

**S2 Ep01: Finding Courage and Healing Trauma
as We Stand for Human Rights with Sibongile Ndashe**



Full Episode Transcript

**With Your Host
Mallika Dutt**

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S2 Ep01: Finding Courage and Healing Trauma as We Stand for Human Rights with Sibongile Ndashe

Where do we find courage in an environment that is deeply hostile to women's rights, sexual orientation and gender identity? How can we sustain ourselves and heal our own trauma as we stand for human rights?

Join me and Sibongile Ndashe to discuss how she weaves her passion for fabric and fashion into her back-breaking work for justice at ISLA – Initiative for Strategic Litigation in Africa.

Welcome to Leadership Moves, a podcast for visionary changemakers ready to shake up and re-envision the world. I'm your host, Mallika Dutt. Join me and my extraordinary guests as we discuss how to generate social change through leadership and the entrepreneurial, non-profit and philanthropic fields.

Welcome, Sibongile, to this conversation with Leadership Moves. I'm so excited to have you here today to talk about cutting edge leadership issues, and social justice, and movement space, and feminist space in the region of Africa. And really learn from the incredible wisdom that you've acquired doing work around litigation, and law, and policy in the continent and globally for these many years. So welcome, I'm so happy to have you here.

Sibongile: Thank you for having me. I am so be happy to be here too.

Mallika: Sibongile, let's begin with just helping us contextualize where you are, the organization that you run which you founded. You are the founder of your organization. So tell me a little bit about ISLA, what does ISLA stand for? What do you do? And what inspired you to start ISLA?

Sibongile: So ISLA stands for the Initiative for Strategic Litigation in Africa. We are based in Johannesburg and we work in a number of countries on the continent. The first five years of our existence we worked mainly in English speaking Africa, East, West and Southern Africa. But over the past two years we have expanded to francophone West Africa. And now we work in Ivory Coast and Burkina Faso. What we do at ISLA we say we are

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a feminist and Pan-African organization. So this is an identity that we have given ourselves.

And we use the law as a tool for social change, to advance women's rights issues and rights of LGBTQI people. So we do four things mainly. We litigate because we want to hold states and non-state actors accountable for human rights violations. We do partnerships, so collaborations is the way we choose to work. Maybe later on we'll get on that. So we have networks that we have established and we have different forms of collaborations.

And to support these two key things we have a knowledge production where we publish work and also do webinars and publications to disseminate some of the insights that we gain from the work that we do. But the centerpiece of our work is really the capacity strengthening that is tailored for lawyers and for social movements who want to use the law as a tool for social change. So those are the four things that we do.

Mallika: That's a huge geographic scope for your work, Sibongile. I'm really curious to know what made you attracted to the law as your tool for change? What was it about your own journey as a child or as an adult that made you feel like the law was going to be the way in which you engaged in social justice work?

Sibongile: So I landed here by chance and didn't grow up wanting to be a lawyer. I grew up wanting to be a fashion designer so I am a kind of creative at heart. And so that's how I make up for it now, by going around collecting fabric, what could have been. So when I was at university there was this group called Street Law which was a program in many universities and where law students would go out and do community education. It was a very fun space and I think the timing of it was amazing. It was around 1995, so second year after the first democratic elections in South Africa.

And we were doing work around the local government elections which would be the first at that time, people voting for the municipalities and local

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government. So we did all of these plays and it was fun, just the ability to talk about the constitution and how to do plays kind of translated into language that people can understand. So that was the first thing just about how the law can be a tool for social fun because there was a lot of excitement I think around the constitution at the time.

And when I finished law school I was lucky to get articles with one of the oldest and largest public interest litigation organization. And coming in also at a time where an organization that used to work with political prisoners and doing struggle work was also trying to reposition itself, to think about its role in democratic dispensation. So I think just being able to have Street Law and then starting with the Legal Resources Center I was able to just gain that kind of excitement that there is nothing else I just want to do right now with the law. I will not have a job in a corporate law firm.

