

Name: Sachs, Albert (Albie)

Born: 30 January 1935, Johannesburg, South Africa

In Summary: Member of the ANC, appointed to Constitutional Committee, his ideas helped shape the TRC, Constitutional Court Judge.

Albie Sachs dedicated his life to fighting apartheid and cultivating democracy in South Africa. After several imprisonments and nearly being killed by a car bomb, Sachs became an icon of the struggle against the racist institution of apartheid. He was the mastermind behind the Constitution and served as a judge on the Constitutional Court. His ideals of the power of truth and the necessity of national unity influenced the creation of the Truth and Reconciliation Commission. Sachs understood that the past violations of human rights had to be addressed, but also that reconciliation among all citizens was crucial for creating a new, united nation.

Sachs was born in Johannesburg on 30 January 1935. His parents, Emil Solomon and Ray Ginsberg, emigrated from Lithuania, where they and fellow Jews faced discrimination and violence. They both were members of the Communist Party in South Africa, one of the few groups open to all races and one that advocated for racial equality. While his father became a leader of a labor union, his mother worked for the African National Congress (ANC). Sachs was deeply influenced by his parents' activism for equality and when the National Party was elected in 1948, Sachs committed his life to fighting to dismantle the institution of apartheid and restore justice and equality in South Africa.

While studying at the University of Cape Town, Sachs joined the Defiance of Unjust Laws Campaign, which fought apartheid through civil disobedience. His first arrest

occurred when he was 17 years old, for sitting in a section of a post office that was reserved for Africans, Coloureds, and Indians. After graduating from the University of Cape Town with a law degree in 1956, Sachs primarily defended black clients accused of resisting apartheid. After 1963, when a new law allowed the government to detain political prisoners without filing charges for 90 days, Sachs served two back-to-back sentences, and later served another detention when the law was revised to allow for 180 days in prison without charges. Fearing more arrests, Sachs moved to England in 1966, but remained active in the ANC.

In 1975 Sachs returned to Africa, this time to the newly independent Mozambique, where many ANC members were in exile, and worked as a law professor. On 7 April 1988 Sachs was nearly killed when South Africa's security forces placed a bomb in his car. His arm was blown off and he lost sight in one eye. While recuperating, Sachs wrote *Soft Vengeance of a Freedom Fighter*. He describes his recovery and emotional experience, stating, "The culture of resistance has over the decades penetrated to my innermost spirit and given me the capacity to triumph" (Sachs 1991, p.201). Instead of retreating in fear, Sachs saw the failed attempt of his enemies and his strength to recover as motivation to continue to fight for justice.

In 1990 when the South African government recognized the ANC and other activist groups, Sachs returned to South Africa after 24 years of exile. Along with the legalization of organizations, President F.W. de Klerk called for the release of Nelson Mandela. The National Party and the ANC conducted meetings during which both parties agreed to suspend the use of armed force and committed to move as quickly as possible to a peaceful,

negotiated political system. This finally created the opportunity for the negotiations of a new constitution of South Africa.

Sachs was appointed to the Constitutional Committee and became a main architect of the Constitution. Sachs stressed the importance of the inclusion of a Bill of Rights, in order to clearly state and protect the undeniable rights of all South Africans. Many South Africans rejected the idea of a bill of rights because they believed it would be a “bill of whites” and protect the status quo of white authority. Sachs, however, insisted that the “objective of a Bill of Rights should be to reinforce rather than restrict democracy” (Bazelon 2003). He understood the importance of not allowing whoever was in power to alter or disrupt the new democracy that was being created. He argued that the Bill of Rights and the Constitution must protect the rights of all citizens, both the oppressors and the oppressed, in order to eliminate a “new form of domination, this time of the majority over the minority, of black over white” (Sachs 1990, p. 185). The Constitution, according to Sachs, should be one that “expresses the sovereignty of the whole nation” (Sachs 1990, p.185). Two years after Mandela was elected president, the new Constitution was passed, with the inclusion of a Bill of Rights, in order to protect the rights of all citizens and promote national unity in a new, non-racial democracy.

Along with the Constitution, the Promotion of National Unity and Reconciliation Act was passed, resulting in the creation of the Truth and Reconciliation Commission. Through the TRC, victims of human rights violations were able to tell their story and perpetrators were given the opportunity to apply for amnesty if they testified the full truth regarding their crimes. Sachs believed that revealing past crimes against human rights would eliminate denial and “achieve an understanding and acknowledgement by society of

what happened so that the healing process can really start” (Venkatesan 2010). The public testimonies of human rights violations created a dialogue about the past injustices and acknowledgement for all those who had suffered in the fight against apartheid.

