



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

THE REFUGEE WOMEN CASE – VIDEO TRANSCRIPT

CHAPTER: THE RIGHTS OF REFUGEES TO WORK

THANDI MATTHEWS

I think the fact that you are passionate about making everybody count, is something that also shone through in the Women Refugee Case and their right to work. In our Constitution, we don't have a specific reference to a right to work. But at the same time, what was very poignant about this judgment, given our historical context, which you make reference to, the role that the continent played in our liberation, and our duty to be welcoming towards people of the continent. Can you speak to us about the importance of being welcoming in the context of our own history, and in our current context of heightened xenophobia?

CHAPTER: I WAS A REFUGEE

JUSTICE ALBIE SACHS

I was a refugee not once, but twice in England, I was a refugee in Mozambique. Refugee law wasn't just a nice thing to have, international obligations etc. It was foundational to us. And the case comes to us, and there's a conflict between provisions in the law dealing with the rights of refugees. And I think it was the Department of Home Affairs, that was preventing refugees from undertaking work as security guards. And there's a challenge by the Union of Refugee Women to that.

And of course, the lawyers use women refugees who looked the least threatening, and stories of refugees arriving from the Democratic Republic of Congo, and other parts of Africa. They tell horrendous stories of surviving massacres, seeing their families being killed, getting down to South Africa, being received here. And we have very, very good legislation on basically receiving refugees. And it was adopted by people many of whom had been refugees themselves. Other countries in Africa have camps near the border, and you'll have half a million people, three quarters of a million people living in camps. We don't have camps. Refugees come, they become part of the population. Other countries prevent refugees from working, here, we have refugees employed all over the place.

And I think for my generation, it was particularly strong. I arrived in England first as a psychological wreck, after solitary confinement and torture by sleep deprivation, crushed. And I'm received as a refugee in England. I can work, I can study, I can get a Ph.D., develop a family, write books, and I report to an organisation then that had supported refugees from Hitler in the 1930s.

I'm the only person who's reported twice to that organisation because I go to Africa afterwards, to independent Mozambique, and I'm blown up. So now I arrive as a refugee as a physical wreck. I've lost my arm and sight in one eye, and the nurses in the hospital gave me an attachment to England I'd never had. When I was there for the first eleven years, even when I was happy in England, I was unhappy, and not because of the people, but I was far away. I felt like a refugee.

I go to Mozambique, even when I'm unhappy I'm happy, because I'm connected. I go to England again and the nurses gave me a love for England that I didn't have before...they were washing my wounds, cleaning and giving me courage and getting me to stand, and to walk, and learning to write and how to tie my shoelaces. You know, it was beautiful. So, I was received there as a refugee. Meanwhile, in Mozambique, Mozambique is being bombed. The electricity is being savaged. Shipping deviated, to ruin the ports. Railway lines disrupted. The economy being wrecked. Why? Because they were supporting our freedom struggle in South Africa.

CHAPTER: THE PRICE AFRICA PAID

The bomb that was put in my car was intended to kill me. I survived. And Mr Mussagy walking by, he died some months later. So, for me, in a sense, it's really like life and death. And the price that Mozambique paid for our liberation was just immense. Huge, in all sorts of ways. Even Samora Machel whose plane was brought down... we had no doubt about it... by false beacons, they lost their president because of the support he was giving to our freedom struggle. So, for me, it's horrific that South Africans can turn against Mozambicans. They'll receive somebody from France or from Ireland or from Canada, a white person, much more comfortably than a black person from our neighbouring country, a country that paid such a heavy price. And it's utterly unacceptable.

CHAPTER: ANSWERING THE PROBLEM

But that doesn't give the answer to the particular problem. And what was interesting there was a judgment had been given in the High Court. I forget the name of the judge. A very, very thoughtful judgment, not striking down the prohibition on working, but challenging the way the regulations were expressed and the whole court agreed that exemptions were permissible.

There's a blanket ban on refugees serving as security officers in South Africa. Now security officers... Is it that unseen person protecting the president? Is it the car guard? They're all security officers and most of the organisation people were car guards. One of the few jobs they could get because...

It's not a kindly job. It's poor weather, it's motorists who are rude and don't want to cough up anything. So South Africans are not rushing for jobs like that. And so, a large number of refugees were employed in that way. And I couldn't see anything, any interest being protected in South Africa by preventing people from being car guards.

But I could see a problem with people serving the security industry in very sensitive areas. And what the rule said was that, if you're not a permanent resident, you can't take on that position. And permanent residence took five years. And during the five years, your police records could be sought, and then you'd have quite a good idea if this person is trustworthy or not. It sort of made sense. So, for me, the question then was to distinguish between the legitimate restriction on employing people who come from wherever: you know nothing about them, about their background, about their temperament, about their kinds of conduct. And to say automatically they can be employed, I would say it's justifiable to limit their right to work in those circumstances, but not the car guard, not the car guard, where the damage is what could be done by kind of any worker anywhere.

CHAPTER: IRONY AND THE JUDGMENT

So, the irony was that Yvonne Mokgoro and Kate O'Regan wrote a stronger pro refugee judgment than I did. I'd been a refugee, but I felt this balancing had to be done and they said, no, this is really based on national origin. It's unfair discrimination, it's the blanket exclusion. And they would have struck down the whole law. Where we all agreed, was an exemption could be granted and the exemptions would go to the big companies.

Usually, former security officials from the apartheid era that had set up security companies now, and they would be granted exemptions. And of course, they would choose the people they were comfortable with, not the kind of people I would want to have control over who's going to protect the president and important public buildings. But the exemptions to be applied for, you had to fill in a long form in English. Almost impossible for the applicants to understand. And we said no, it's got to be a meaningful exemption. It's got to be written in a language that they can understand. There've got to be people on the spot who will tell people what their rights are.

So, we built in a lot of procedural elements to make the system fairer, and to prevent that kind of what could easily become a sort of corrupt thing of, you just grant so and so the head of the company an exemption and he employs whoever he wants. So, I think the impact of what we

required did something to civilise, if you like, Home Affairs, in that they were much less bureaucratic in their thinking, they were much more responsive to the people who are bewildered. They've lost their countries; they're bereft in all sorts of ways, and if English is being used, it's not all that good, they're without their families... they need back up and support and compassion. And that element was built into the requirements that we had. So, there I am, the refugee, judging on refugee law and giving a softer judgment than my colleagues who'd never been refugees.

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