And so for the past 21 years I have done nothing much other than being a public interest lawyer with the focus on gender and sexuality issues. So everything else has been a progression from that. I left the Legal Resources Center, I taught the constitutional code. I went to work for a feminist organization that was doing really amazing pioneering work in South Africa, constitutional litigation for about six years.

And then I moved to London to work for a very big also organization at the time that was doing public interest litigation, mainly amicus briefs before regional bodies, the European Court, the African Commission providing bigger representation. And there were some places also before the UN treaty bodies. So that's when the idea came to go back and set up a regional organization that simply focuses on gender and sexuality.

Mallika: And why gender and sexuality? So yeah, I understand historical moment in South Africa, you were in college 1995. My God, I remember all of the excitement around the constitution of South Africa. It was one of the most progressive, incorporating and embedding human rights values constitution in the world. And I think the whole world was celebrating with

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you at that time as all of this was unfolding. I also remember that was the time of the Beijing conference on women in 1995.

And I remember being part of the global women's movement really pushing for the recognition of women's rights as human rights. And being in conversation with these incredible feminists from around the world as we pushed governments to recognize really equality for women and public policy at the UN. And so 1995 for me is always one of those years that has so many things associated with it, such a time of excitement for all of us, also makes me feel old as I reflect back on that time.

So it's so exciting to hear about both your experience in college and then all of the ways in which you continue to engage with the law at the really grassroots level. And then also at the global public policy level, also within the country as well as leaving the country to be in London. So that was quite a wonderful ark that you went on when you did decide that you were going to go back and create a regional organization. You made the decision that you're going to focus on women and sexuality related issues.

So I'm curious, given the range of human rights issues that we continue to deal with around the world, what was it that drew you to those issues in particular?

Sibongile: So one of the things about working in a global environment is what we all get to bring in the table. So when talking about jurisprudence from the inter-American human rights systems, 15 from the European system and also from the African system. One of the things that was very clear was that we did not have jurisprudence. So the commission had been around for almost 25 years at the time when I was at INTERIGHTS. And there were no cases on women's human rights and cases that could have been about women's human rights were not.

And part of the thing that was becoming clear was that it really did matter who was litigating these cases. So a case about women being sentenced to lashes for wearing pants may proceed a decision without having talked

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about gender equality and just focused on the punishment that they received, that was cruel, inhuman and degrading. So the recognition or the realization that this was how women were being made invisible even in cases that were about them. That there was a problem in seeing the gendered issue that we were dealing with.

And so I remember one of the first substantive cases on women's human rights of the African Commission was the case we worked on against Egypt. And the decision was in 2013 and it was also a moment of really huge excitement to say that we now have a substantive decision that talks about state obligation to protect women from violence. And also able to recognize violence as discrimination.

So having come from a context of going to the constitutional code where we used to say, "We start with A for abattoir to Z for zoology. And we are really using the courts to deal with issues of domestic violence, sexual violence, customary law, inheritance and all of those things. And see a continent that is as big and as diverse as ours, not being able to develop jurisprudence on these issues that affect women. So when you look at covers of international NGO publications, African women continue to be the poster, women and poster girls for all sorts of violations.

So the big thing is not being able to contribute to the decision, to the conversations about what it is that was emerging from our systems. The thing that we were able to contribute was just how hard it was that the cases were not going there, that we were not seeing a lot of women engaging with the African human rights system. That was the key thing that made me to set up this organization. Also the work on sexual orientation and gender identity, that had become such a contested space from 2006 up till now.

At the African Commission we were doing advocacy, the resistance, the pushback including a commissioner saying, "This is not part of the African human rights system. That the charter does not protect gay, lesbian,

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bisexual, trans, individual sex people.” So this was important to say, “This is not something that can be an add-on in international NGOs.” We do deserve to have an organization that focuses on gender and sexuality and to be intentional about it to the point of just exclusively dealing with those two issues.

