Agnieszka Wlodarski Constitutional Court Oral History Project 1*' of February 2012
Int
AW
Int
AW
This is an interview with Agnieszka Wlodarski, and it $\hat{a}\200\231s$ the $1\hat{A}^{\circ}$ " of February, 2012. Agnieszka, thank you so much for agreeing to participate in the Constitutional Court Oral History Project, we really appreciate it.
Thank you. $ $ think itâ\200\231s a wonderful project. Thank you for having me.
wondered if we could start at the beginning, if you could talk about early childhood, a bit about family background, and what were some of the formative influences that may actually have led you down a particular career trajectory?
Certainly.   was born in Poland in the late seventies. My parents actually had survived the war. And   think a lot of the decisions that they based how they would nurture me and what they would like for me in the future, were based on that. In the early eighties they actually decided to leave Poland. At that point in time it was a State of Emergency and they realised they wanted to bring me up in an environment where   would have more freedom and not have to worry about living in an environment where it could potentially be a war environment. Because at that time they didnâ\200\231t Know which way it was going to go. We then stayed as refugees in Austria for just under a year, and then my father had applied to a number of countries to find work and then also for us, for our family, to move. Iâ\200\231m an only child and my motherâ\200\231s an only child, so quite a small family. And he wanted to go somewhere where it would be English speaking, so that   could learn English and have a better future. We thenhe received a number of offers and then he decided to come to South
Africa. $\mid$ donâ\200\231t think they were quite aware what was going on at the time, but $\mid$
must say in retrospect $ $ think my life would not have turned out the way it had, had they not taken the step. $ $ would not have met my husband, $ $ would not have done the wonderful things $ $ would have done. So Iâ\200\231m really glad that it worked out the way it did. It certainly wasnâ\200\231t easy for them coming to a country
where they didna\200\231t speak the language, having to adjust to a very different way

where they didnâ\200\231t speak the language, having to adjust to a very different way of life. But  $\mid$  must say  $\mid$  had a very good childhood, my parents spent a lot of time with me, told me stories about the past, and a lot of life lessons that  $\mid$  learnt from them  $\mid$  still take forward in life, and  $\mid$  think thatâ\200\231s also made me get

into the work that  $I\hat{a}\200\231m$  currently doing more so than any other influence that  $l\hat{a}\200\231ve$  had. | went to school and then after finishing school | actually decided | wanted to do law. | wasn $\hat{a}\200\231t$  quite sure at the time what it all entailed, and after

finishing school...sorry, while doing my studies, | actually worked at the Centre for Human Rights at the University of Pretoria, participated in a lot of the programs that they had, the Masters programme, the moot court programme. And | think there a more structured love for human rights came about in terms of how | saw it and how | would potentially fit into the kind of

ΑW

Int

AW

work that the centre was doing, as well as in my future. After | finished my studies, my LLB,  $\mid$  ended up working at the South African Human Rights Commission, and | worked on the new Act that was released at the time, which was the Promotion of Access to Information Act. And then for a little while after that, before | actually came to the Court, | worked on the Promotion of Equality...Prevention of Unfair Discrimination and Promotion of Equality Act. So | had worked in the human rights field for quite a while, but | realised already while | was studying, that Iâ\200\231d actually wanted to come to the Court. | held it in very high esteem, and just being able to work with the judges and fellow clerks was really something that | wanted to do. | applied, | was actually interviewed by Justice Langa, and that was my first encounter with Justice Langa, whoâ\200\231s a wonderful, wonderful man. And then for a number of months didnâ\200\231t actually know which judge | had been allocated to. So | had...I think | only found out towards the end of the year that | would be clerking for Justice van der Westhuizen. We were still in the old Court when | started in January, but | think it was a matter of weeks where we actually moved to the new building. So that was also quite an experience. It was...the inauguration was on Human Rights Day, on the 21\* of March of that year, 2004. remember being roped in...all the clerks had to give tours of the Court. | could probably still give one now, | think (/aughs) and in terms of the art works and just knowing the history of this building, it was just a really special time, | think, to come to the Court. So | think | was very fortunate in that.

