

Judge Edwin Cameron Interview

TIME IN CODE	QUESTIONS	CONTENT	TIME OUT CODE
00:00:14:00	Can you tell us about the paradox of being a human rights sort of focused lawyer under apartheid and the kind of dilemmas and issues that you had to deal with and how did you reconcile that for yourself?		00:00:41:01
00:00:41:20		It was an awful paradox operating as a human rights lawyer under apartheid because apartheid, one of its main atrocities, was that it was a legally enforced system of degradation, oppression, exclusion, humiliation, enormously systematic, minutely regularized through law but because it was a legal system it offered narrow little intestacies , narrow little windows of opportunity for lawyers like Mandela, Tambo, Kentridge, Chaskalson, Bizos, and Godfrey Pitje to oppose it. So in the 1970s and 80s there was space for lawyers to be very active against apartheid but always with a conscientious worry, a quibble, a doubt because of course by remaining within the system and being a lawyer within it, you were contributing to legitimating it but we nevertheless felt confident that our work with the trade unions, which were legalized after 1979 and which grew extraordinarily in the 1980s with the United Democratic Front and other anti-apartheid activist organisations within the white community, the end conscription campaign with which I was very active, we were convinced that we did much more good than we did harm and in fact from that time in the 1980s, there were a number of major judicial decisions that made it increasingly difficult for apartheid to operate and contributed towards its demise.	00:02:24:10
00:02:25:00	Can you think of one judicial decision case that made it difficult for apartheid?		00:02:36:00

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Judge Edwin Cameron Interview

00:02:41:10		I think the clearest case where judicial decision-making intervened in apartheid were two very, very complicated cases that Arthur Chaskalson and Geoff Budlender from the Legal Resources Centre brought to the Appeal Court in Bloemfontein where five apartheid Judges heard extraordinarily complex challenges to the pass laws. Now we sometimes forget that unless you had a permit, a pass to be in an urban area, you as a black person were unlawfully there and could be arrested at any time. The pass laws were the basis of apartheid because they excluded black people from their own country, they said you have got to go back to Bantustan areas and you are an unlawful entrant on your own soil. And the basis of the challenge was intensely legal but the Appeal Court in both cases, Khomani and Rikhotso, ruled against government and those two rulings made it almost impossible for the pass laws to continue to be implemented and by the mid-1980s the apartheid government gave up, they said we are no longer going to enforce the pass laws and that in itself was a major legal victory, it was a vindication of legal process but it was also a stunning political victory.	00:04:10:08
00:04:11:10	Your sexual orientation is quite well known, did apartheid make it hard for you to explore that side of yourself and what were the effects of the law on you?		00:04:24:15
00:04:25:01		It was very difficult under apartheid to be an openly and proudly gay man or lesbian or a transgender or an intersex person, there was oppression, there were police raids, there was prosecution, there was stigma, there was violence, indeed under apartheid we existed in conditions which are still ramped outside South Africa throughout the African continent. Through most of our beautiful continent, LGBTI people are still prosecuted exactly like we were prosecuted under apartheid but we used the law, just like we used the law for anti-apartheid work, in favour of LGBTI qualities, where we took cases, we opposed criminal prosecutions selectively and carefully we used cases to advance knowledge of LGBTI equality and I must mention there that an important person in our struggle was Simon Nkoli, he was arrested for the	00:06:12:21