Mallika: Creating an organization that brought together many, many complex issues into being. I’m wondering if you remember when you started ISLA, what were some of the challenges that you faced? As a founder, as a leader what were some of the things that were particularly difficult that you had to address in order for the organization to come into being?

Sibongile: Moving outside of the continent because for a very long time after I left South Africa, I did a lot of work in Kenya. So Kenya became sort of the home, the godmother for ISLA. And so a lot of the work that we have done and the good partnerships that we have enjoyed were in Kenya. But it was not so easy I think in other parts of the continent in other countries because we wanted to do something that was challenging. Trying to do both women’s rights work and the sexual orientation and gender identity.

In some countries the feminist movement had been a natural ally for their [inaudible] work. But in other countries the tensions were just too much that it was not even possible to get the various groups to work together. So in 2017 I think one of the most challenging things that happened to us was when we were arrested and detained for a week with a team of lawyers.

And at that time we were doing a consultation to challenge the ban of lubricants and the closure of drop-in centers, which were centers that are used by key populations, sex workers, men who have sex with men and other groups. And we were not charged. We were just detained. And the offence was promotion of homosexuality. And we lost a lot of partners, the women’s rights groups at the time that we were working with because even though this was not true, we were still doing the same human rights work.

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But because it had now been linked to homosexuality which many people were not happy with, it just made that. So it has been a struggle I think to be able to do this work kind of bit by bit because sometimes we need very amazing feminists. And we think we are really onto something here and then we introduce the other work because we can't hide it. We don't have to hide it. We don't want to hide it. And you can actually sense the resistance to doing this work.

And sometimes people believe that they are rational, and that's the argument that they make to say, "We're already working with a vulnerable group which is women so we don't want to take on another vulnerable group because it's going to compromise the work that we do. And so we are not going to touch this work because this is a very hostile context." So we have struggled to be able to do this work kind of side by side in the way that we had intended to do.

Yeah, so those have been, I think, some of the hardest things because it's about how much visibility do you do for this work without necessarily affecting the other work especially when we move into new countries when we are not known. Because unfortunately the arrests were a big kind of – it was big news. And so when you look at the ISLA that's one of the things that you find. So even when we interview people, that's one of the things that we have to talk about is, "Are you doing dangerous work? Are we going to be arrested?" And all of those things.

In fact the lawyer position for the sexual rights program is one of the most difficult positions to recruit for.

Mallika: So many deep teachings in what you just shared about cross issue, cross identity, organizing, how to build alliances, build solidarity, all of the challenges of working with populations that are marginalized. And then all the arguments that we can often make to not work with other populations that are marginalized. There's just a lot in what you just shared.

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And so much courage really, Sibongile, in moving forward in the ways that you have, to insist on keeping these issues front and center in ISLA?

What are some of the challenges that you're facing now in the litigation landscape? You had mentioned that there are a lot of issues that are emerging with the far right in Africa right now that you are having to contend with and create strategies around. How is that influencing your work right now?

Sibongile: There is a lot of work that's being done to track the various actors across the world where the money is coming from, what motivates them, the language that they use, the tactics that they employ in different parts of the continent. Because one of the things that we're all learning is how amazing they are in terms of the advocacy, just to adapt to local context and engage with the way in which conversations take place. And also just to be able to influence the conversations.

So we have seen in South Africa the pushback on the comprehensive sexuality education. We see the attacks on abortion in Kenya. We also see the new Bill in Ghana and also the organizing and all of those things. And so once again our analyses have said we're quite critical of the response that has been very siloed. So donors who fund abortion will give money to their partners to push back and also people who support LGBTQI movements, will give money to their partners to push back and so on it goes.