Agnieszka, thank you so much for that outline. Iâ\200\231m very curious, | want to take you right back, coming to South Africa in the eighties, particularly given that it was the height of oppression, etc, how did your parents make sense of it, and as a young child, how did you make sense of it?

| think initially, | think | was too young to actually appreciate everything that was happening. | think my parents would tend to shelter me from external influences. But | think it was difficult for them, | think, coming from obviously an oppressive environment themselves but slightly differently, from a different angle. | think it was difficult but | think what they tried to instil in me were values that | should go forward in my life, and being able to know right from wrong. | think they struggled with a lot of what was going on, because they hadnâ\200\231t been subjected to that kind of discrimination as well as segregation and separation. They tried to explain it to me but in a way that itâ\200\231s not something that we believed in. It was just something that | should stand for what | believe in. And at school | was in an integrated school, so | think | might have missed the worst, you know, in terms of my developmental stages and where | was at school at the time. Most of my school was with....

Everyone?

Everyone. So it wasnâ\200\231t as noticeable...

ΑW

Int

ΑW

Int

AW

Int

ΑW

Did you go to a private primary school?

No, no, actually a public school, and  $\mid$  was actually in a town just outside Johannesburg, so it wasnâ\200\231t in the mainstream environment. You know, it wasnâ\200\231t something within my environment that was...you know, my friends were black, my friends were Coloured, my friends were Indian, so it wasnâ\200\231t something that at that time was an issue.  $\mid$  wasnâ\200\231t perhaps as politically conscientised at the time, but  $\mid$  think at university it was a little bit different because it was the University of Pretoria, and there were issues around language and colour, and  $\mid$  think  $\mid$  realised it the most because  $\mid$  was on the Student Council as well as a student court judge. And you realised that even though,  $\mid$  think the way  $\mid$  see it is, that youâ\200\231ve got your groupings on the left

youâ\200\231ve got your groupings on the right, and then the in-between bit where everybodyâ\200\231s actually quite happy to get along and work with each other. But occasionally youâ\200\231ve got the people on the left and the people on the right that do complicate things and make life difficult.

The decision to go to the University of Pretoria, what prompted that?

 $\mid$  actually just wanted to be close with my folks.  $\mid$  didnâ\200\231t want to be too far,

quite honestly,  $\mid$  wasnâ\200\231t nuts about the Wits campus. So that was really the decision. So  $\mid$  wasnâ\200\231t far enough for my folks to reach and  $\mid$  like the campus so  $\mid$  think  $\mid$  also didnâ\200\231t quite realise all the dynamics involved at the time.  $\mid$  th ink

you realise a lot of the dynamics afterwards.

When you got to the campus, it would have been in the mid-nineties, would that be correct?

Late.

Late nineties. So by that time transformation and transition had been underway. | wondered in terms of the Law School at University of Pretoria, what transformation projects had been underway?

They...1 think one of the major ones were to actually present the courses in English. | think between the two very Afrikaans universities, or the ones that are considered Afrikaans, being Stellenbosch and Pretoria, thatâ\200\231s always been an issue in terms of the classes, what languages that were going to be presented. By the time | got there they actually had Afrikaans classes, and then separate English classes. Youâ\200\231d have most of the black students and the mixed crowd, if | can call it that, in the English classes. | think there was still difficulty in terms of their residences, the transformation taking place there.

ΑW

Int

ΑW

Int

ΑW

Int

ΑW

But again, | think that a lot of people were for it, and then you had your few elements that were against it, which is unfortunate but, ja...

| also wondered, Agnieszka, in terms of the type of law that you studied, at that time what interested you? Were there attempts to introduce Constitutionalism, also Public Interest Law?

We had...I think | was fortunate in that | was working as well at the Centre for Human Rights, so | was certainly exposed to a lot more human rights, | think, than most students would have been, only taking the class. So, there was a lot of interest in terms of the, you know, whether it was the classes, the Masters classes that | would occasionally attend, and listen to the lectures. Interesting guest lecturers that came in. There was a professor (H. Goulet), who, | think heâ\200\231s still around actually, he was just a fascinating man. And | think listening to experiences of individuals and their life histories and where theyâ\200\231ve come from and what they believe in, really shaped a lot of my thinking. | wanted to continue within human rights so thatâ\200\231s why | went to the Human Rights Commission. It wasnâ\200\231t perhaps the type of work that | think | wanted to do at the time, but it was...ja, | think that was the main thing that actually shaped my interest.

