



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

## THE RESIDENTS OF JOE SLOVO COMMUNITY CASE – VIDEO TRANSCRIPT

### CHAPTER: JOE SLOVO

#### JUSTICE ALBIE SACHS

I knew Joe Slovo very well from the struggle days. He was an advocate in Johannesburg. I was an advocate in Cape Town. He became a full time revolutionary. He fought in World War Two. He'd been a soldier. He became head of a very elite, uMkhonto weSizwe Group of the ANC that went in for very specialised sabotage attacks with quite a high degree of success. Very popular in the country. So, the poor people named their settlement after Joe Slovo, after this white guy. And he was the first Minister of Housing. And maybe they also thought if they name this settlement after him, they might get access to housing a little more quickly.

#### CHAPTER: JOE SLOVO COMMUNITY

And it was a big area, maybe twenty to thirty thousand people, between the airport and the centre of town and next to a major highway. The Department of Housing got changed to Human Settlements, the terminology changed, and Lindiwe Sisulu became the Minister responsible. Now, she'd also been a combatant, and from a very famous family - daughter of Walter and Albertina Sisulu - criticised for being rather imperious in her style and manner. And she decides, *'We've got to redevelop that area. It gives a terrible impression of Cape Town, South Africa to the visitors'*.

I don't know exactly what's going on in her mind, but it's clearly an area that could benefit from enabling people to have better housing. And they develop a housing programme. It involves the national government, provincial government, local government, all quite complicated. And people look at the programme, and they see that they're going to be relocated, while the new homes are being built, quite far away. And only seventy percent will come back to get housing there. The other thirty percent will be for other claimants, not from that particular area. Anyway, they speak to her. A strong exchange of words. They go out into the street, they burn some tyres, they get really angry, and the matter comes to court. Legal Resources Centre, I think, again, is involved and it's Geoff

Budlender who's actually appearing in that case. And he produces forceful legal arguments of a technical kind. That the programmes of removal to an area of Delft, quite far away, were introduced - the seventy percent quota established - without giving the residents a hearing. It's a very procedural *audi alteram partem* principle that's used. Hear the other side. He is very, very confident. The Court is packed, lots of people interested. An emotional case and lots of different issues. One of the issues is, *'Are they unlawful occupiers?'* And the PIE Act - Prevention of Illegal Evictions and Unlawful Occupation Act - applies to unlawful occupiers. It protects them from eviction in the sense of only if it's just and equitable to evict them. It has to be done through the Court.

#### CHAPTER: THE JUDGES DEBATE

And I'm saying, *'They're not unlawful occupiers. They weren't, at the beginning'*. Zak's saying, *'They were unlawful. They came there, they put up their shacks, they got no permission. They got no rights from the council.'* And I'm saying, *'No, the land was empty. It was public land, they had nowhere else to go. The council allowed them. There was tacit consent. They're not unlawful occupiers.'* And I quoted Sol Plaatje, writing in 1914, after the Land Act was adopted, *'We black people, natives, woke up as pariahs in our own land'*. And I quoted quite extensively - it's in a long footnote - of the homelessness and landlessness of black people, and to say that they're unlawful occupiers of public land, to my mind, was wrong. They weren't unlawful. They became unlawful occupiers when the council said, *'Now we're starting on a new programme and you have to leave so that the bulldozers can come in so we can put up the buildings.'* Staying on after that, they then become unlawful occupiers. It didn't make any difference to the outcome. To me, there was a moral principle involved, to get away from this notion of black people as squatters, as wanderers, occupying land, without rights. You start with rights. You have a connection with the land. And in this case, they were lawful occupiers, not unlawful occupiers. Zak disagreed completely. My colleagues... I don't think any of them agreed with me.

#### CHAPTER: WHY WE HAVE A CONSTITUTION

But I felt it necessary to tell the story from Sol Plaatje onwards, as part of our history, of why we have a Constitution and why interventions are required. Geoff was very disappointed when we didn't accept his administrative law arguments. And my feeling, and I think the feeling of the other colleagues, was you don't apply the formal administrative law like as if you're giving a liquor licence or fishing licence. It's very formalised. Here these are government processes. They'd have consultations, umpteenth consultations, not a formal notice telling people what would be happening.

So, we didn't accept his main arguments, but we were worried about the terms of the removals to enable the housing process to go forward. And what the residents wanted was - you stay in your home, until the bulldozer comes next door, then you go away for a few months, and you come back again. You didn't have to be evicted; you didn't have to move. And being moved meant being moved twelve kilometres or fifteen kilometres away, far from their work. They'd have to pay transport costs. And what sort of conditions would they have when they were there? So, we said it would only be just and equitable to remove them temporarily if certain conditions were met. One, transport to their work should be provided. Two, the accommodation should be better than had been indicated.

It should be of a dignified quality. Three, I forget what there was. Making it possible for children to attend school. And they were quite strenuous conditions to make a just and equitable eviction. And the authorities looked at it and said, *'It's such a hassle, it's going to cost us so much. Let's see if we can do it, leaving the people in their homes.'*

So, they conceded, not because we ordered them to allow the people to stay in their homes until the bulldozers came like next door, but because to achieve a quality of temporary relocation compatible with human dignity, would have been expensive and time consuming and so on. Actually, they saw common sense. And now I fly a lot. I drive past there a lot.

It's very dramatic, actually. You see the different housing sections, and one large portion has solar panels, and big boilers for water. So, their hot water clearly is heated with the solar panels. It looks impressive and it's the sort of thing that the government should be doing anyhow, and they did it there. And then I kind of feel proud of that, and proud of the fact that we developed two key elements of making socio-economic rights enforceable.

#### CHAPTER: REASONABLE MEASURES, RESOURCES AND HUMAN DIGNITY

Bearing in mind the need to take reasonable measures, progressively, within available resources, in a sustainable way. And the first was the emphasis on the word reasonable measures, balancing out the need to uphold human dignity and realise the promise of the Constitution, against the capacities of government to undertake and do things, and the wide discretion that they have to have, in how the resources are used.

So, the word reasonable then became...I would tell people, it's like Archimedes said, *'Give me a lever and I can lift the world.'* In law, you need a lever. You need an organising principle, a hook, that somehow, holds together the different themes and enables you to operate. So, reasonableness became, then, the core of our approach. Reasonableness being always contextual, proportionate, depending on the circumstances, the different elements involved.

## CHAPTER: MEANINGFUL ENGAGEMENT

And then the other major piece of legal technology, if you like, was meaningful engagement, and that's very South African. We got our Constitution through meaningful engagement. We speak about Lekgotla, Indaba, Bosberaad, settling things. It's very African, in that sense. Deeply embedded in the African culture. Talking your way through. But it's now being transported to the judicial sphere where normally that's excluded.

We're the judges, we're smart, we're clever, we tell the law. It's saying, we create the framework, the parameters of the law, the interests that are involved. Now you get together, and you come up with solutions that will work. And it's not only you get better solutions. It's dignity for people. It's a sense of citizenship through the judicial process, that we matter, we count, our say is taken account of, and it feeds into what the Judges decide.

So, to me, these are the two great contributions that the Court in my period of fifteen years made to not only putting socio-economic rights on the map as rights that are capable of serious significant judicial enforcement as fundamental rights, but also providing the levers, the technical ways of approaching, that provide the most just and fair solutions.

END