And so our sense has been that this is not only dangerous, but it's also very limited and limiting because it's basically like you are training someone to fight a lone fighter but they're actually dealing with a mob. Because the actors, the opposition are very organized and our efforts are very disparaged. So the kind of work that we are trying to do is to say, "Let us look for a niche for ourselves that tries to unify all of the various groups that are fighting back and look at the legal actors."

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Because the legal actors have intervened in court cases and it's very clear that they are supported because their arguments, they borrow a lot from arguments from the US, litigation in the 60s right up until now. The language of conscientious objectives, people not wanting to work in theater and do abortion as nurses, or people who want to be marriage officers but refuse to conduct same sex marriages and all of those things on the basis of rights to religion.

But where we are trying to develop the work is to think about the disinformation. Because this is a tool that has been used a lot where you deliberately distort information. You can take a textbook and change the images so that you can actually write at kind of public anger and sentiment. Because we're not having a fair debate about all of these issues, people are lying about LGBT advocacy, accusing people of setting up recruitment centers, gay-for-pay is the language that we are hearing.

To say we need to be able to hold these people accountable, the people who are actually making the decisions, the public are angry over things that are not true. So they have borrowed a lot of tactics from the US from the 1960s, like let's stop them, they are after our children. So you just keep on putting children in there. So that's one of the challenges to say how do we use the law to challenge this disinformation but also the other ways in which the anti-rights actors are using the law?

But we are also struggling I think with courts, after all of this investment in development of treaties and soft law, the kind of normative standards that we use in court. There are issues that courts have really proven kind of resistant to change. So the patriarchal attitudes don't see the law, don't recognize the law. And so they can kind of go out of their way to subvert the law by using the law.

So for example, last month we went before the ECOWAS which is the sub-regional court in West Africa which has a human rights mandate although it was not initially set up for that. And we wanted to do our application, also

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do an amicus brief on an issue that the court has struggled with for over 10 years which is about recognizing violence against women is something that is attributable to the state, if they act, the state has acted in such a way that the perpetrator was not held accountable.

So once again they will see that slavery, for example, is wrong, and it should be attributed to the state. But they will say the sexual violence that came with slavery cannot be attributed to the state. Or in a domestic violence situation they will say, "Well, the assault, because it's cruel, inhuman and degrading can be attributed to the state but domestic violence is a private matter."

So we agreed on this brief to go and say in a new case now in September that we would like the court to develop its jurisprudence to be in line with international human rights standards. To really recognize that there is a clear link between violence and discrimination. And that's why we talk about gender-based violence is a form of discrimination. They did not hear us. Out of the blue the court said, "This is an interpersonal matter, that we wanted to make a public interest issue."

This was a case against Nigeria, so the rapist was not in court. It was a person against the state and they called it interpersonal. And only use that argument so that they would not hear us. And so that's one of the things that is very kind of frustrating because there are many people who are recording victories going through that court. So when we say it's feminist, this court is not working, this court is not getting it. It's like you just [inaudible] complainer because we are saying, "You're not getting women's rights."

Because some of these decisions are actually positive decisions, the claimant will win but they will fail to get the gender issue. And we are saying, "It's not okay to just win, for a court to just respond to it, that issue." And say slavery is wrong, or rape is wrong but actually not really deal with state responsibility in the way in which it actually is in all of these treaties

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and all of these kinds of normative standards that have been developed. And so these are some of the issues that have kind of held back the decisions of the regional human rights system.

And finally, we are also seeing kind of regression even at domestic levels. So right here in South Africa last month there was a decision that shocked all of us. A rape case where a high court overturned a conviction because the court said that the magistrate court that convicted actually got it wrong. There was consent because she agreed to the oral sex. And therefore what happened kind of afterwards. He had a reasonable belief that she was consenting to the penetrative sex. She had said no in the beginning, she doesn't want to have penetrative sex.

