

Public Interest Lawyers' Group – conference 24/25 July 2014

Celebration of founding of CALS, LRC, LHR

Thursday evening 24 July 2014 18h00

Remarks by Edwin Cameron, Constitutional Court

1. It's a great pleasure and an honour to be here this evening.
2. We are here to look back and commemorate important events in the past. But the greatest significance of those events lies in the future.
3. This is because of a special belief we share – that the law in our country is a uniquely valuable instrument of social change and to secure justice.
4. That belief was forged under apartheid.
5. Its roots lay in the Roman and Roman Dutch law the Dutch settlers brought to South Africa in 1652. This the English colonists of the nineteenth century overlay with their forms and procedures.
6. The result was a complex and sophisticated hybrid legal system – one that in 1948 was pressed into service for the enforcement of a pernicious system of human separation, subordination and degradation, based on race.
7. But early on in formal apartheid, lawyers and activists took hold of an acute insight – that while the law was to be the chief instrument in executing and enforcing apartheid, it could also be used to thwart its achievement.
8. The Defiance Campaign of the early 1950s, the massive treason trial that followed in 1956, the Rivonia Trial in the 1960s, resulting in the imprisonment of most of the internal leadership of

the ANC – all of these only underscored an intense underlying conviction a cadre of lawyers shared:

that enlisting law in the service of apartheid was a perversion of its innate design.

9. These were the lawyers who –

- defended Nelson Mandela when he was prosecuted for leading the Defiance Campaign;
- who secured the acquittal of 156 accused in the Treason Trial;
- who ensured that Nelson Mandela and other leaders were not sentenced to death in the Rivonia Trial;
- who protested with vehemence against the laws licensing arbitrary and indefinite detention.
- They were the lawyers who protected the illegal strikers in Durban in 1973 and 1974.

10. The founding of CALS in 1978, by Professor John Dugard, and of the LRC in 1979, by Arthur Chaskalson and Felicia Kentridge, with Dugard's backing and assistance, with LHR following just a few years later, therefore represented the triumph of an idea – the belief about that lawyers had an especial role and a particular responsibility in the face of gross injustice.

11. That idea was animated by the iniquities of apartheid. But behind it lay a deeper belief about the nature of law itself.

12. These lawyers' opposition to apartheid embodied the insight that law need not only oppress, separate, subordinate and exclude, but could be used *and indeed should be used* in the fulfilment of a deeper and better ordering of human society: that this was its true role.

13. It was that idea that inspired the energies that led to the animated battles CALS and the LRC and the LHR fought in the 1980s – battles that:

- succeeded in making the pass laws unenforceable;
- helped thwart many pitiless mass removals from the land;
- prevented the creation of ethnically homogeneous states, thus making impossible the implementation of grand apartheid design;
- assisted religious and conscientious objectors to stymie the impress upon them of conscription into apartheid's army;
and, perhaps most importantly,
- secured the legal conditions for the flourishing of the world's fastest-growing labour movement in the 1980s.

14. Behind all this lay more than just a profound sense of the insults and injustices of apartheid. Behind it lay a more ambitious notion of what rule by law should mean – of how society should be ordered when a just legal system embodies attainable human values and aspirations.

15. That idea found its triumphant embodiment in the Constitution – a visionary and aspirational system of norms that points us to a society in which all have dignity and in which equality is not an empty formalism but something whose attainment will benefit all of us, rich and poor, possessed and dispossessed.

16. And it is this inspiring idea that animates the continued existence of CALS, the LRC and LHR.

17. It is therefore a mistake to seek to justify the continued work of CALS, LRC and LHR on the basis of the continuing legacy of apartheid.

18. It is equally mistaken to justify their existence because of the manifold failures of governmental capacity and will in implementing the Constitution.
19. That continuing legacy and those failures are only a partial focus of a broader struggle that lies rooted in a profound belief in the power of law to secure transcendence over social disadvantage, stigma, dispossession and degradation.
20. This requires enlisting not just the mechanisms of the law, but the highest aspirations embodied in it.
21. Those aspirations are manifested in the belief that the deeper rule of law requires the empowerment of all people and, in the process of that empowerment, dismantling barriers of privilege and exclusion.
22. We can test this idea by considering the position of poor rural women, of the disabled, and of sexual minorities. By itself, the end of apartheid did nothing to improve their position.
23. Their historical struggles antedated apartheid as much as they continued after the Constitution came into effect.
24. Dedication to these struggles entails a belief, in short, that –
 - equality before the law implies a commitment to a substantive conception of human parity; and that
 - the material conditions of life, and the terms and quality of our social inter-connection, are inescapably relevant to our duty as lawyers and judges.
25. It is the practicability of this fundamental idea that renders law and lawyers in South Africa unique: unique in history, unique in legal conceptions, and unique in aspirational possibilities.

26. CALS, the LRC and LHR therefore do not continue their struggle because the transition has been faulty. They do not continue to exist because of the contingencies of our apartheid history.
27. Their existence embodies the inspiring conviction that apartheid was one means of thwarting the proper role of law, but not the only means.
28. This means that the organisations whose birthdays we celebrate tonight are not less indispensable than under apartheid, but much more so.
29. The Constitution represented a victory of the deep-lying conception of law for which they fought under apartheid and whose aspiration the Constitution embodied, but did not fulfil.
30. Constitutionalism has allowed these organisations to claim their rightful place at the centre of our joint struggle as South Africans for transcendence.
31. But fulfilment of their aspirational conception of law still lies ahead. It lies on us to fulfil as lawyers. The struggle may yet be long. It may require us to understand that we find ourselves in a shared dilemma in which all of us seem to lack sufficient means and insight to achieve the society to which we feel ourselves committed – and that our role is not always adversarial, but one of counsel and guidance and vision.
32. Under the constitutional transition, CALS, the LRC and LHR would continue to be watchdogs to ensure the implementation of constitutional rights. But they would not be merely vehicles for the expression of grievances and the assignment of blame.
33. They would have a special role in expanding the law for socially marginalised and disadvantaged groups, and in securing a society in which the means of dignified life are available to all.

34. And they would have a particular role in advising, assisting and guiding government in fulfilling the rights in the Constitution.

35. The highest role of these three organisations thus lies not only in the practically vital work they continue to do. It lies in their role as guardians of an inspiring vision of law – one forged under apartheid, but that is now more important than ever before.

36. And the nurturance and stewardship of that idea lies in especial trust with these organisations, whose role has not diminished, but continues to grow in importance every day.