



A Curated Conspectus of the Life, Love, Law,
Literature and Laughter of Albie Sachs

THE MATATIELE MUNICIPALITY CASE – VIDEO TRANSCRIPT

CHAPTER: DEMARCATIONS, BOUNDARIES, EQUALITY AND VOICE

THANDI MATTHEWS

The issue of participatory democracy becomes even more important when we think about the demarcation of our different municipalities in relation to provincial administration. What I find interesting when it comes to issues of governance, is that, in terms of our history of colonisation, we know that colonisers went to the African map and decided to draw lines and people were put into different countries - communities were separated. That seems to be a continuation in our current dispensation of democracy, where communities have a lot of contestations about where they're going to be situated.

And now it becomes more about resource allocation, governance regimes. We've had a few cases with respect to the issue of local municipalities resisting provincial demarcation. Can you speak to us a bit about those cases?

JUSTICE ALBIE SACHS

Yes. Thandi. The point you're making has arisen very sharply in relation to traditional judicial authorities, and the challenges being made that the demarcations are not just colonial, they are apartheid. And even the way tribal groups were created under apartheid, and the way certain traditional leaders who sided with Pretoria were favoured, and the popular leaders were deposed. To continue with those demarcations and boundaries in a way that's going to deprive, particularly African women, of a choice as to whether they want to be governed by rules that inevitably work out as very patriarchal rules under traditional law, as it had been applied, or under the living customary law themes that the Constitutional Court has developed that bring in the values of equality of the Constitution, are very anti-patriarchal. These are very, very live issues.

CHAPTER: THE DEMARCATION OF PROVINCIAL BOUNDARIES

The cases that came before the Court dealt with the demarcation of provincial boundaries. I remember the days when we were negotiating the Constitution. The big issue was to have a non-racial institutional arrangement of our democracy, with voters, citizens, territorial areas, nothing based on race - as against the idea of Zulu speaking people would have their territory and area, Afrikaners would have their area, there's something else with somebody else, and rule by consensus. The grand constitutional battle was over that issue. It took us some years and only after rolling mass action, after Boipatong, did the then government concede to what became the template for our ultimate Constitution. What they'd been arguing for was power-sharing between different racial groups. In the end they were not specifically identified as racial groups.

It would have been the top three parties, but the effect would have been that Mandela would be President on Monday and De Klerk on Tuesday and Buthelezi on Wednesday. In fact, it was six months, six months, six months, ruling by consensus, which would have given the white minority a veto. Totally impossible. And it would have introduced themes of race right into the heart of our new government.

CHAPTER: A BATTLE OVER THE F WORD - FEDERALISM

So that was the big battle. But the second big battle was over the F word - federalism - and federalism was seen by most people from the black majority as an attempt to maintain white supremacy through weakening the power of the central government to bring about change, to entrench local white power bases, basically. We all agreed on the necessity of having three levels of government. National; it would be provincial, regional, whatever it was; and local. We couldn't even agree on the terminology. Should they be called states? Should they be called provinces? Should they be called regions? The ANC said *regions* - which is regions of the national state. The then-government said *states*, they must have a large degree of autonomy. So, you look in the documents, the SPRs [States/Provinces/Regions]. They were given forms of election and functioning.

The SPRs - their powers identified for SPR. We ended up with provinces. Canada has provinces. Their provinces are actually very independent. The United States has states. The Federal Republic of Germany has the Länder. In fact, the Federal Republic of Germany is more united than the United States of America. United States of America is more federal, in the sense that the states have much greater powers than the Länder have in Germany.

So, we ended up with something closer to the German model. And we didn't say, the United States of South Africa, or ... it's not called a unitary state. That term is not used in our Constitution. It's a single sovereign state - that term is used. So, we ended up with the provinces.

CHAPTER: WHERE WOULD THE PROVINCES BE?

The question then was where would the provinces be? And we had huge debates. I was in the ANC then. And we found that the most useful indicator, in fact, were the sporting unions that had set up different regional bodies based on convenience, connection, a certain political, cultural character. The social scientists were not the best people with the measures that they used. Any event, before, we had had two Cape Colonies, and now it's divided into Western Cape, Eastern Cape, Northern Cape - three.

We had KwaZulu Natal, kept more or less the same now, it had been the British Colony; the Free State one; and then the Old Transvaal, I think is divided into three. I think that should make...is it nine? So we weren't following in that sense, the old colonial boundaries in South Africa. We were following part of our history created by conquest, the British conquering the Boers and so on.

That was the outer limits of South Africa, and internally it was based on functional areas. The problem then that arose was that in certain border towns like Matatiele - it was on the border between KwaZulu Natal, Lesotho and the Eastern Cape. And for various historical reasons, the amaMpondo - the Mpondo speaking people in Matatiele - had for a long time migrated to Durban, found employment there, associated themselves there... Cape Town was far away, Kimberley was far away.... and had strong connections there.

But the powers that be or the powers that were, in the Eastern Cape wanted Matatiele - the Xhosa speaking people - to be part of the Eastern Cape. And to some extent the revenue you got as a province depended on population, and that was seen as an advantage. The people of Matatiele were not happy with that. And there were various protests, and eventually the matter goes through parliamentary processes. An amendment is required to change the boundaries of the provinces, and the challenge is made to us.

CHAPTER: MEANINGFUL CONSULTATION - A UNIQUELY SOUTH AFRICAN THING

And it was almost a uniquely South African thing, because of the configurations. And what for me was determinant, was the question of consulting the people concerned. It's not just for the national government and the province to negotiate and decide, no... the people on the spot must have a say. Not a determinant say, they don't have the last word, but they must be involved, they must know what's going on. And there just hadn't been enough, there hadn't been serious involvement and consultation, and people whose status is going to be affected, in terms of a whole range of things - where they collect their licences, where they get permissions from, to do all sorts of things like that - it's very important in daily life.

They must have a say in the decision on the boundaries. A say. A say means you have a right to be heard, to be listened to. It doesn't mean what you say is determinant. So, it was quite an emotional case in a number of respects, and it involved internal dynamics inside the ANC for example, it wasn't simply people from outside the ANC attacking the ANC government. It had its own internal dynamics as well, that intensified some of the emotion about the issue. And if I remember correctly, we challenged the amendment, and I think future processes had to be followed. And we cited either the text of Doctors for Life or at least the principles of Doctors for Life, the importance of participatory democracy.

END