In terms of the Constitutional Court, at some point you decided to do the clerkship here. Was there a decision that prompted that? What was the background to that?

| had always thought about it, and it was really a case of trying to find the right time to do it. | had actually met my husband while studying, so weâ\200\231d been together for quite a few years, and after varsity...we finished at the same time, and after university he decided to do his pupillage. So we actually needed a fixed income, so thatâ\200\231s why | went to the Human Rights Commission. | was there for quite a while actually, for a few years, and then | thought, now is as good a time as any, we were financially stable at the time so that | could do it. Because it was quite a bit of a change in terms of...ja (/aughs) to be able to do it. So | was fortunate enough that my husband supported me during that time. And | spent a year and a half here.

The interview with Johann van der Westhuizen, how do you remember it?

| didnâ\200\231t actually...no, | didnâ\200\231t interview with him.

You interviewed with Langa?

Justice Langa, ja.

ΑW

Int

AW

Int

ΑW

Int

ΑW

Was he interviewing for other judges?

He was at the time. There were two judges, it was Judge Skweyiya, and Judge van der Westhuizen that were actually appointed, but | think at the time they didnâ\200\231t know who it was going to be. So | remember going to the interviews and this all still took place at the old Court in Braampark, so it was a very different environment. It was almost a bit more corporate feel because of the place where it was, but | remember being quite intimidated by Judge Langa, but as the interview went on, his sense of humour came out and just his general personality, which is really endearing. | think heâ\200\231s definitely one of

the judges that | remember from my time at the Court.

also wondered, starting with Johann van der Westhuizen, he was new to the Court, how did you manage that transition, the both of you actually?

Well, it was quite difficult. We started with a completely new chamber. We had two new clerks, my colleague Luthando, and we had his secretary at the time was also new, and the judge was new.

Was that Mosala Sello?

No, | think it might have been somebody else before him. I'll think of the name. So it was all very new, from our duties in terms of what we needed to do as clerks, to assisting his secretary, to assisting the judge. So it was quite a period of transition, | think, for all of us. But it was good to have the support structure of other chambers and those that had actually been around for a while, could show us the ropes and assist us.

In terms of the cohort that you were with, what were the dynamics of the cohort, how was your chambers perceived, what were the discourses...?

 $\mid$  mean, it wasnâ\200\231t very...there wasnâ\200\231t an obvious,  $\mid$  think with a new judge

everybody is still trying to see, figure out what his clerks are like, what he $\hat{a}\200\231$  s

about. But the dynamic between my cohort of clerks, Iâ\200\231m still on good terms with many of them...many, many of them, so it was always a very close-knit group, which is good. We saw each other socially as well as professionally at the Court, which is quite nice. | think the sense of camaraderie and the bonding was really good. | think it was difficult to say what the perception was of the chamber. | think everybody was waiting to see what the judge and his judgments and so on would be all about. So | think it was a bit of a difficult time to be able to say something definite. | donâ\200\231t know if youâ\200\231ve inter viewed

any of his older clerks, or as in more recent clerks?

ΑW

Int

AW

Int

ΑW

No.

No, okay. | think they might have a bit of a different take on things.

In terms of the key cases that came while you were at the Court, | wondered whether you could talk about a particular case that may have had quite an impact on you?

| think there were a number of cases and each of them had a different reason why they had an impact on me. | think the one that | remember the most is the Justin Nurse South African SABMiller trademark infringement (Laugh it Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International and Another) case. And Justice (Dikgang) Moseneke was delivering the judgment. And the reason why | remember that is | was actually sitting in the gallery and Justin (Barlett) Nurse, who... | mean, | donâ\200\231t

know if you actually know the history, but he $\hat{a}$ 200\231d basically been taken to all the courts, from the High Court, to the Supreme Court of Appeal, where SABMiller had said that he infringed on their trademark, there $\hat{a}$ 200\231d been economic loss...

This is the  $\hat{a}\200\230$ Laugh It Off (Laugh it Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International and Another) case?

