

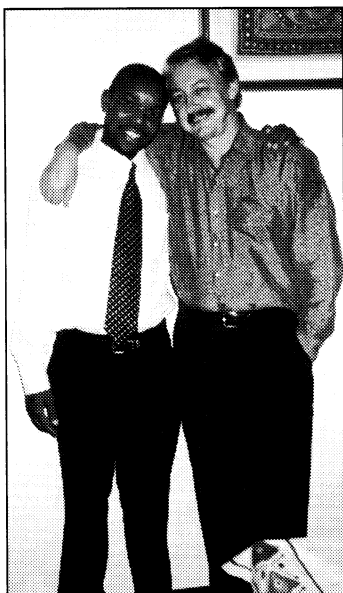
The hunger for justice across generations

An introduction to Siphosami Malunga by Colin McDonald QC

Just occasionally one gets to meet a person who stands out, who makes a difference and looms large in life. Siphosami ("Sipho") Malunga is one such person.

In early 2000, I was visiting the Dili District Court in East Timor. There, I saw a young advocate at the bar table of the main courtroom. He was elegantly dressed and assured in his courtroom demeanour. He was distinct from all others present in the court. I paused to listen to his argument addressed to the three members of the International Serious Crimes Panel. I was struck by his eloquence and his passion. The case in progress was one of the first trials for crimes against humanity in East Timor. I deliberately stayed so that I could make an introduction.

The young advocate readily introduced himself, "Sipho is my name. Sipho Malunga." He produced a UN card identifying him as a judicial affairs officer attached to the United Nations Transitional Authority in East Timor ("UNTAET"). I ascertained that he was one of the new public defenders brought into East Timor to provide counsel in the international criminal section of the UNTAET court administration.



Above: Siphosami Malunga and Colin McDonald at the ICJ dinner in Darwin.

In our first conversation I was attracted by his idealism and his passion for justice. I learnt he was from Zimbabwe, from the English common law tradition and, as a common law lawyer in East Timor, was a rarity in the Portuguese dominated legal administration. That first conversation was to be the beginning of a friendship.

On each of my subsequent trips to East Timor I made a point of meeting Sipho. He was the leader of the public defender defence team dealing with serious crimes against humanity and crimes under international law.

He talked about his cases, evidence, tactics and the foibles of the judges. He spoke incessantly about the legal reforms needed and that had been promised under UNTAET administration.

As time passed I came to know and meet his lovely wife Sima and family who resided in Darwin. Yet for our many conversations, Sipho remained a mystery. Never lost for words he spoke of the direction of legal aid in East Timor, the direction of a case, the quality of justice there, international law, almost any topic save the one that increasingly drew my curiosity: 'What was this Zimbabwean lawyer doing here?'

Sipho obviously sensed this, but bided his time. Then, on one of my visits he picked me up in his UN Landrover to take me to the Dili airport. I hopped in the car. He leant on the wheel and said looking out the windscreen with a smile: "Colin, I know you have wanted to know who I am. I like to keep a low profile and so I have waited. At your feet is a brown envelope." He laughed. "Not one of those brown envelopes, but nevertheless open it." I noticed at my feet the brown envelope to which he referred. I picked it up and removed its contents, the Catholic Commission for Justice and Peace Report on the

sustained human rights abuse in Zimbabwe 'Breaking the Silence'. My curiosity heightened.

Sipho asked me to turn to a particular page as he looked fixedly out of the windscreen. Doing as I was asked, I saw the heading: "The Trial of Sidney Malunga". "Turn the page" said Sipho. Again, I did as I was asked. The next heading struck me: "The Death of Sidney Malunga." I recalled that name I turned and faced Sipho as he spoke: "He was my father."

The mystery unraveled and, as we drove, I read about Sipho's father, one of the founders of modern Zimbabwe, the fights on points of principle he had had with Robert Mugabe his one-time teacher, mentor and friend.

continued next page

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from previous page

I learned about how Siphos father had clashed with Mugabe and paid the price.

Sidney Malunga had been gaoled as an activist in pre Independence days for ten years. Then, when released and acknowledged as a new leader of Zimbabwe, he disagreed with Mugabe about crucial economic reforms and issues of principle. The price he paid was a trumped up treason charge. Sidney Malunga's extraordinary trial for treason is one of the great trials of the last 20 years. It had all the ingredients that movies are made of. Despite the odds, he was acquitted only to be thrown into goal again.

