

# Meeting Albie Sachs: From Outlaw to Constitution Maker

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I met him in Cape Town. We started off with a breakfast at *Vida e Caffè* at Sea Point, a popular place. After some time we realized that the conversation wouldn't end as soon as we had thought, so we went over to his house.

"To North Americans, the most important thing is freedom. But for South Africa, equality is what comes first," Albie said. He participated in writing the Bill of Rights, promulgated in 1996. He was nominated for the Constitutional Court when Nelson Mandela took over the presidency. Then he went forth using the weapon that has always been at his side: a true understanding of human rights and the firm conviction that all are equal. A little of this legacy will be shared with you through the following interview.

## Prison, Torture, and a Bomb Attack

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One dawn, when he was a law student in Cape Town University, the police invaded his house. He was placed under a "prohibition order" which restricted all his activities. Subsequently, he was thrown into prison. The first time he spent 168 days in solitary confinement. The second time, three months. After that, 78 days. He was kept awake day and night while a group of interrogators yelled and hit the table for ten minutes. Then, ten more minutes of silence were followed by ten minutes of yelling. The next day his body waged war against his mind: "The desire to sleep was crushing. I was starting to collapse." He knew people who had remained in this

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The transformation was so drastic that he doesn’t celebrate his birthday, January 30<sup>th</sup>, any longer, but celebrates April 7<sup>th</sup> instead.

## **Adjudicating Nelson Mandela’s Law**

Albie remembered a very important event for the South African constitutional jurisdiction. In 1995, the then president Nelson Mandela used his power for his own purposes and tried changing a local elections law in favor of his party, the ANC. The act was questioned.

“He had been elected by an overwhelming majority, had unimaginable popularity and majority support in the Legislative Branch,” stated Albie. Despite all of this, the Constitutional Court brought down the President’s project.

Mandela publicly said this: “This ruling has not been the first nor will it be the last in which the Constitutional Court helps both the government and society to guarantee a constitutionally effective government.” He obeyed the decision without arguing. For Albie: “It was a very important moment for us.”

## **The Constitutional Court Building**

The Constitutional Court’s headquarters is the most memorable court building that I know of. It was erected in the Old Fort prison, a place that held Johannesburg’s most famous prisoners. “We say, with a mixture of satisfaction and shame, that South Africa possesses the only prison in the world where not only Gandhi but also Mandela was imprisoned,” Albie Sachs remembers.

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The entire prison structure has been preserved. The cells are there, around the Court, with a stairway incorporated to the building itself and the prison bricks encase the chamber where trials occur. To Albie: “The Courtroom doesn’t only represent the important ‘never again’ principle of constitutional democracy, but it also represents survival, hope, and the triumph of courage and of humanity over despair and cruelty. The terrible negative energy of the past was converted into positivity for the future.”

## **The TAC case – *Treatment Action Campaign***

One of the most memorable decisions of the Constitutional Court Albie partook in had to do with AIDS, the lethal disease ravaging large parts of Africa. A drug manufacturer had agreed to freely supply the government, for five years, with a drug capable of saving lives of HIV-infected people.

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On the day of the trial, the Court was filled with people wearing shirts that said: "HIV positive." The atmosphere was charged with emotion.

During the [trial](#), Albie had to leave the chamber for a moment. His eyes were filled with tears: "Not only from the emotion of seeing the impact that AIDS had had on our country. The tears came from an enormous sense of pride for being a member of a court that protected fundamental rights and dignity." When he came back he said to his colleague at the Court: "There isn't a problem, Sandile. I am ready, you can put away your handkerchief."

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Albie Sachs highlights that the public policy was analyzed as a whole, making it a decision that extended to the community. "We don't favor only one person or the other who, because he or she has access to good lawyers, is able to get to the Supreme Court. In seminars, I discuss the consequences of isolated decisions regarding the right to health, destined to one person or the other, decided in some Courts, like in Colombia and in Brazil. We prefer to do it in a general fashion, benefiting everyone," he says.

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The Court gave Parliament one year to correct the law: "The Court is given this power by the Constitution: to declare something unconstitutional and suspend the declaration of invalidity in order for the law to be corrected," he explains, affirming that he didn't want the Marriage Law to be considered unconstitutional just because it hadn't been altered in time, "which would have been disastrous." Then the ruling came that, in case no action was taken, the law would start using the term "or spouse".

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In 2005, a law came into effect that added to the ways one could have access to an abortion. This law was questioned in the Constitutional Court, which formally considered it to be unconstitutional because the Legislative hadn't allowed for the public participation required by the Constitution. The Court gave 18 months for the Legislative to fix this mistake, allowing for public participation in the discussion of this law. The Legislative did this and, in 2008 the new law was promulgated, without the previously detected mistakes.

I asked Albie about the constitutionality of the Abortion Law. To him, the Constitution guarantees, in its Rights Declaration, the freedom for women's reproductive rights, paving the way for laws like this one. Section 12(2)(a) of the Constitution says: “Everyone has the right to physical and psychological integrity, which includes the right of making decisions regarding reproduction.” But section 27(1)(a): “Everyone has the right to have access to services that provide medical care, including care in regards to reproduction.”

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“We had policies directed towards blacks having access. Others were directed towards women having access. It so happens that in these access laws for women they started discussing whether the white women would be deprived from participating. The discussion had too many tangents,” said Albie.

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## “See you next time!”

Before leaving I ask Albie Sachs what kind of South Africa he will leave for his son, Oliver.

“To many people, nothing has changed. To me, a lot has changed. All one has to do is look at the newspapers. The criticism towards governing authorities is intense, people say whatever they want. There is incredible improvement regarding the social-economical rights. The government has been implementing varied programs, like the access to decent housing. Of course it has problems, like violence. But, undoubtedly we live in a country that is much better than it was yesterday,” he answers.

At midnight on October 12, 2009, his 15 year term in the Constitutional Court expired. He was no longer a judge. Yet, the world would continue to thirst for Albie Sachs. He didn't become great because of the constitutional jurisdiction. He is the one who, with his own legacy and alongside his colleagues, gave dignity to the South African constitutional jurisdiction.

Albie lost his vision in one of his eyes and almost his entire right arm. Nonetheless, in him rose a fruitful heart, a powerful mind, and a body filled with energy. With his heart, he kept intact the belief that we are all equal. In his mind, brave and inspiring ideas overflow. With his energy, he travels around the world bringing his message.

“See you next time, Albie!” – I said, certain that I had just experienced one of those rare moments where one leaves a better person than he was when he came in.

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