In addition to recording the testimonies of victims, the TRC had the power to grant amnesty of those who committed crimes against human rights. Before the TRC was established, many wondered what the best way to account for all the crimes and injustices that occurred during apartheid. The first option was similar to the Nuremburg Trials, “by bringing to trial all perpetrators of gross violations of human rights” (Tutu 1993, p.19). The contrasting option was dubbed “blanket amnesty”, but this too was rejected because “it felt strongly that general amnesty was really amnesia” (Tutu 1999, p.28). In drafting the Constitution, however, Sachs understood the need for accountability for past crimes, but also knew that in order to “persuade whites to relinquish power now, they must be given reasonable guarantees against persecution in the future” (Sachs 1990, p.22). In order to be granted amnesty, the perpetrator was required to testify before the TRC and divulge the full truth of their crime. The TRC had the ability to grant amnesty in order to facilitate a sense of forgiveness and reconciliation among the highly divided South African population. According to the Promotion of National Unity and Reconciliation Act, “national unity, the well-being of all South African citizens and peace require reconciliation”. Sachs argued that absence of reconciliation would “postpone the peace which we all so sorely needed”, and would “delay the reconstruction necessary to ensure that South Africa truly becomes a country that belongs to all who live in it” (Sachs 1990, p.31). In the process of granting amnesty to past offenders, the TRC was able to expose crimes committed, but also

incorporate a sense of forgiveness, which was necessary for South Africa to move forward as a unified, democratic nation.

Sachs not only contributed values and ideals to the TRC, but also experienced the power of the system firsthand. In the mid-1990's, Sachs was confronted by a man called Henri. He introduced himself as the man who was responsible for the car bomb that nearly killed Sachs. Sachs explained to his assassin that he could not shake his hand until he told the truth. Henri was granted amnesty after testifying in front of the TRC and, months later Sachs extended his left hand to him. This experience was more than just forgiveness for Sachs, but was "something far more affirmative was happening. This instrument of the state, of apartheid, suddenly became this guy, Henri" (Feneley 2010). Sachs experienced the same reconciliation and ability to move forward that he advocated for in the Constitution and in the creation of the TRC.

Sachs was not only valuable in shaping the TRC, but was an influential member of the Constitutional Court. The Constitutional Court was established by the Constitution in 1994 in order to "protect the Constitution and the fundamental human rights it entrenches" (The Constitutional Court of South Africa). It is the highest court in South Africa and only deals with constitutional matters. It has the power to declare an act of Parliament null and void, determine if an amendment to the Constitution is appropriate, and to decide if the president failed to uphold a constitutional obligation. After he jokingly told the candidate review committee that he "would give [his] right arm to get on to the court", Sachs was appointed as one of the 11 judges (Bazelon 2003). The court not only needed someone familiar with the law, but also someone with integrity and a strong commitment to human rights. Wim Trengrove, a member of the judicial selection committee, states, "Albie was

almost credible as a voice for others. His foremost qualification was...as someone committed to the constitution's values" (Bazelon 2003). During the 15 years as a judge, the Court declared the death penalty unconstitutional. When President Thabo Mbeki and his health minister banned the distribution of drugs that prevent pregnant women from transmitting HIV to their babies, the Court ruled against the government and demanded it to provide the drugs. Sachs was also instrumental in the landmark case *Home Affairs v. Fourie*, which legalized same-sex marriage, ruling that banning gay marriage violated equal rights guaranteed in the Constitution. Being appointed to the Constitutional Court allowed Sachs to continue his life-long dedication to justice and human rights in South Africa.

Whether it is through the ANC, the Constitutional Court, or shaping the TRC, Sachs fought for a better future in South Africa. His steadfast ways and self-sacrifice made him a respected, influential activist. He not only sought to break down instruments of apartheid, but also strove to create a strong democracy that protected the rights of every citizen. His understanding of reconciliation and the importance of exposing the truth influenced the foundations of the TRC and contributed to the progression of equality and national unity in South Africa.



Albie Sachs, 1990. Photograph by David Goldblatt. Permission: [Africa Media Online](#).

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