Like Nelson Mandela, Sidney Malunga spent nearly all of his adult life fighting for justice and all too much of it he spent unjustly imprisoned for his beliefs and commitment.

One can imagine his thoughts as he sat languishing for years in various goals separated from family.

On 29 August, 1994 Reuters issued this haunting press briefing:

"Zimbabwean politician Sidney Malunga, the government's most vocal critic, was killed in a car accident late on Sunday, witnesses and government ministers said on Monday.

The witnesses said Malunga, a member of parliament since Zimbabwe's independence from Britain in 1980, died after his car overturned while trying to avoid running over a dog in the country's second city of Bulawayo.

Although an official of President Robert Mugabe's ruling ZANU-PF party, Malunga crusaded against state corruption and injustices, often clashing bitterly with government ministers who accused him of being a rebel.

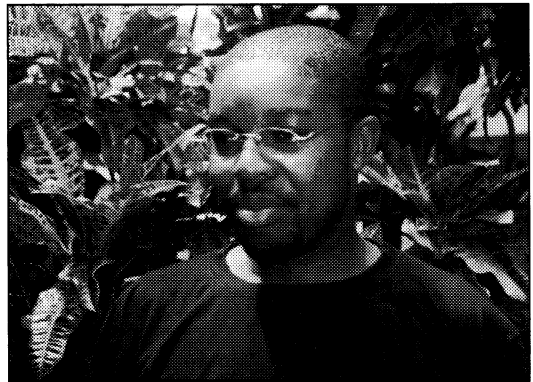
Malunga, 50, is the third legislator to die in a car

accident in Zimbabwe this year.
- Reuters"

The death was unusual and almost certainly one of a stream of disguised political killings. Why would government ministers feel so constrained to issue media releases upon a tragic death arising out of a car accident?

It was with this press release that I had the privilege in Darwin to introduce Siphos Malunga as the guest speaker to the International Commission of Jurists dinner held at the Asian Gateway restaurant on 22 March. It was a dinner those who attended will never forget.

For 45 minutes members and guests sat listening to Siphos tell his story and the destruction of the rule of law in his beloved Zimbabwe. I have not listened to a more eloquent and moving political or legal address. He spoke of his father and all those other dead and living lawyers committed to peace and justice in Zimbabwe. He emphasised the role of so many others in the struggle for justice and human rights in Zimbabwe and the tragic decline in the rule of law in his country.



Above: Siphos Malunga, lawyer, passionate Zimbabwean.

We came away for that dinner with not just Siphos words ringing in our ears, but also the conviction that we had been privileged listeners to one of new leaders of Zimbabwe, following in his father's tradition.

In the course of his speech Siphos spoke of his first 10 years of life visiting his father in various prisons. Of the agony of seeing his father betrayed, unjustly tried, extraordinarily acquitted only to be thrown into a prison again guilty of no offence other than being an influential, eloquent opponent of Robert Magebes Government.

The address by Siphos Malunga on the demoralising decline of an independent nation was a memorable event.

Siphos was passionate about the need for restoration of justice in his country.

The ICJ has asked Siphos to "file" a special report on the decline of the rule of law in post independence Zimbabwe for the next edition of *Balance*. It will be an article well worth waiting for and guaranteed to be of much interest. ①

Some thoughts from Siphos

On Robert Mugabe:

"He is no longer the international statesman that we all thought he was, he is now just a crazy, racist bigot."

On the mood of Zimbabweans towards the elections:

"They feel extremely cheated. They're very angry. There is underlying anger, it's seething. And to make matters worse, people are hungry."

On the Zimbabwean government vs the judiciary:

"They literally forced all the experienced judges to resign...we will have to get back all those wonderful judges."

On defending accused human rights violators:

"I believe that each man should be responsible for his actions. That he should not be imputed and when somebody has done something, you must have proof...If somebody did something and there's people pointing fingers, let them come out. Let them bring the evidence and we should be able on that basis, to find the guilty."

On the Commonwealth's stance on the elections:

"...most relieved and perhaps grateful...It's not often that leaders are willing to do that."