

<https://www.dailymaverick.co.za/article/2023-07-25-unity-in-diversity-justice-albie-sachs-reflects-on-the-importance-of-participatory-democracy-in-sa/>

RIGHT TO BE HEARD

‘Unity in diversity’ – Justice Albie Sachs reflects on the importance of participatory democracy in SA



Former Constitutional Court Judge Albie Sachs. (Photo by Gallo Images / Beeld / Deaan Vivier)

By Tamsin Metelerkamp

25 Jul 2023

Participatory democracy is not only about accountability and fairness for the electorate. There are better outcomes when people are engaged and listened to in the formulation of the law.

The democracy that is envisaged in South Africa’s Constitution is a participatory one, in which individuals feel they can be involved and have a say in the formulation of laws and policies on an ongoing basis.

This participation is particularly important given the multiplicity of groupings in our diverse country, according to Justice Albie Sachs, anti-apartheid activist and former Constitutional Court judge in the first of a

three-part series providing constitutional insights into participatory democracy, administrative justice and socioeconomic rights.

“It’s not simply fairness to the electorate and accountability. You get better outcomes where people are knowledgeable about the law; they’ve been engaged in the formulation of the law; they’ve been listened to; they feel part of that wider society,” he said.

“That’s what is meant by unity in diversity. It’s not just unity of uniformity through a mathematical majority in Parliament at a particular moment. It’s a unity of participation, of involvement, of feeling that you matter – that your views are important.

“You’re more likely to get outcomes that will work because the people on the ground who are most affected by the law have had a particular say.”

Sachs said one of the most fascinating cases from his 15-year career with the Constitutional Court was the “Doctors for Life case”, in which the conservative, anti-abortion Doctors for Life group claimed the government had failed to provide a promised opportunity for participation in certain legislative processes.

“Parliament had passed a cluster of cases dealing with... access to medicines and medical care, and one of the cases dealt with termination of pregnancy,” he said.

“There was another law that dealt with... the association of medical practitioners, dentists... and the third one – much more far-reaching – dealt with traditional medicine and recognition for traditional medicine.”

All of these laws had passed through the requisite processes – public participation, voting in the National Assembly and National Council of Provinces – and been signed into law by the president.

However, Doctors for Life claimed that when they wanted to make representations regarding the draft law on abortion in the National Council of Provinces, they were told delegates would come to them to engage. Later, they heard that this was no longer going to happen as legislators had run out of time. The group then approached the Constitutional Court to have the law declared invalid.

“The Constitution says that the legislature must take reasonable steps to involve the public in all legislative processes... and it’s not enough to say, ‘Naughty, naughty – don’t do it again’,” said Sachs.

“Can we actually strike down the law as unconstitutional? Ultimately, after long debates and discussions, by a very large majority the court said it’s not

enough simply to say that it would have been better had you [as government] followed through on your promise to have public engagement.

“You have a duty to take reasonable measures and you thought it was reasonable to tell the public, ‘don’t come to Cape Town, we’ll come to you’. It’s then unreasonable to renege on that simply because of parliamentary timetable problems.

“We actually struck down the law.”

A lot of research went into reaching this verdict. Sachs said that he ended up completely convinced that if the participatory democracy envisaged by the Constitution was to be real, there had to be consequences for failures of participatory processes.

“What became clear from the literature all over the world [is] there’s a feeling that formal representative democracy is not enough; that there’s a certain disenchantment with the political processes that have the elections,” he said.

When promises are made and not fulfilled, it can lead to people feeling disempowered and young people becoming dismissive of the entire electoral process, he continued.

“That can lead to very, very negative results and a yearning for continuing public engagement in the democratic processes. Not simply issuing papers and saying, ‘If you come to Parliament, you can have your half an hour ... to speak to your representations’, [but] something more on the ground, something more ongoing. A more visceral ... organic connection between Parliament and the people.” **DM**

Register for the second [*Daily Maverick participatory democracy webinar*](#) [*here*](#).

The Inclusive Society Institute is an independent Non-Profit institution which has as its objective the promotion of a more inclusive, just and equitable South African society. This article draws on the Institute’s Constitutional Insights: A Series of Talks with Judge Albie Sachs. The series is being promoted in collaboration with the Daily Maverick.



INCLUSIVE SOCIETY
INSTITUTE