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PROGRAM NAME: WOMANITY – WOMEN IN UNITY

GUEST NAME: JUDGE SISI KHAMPEPE – JUSTICE OF THE CONSTITUTIONAL COURT OF SOUTH AFRICA

SPEAKER	TRANSCRIPTION
DR. MALKA	Hello, I'm Dr. Amaleya Goneos-Malka, welcome to 'Womanity – Women in Unity'. The show that celebrates prominent and ordinary African Women's milestone achievements in their struggles for liberation, self-emancipation, human rights, democracy, racism, socio-economic class division and gender based violence.
DR. MALKA	Joining us on the line today is Justice Sisi Khampepe, Justice of the Constitutional Court of South Africa, a position that she has held since 2009. She is one of eleven judges charged with the duties of upholding the law and the constitution in South Africa. To name a few of her previous responsibilities in 1995 she was appointed by former President Mandela as a TRC Commissioner. In 1998 she held the position of Deputy National Director of Public Prosecutions in the Department of Justice and Constitutional Development. In 2000 she was appointed Judge in the High Court. Welcome to the show Justice Khampepe.
JUDGE KHAMPEPE	Thank you very much Doctor Goneos-Malka, I'm very honoured to be invited to the show.
DR. MALKA	Justice you began your legal career as a legal advisor in the Industrial Aid Society where you were exposed to the dishonourable employment conditions of black workers; thereafter you served as a fellow in the Legal Resources Centre and later on you joined Bowman Gilfillan Attorneys as a candidate attorney, can you please share with us what it was like being a young candidate attorney in those years, during the apartheid regime, the struggle for democracy and basic human rights violations?
JUDGE KHAMPEPE	Thank you very much Doctor for that question. It was very difficult for a start to get articles in the sense that I was interested in. Because of the dishonourable manner in which I had seen black workers being treated in their employment, I wanted to serve articles in a law firm that had labour litigation, so the few firms that did do...that did have labour law all turned me down for being a candidate attorney. It was very disappointing and demotivating and I very nearly left the legal profession at that point.
DR. MALKA	And Justice what was the reason for them turning you down?
JUDGE KHAMPEPE	Well it was you know the environment of the moment, most of the...most of the big firms were not very comfortable in appointing black candidate attorneys and in my case it took the intervention of Helen Suzman and Felicia Kentridge who was working at the Legal Resources Centre to get me somewhere. I was ultimately invited to a few firms to do interviews. I prepared myself you know Doctor, to the hilt, for these interviews...
DR. MALKA	...I can imagine....
JUDGE KHAMPEPEbut at one firm I was told that the only reason they had called me in was to satisfy their curiosity about a black woman who claimed to have a masters degree from Harvard Law School, that was obviously very, very annoying but ultimately just when I thought I'd had enough and was going to leave the legal profession and take on something else differently, I was offered articles at Bowman Gilfillan, so in those years most of the clients of these firms were not appreciative of a black person handling their matters and clients would sometimes be quite vocal about it and we would have to be removed from handling a particular matter of a client who was not

	comfortable in having a black candidate attorney involved in his matter.
DR. MALKA	So there were still stereotypes that perpetuated based on race, based on gender and it was almost in essence trying to project that into a person's capabilities.
JUDGE KHAMPEPE	Yes, I think I would say more than gender during those days it was race and you know just the experience that you had as a candidate attorney was also quite something that was difficult to handle. I remember once going with my white colleague who was also a clerk, in a matter that was heard in Pretoria and during a court adjournment we went to have lunch in a restaurant, I was not allowed in that restaurant because the black, the separate amenities act was in full force, we had to buy our lunch in a kiosk and we ended up going to her car to go and eat our lunch. So my time as a candidate attorney was filled with constant experiences like that.
DR. MALKA	And it must have been incredibly frustrating as being part of the law and being confronted with such unjust legislation.