Laugh It Off (Laugh it Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International and Another) case, ja. And | think being so close to a litigant and | think realising what heâ\200\231d been through, going through, all the levels of court, was actually quite an impact. And | remember him, he was a little bit late in coming into the Court and Justice (Dikgang) Moseneke was reading out SABMillerâ\200\231s arguments and think when Justin (Nurse) walked in, | think he thought, this is the judgment and this is the way the judgment is going to go. And | remember thinking, just hang on, just wait, ita\200\231s coming. Because we were obviously all involved in the judgment, so you know where itâ\200\231s going to go. And he sat down and when the actual judgment was delivered and the finding in his favour, effectively, just that sense of relief, and | think just understanding what someone would have gone through to be able to actually get to the Constitutional Court, but the sense of relief that justice had actually taken place. So that was, | think being part of the proceedings and understanding what the litigants went through. There were a number of other cases, the Rail Commuters (Rail Commuters Action Group v Transnet Ltd t/a Metrorail) case; | know Justice (Kate) Oâ\200\231Regan was writing that. And there was another one,  $\mid$  think, Kern (K v Minister of Safety and Security) if Iâ\200\231m not mistaken, | think her (Justice Oâ\200\231Regan) chamber also was involved in that. | think just realising what trauma people go through and having to go through the justice system and the

ΑW

Int

AW

various courts. But it $\hat{a}\200\231s$  almost that sense of relief and finality when they get to

the Constitutional Court, and having judges of such stature and knowledge finding in their case, and working through the argument of both parties, listening to counsel arguing the cases, and then the final outcomes. It was really just an honour to be part of that process. And looking back, | think each clerk has got their experience in terms of, whether being the writing chamber, or being involved in a very important precedent setting case.

Agnieszka, in terms of the actual chamber, how did Justice Johann van der Westhuizen, how did he work, and did you feel that you could contribute, were there discussions about particular cases and judgments?

think he was still finding his feet, so | think we...we did have discussions with my colleague, we would sit down and discuss the case, we would present memos to the judge in terms of what we found when we analysed the papers that had come in. Some of them were quite daunting, the Rail Commuters case(Rail Commuters Action Group v Transnet Ltd t/a Metrorail). as well as the Basson (S v Basson) case that had come through. There were just volumes and volumes and volumes of papers, and | think occasionally that was intimidating. But he would bring us and focus us and help us in looking at what the law should be, what facts should we be looking at. So | think he was quite good at that, and bringing out...making us feel less shy about contributing, especially on such occasionally intimidating cases. | think the first year was probably quite different to how he approached things after that. think... mean, | remember staying quite late occasionally and helping him with the judgments and writing them out and those kinds of things. So | think he probably changed things quite a bit after | left, so | canâ\200\231t really say how works now.

You were also here at a time when there was a bit of a changeover of guard, Arthur Chaskalson was retiring, what are your memories of that time and also the fact that you came to a new building?

Yes, no, absolutely. The...well, let me start with the building, because chronologically that flows first. But it was quite incredible to be able to be part of that in terms of the actual inauguration on Human Rights Day in 2004. But just being in such an amazing space, the art gallery itself, and just spending time with my colleagues at the time. The library is absolutely amazing. And | think that all...it just created the atmosphere for being in just a place that nothing in the world can actually match for me, | must say. Iâ\200\231ve travelled a lot

and this will always have a very, very special place in my heart for a number of reasons. One of my good friends, who  $I\hat{a}\200\231m$  still in good contact with, and she was actually one of the clerks for Justice (Arthur) Chaskalson, and it was, | think, realising that the judges were human as well. | think, we, as law students, and as lawyers, hold them on a pedestal, and | think being able to interact with them on a personal level, and realising that they are human and

ΑW

Int

AW

Int

AW

very caring individuals was really quite special. Most of the judges made quite a big effort, especially Justice (Arthur) Chaskalson and Justice (Pius) Langa to know the clerks at the time, and they would know you, they would say hello, and name you by name. They would remember little things that youâ\200\231d discussed with them, so that was quite special, and | think it was...the change of the guard was, | think quite a big thing for everybody involved. It was quite an emotional phase. | remember the farewells and having everyone from senior counsel to the most junior person in the Court, being quite emotional about the judges actually leaving, and | think the reality sinking in that they were leaving. But of course they remain involved, which is great.

