Appeal did not have constitutional jurisdiction. But that has been extended to the Supreme Court of Appeal. But where necessary, we take a matter from anywhere and bring it to this Court.

Int Pius, in terms of the challenges and difficulties of adjudicating cases of the Constitutional Court, what are some of these challenges?

PL Firstly, the fact of course, is that we come from a difficult background where previous Constitutions did not make provision for many of the things, which were the real needs of the people. They were not all embracing in terms of the entire population of South Africa, catering only for a small minority of people. So one of the biggest challenges is opening the door to everyone, equality is really a central tenet of our lives. Where human dignity is also a central tenet of our lives, everyone's lives. People who were previously not recognised by the powers that be. They are now coming to the fore, and they must come to the fore. So the challenge is for the Constitutional Court to bring into effect the challenge of equality and human dignity. And it's not always easy but this is something we must always bear in mind. The benefits of the Constitutional order must always be available to them. I would say that is the major challenge. The other challenge of course would be, coming from that past with all the hatred, the difficulties in relations among the races, divisions, how do we as South Africans bring the whole nation together? The challenge is something which the Truth and Reconciliation Commission had to confront, had to deal with. But it's an ongoing challenge every day. With us it comes to us by way of litigation and in dealing with each case we think about our divided past and how we patch that up, and bring everyone on more or less equal basis, on a par. I should say that matters relating to socio-economic rights are the most difficult and yet they are the most essential, because the majority of the population in South Africa, come from that kind of background, a deprived background. And somehow, and we can only do it through our judgments, we have got to keep on nudging society together.

Int Pius, in terms of the issue of principle and pragmatics, how do you manage that relationship?

PL Well, you...yes...it's also a difficult question. You manage that relationship simply by harking back...you see, that is one of the advantages, the richness of having a diverse Court. The Court itself is made of people coming from different backgrounds. The Court itself is made of people who, some of them, know what it is to be hungry, to be poverty stricken. There are people in the Court who have been subjected to that. The Court itself has people who understand the deprivations of the prison environment. They would know, some of them, the position of a victim who has been wrongly accused, or even if correctly accused, who has been deprived of rights to defend him or herself. So that background is useful, because on the one hand you have people who have experienced that, and they decided to be activists to fight that. On the other hand, you have progressive people among the judges, who approach all questions, which confront us, with humility, with an awareness. I mean, each judgment shapes all of us with an awareness of what the entire South African community is.

One of the things, that we did when we first started at this Court, was to visit Soweto, for instance to familiarise ourselves generally with conditions in which some people lived. We crisscrossed Soweto, had lunch in one of the taverns in Soweto, talked to the people. Just to get a picture embedded in our psyche of what South Africa was all about. I think it is our function to understand everyone and to put ourselves in their place at times, and we may just find that people are not as bad as we see from a distance, and that we do not need to be as afraid as we are of one another. Because we are all afraid of something which is on the other side of the fence.

Int In terms of the issue of power, how do you as a judge grapple with the issue of power?

PL Ja. The first thing that comes to mind is that power corrupts. We live in a country, or in a world, which is governed and some people have the responsibility of governing. My own take is that it's easy for those who wield power to be corrupted, and therefore that's why life in a democracy is still for me the best, because there are facilities to confront those issues within the rubric of democracy, and there's nothing like vigilance by all members of society. But then of course, vigilance is useless if we cannot take it further, we condemn bribery, for instance but the truth is that there are two parties that are involved, the briber and the bribee. As a community, we must always focus on doing something about it. That amounts to exercising our rights in a democracy, I think that is possibly the only way to react to it. In each community we need brave people who are going to speak truth to power, and it can be difficult. Difficult in the sense that you might be victimised, you might be deprived of your natural progression and growth, and simply because you're doing that, and find that people behind you, people who are corrupt, leapfrog you and are successful. But there is no substitute to doing that. That's why I appreciate the fact that I became a judge. It has trained me in itself: integrity, being forced to speak the truth, regardless of who it is to, or who it is about. That's all I've got to do, speak the truth to the end and that is the solution, for me. And if we spread that around, speaking truth to power, that has the makings of a developing culture and a great nation.

Int Thank you for that, Pius, it was very profound. I'm wondering in terms of the transitional democracy and the role of the Constitutional Court, what were the challenges when you became a judge at the Constitutional Court, and what are the challenges that remain?