JUDGE KHAMPEPE	Absolutely I mean I was always being treated differently in public facilities, right down to going to different toilets to my white colleagues. Often there were very few toilets for blacks at courts and other public places so you had to go around literally looking for them.
DR. MALKA	It was a very oppressive time.
JUDGE KHAMPEPE	Yes, but you know these negative experiences instead of killing my aspiration of being a qualified lawyer they strengthened my resolve to pursue law and qualify in order to fight against the injustices of the day.
DR. MALKA	And after being admitted as an attorney in 1985 you established your own law firm which turned into one of the few black labour law firms in the country where you were renowned for defending the rights of workers against unjust laws and unfair employment practices; you represented several unions that were affiliated both to the National Council of Trade Unions (NCTU) and the Congress of South African Trade Unions (COSATU).....
JUDGE KHAMPEPE	Yes. Absolutely.
DR. MALKAand you were the National Legal Advisor of the South African Commercial Catering and Allied Workers Union (SACAWU)...
JUDGE KHAMPEPE	Yes.
DR. MALKA	Can you please share with us some of the memorable moments and what stayed with you the most from those times?
JUDGE KHAMPEPE	Oh yes indeed, I have some memorable moments of my time as a lawyer then.
DR. MALKA	I'd love to hear some of the stories.
JUDGE KHAMPEPE	Let me tell you they are memorable because I was involved in changing the way the law applied and negatively affected the workers and black people. Let me start with the story about hawkers. I assisted ACHIP that was an organisation that was established by Lawrence Mavundla, Professor Lewis Tager from the Wits University and my husband. Now ACHIP was established in order to overcome the mine field of by-laws which were enacted to prevent hawkers to continue with their trade and to stop the harassment of workers by the police who would come arrest them for conducting business and confiscate their stock and also ACHIP was established to grow the businesses of the hawkers. I was personally concerned for the plight of millions of families who were dependent on the hawkers who were the bread winners of their families but found themselves having their stock confiscated from day in and day out. I defended most of the hawkers for free against the unreasonable by-laws and their subsequent arrests that was the order of the day. So on the proactive side to amend the

	<p>laws affecting workers I worked with the Law Reviews Project under the leadership of Professor Lewis Tager at the Wits University. Now we were concerned about the licensing requirements because those licensing requirements were so many that it was almost impossible for hawkers to obtain a license. What remains with me today was my own contribution in the reduction of the licence requirements for the hawkers. When the requirements were reduced, most municipalities allowed the Small Business Development Corporation to put up formal hawker trading sites at convenient places, all this lessened the burden of the hawkers and made it possible for them to trade. This development restored the hawkers pride, restored their dignity and indeed improved the profitability of their businesses. Today hawkers are much better off, I look back and am filled with a sense of achievement for my own contribution to the plight of the workers. The next memorable moment relates to my involvement with the Black Consumer Union. The Black Consumer Union was established by a group of women led by the great activists of our time, Doctor Ellen Kuzwayo, Mrs. Nana Thuli and Ms Joyce Seroke who was not too long ago the Chairperson of the Gender Commission. It was primarily established to improve the socio-economic and health conditions in our country. The Consumer Union was involved in consumer issues such as wanting to get fair value for products consumed, particularly by blacks.</p>
DR. MALKA	<p>And Justice this went across the whole country, it wasn't contained to one particular province?</p>
JUDGE KHAMPEPE	<p>Yes. Absolutely, yes. It went across the whole country, so I was asked to serve as the Union's lawyer and I agreed to do so without charging anything. So what remains memorable was that I registered the first co-operative in the country for a black entity, that's the Consumer Union, and that co-operative was established for various consumer activities, so the remarkable thing I can highlight also was the battle that the Consumer Union had to fight in the skin lightening creams which had hydroquinone, you know the use of this cream had adverse effects with time on the skin of women and disfigured their faces.</p>