Judge Edwin Cameron Interview

		massive uprising in the Vaal on the 4 th of September 1984. The anti-apartheid uprising led to the charge of treason and murder and Simon was put on trial in the famous Delmas treason trial with many other famous internal anti-apartheid leaders at that time and Simon took the astonishingly courageous step of coming out during his trial to his fellow trialists, who initially rejected him but eventually, because of his courage and persistence, came to accept him and ultimately to embrace him and that provided the basis for our campaign to include sexual orientation in South Africa's Constitution, which we achieved and became a world first.	
00:06:14:10	Can you tell us about your involvement in the South African transition in those years between 1990 and before the establishment of the Court?		00:06:35:18
00:06:36:00		My main involvement in the constitutional negotiations was as the shepherd of the gay and lesbian communities' submissions to the constitutional process. We saw a chance early and partly because of the work of Simon Nkoli, who was a young black man from a poor township from Sebokeng, who said, I am black and poor but I am also gay, I am not separately black and poor and gay, I am all those things together. Partly because of Simon's impressive intervention we were able to make persuasive arguments to the constitutional negotiators to include sexual orientation in a broad equality clause. The debate within the constitutional process was whether we should have a narrow clause? Should we only say race and gender and other conditions or maybe race, gender, religion and culture and other conditions? We made an argument to the constitutional negotiators - we said, make it broad, include age, include disability, include language, include every basis upon which there has been discrimination in apartheid South Africa on irrational and unjust grounds. All the bases on which people like us have been stigmatized and on that basis, which was a broad principled argument, we were able to persuade the constitutional negotiators to include sexual orientation and when that happened, when our constitution took effect on	00:08:22:05

Judge Edwin Cameron Interview

		the 27 th of April 1994, we were the first constitution anywhere in the world that expressly included protection for LGBTI persons in its constitution.	
00:08:22:21	Can you give us your remarks in general about the transition and about what was negotiated and how difficult it was to come to any kind of consensus?		00:08:45:15
00:08:46:00		<p>We cannot afford to forget the power of the apartheid state, the depth of entrenched racism and the simple institutional force that the apartheid government was wielding, it had the most powerful army in Africa including the armies in North Africa like Egypt, a very, very powerful force and indeed the apartheid state even had nuclear power and nuclear weapons. We forget that at our peril, because when the opposition movements, the internal opposition movements, the external liberation movements entered the negotiations they were dealing with an extraordinarily powerful monster, a monster that was designed to protect the status quo. The other difficulty was that there had been a terrible war in KwaZulu Natal in which Inkatha, under Chief Mangosuthu Buthelezi, was defending its turf against young ANC activists with terrible consequences. Inkatha, in my recollection, because I was involved in many cases at that time, employed terrible methods, that's my recollection, I know that there are people who want to give Inkatha's side of the story and no doubt ANC activists also employed terrible methods, the consequence was some thirty thousand deaths in KwaZulu Natal alone. We also forget that in the period between 1990 and 1994 there was a terribly high rate of violence, in the year preceding our transition alone there was some twenty-seven or twenty-eight thousand murders, violent deaths many of them related to hit squads, to train violence and to unexplained terrifying attacks on people. So our country was in peril, our country was on the precipice, we faced a real risk of civil war, the right wing was armed and dangerous, the right wing crashed through the windows of the Trade Centre</p>	00:12:34:01

Judge Edwin Cameron Interview

		<p>where the democratic Constitution was being finalized, the right wing wanted to support chief Mangope in Bophuthatswana who wanted to secede from South Africa. Until the 27th of March, a month before our first democratic election in April 1994, Chief Buthelezi was threatening to boycott the election. So we must remember that what was achieved was not a miracle because miracles come from elsewhere, they come from above; what was achieved was achieved with the blood and sweat and toil and risk of many, many, many thousands, tens of thousands, hundreds of thousands of extraordinary South Africans and ordinary South Africans, their courage and their risk to their own lives but what was achieved was extraordinary, it was massive, it was an enormously successful negotiation ending the formal existence of an inequitable system. The work lay ahead.</p> <p>The Constitution laid the basis for us to do the work, we haven't done it very well, me as a Judge, government, I blame the government more than I blame the Judges by the way, I think government has failed us in our transition in many ways; land reform, discrimination, other instances but nevertheless the actual creation of the Constitution was a triumph of which we should continue to be proud.</p>	
00:12:35:05	What was the intention of the Court's leadership under the likes of Chaskalson and Langa when they shepherded the court in those early days and how did they build trust with the government?		00:12:55:23
00:12:56:06		<p>During the negotiations, it was initially uncertain, but very soon an agreement was reached that there had to be a new court, a fresh court, a court of unpitiable integrity and independence and not connected to the old apartheid court system. with which all the existing Judges had been connected. And president Mandela soon after he took office in June 1994, selected Chief Justice Arthur Chaskalson, as he was then called the president</p>	00:16:12:11