also wondered, in terms of life lessons, what life lessons did you take away from your time at the Constitutional Court?

| must say the year and a half that | spent here was...it just made me realise what life is about, | think on a personal level. Just that you can as a person make a difference. And | think that made me also realise what direction | wanted to take professionally. | wanted to make a difference. | initially did the corporate route to get qualified, do my articles, but | realised that wasnâ\200\231t something that | actually wanted to carry on doing. And while | was actually at the corporate law firm, which is wonderful, | mean, the time was great, it just wasnâ\200\231t something that | wanted to do for the rest of my life. | actually attend ed.

and | think it was the NM (NM and Others v Smith and Others) case, the Patricia de Lille book that had revealed the HIV status of a number of women, and | was on the other side in a sense that | had to note the judgment for the corporate law firm who was actually acting on behalf of the insurers. So slightly removed but still...and | got to the Court and | remember seeing Mark (Heywood), and itâ\200\231s like yesterday, in his purple HIV T-shirt, and just the reaction when the judgment was in favour of the ALP, Aids Law Project, at the time. And | just remember thinking that, that is what | want to do. | want to be involved with people like that and do the work that theyâ\200\231re doing. And very shortly after that | actually ended up interviewing with Mark (Heywood) and starting at the Aids Law Project in early 2008. And Iâ\200\231ve been with them for the last, almost four years now.

And itâ\200\231s now called SECTION27...

And itâ\200\231s now called SECTION27, after the section in the Constitution, ja.

Whatâ\200\231s your experience of working for SECTION27?

Itâ\200\231s further developed my passion for human rights, but has really taken it down to a level...itâ\200\231s been tough. | think health in general is...itâ\200\231s not an easy

topic. There was also the, just the political setting was quite difficult with the former Minister of Health. But the change has been incredible on that level.

ΑW

Int

AW

The change has been incredible with the new Minister. Well, heâ\200\231s not that new anymore, but the current Minister, (Aaron) Motsoaledi. Things have really moved in terms of addressing both HIV... worked a lot on TB-related issues, which was not given as much attention, | think, as HIV. But things have really moved on in terms of just the general attitude, and of government as well as the department, and the policies have been developed to really try and address TB, which is quite close to my heart. But working in the organisation, | think, seeing people like Adila (Hassim) and Mark (Heywood) in action and just the level of passion, commitment has really just been quite inspirational. And theyâ\200\231ve always given us a lot of room to develop. Sometimes being thrown in the deep end. | remember getting to the ALP and being told you have to work on drug-resistant TB, and it was just the...having to understand from a medical perspective what itâ\200\231s all about, but | think also understanding how it fits in within the human rights framework. And Iâ\200\231ve gone on to do quite

lot of work on human rights and TB, conducted a lot of visits. And it $200\231$ s always been knowing that at least  $1200\231$ m trying to make a difference, little bit by little bit,

person by person, but at least  $Ia\200\231m$  trying to do my bit that  $Ia\200\231d$  always wanted to.

So itâ\200\231s been very fulfilling in that sense. Like  $\mid$  said, itâ\200\231s not alway s the easiest

of topics because youâ\200\231re sometimes dealing with a worst-case scenario, So sometimes on a personal level, itâ\200\231s been quite tough. But an amazing four years.

Great. In terms of your observations of the Constitutional Court since you $\hat{200}$ 231ve left, what are your observations? What is your level of engagement?

havena $200\231$ t been that involved. A bit in the clerksa $200\231$  association...and then wea $200\231$ ve

been back with Adila (Hassim) actually arguing one or two cases. So more from the instructing attorneys or being involved in the matter itself as the amicus in the one...in fact, two cases that weâ\200\231ve been involved in.

Would you want to talk about those cases?