DR. MALKA	<p>And it's been, obviously because of the detrimental effect, it's been banned as a substance.</p>
JUDGE KHAMPEPE	<p>Yes, absolutely. The persistent work of the Union I would want to believe in this regard led to the government banning the selling of products that had hydroquinone, so for decades these products were not sold but it is shocking that today they have returned to the shelves of prominent stores in a disguised way, I feel very despondent about that. But then the last memorable moment, if you would allow me Doctor, to relate is that of a matter I won for a trade union. Now black employees who were employed in all provincial hospitals were employed as temporary workers and because they were temporary workers they could be dismissed by an administrator on a mere 24 hours notice, so most of these workers had been employed for a long period, some having period of services falling in excess of 10 years.</p>
DR. MALKA	<p>And they could be terminated on 24 hours.</p>
JUDGE KHAMPEPE	<p>They were terminated on only 24 hours notice, with no hearing, so a large group of these workers were dismissed by the administrator without a hearing on account of this 24 hour notice requirement. I challenged the administrators decision to dismiss them without a hearing and the High Court held that even though they were temporary workers and could be dismissed on 24 hours, the fact that they were obliged to make contributions to the employee's pension fund entitled these workers not to</p>

	be dismissed without a hearing so this decision turned the way temporary workers were treated by the administrator in all hospitals throughout the length and breadth of our country, so for the first time these workers were entitled to be heard before a decision to dismiss them was made. So that was something that you know, was memorable and is memorable with me even today.
DR. MALKA	It must be so rewarding to know that you played such an important role in other people's lives to make sure that their work and the activities that they do, that they're allowed to prosper.
JUDGE KHAMPEPE	Yes, it does and in fact you know it actually goes in line with what I saw when I was employed at the Industrial Aid Society what I saw the dishonourable manner in which our workers were being treated and now that I was able to practice law it gave me great satisfaction to be able to change their lives to the better.
DR. MALKA	Today we're talking to Justice Sisi Khampepe, Justice of the Constitutional Court of South Africa.
	AD BREAK
DR. MALKA	You are listening to 'Womanity-Women in Unity' on Channel Africa, the voice of the African Renaissance, on frequency 9625 KHz, on the 31 meter band also available on DSTV Channel 902. Today we're talking to Justice Sisi Khampepe, Justice of the Constitutional Court of South Africa. We would love to receive your comments on Twitter@WomanityTalk.
DR. MALKA	In the previous segment Justice Khampepe spoke about her experiences as a young candidate attorney she also shared some of her memorable moments especially the work that she did almost in essence on a social responsibility level where she did not charge a fee; her involvement in the way in which laws were applied to black labour, particularly to hawkers, to ease the restrictions on attaining licenses; her work with the Black Consumers Union and also her Trade Union work which helped to mitigate laws which were prohibitive in terms of temporary workers in hospitals where they could be terminated from employment on a mere 24 hours notice.
DR. MALKA	Justice Khampepe reflecting back on some of your history, in 1995 you were appointed by former President Mandela as a Truth and Reconciliation Commissioner.....
JUDGE KHAMPEPE	Yes.
DR. MALKAand in the following year you were a member of the TRC's Amnesty Committee, for somebody who is renowned for defending the rights of workers against unjust laws and unfair employment practices, as you've just shared with us earlier, you were then called upon to be part of the TRC Commission.
JUDGE KHAMPEPE	Yes.
DR. MALKA	I'm certain that you would classify this period in your life as one of the most emotionally stressful times in the history of our country that you've been involved in, can you please tell us what stayed with you from that period and what you learned about us as members of human society?