They have never had penetrative sex. They were in a relationship. She was 23 years old. She was a virgin and had told him all of these things, that I don't want to go there. And so the court says, "You had this and therefore you have consented and he believed that you were consenting because you allowed him to do all of these other things." So basically, I think those are some of the things that are frustrating or that are challenging in using the courts as a space for advancing issues of gender and sexuality.

We are not kind of naïve, I mean as feminists we've always known the nature of our progress that we go one step forward and then we go kind of three steps backwards and we have to fight again. The same issues keep on coming back. But it still feels very vicious, I think when it happens, the pushback, the nature of the struggles. So yeah, so that's what is preoccupying my mind right now, sometimes the frustration of it. So when we win, we win, but when we lose it really hurts.

Mallika: When we win, we win, when we lose it really hurts. And especially because when we lose, the violations that people are experiencing continue. I mean we're addressing so much pain, so much abuse, so much discrimination, exploitation. I mean really the human rights work requires us to constantly be showing up to address trauma, to address all of the ways

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in which human beings hurt and harm other human beings in some of the most vicious ways.

And then this is the work that we do day after day, year after year, month after month with a great deal of courage but also at great cost to ourselves sometimes. As a leader in this space, how do you take care of yourself?

Sibongile: So one of the things that happened and I credit this to, I think my third job when I was working for a feminist organization, the Women's Legal Center. We talked a lot about mental health and the need to develop boundaries because there is a lot that attract people to this work. So it's either people who have faced violations, or people who have had some experience even it was not directed at them, kind of association with violence.

And so sometimes people can use the work to heal themselves, wanting to be something that was not there for her. So going beyond the call of duty, extending oneself in ways that are not kind of helpful, so kind of resisting self-care. So one of the biggest things I think that I learned was that creating healthy boundaries for myself was important, that I'm not doing anyone a better service by doing more than what I can. So to be able to shut when I can and then to open when I'm ready and I feel safe and I feel like this is something that I can do.

To be able to recognize my trigger moments and to take better care of myself by just understanding and knowing which boundaries and what's healthy and what's not healthy for me. But as a leader I think that comes at kind of great costs because it's not everyone who has gone through that work of creating healthy boundaries. And also people who are able to seek help when they need it.

And so there have been many times where I feel I haven't showed up for people in ways that could have helped them because I've always kind of insisted in the self-care. Like I think you need help but I don't know how to give you the help. There are quite a number of resources and I think this is

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the challenge of doing this work. So sometimes there are budgets, what does it mean for people who are doing this work? Because the healers also need to be healed in one way.

So an organization that's able to put resources to help people do that. We struggle to actually just find the money to provide the care for everyone who does this work. But there is a recognition that that's the care that needs to be there available. And sometimes there are very big kind of mishaps because we know that we need to deal with people as they come. We need to see them as whole, as their entirety.

We have set up space and we have handled it awfully, saying, "Okay, fine, let us talk, let us understand." While there is actually no capacity to hold the people who are sharing their pain, their trauma, their health and all of that. To an extent of saying, "Okay, fine." This space started off with very good intentions and maybe there were people who could hold people. And the people are no longer there so does it still serve its purpose?

So healing work is hard. And putting in place resources to be able to hold people who are doing this work that we know induces trauma, is traumatic in very different ways with different people. It's something that I feel we still haven't been able to do very well. There is a recognition but it hasn't really come with that needed support, especially as we call ourselves a feminist organization. When I look at what donors, some donors actually having space for their staff to help with these kinds of issues, I wish we had that.

But it's not something that we can, kind of setting up a center or a space that's able to do that. Fortunately there are some donors who are putting aside kind of budgets for wellbeing to support their staff. So hopefully with more feminist funds coming in and recognizing the cost of doing this work, it will be possible to provide support to the people who are really on the frontline and having to hear, talk to clients and record all of those things. But there is a recognition and I think that's an important step that this work is very costly. The emotional cost of this work is extremely high.