Sure. The one that | was more closely involved in was the Nyathi ((Minister for Justice and Constitutional Development v Nyathi and Others) case, and we came in as an amicus, and | remember...| think the really interesting thing has been working with ALP and SECTION27 now is that, how they manage to mobilise people on an issue, and in this particular case it was other lawyers and other organisations. The impact of the judgment, effectively what the case dealt with was, Mr Nyathi had a judgment against, and | seem to think it was the Department of Health, but he could not execute against the Department because the law as it stood, you weren't able to take things further than obtaining the judgment but then never really being able to take that step of getting compensation from the state, if they did not pay according to the judgment. And just being involved in quite a bit with Adila (Hassim) actually on the matter, and doing the background research on a number of points, and just seeing how she worked. And what aspects we needed to address, how

ΑW

Int

AW

Int

AW

the people were mobilised, other organisations, who then subsequently also made submissions and also were involved in being amicus...amici. So itâ\200\231s really been, | think seeing it from the other side, Iâ\200\231m sure that thereâ\200\231s, most

clerks have had a variety of being involved, whether arguing before the Court.  $Ia\200\231$ ve been more in the background, but | think supporting an organisation such as the ALP (Aids Law Project), SECTION27, in taking cases forward.

| wondered what you think of whether the Court has done enough to satisfy socio-economic rights?

Oh, that  $\frac{200}{231}$ s a tough one (/aughs). It  $\frac{200}{231}$ s always a tough one, | think every body  $\frac{200}{231}$ s

got a different opinion and | think itâ\200\231s also coloured perhaps by what their direct involvement has been. | think you only have to look at the exhibition, or at least the...downstairs, | think to realise what they have done. And | think itâ\200\231s

easy to criticise or to compliment, but | think you need to look back at what they've done. And on a number of the cases, | mean, the Grootboom (Government of the Republic of South Africa and Others v Grootboom and Others) case, obviously comes to mind. | think we...the Court has played a very significant role, but | think that government, as well as individuals, also have a very big role to play. It was quite unfortunate that Mrs Grootboom died without ever actually getting her house. And | think ita \200\231s not the fault of the Court. | think theyâ\200\231ve done what they can and in terms of the development of the jurisprudence has been very significant, and | think relying on the jurisprudence, weâ\200\231ve obviously relied a lot on the Treatment Action Campaign (Minister of Health and Other v Treatment Action Campaign and Others) case and the judgment in terms of, which has been very influential in the work that SECTION27 has been doing. So | think in that respect, realising how one judgment can unlock, | suppose, development in the Treatment Action Campaign policy as well as improving access to antiretrovirals for people. That was quite significant. But | do realise thereâ\200\231s a big debate on, but | haven't really been getting involved in that, | must say. | think | want to preserve how | perceive things.

Agnieszka, in terms of your fears or concerns for the future of the Constitution and the role of the Constitutional Court, what are those?

think certainly, as people refer to it, the Secrecy Bill. | think that is...

The Protection of the State Information bill?

The Information...has got quite a large impact on that, | think. It really hit me, | was actually with my husband, we were in Washington and thereâ\200\231s a museum there called the Newseum, and they had one exhibit that showed the world, and it coloured each country in respect of how open they were to information flow and access to information and so on. And | remember getting very...both

ΑW

my husband and | are quite upset about the fact that South Africa had been downgraded. Because at the time...this was about two years ago, there was already talk, and just talk about the implications of the Bill, and so on. And | remember thinking that what is this going to mean? Weâ\200\231ve worked so hard to achieve what we have, the Constitution itself is such a significant document, both to us as well as for the world, what impact are the actions that are going to be taken in terms of restricting access to information on the Constitution? So thatâ\200\231s from the one side. From the other side, it really just depends. | think

that perhaps following your previous question; it really depends on what case comes before the Court and what the Court finds. | think itâ\200\231s a wait and see approach at this point. | think weâ\200\231ve had significant cases that have come before the Court but | think thereâ\200\231s many more to come. And | think that we will have to see how the Court, which is now currently composed of many new judges, how they will find, and what direction they will take.