Judge Edwin Cameron Interview

		<p>of the Court, the terminology changed later to become the first leader of this new independent post-Constitution, post-democracy court to be put on top of the whole court structure in South Africa and it was an enormous task which Chief Justice Chaskalson undertook. His first deputy was Deputy Chief Justice Pius Langa who had been head of the National Democratic Lawyers' Association, a person of quite singular integrity, humility and power both as a human being and as a lawyer, he'd started as a clerk in one of the "Bantu Commissioner's Courts" in KwaZulu Natal I think, he had also been an interpreter, he rose up through that system, qualified as an advocate, went to the Vaal, became a senior counsel, became an intellectual leader in the legal profession, and then took his place besides Arthur Chaskalson as first Deputy Chief Justice of South Africa and Arthur's successor later as the first black Chief Justice of South Africa. It was an enormous task that they faced of building a jurisprudence on a new basis, brand new constitution, lawyers weren't used to working with constitutional rights, constitutional concepts, constitutional aspirations, there were new mechanisms we had to create. We had a new form of municipalities, there were new provinces, there had been four old provinces and there were now nine, so the simple task of mind adjustment but also of institutional and practical operational adjustment was completely enormous. The Constitutional Court played its part in that and I think it did a historically enormously important role, its case load was low normally, about twenty judgments a year, whereas now we are delivering two to three times that every year, they received maybe thirty to sixty applications a year, we now receive well over three hundred and fifty applications a year. So often the output was more reflected, more leisurely but they had the opportunity to do so and it meant that they could lay the basis for the constitutional jurisprudence that we the successors of that Mandela court, all first eleven judges were appointed by president Mandela, we were their successors and we have now sought to build upon a very firm and aspiring foundation that they had laid for us.</p>	
00:16:13:00	What was the importance of the consensus building that Arthur Chaskalson was		00:16:26:13

Judge Edwin Cameron Interview

	passionate about within the Court and between other arms of government?		
00:16:28:03		<p>In a system of separation of powers, it is inevitable that there will be conflict because judges determine the limits of government's power and they have to determine when government, the legislature or executive overstep that power, so there is inevitable tension and rightful tension. The Chaskalson court was unflinching in ruling against president Mandela and later when we come to the nightmare, not just of the AIDS epidemic, which afflicted our country after the transition began in 1990 and came into very full force under democracy. But the bigger nightmare of presidential denialism came under President Thabo Mbeki. The Chaskalson court was enormously courageous, principled and unflinching in overruling a decree of President Mandela, which he went on to national television to welcome, he said I had been found wrong today by the Court and I want the country and the nation to know that I am going to subordinate myself to the rule of law but later in a much more explosive and emotional case, the judgment that told president Thabo Mbeki that he had to start making antiretroviral treatment available in the country, there was a terrifying moment when it seemed, on the basis of comments that president Mbeki's health minister Dr Manto Tshabalala-Msimang made, that president Mbeki might defy the Court and it was a real possibility because to the north, at that very time in 2002, president Robert Mugabe was deliberately and violently defying his judges, he sent his thugs into the Chief Justice's court to take over the court, to climb over the bench to show that the rule of law will not be obeyed in Zimbabwe. Our history has been very different, we've had a succession of presidents who sometimes resist and sometimes with reluctance have nevertheless bowed their heads before the rule of law and that is part of the power that the Chaskalson Court generated in negotiating this difficult path between principled desertion of constitutional value and structure and governmental antagonism and it's a path that we still have to negotiate today and it's never easy.</p>	00:19:01:05