JUDGE KHAMPEPE	Absolutely. As you know the TRC was chaired by the Archbishop Desmond Tutu whose leadership helped to steer the course of the TRC. I was a commissioner as well as being a member of the Amnesty Committee. The Amnesty Committee had to grant amnesty to persons who made a full disclosure of acts associated with the political objectives, committed in the cause of the conflict of the past, so the work of the committee was to deal with people, perpetrators who had committed the atrocities like murder, abduction, torture, who volunteered information and wanted to be granted

	<p>amnesty, so it was by nature, the kind where you only heard about killings, torture, pain. It was a bloodbath committee so for almost ten years I sat in that committee to hear one horrific story of murder and torture after another. At the end of each gory detail the committee had to deliberate if an applicant qualified for amnesty. Now the reasons which were put forward by many perpetrators from the security force was that they killed blacks and tortured the black activists with such ease because they were brought up in their families to understand that black people had no soul and this knowledge made it easy for them to torture and inflict pain in the most indescribable way. Perhaps what has stayed with me is the case of Derby-Lewis and Walus because it is still present in people's minds.</p>
DR. MALKA	Especially in these last couple of weeks.
<p>JUDGE KHAMPEPE</p>	<p>I think in the last couple of weeks, as you know there Walus committed a cold blooded murder of Mr. Hani who was the General Secretary of the black...of the Communist Party. Mr. Hani was shot dead in the driveway of his home but following his assassination political arrests/unrest broke out in towns across the country. This Polish immigrant and a member of the Conservative party applied for amnesty and we refused them on the basis that they had not fully disclosed why Mr. Hani was assassinated. Now another case that really, really comes up in my mind is how the security police tortured activists. In one case a person was tied with his legs to a tree with his head just above the ground, the police set...lit a fire under his head which burnt his hair off, scorched his scalp and they stood there watching whilst they were enjoying a braai with meat and alcohol. This was a horrendous incident that left you emotionally taxed. Another was the three men who were intercepted just as they were about to cross the border into Swaziland, the security police interrogated the men before shooting them but just before they were executed one of the men asked to be allowed to sing Nkosi Sikelel iAfrica. The security police who testified at the Amnesty Committee related how shocked he was that a person who was in the throes of death chose to sing Nkosi Sikelel iAfrica. Now these experiences made me think how worthless black people's lives were. The security forces were willing to do these horrible killings and torture simply because one race thought that another race should be subservient and that one race thought that the other had no soul. I thought in future no race should feel they are above the other and there has to be a mutual respect between human beings and a respect for fundamental human rights. South Africa's history of repression and exploitation severely affected the mental well-being of the majority of its citizens. South African's have had to deal with a psychological stress caused by deprivation and dire socio-economic conditions coupled with the trauma from violent state repression. We come from a past where the pigment of your skin mattered more than the humanity of your heart. Our history was characterised by systemic and extensive exclusion of black people from all aspects of social, political and economic life and these inequalities formed the basis of economic and social relations. My own view is that those who benefited from a range ofand privileges under apartheid must play a pivotal role in the reconstruction of society. One must have regard that the apartheid educational curriculum did not result in the reproduction of certain cultural values, it legitimised unequal social and economic relations by shaping the mindset of the population through socialisation and indoctrination but out of this period of strife and conflict our constitution has been born and it guarantees all who live in South Africa, fundamental human rights, non-racialism and freedom. It seeks to improve the quality of life of all citizens and free their potential. However, until real economic inequalities are eliminated, until</p>

	equal opportunities become a feasible reality, the noble values on which our constitution is founded being human dignity, human rights and freedom will remain under partial threat and that's my concern.
DR. MALKA	Justice thank you very much for that narrative, I was particularly moved in terms of the elements that you described, the experiences you witnessed being on the TRC Commission in particular and it just highlights the past that we've come from.....
JUDGE KHAMPEPE	Yes.....
DR. MALKAwhere we are today.....
JUDGE KHAMPEPEabsolutely.....
DR. MALKA	...and how we can move forwards and into the next phase and when we look at the next phase, having achieved political freedom, it's now about achieving economic freedom.
