VOICE FILE NAME: COHP Albie Sachs

Key:
SO: Dr Sue Onslow (Interviewer)
AS: Dr Albie Sachs (Respondent)

SO: This is Sue Onslow talking to Albie Sachs at the Lancaster Hotel, Bedford Place, London on Wednesday, 7th August 2013. Mr Sachs, thank you very much indeed for agreeing to talk to me. I wonder if you could begin by giving, please, your view of the role of the 'Commonwealth family' as part of your story in the anti-apartheid struggle.

AS: I was a lawyer, advocate and activist, in and out of prison, and very much involved in activities of the ANC from a very young age. I was aged 17 and a second year Law student when I took part in the Defiance Campaign against Unjust Laws, then attended the Congress of the People in 1955 where the Freedom Charter was adopted. So, I was subjected to the kind of repression that was meted out to thousands and thousands of us in the country. As far as the Commonwealth is concerned… I know your story starts in 1965, when the Secretariat was set up, but one has to set the table back a little bit. In 1961, Dr Verwoerd, the Prime Minister and leader of the National Party (NP), moved for South Africa to become a Republic. 31 May was the historic day: it was the day when the Anglo-Boer War finally came to an end, and that was the day chosen by him to declare South Africa's Republic status after a whites-only referendum. My recollection of the vote is that something like 55 percent of whites voted for the Republic and 45 percent against. It might have been even narrower than that. Nelson Mandela played an important role at that stage: he said that whites only were making a determination for the whole of South Africa and he called for a general strike in protest. He went underground, and that was when he put on the table very strongly the idea of a National Convention to redraft South Africa's whole constitutional order. The NP Government mobilised the Army, the air force, and made a massive show of strength. Mandela later on was captured.

SO: You're emphasising very much the role of Mandela. What of Chief Lutuli? What of Oliver Tambo?

AS: Mandela was the principal figure at that moment – he actually called for the general strike. Tambo was out of the country at this stage. And, in a sense, all the themes that played themselves out in later decades were already being established: this was an overture, if you like. I can remember working on the

New Age newspaper – it was a left-wing, pro-ANC weekly – and the question was, "Would South Africa be allowed to stay in the Commonwealth after declaring itself a Republic?" There was very, very heavy spending and promos in favour of saying, "It's fine, it's okay; South Africa can stay in the Commonwealth." But we had our people here in London – the name Vella Pillay was very prominent, one of the founders of the anti-apartheid group. He said no, he's been in touch with African governments and [there is] no way racist South Africa – declaring itself a Republic and changing its status – [would] be allowed to stay on in the Commonwealth. It would have to apply for readmission to the Commonwealth and the majority would be against.

Ours was the only newspaper in South Africa that carried that story. The press generally had very strong statements and indications from, I think, the British Government and others of, "Don't worry, chaps! It'll be okay, we'll keep you in." It is one of those examples where we saw this massive campaign, using the media to create a climate facilitating apartheid South Africa remaining in the Commonwealth, which turned out to be completely wrong. So, the decision came that South Africa could not remain inside; Verwoerd would not be readmitted to the Commonwealth.

The groupings inside the Commonwealth that were really divided on the issue of readmitting South Africa tended to be the groupings that played different roles as far as the Commonwealth itself was concerned. It was one of those issues that certainly rallied the African countries and the Asian countries of the Commonwealth on an anti-apartheid platform, whereas there wasn't much solidarity between them on a whole range of other questions internally, in terms of African politics or Asian politics. The anti-apartheid theme was something that they supported quite strongly. It was a strong, unifying factor amongst what were then called the 'Third World' Commonwealth countries, and it was a divisive factor for the Commonwealth as a whole. By and large, the British Government, the Australian Government, and the New Zealand Government were doing what they could to keep South Africa within the fold. Canada was the one country that acted as something of a bridge between the two groups – quite overtly, and acknowledging their special role in that regard. You look puzzled.

SO: No, I'm just thinking… After South Africa's withdrawal from the Commonwealth in 1961, your newspaper must have felt vindicated in arguing that it was not going to be acceptable for the country to stay in the Commonwealth.

AS: We just felt our sources were better – less tainted by spin, and much more in touch with the actual great majority of members of the Commonwealth. But, you know, we were a small paper subject to constant police harassment. The editors were banned, the newspaper was banned, so, it wasn't as though we were able to sell thousands of copies afterwards to say we were right. But it was certainly a lesson to me at the time: just don't always trust what you read in the newspapers! And then I would say, with Canada acting as something of a bridge, partly because Canadian support for anti-apartheid was stronger – also, we didn't have rugby teams or cricket teams going to Canada – and I think it was the time of Liberal Governments there...But, partly, they wanted to prevent the division of the Commonwealth. They saw their role as being supportive of anti-apartheid struggle in principle, but also helping to keep the Commonwealth together and not allowing the Commonwealth to split on the question of South Africa.

At a later stage, another bridge was established through Malcolm Fraser and the personal role that he played. Having been the Liberal – perhaps more conservative – Prime Minister in Australia, he joined the Eminent Persons Group in 1985/86. He played a very positive role in straddling the gap that had emerged before what used to be called the 'white' Commonwealth and the rest – the majority of the Commonwealth. And to my mind he comes out very, very well in this whole story as somebody who – in a kind of modest but firm way, with genuine anti-apartheid convictions – contributed towards a climate of saying, in the end, [that] this apartheid system is just intolerable. The British Government, to put it mildly, was unenthusiastic, and the issues that would crop up weren't simply issues now of admission or non-admission, because South Africa wasn't even claiming to have a right to be readmitted. The issue was what to do about sanctions, and again you saw these divisions inside the Commonwealth. The sanctions in relation to the supply of arms got general support. I'd say even the British Government, I think, came on board with that. As for the economic boycott, there was a split right down the middle, with the British Government very strongly opposing economic sanctions, Australia and New Zealand generally supporting them, while the Canadians were a bit more ambivalent on that. India [was] strongly in favour; Pakistan, I think, in favour; and most of the Asian countries. Even Asian countries that were quite authoritarian and conservative took quite strong stands on the issue of apartheid.