Judge Edwin Cameron Interview

00:19:01:20	Can you tell us about your appointment to the Court, how did it happen and what did it mean to you?		00:19:16:00
00:19:19:10		<p>It's a wonderful privilege to be a Judge on the bench of the Constitutional Court and its one that I aspired to. I applied in 1994, I was asked by Chief Justice Chaskalson to apply in 1997 and 1999. In 1997 we knew that Justice Zak Yacoob would be appointed when Justice Ismail Mahomed was appointed to the Bloemfontein Court of Appeal and I applied in that knowledge and said so in my interview and when I applied in 1999 I was supportive of the appointment of Justice Sandile Ngcobo who later became Chief Justice and then I didn't apply during the Mbeki years because of the fact that I took a very strongly, fiercely outspoken stand against president Mbeki's denialism on AIDS. And I did so because I was myself living with HIV. I had myself experienced AIDS and I had myself seen the lifesaving recovery, the restoration to joy which even today as we talk here today, I am able to show because of antiretroviral treatment so because of that outspokenness on my part I didn't apply at the time that President Mbeki made quite a few appointments during the 2000s. But just before President Mbeki left, I was encouraged to apply, by now it was former Chief Justice Chaskalson and his successor Chief Justice Langa also encouraged me to apply and I said to them but President Mbeki is still president and I will never forget what retired Chief Justice Chaskalson said, he said President Mbeki is a very independent man, he might appoint you simply to show that he doesn't take criticism obversely and that he is not obverse to independent people, as it happened president Mbeki was recalled during the appointment process and I was appointed a few months later by President Kgalema Motlanthe.</p>	00:21:27:11
00:21:28:16	What does the Court's building mean to you and why is it so important?		00:21:34:20
00:21:48:10		The Court building is a very wonderful building to work in. Every morning I park in the basement where the judges and court staff and law clerks park	00:23:45:05

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Judge Edwin Cameron Interview

		and I walk up two flights of stairs and at the top of the second flight I turn left and there is a massive window, that winter or summer lets in all the eastern light, and it's every single morning, it's a wonderful experience. It's a building of light, a building of respect, a building of fragility but also of strength, it's a building that reflects our history because it incorporates the degrading structure of the past law prisons upon which foundation it is built. When we sit in the court room, we are surrounded by the red bricks from the Number four and five prison, where many hundreds of thousands of black South Africans were imprisoned for not having a dompas in their own country. So it's a symbolic but also practical reminder that the laws that we apply are rooted in the long history of injustice, inequality, subordination, against which we are still struggling more than two decades after apartheid and the building symbolizes all of that and it brings it together the accessibility, the light, the history but most importantly it brings together our aspirations that we can, we South Africans can achieve a society in which human dignity of every person, as the Constitution promises, really is valued - that it's going to take concerted effort on the part of civil society, on the part of government, on the part of our political leaders but also on the part of lawyers and of judges.	
00:23:45:23	What are your fears and concerns about where we are as a nation and what the Constitution means?		00:24:00:20
00:24:01:05		Make no mistake, we are very, very far from living the vision of the Constitution. We have only just started on creating the equality and the dignity and the social justice that our Constitution envisaged and that our Constitution promises. Many people are impatient and I understand that impatience because things are not right in our country, there's still race discrimination, there's still gender subordination, there's still attacks on LGBTI people, there's still extreme inequalities, there's still racism, so there are many problems. There's disposition and of course also our economic and structural problems which have magnified in the last ten years, so the problems are enormous but we have before us in the Constitution the	00:26:45:16

Judge Edwin Cameron Interview

		<p>means to fix them, but the means depend on us, on me, on everyone, on young people particularly, it depends on people committing themselves to the activism needed to realise the Constitution, to joining political parties, it doesn't matter which political party - join a political party and become active. To being active in civil society - join an organisation that cares for old people or for children or that is involved in policing building or traffic, there are many, many organisations. In South Africa, we have got one of the continent's most active civil societies and there are many opportunities for people. Get involved, also at a personal level and of course we need to be cognizant of the extreme disparities that our country still manifests. Those of us who've got comfortable homes, roofs over our heads, cellphones, you can travel in cars, could have the means to eat and to live comfortably – we are a minority in our country and we have to remember that there is a duty on us as well of sharing resources, of sharing income and of making distributional shifts that make a difference, even if it's only to one person or one family or one organisation but making that effort, in those different ways. There's an obligation on each of us through political activism, through civic activism, through personal engagement and through personal commitment to narrow the gap, the extreme gap in South Africa between those of us who have and the many who do not have.</p>	
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