JUDGE KHAMPEPE	Absolutely, that is the real issue that the country is faced with because whilst we have this economic inequality we remain being under real threat of not achieving the real equality that we all deserve to have among South Africans.
DR. MALKA	And whilst we're on the topic of equality, as you know this programme, 'Womanity – Women in Unity' is a gender based show...
JUDGE KHAMPEPE	Yes.
DR. MALKAthere has been a tremendous focus globally in terms of gender equality....
JUDGE KHAMPEPE	Yes...
DR. MALKA	...about building female leadership and about having 50/50 representation, in your position as a judge do you think that 50/50 representation across the board can realistically be achieved?
JUDGE KHAMPEPE	Oh I definitely think so. I think where there is a will there is a way. You see we once lived in a society where a woman's place was completely in the kitchen only and you know during my time at university for instance, it was considered unheard of to have women enrolling at the law faculty. I remember when I went to university and enrolled in the faculty of law, one of the white male lecturers came to my first lecture and expressed his shock at there being so many women in that lecture room, he told us in no uncertain terms Doctor, that the law faculty was not meant for women. He advised us to go register for social work for women....while the window.....
DR. MALKA	Goodness me, I'm really glad I wasn't around during those times...
JUDGE KHAMPEPE	Yes.....he told us to go register for social work while the window period for changing the degree was still open, he said if we did not and we remained in the law faculty we ran the risk of failing. Now I remember how condescendingly he spoke to us as women, that really fortified my resolve to pursue my studies in law, I really wanted to prove him wrong. I stuck to my guns and became more and more determined to work hard. In due course I was up there with the best in the class in every test I wrote up to when I graduated and you know I just felt after graduation a great need to go further with my studies and I applied for a scholarship...got my...got accepted to Harvard Law School for my LLM, this was during the 1980's when the racism of apartheid reigned supreme. I did not allow that to overcome my ideal, indeed when I graduated at Harvard, I was one of the few students who the Dean wrote a congratulatory note which is hanging in my study because it motivates me, which says "you will now embark on a career as a legal scholar and share your insights and analysis with others. I

	<i>think you have an important future ahead of you as an outstanding lawyer in South Africa”</i>
DR. MALKA	What a wonderful memento to have.
JUDGE KHAMPEPE	When I got that I said come on, what with the legacy of apartheid but little did I know that he had a better idea of my career path than I did.
DR.MALKA	Wonderful.
JUDGE KHAMPEPE	So my view is that given a chance women in different careers can easily achieve the 50/50 representation across the board and this is why I say so, see the South African government for instance has taken a lead in ensuring that there is parity. South Africa is one of the leading countries in the world where there is a higher number of women in parliament and in the cabinet. Gender equality is now a given, it is now for us to ensure that the commendable efforts taken by others are taken seriously and sustained. Now our constitution for instance is deliberately gender conscious, it is impenitent in its call on all of us to ensure that in our country we can all advance to the upper echelons of society, not because we are women and black, but because we are all human beings, equally worthy of recognition so women at all levels of leadership should be vocal and fight seriously to ensure that parity is achieved. Men must support this cause and move away from the negative stereotypes towards women. I think we need to build on all public and private sectors, for me there should be no exception, there is unfortunately an overall shortfall in gender parity in the judiciary for instance, so I really am sure that we will in time have the 50/50 parity and you know when I think of gender equality I’m always reminded about what Maya Angelou says about diversity because when we think equality we are diversifying...
DR. MALKA	Can you share it with us....
JUDGE KHAMPEPE	She calls diversity a rich tapestry whose richness derives equally from all colours it is made of, men and women are all human so our humanity lies in our ability to connect beyond the strictures of gender that society places on us. Our differences in my view make men and women human, our differences mean no more than that in the eyes we can see each other as men and women, at our very core we are all human beings we therefore all deserve to be given an opportunity to succeed and lead in our different career path, that is my view.