PL I've already mentioned some of the challenges, which we had to confront. There is the issue of separation of powers, which rears its head from time to time, not only in South Africa, but in other jurisdictions as well. I believe a judiciary should be independent always and do its work without fear or favour,

and without worry over much about changes in governmental policy. as long as it is consistent with Constitution. And if it's not and it's brought to us, that's the only yardstick we have.

Int During your time, Pius, on the Court, what do you think were some of the failings and some of its greatest achievements?

PL Of the Court?

Int Yes...

PL Let me start with what I think are the greatest achievements. I think the Court has achieved much, not least being the fact that the Court has managed to make itself well-known, respected, accepted and praised throughout the world. We have managed to hold conferences in South Africa, at which we invited other courts, highest courts from different jurisdictions, and the response had been phenomenal. They come to South Africa, to our Court, to take part with us in the development of principles of law. and that shows the respect they have for us and the esteem they have for our system and for what they know the Court itself to stand for. I am gratified by the fact that many people in the institutions in South Africa, the political parties, women and men on the street, when facing difficulties, they all think in terms of "taking it to the Constitutional Court." And that is an aspect to be proud of, and definitely one of the successes, because I think if the Court ceases to be relevant to the ordinary woman, man on the street, it will have lost its way. Failings? I think this would be about what still has to be achieved. And that has been part and parcel of a South African community, which is still walking on a bridge, not having reached its destination. We are walking together with the entire community of South Africans on this bridge. The advent of democracy brought with it high hopes for radical change in the lives of the millions who suffered under the yoke of apartheid. The preamble to the Constitution speaks of an aspiration to heal the divisions of the past and establish a society based on social justice and fundamental human rights. It speaks of a society where every citizen enjoys equal protection of the law and the improvement of the quality of life for all and the freeing of the potential of every person. The people want to see the changes in the constitutional order affecting, improving their everyday lives. To the extent that there is still a long way to go, particularly in the socio-economic sphere, we cannot claim to have achieved the objectives of the new order yet. I refer here to rampant poverty, homelessness, disease and a general sense of being disempowered by the conditions those people live in. The foundations have been laid and miraculously so given where we come from. The project of building and developing the South Africa envisaged by the Constitution has only just started. We are discovering the progress will not as fast as many hoped. The issue of access to the courts, the legal system in South Africa is difficult. I know that legal aid has been increased exponentially but there are still people

who can't find their way to the courts simply because they are poor. And until we find solutions for that but until we can equalise, find solutions for people who wish and who deserve to come to the Court and bring their matters there, we should always be saying there's a long way still to go. Ja.

Int Pius, I've asked you a range of questions, and you've been so generous. I wondered whether there's something I've neglected to ask you which you'd like to be included in your oral history?

PL Let me think about it, I'll drop you a note.

Int (*laughs*) Thank you so much, Pius.

PL Yes. I'll be in touch...

Collection Number: AG3368

CONSTITUTIONAL COURT TRUST ORAL HISTORY PROJECT

PUBLISHER:

Publisher:- **Historical Papers Research Archive**

Location:- **Johannesburg**

©2014

LEGAL NOTICES:

Copyright Notice: All materials on the Historical Papers website are protected by South African copyright law and may not be reproduced, distributed, transmitted, displayed, or otherwise published in any format, without the prior written permission of the copyright owner.

Disclaimer and Terms of Use: Provided that you maintain all copyright and other notices contained therein, you may download material (one machine readable copy and one print copy per page) for your personal and/or educational non-commercial use only.

People using these records relating to the archives of Historical Papers, The Library, University of the Witwatersrand, Johannesburg, are reminded that such records sometimes contain material which is uncorroborated, inaccurate, distorted or untrue. While these digital records are true facsimiles of paper documents and the information contained herein is obtained from sources believed to be accurate and reliable, Historical Papers, University of the Witwatersrand has not independently verified their content. Consequently, the University is not responsible for any errors or omissions and excludes any and all liability for any errors in or omissions from the information on the website or any related information on third party websites accessible from this website.

This document is part of the Constitutional Court Trust Oral History Project collection held at the Historical Papers at The University of the Witwatersrand, Johannesburg, South Africa.