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Mallika: Yeah. It definitely is very high. I can attest to that, having gone through my own journey and completely burning out some years ago and then really having to take some time out to do my own healing before I could reengage. It is a conversation that is happening more and more now in movement space. And so I'm really grateful for that.

And I'm really grateful because the work is so important and it has to be resourced. And the people who do the work have to be resourced otherwise we're not going to be able to realize the vision of the world that we all desire so much. What's giving you joy these days? What's making you happy? What are you feeling passionate about in a joy filled way?

Sibongile: Tomorrow evening I am going to go home and spend time with my mom and my brothers. I have these two family weddings this weekend and the next weekend. So just the idea of seeing all of the family members because some of them we really haven't seen them since COVID started. So this time last year was really horrific, we were just moving from one funeral to the other. So the ability to look at people and actually hold them and hug them after this horrible, horrible, horrible period that we all went through. It's something that I am kind of joyful.

But I'm happy that the year is coming to an end. I am a frustrated creative, so one of the places where I can be found is on Pinterest. I have a lot of boards. So one of the things that I am going to be doing with my time is obviously using the fabric that I create to make cushions, and seats, and all sorts of covers for daybeds. Yeah, so those are some of the things, just the ability to sit down and create over the next two months, working a bit but also just knowing that I am on holiday and there is water close by, it's something that gives me a lot of joy.

Mallika: That sounds wonderful. I love the ocean very much myself. And I have tried as much as possible to get to ocean energy this year. And I've been actually quite lucky so I can just imagine you walking by the water. The last question I have for you, Sibongile, is, young people starting their

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work in social justice, perhaps dreaming about creating an organization, any wisdom that you want to share?

Sibongile: Intergenerational kind of organizing and working is hard but when it happens it's very beautiful. So I was lucky to have been held by very different people at the beginning of my career, people who watched me read and say in ways that were not condescending or patronizing at all that, "I can see you like to read but I would like to see you write a bit more." So I wish that for many people to have people who hold them in such a way that they are able to realize the beauty that's in them. And those people aren't necessarily kind of mentors, the experts in the field.

One of the people who had an amazing contribution in my life was a program coordinator who was really there to provide us with admin and logistic support. And she was so amazing, that she'll come to me and say, "You know what? I know what you don't like doing. You don't like the admin stuff. You don't like the recon stuff. So why don't I help you so that you can actually do the stuff that you want."

I wish that for people who are starting in this profession. The ability to trust, the ability to see who is there to hold our hand and to understand what they are holding our hands for. Because there is a lot to learn. But learning takes place in different ways. And the encouragement also happens in different levels. It's not everyone who is going to say, "I was mentored by Ruth Bader Ginsburg and this is what I learned from them."

Whoever is there if you can derive any lesson from them, whether it's about the whole papers of humanity, or tiny papers of humanity, something that will make you a better person. Our first Director said this to us when we entered the profession, "That there was no illusion of that they will retain us when we finish our articles." But he wanted us to leave with a sense of social justice and that kind of conscience to lead us so that even when we go and work for a bank, we can interrogate the contract and actually say, "These terms are unfair."

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And I do believe that for people who are entering this profession, the ability to say, “This is right and this is wrong.” And that the law and justice are often distant cousins but our task is to close the gap between what is and what should be.

Mallika: I’m just going to let that in, I’m going to be held and be held, allow myself to be held by the beauty and the wisdom that you just shared, to close the gap between law and justice, and the gap between what is and what should be. Sibongile, thank you so much. Thank you for your incredible leadership and ISLA, for your love, your compassion, your courage and your wisdom, for this conversation. I wish you a wonderful time at the ocean.

Sibongile: Thank you so much for having me and for this conversation. And thank you for being you and for always holding space. I always tell the team that after talking to you I feel better. I feel good about myself. So thank you for being that person.

Mallika: Thank you. That’s lovely to hear. What a beautiful way to end this conversation.

Sibongile: Thank you.

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