

'Accept realities of race'

SACHS: ISSUE HAS TO BE CONFRONTED HEAD-ON TO CREATE NONRACIAL SOCIETY

» Divisions along race lines 'threaten to derail achievements since 1994'.

THINK
PIECE



Daryl Swanepoel

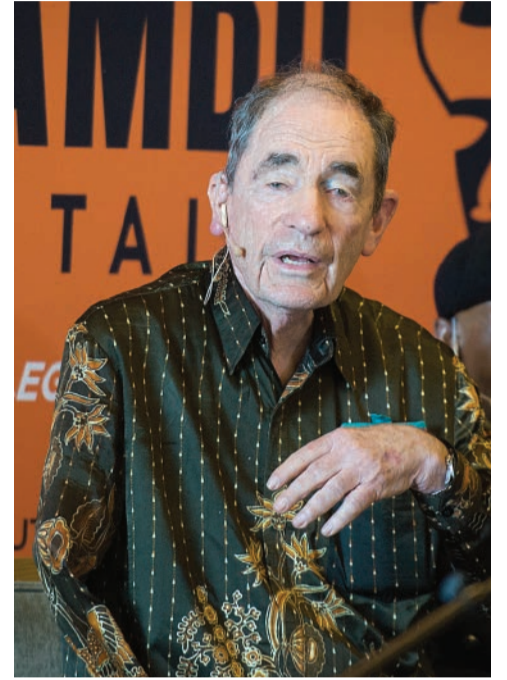
South Africa's constitution cannot be blamed for the pandemic of corruption, violence, racial tension and mistrust that is currently sweeping the country.

As stated by retired Judge Albie Sachs, a founding member of the Constitutional Court and contributor to the design of arguably one of the world's most progressive constitutions upon which South Africa's legal system is based: "[The constitution] won't eliminate racism and corruption, but it gives mechanism for doing so."

The Inclusive Society Institute (ISI) has been wrestling with this very notion of national inclusivity in a set of recent debates, focusing on how an economy benefits from a fully inclusive society once political leaders and citizens find a shared identity and a common goal.

Sachs, a giant in his own right as both a stalwart of the struggle for a democratic society and a pioneer of SA's reconstituted post-apartheid legal system, contributes to this debate in his insightful and meaningful way.

Some argue, in the face of continued inequality, that the constitution may have limited



LEGAL MIND. Retired Constitutional Court Justice Albie Sachs, who recently delivered the Inclusive Society Institute's annual lecture in which he spoke about the heightened racial discourse in South Africa. Pictures: Gallo Images

government's ability to accelerate racial redress in SA, but Sachs counters that the constitution, far from a repudiation of the beliefs and vision of the anti-apartheid struggle, was instead "a continuation of our beliefs, because the constitution incorporated what we had been fighting for".

Building on this, Sachs states that the vision in 1994 for South Africa's democratic constitution does not include the ready-made conviction: "now we'll have a great society". The constitution itself realised that many of the aspects of the new, more equal society had to be built or – in the words of the constitution – had to be "progressively realised".

Agreement on the new constitution in 1996 is best described as the end of the beginning, rather than an end in itself.

"The constitution doesn't create society; it provides the mechanism and the values for creating the society. It doesn't build homes, it doesn't build schools, it doesn't stop corruption," argues Sachs.

What it does do is empower the people through elections, through voting, and through fundamental rights and to that extent Sachs believes the vision has been maintained.

The need to feel empowered is one of the fundamental points that comes through clearly in the ISI's debates on national inclusivity and advancing the economy through inclusive growth. It is seen and recognised by societies across the globe as a building block of a successful economy and thriving nation.

Divisions and exclusions along race lines are threatening

to derail many of the country's achievements since 1994.

Certain groups believe that bringing down the race walls will threaten their ability to wield control over voters, while others fear that removing divisions will challenge their existing privileged way of life.

Sachs believes that while the injustices of the past cannot be ignored, race is not a proxy for poverty and injustice.

However, race is intertwined with accumulated injustice that still exists in our minds and in our ways of doing things.

That said, race has to be confronted head-on in order to ultimately create a nonracial society. The constitution, tempers this potentially stormy interaction by denouncing the use of hate speech by either side.

The legal framework promotes interaction, speech and debate while simultaneously trying to protect against the counterproductive onslaught of slander, defamation and

incitement to violence. Freedom of speech does not allow freedom to promote hatred.

Interestingly, Sachs believes that acknowledging the realities of race could be extremely important, especially for whites in SA.

"To acknowledge their potential vulnerability because of race, because of stereotyping of whites, because they are in a minority and they are seen by many as the source of all evil."

Sachs as always is cautious, true to his beliefs, when he stresses that progressive change must take place according to law, and according to the constitution that is designed to protect all South Africans.

"Not through anarchy, grabbing and self-enrichment or corruption," says Sachs, will the ideals of the liberation struggle take root.

► Daryl Swanepoel is the chief executive of the Inclusive Society Institute. These thoughts, formed within the context of the heightened racial discourse in the country of late, emanate from the recent ISI's annual lecture delivered by Judge Albie Sachs.

Acknowledgment important, especially for whites

Diamond mines probed for damages to inshore reef systems

John Yel

Sediment from coffer dams built by diamond mining companies on the West Coast is smothering the seabed and damaging the inshore reef systems, perhaps permanently, diamond divers have warned.

Alexander Bay veteran diver Kobus Kriel said the sea was so dark with sediment "we can't even dive with lights".

Kriel has submitted an affidavit to the Green Scorpions, who are involved in a criminal investigation into the construction and impact of the coffer dams

being used to mine diamonds near the mouth of the Orange River. The probe is at an "advanced stage", according to the department of environment, forestry and fisheries.

In addition to the criminal probe, a "pre-compliance notice" was issued on 2 November, following investigations by the department's Green Scorpions environmental management inspectors, with the recipient being given an opportunity to respond to various allegations about the illegality of the coffer dams. The department did not name the recipient.

Diamond mining in this

area is managed by the Alexkor Richtersveld Mining Company Pooling and Sharing Joint Venture (PSJV), formed between government-owned diamond mining entity Alexkor and the Richtersveld community after its successful land claim.

The joint venture, in which Alexkor holds a 51% interest, employs more than 100 mostly small, private contractors to mine diamonds in five huge blocks, extending roughly between the mouth of the Orange/Gariep River in the north and close to the little mining town of Kleinsee in the south.

Compliance notices are is-

sued in terms of the National Environmental Management Act, and are aimed at making offenders comply with environmental legislation or with the conditions of their permits or other regulatory instruments.

Pre-compliance notices give offenders advance warning that inspectors intend to issue a compliance notice and allow them to make representations before this is done.

The response by the "recipient" in the probe was due by the end of last week, the department's chief director of communication Albi Modise told *GroundUp*. "A final decision on

the way forward will be made after the contents of this representation have been considered," he said.

Referring to the criminal investigation, Modise said once the docket was finalised, it would be submitted to the Director of Public Prosecutions for a decision on whether to prosecute.

Coffer dams – used along Namaqualand's "diamond coast" since the 1950s – are temporary sea walls constructed to hold back the ocean from the intertidal beach area and shallow surf zones while miners access the diamond-bearing gravels under the beach. – *GroundUp*