



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

## THE MERAFONG CASE – VIDEO TRANSCRIPT

### CHAPTER: A PROMISE AND THE ECONOMIC POWERHOUSE

#### JUSTICE ALBIE SACHS

The Merafong Case, I think Merafong was the old Carletonville in South Africa. The name has changed. The people in Merafong wanted to be part of the Gauteng Province. It's not just glamour. Gauteng is the economic powerhouse of South Africa. And they were told that arrangements should be made between the National and Provincial Governments ... it is going to now be placed under the North West Province, and it seems that the people are unhappy. They're not going to get the services; they're not going to get the support. They're going to be connected with a more rundown part of the country, rather than the dynamic powerhouse of the country.

And so they protest, and protests take many forms. Sometimes it's polite and sometimes it's ugly. I remember the divisions on our Court were very sharp. Some of the judges felt all the correct processes had been followed, the steps have been taken, end of the matter. And simply because some judges sympathised with the Merafong residents simply because, if you like, there's been bad manners from the government, doesn't mean that the function is being unconstitutional. I felt particularly strongly in the case of Merafong that the people had been consulted and they'd been given a promise that they'll be incorporated into Gauteng.

### CHAPTER: NEGOTIATIONS AND A CONSTITUTIONAL OBLIGATION

And then afterwards there were future negotiations and the decision was altered; it was reversed. And I said, once you've given that promise, if you renege on the promise, you might be able to renege, but the very least you can do is go back and report and explain why you've changed, and it's not only the least you can do as a matter of good governmental manners, but as a constitutional obligation.

I think I concurred in the majority judgment in setting aside the decision at that stage. I think ultimately Merafong was incorporated in the North West. I think that's the position now. But it's

interesting how emotional people become... forms of status that are not connected directly with race or gender or language or colour or anything like that, but with the province that they're in.

#### CHAPTER: LOCATION, GEOGRAPHY, IDENTITY AND RESOURCES

THANDI MATTHEWS

Well location and geography are still forms of status and identity. And I think because of our attachment to land and what that means for our identity, but also governance and what that means for resource distribution and recognition, these matters are of crucial importance, I think, to many people in local communities.

JUSTICE ALBIE SACHS

They certainly have to be regarded and taken account of. It's a case of the sensitivity required by the Constitution. As I keep saying, it's not just good governmental manners. It's not just a diplomatic, nice way of functioning - of course we want that - but it's a case of a constitutional obligation.

And the fourth foundational value of the Constitution includes regular, free and fair elections and a common voters roll, to create a democratic government that will be, I forget the exact wording, but accountable and responsive to the people. And for me, that was put in for a good reason. It was actually one of the principles negotiated in advance, in the thirty-four principles and it happened to be a principle

#### CHAPTER: AN OPEN, RESPONSIVE SOCIETY

I fought hard for the open society, a responsive society, that simply having regular elections is not enough, that one needs an acknowledgment of pluralism, of diversity and of responsiveness. So, they tagged it onto the foundational principles. And I think the courts have to take account of it.

In the apartheid era, administrative law used to be in a sphere that the progressive lawyers became very expert at. You could trip up the government a little bit here, a little bit there, you could defend something through administrative law. You needed an open-minded judge to do it.

All of this changed enormously with the new Constitution. Now, people had fundamental rights, the Bill of Rights laid down fundamental rights. And you don't have to find some indirect procedural failure on the part of government...'didn't have a hearing'...'not within the powers'...our arguments always used to be based on things like that.

And administrative law as such was constitutionalised. The right to just administrative action and a whole series of new cases, new issues. It used to be, in the old days, applying for liquor licences. The

lawyers buzzed around like busy bees for liquor licences. Then fishing licences in a way took over from liquor licences, and administrative law played a very big role. The Bato Star Case was a leading case. I didn't write a separate judgment there, but a wonderful judgment from Kate O'Regan, stressing the importance of conserving the supply, the stock of fish in the sea, and supplemented by a terrific judgment by Sandile Ngcobo, underlining the importance of affirmative action, of redress, in an industry very much under white control. As I say, I didn't write in any of those cases.

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