In terms of the transition to democracy, what do you think are the challenges that remain now, particularly from a human rights perspective?

think from, perhaps from the angle in terms of the work that Iâ\200\231ve been doing, it takes quite a while to translate a potential judgment or a direction that we should be taking, or at least the judgment indicates the direction that we should be taking, to actually the people at grassroots level feeling the effects of the judgment. | think the Grootboom (Government of the Republic of South Africa and Others v Grootboom and Others) case is an example. The Treatment Action Campaign (Minister of Health and Other v Treatment Action Campaign and Others) case. It does take a while for the machinery of government and the state to actually move towards realising those rights. Iâ\200\231ve also found that people arenâ\200\231t always aware of what their rights are. | think theyâ\200\231ve got a...weâ\200\231ve certainly been working a lot with patients; there was a

time that | worked with refugees and migrants. There was the...you might have picked it up, but there was, | think in 2009, a number of people had been arrested, homeless people had been arrested sleeping outside the High Court, outside the Central Methodist Mission. There were probably about three hundred and fifty people that were arrested. They just had nowhere else to go. And being involved in the processes, | think you realised that even though ideally the solution would be to do the following, translating that into practice is very different. And | think thatâ\200\231s one of our biggest challenges, i

that just the time taken between realising, this is the direction we should be taking, this is what we should be doing for our people, and translating that into actual policy implementation, making sure that therea  $200\231$ s sufficient money allocated. With TB in particular, we haven  $200\231$ t been giving it as much attention a

we have in terms of HIV, in terms of ensuring the budget is there, ensuring that the policy is being implemented. | think our level of success would have been greater if sufficient attention had been given to that.

ΑW

Int

AW

Given your birthplace as Poland,  $\mid$  wondered whether...theyâ\200\231re both transitional countries... $\mid$  wonder how you understand the differences and the dynamics and what works and what doesnâ\200\231t, form a human rights and legal viewpoint?

 $\mid$  havenâ\200\231t... $\mid$  think the closest that Iâ\200\231ve actually come to making a very strong

connection, was a few months ago when we actually went, with my parents, for the first time in a very long time, to Poland. And | realised just from the stories and putting the stories that my parents had told me, about the hardships that they $200\231$  gone through and their families, was that it wasn $200\231$  as...

so different from where South Africa came from. Some of the dynamics were obviously a little bit different. But just, | think the sense...what struck me, was the sense of unity and the individuals that really made a difference in the struggle in South Africa, and | think perceived slightly differently, but also a struggle in Poland. And | think itâ\200\231s those individual stories that actually mak e

such a difference and put it into perspective. Poland has gone onto, and | think South Africa as well, to be quite strong economically. | think that both countries are dealing with the past and have their own unique ways of dealing with the past. But what | realised in Poland was you canâ\200\231t forget what the past was, you need to honour that and you need to keep it in mind when youâ\200\231re moving forward. And | think South Africa is probably in a similar position, and | think thatâ\200\231s important for us to maintain. And itâ\200\231s interesting to speak to my

black colleagues who have also gone through quite a lot, and telling them about my past, and  $\mid$  think them realising that a lot of similar things had happened in both our backgrounds, even though continents apart. And very different countries at the time. But  $\mid$  think thereâ\200\231s a certain bond, definitely

Agnieszka, one final question, what do you think, in your estimation as a former law clerk, are some of the achievements of the Constitutional Court?

| think both on a national level, looking at the judgments that have come out of the Court. The judges, in terms of what role they have played in developing the jurisprudence, but | think also as individuals, what influence theyâ\200\231ve had on both the clerks, when they were here, as well as legal professionals. So from counsel to the attorneys, to others that have just come to the Court, | think thatâ\200\231s been quite significant. | think that the Constitutional Court has made a difference in the lives of all the clerks that have been here, as well as anybody that has worked here. On a more international level, | was at a comparative law conference, and just the level of respect and deference that other courts give to the Constitutional Court, both the judges as well as the judgments that have come out, is really significant, and | think you realise what an influence the Constitution, the Constitutional Court, and the judgments have had on \_ international jurisprudence and comparative jurisprudence.

```
Int

AW

Int

AW

Is there something Iâ\200\231ve neglected to ask you, which you'd like included in your interview...oral history?

| canâ\200\231t think of anything (/aughs).

Thank you so much, nice to meet you.

Thank you.
```

13

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 copyrigh  $^{\scriptsize +}$ 

## 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 he rein

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 liab ility for

any errors in or omissions from the information on the website or any related informati

on third party websites accessible from this website.

This document is part of the Constitutional Court Trust Oral History Project collection

at the Historical Papers at The University of the Witwatersrand, Johannesburg, South Africa.