DR. MALKA	I think it’s a very important view and I think that building on what you’ve already said that if we can get our different entities, whether it is in the public sector or the private sector,...
JUDGE KHAMPEPE	Yes...
DR. MALKA	...to actually focus on the fundamental elements of our constitution which you expressed as being built on human dignity, human rights and freedom.
JUDGE KHAMPEPE	Yes.
DR. MALKA	Today we’re talking to Justice Sisi Khampepe, Justice of the Constitutional Court of South Africa.
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DR. MALKA	In the previous segment Justice Khampepe shared some of her experiences being on the TRC and the atrocities that took place and one of the elements that she spoke about which she highlighted was the fact that the pigment of a

	<p>person's skin seemed to matter more than the humanity of the heart. She also shared some of her experiences as a young person going through her university days where women students were discouraged from pursuing their degrees within the legal sphere and then she went on to achieve her LLM from Harvard.</p>
DR. MALKA	<p>Justice Khampepe one of the questions I ask my guests on this show who've made tremendous achievements in their respective fields is about the factors that they consider have contributed to their success. In your opinion what have been some of the key drivers to your success?</p>
JUDGE KHAMPEPE	<p>I would say my key drivers are hard work, perseverance, support from my family and my humility. I would also add my passion for what I do and a strong desire to change the lives of the most impoverished to betterment. With regard to who have been strong women in my life I would count Mam Winnie Mandela, she was persecuted by the apartheid regime, she was in prison, banned and harassed, but in all that she remained determined to the cause of the liberation movement to emancipate our people. Mam Albertina Sisulu is also one of the woman I looked up to. She was harassed by the police, constantly arrested but those hardships did not change her resolve to fight for justice and another woman who influenced me growing up was Helen Suzman. She singlehandedly stood against those lily white men in the apartheid parliament and argued against their racist policies without giving up. She was fearless, courageous and stood for the cause of non-racialism when it was not fashionable to do so. I remember even when I participated in debates at high school my teacher never ceased to tell me that I was a Helen Suzman or a Winnie Mandela because I did not allow boys to put the fear of the devil into me during the debate. I would also say another person who has influenced me is my sister, she gave me support at all times, affirmed me to continue with my career, that's my sister Lizzie and my mother, her humility and willingness to share her paltry food with those in our community in need of food was another factor that had an influence in the person I am today. So was my husband's grandmother who always stood for the truth and fairness irrespective of whether such affected his own children adversely, but these are the women who are in the past. I am today challenged by my teenage daughter who is opinionated and is very much aware of her rights as a child and never ceases to challenge me about issues affecting our generation gap.</p>
DR. MALKA	<p>I think she's inherited some of her mother's spirit.</p>
JUDGE KHAMPEPE	<p>It is always amazing how she challenges me and always reminds me that having regard to the Bill of Rights, I cannot tell her to do certain chores in the house because they impinge on her rights.</p>
DR. MALKA	<p>Wonderful! Justice Khampepe we are unfortunately running out of time....</p>
JUDGE KHAMPEPE	<p>Yes.</p>
DR. MALKA	<p>In closing the conversation today, please would you share a few words of inspiration which you would like to pass on to women in African that are listening to us today?</p>
JUDGE KHAMPEPE	<p>Thank you very much Doctor. I would say women must be brave. They should not hesitate to follow their heart. You know we become excellent in whatever we do if we follow our passion, we must identify our passion and when we do we must be resolute in following it. Women you are part of the world's changing agenda and you are agents of change within it, do not be afraid to take the plunge, this world belongs to you and it's problems and successes will best be solved and advanced if you take an interest in it. You are the future of this world, believe in yourselves and be prepared to work hard, that is my message.</p>

DR.MALKA	Thank you so much for sharing your message and for sharing some of your experiences that you've had throughout your career with all of us on the show today.
JUDGE KHAMPEPE	Thank you very much Doctor it was a pleasure for me to do so.
	PROGRAMME END