SO: Yesterday I was reading the transcripts behind the Nassau CHOGM meeting in 1985 and the Eminent Persons Group. Dr Mahathir took a very firm stance indeed. The CHOGM meeting minutes show the clarity of his statements to other Heads of Government.

AS: Yes. It was a bit confusing for some of us because we were much more sympathetic to anti-authoritarian figures and pro-democracy figures in those countries. That was part of the quality of the ANC leadership: not to get drawn into internal political fights – or battles, anyway – and try to get maximum unity. You mentioned the name earlier of Oliver Tambo. I'm speaking now about the 1980s. Tambo was based in Zambia, which was a one-party state. He flew to revolutionary Mozambique – these were natural allies, there was solidarity between FRELIMO and the ANC – and then he flew to the Kingdom of Swaziland and finally to Lesotho under military rule. He wouldn't come up with different statements for each country: it would be a consistent approach of trying to get maximum African unity which ultimately resulted in the Lusaka Accord, which was the real door-opener to negotiations. You know the story about negotiations? There's a nice story explaining that Thabo Mbeki met a National Party professor in a country house in England, and they got the whole thing going. Those things helped, but they were really peripheral: not insignificant, perhaps, but only little elements and threads.

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The real foundation for the opening was the Lusaka Accord, which was very much pioneered by Oliver Tambo, with Thabo Mbeki playing a very important role in that. And that set out the framework for the future negotiations to transform South Africa. That was not a purely Commonwealth initiative, although the African Commonwealth countries played a leading role in that – very much under the guidance of the ANC and of Oliver Tambo personally.

Now, how did we feel about the Commonwealth? The answer is: ambivalent, because the Commonwealth itself was ambivalent. In terms of overall

denunciation of apartheid, there was no problem. Nobody defended apartheid. I think it wasn't just for purposes of alliteration, but people "abhorred apartheid". Tory governments abhorred apartheid, but… It was always followed by the 'but'! I think it was Bertrand Russell who said, "The most powerful word in the English language is 'but'," and it was certainly a powerful word. And it was not only Tory Governments: it was not just the 'kith and kin' identification of whites with whites, nor just protecting investments. There was certainly a huge degree of Afro-pessimism: a feeling that everything would just go to pot in South Africa if a black majority government took over.

This was certainly bound up very much with the Cold War, but that's where the Asian participation is quite important. There were often very, very, very anti-Communist, anti-Soviet, [and] anti-China countries in Asia giving strong support to the anti-apartheid movement. So, this fuelled that ambivalence and I personally felt – and I've written about this – the ambivalence of having been received as a refugee in England twice. Not just once, but twice! There was a body which is now called CARA.

SO: The Council for Assisting Refugee Academics? It was renamed in 1999.

AS: Yes, and I was received by the predecessor organisation, the Society for the Protection of Science and Learning, when I arrived as a mental wreck after solitary confinement in South Africa. That was in 1966. I had such ambivalence towards the UK because, on the one hand, it was a country that was willing to receive me – I would walk on Hampstead Heath and watch the kites flying and I couldn't believe that I wouldn't be arrested and locked up and put in solitary confinement the next day. It was just amazing. And I appreciated the fact it was a country to which I could go, and I could study, and I could write and I could publish. On the other hand, I kept feeling that if Britain hadn't effectively been involved in the conquest of South Africa and the establishment of the white-dominated state in 1910, we wouldn't have the struggles over apartheid. That same theme of the British Empire was now reflected in terms of the British Government's stalling and blocking of effective sanctions against apartheid South Africa.

The idea of sanctions was to minimise the need for an armed struggle. It wasn't there just to punish and destroy; it was seen as part of a strategy that would be relatively non-violent. So, here I am, I'm torn, and anybody who's worked with refugees knows this. You also put on to your host state a lot of your anger, because you can't get at those who've displaced you: they're too far away. So, you get at the features of the society that's receiving you that reminds you of the negative aspects. And then I would feel, "This is crazy. I'm here in the UK being given every opportunity to establish a family life, to do a PhD and to have books published, and yet I've still got a bit of rage inside me." Ambivalence.

When I came the second time, in 1988, I came as a physical wreck. I'd been blown up: I was semi-conscious; I'd lost an arm. It was when I was blown up in Mozambique by a bomb put in my car by South African security agents. I came literally on a stretcher, and what had such a big impact on me, really, was the nursing I got in the London hospitals. So, the first time was '66. I go to Mozambique in '77, and I'm blown up and come back in '88. And there was just something about the hands of the nurses – cleaning my wounds, changing the bandages, just the touch – that gave me an affection and love

for the UK that I hadn't had before. Respect, admiration, people I loved… I loved working with people involved in anti-apartheid, arguing with others and all the rest. This I had had in spades when I had come the first time as a refugee. But this was something deeper than just respect and admiration. This was physical, intimate and deeply caring contact. It made me love being in London. I was so thrilled when I recently saw the Olympic Games opening ceremony – the big show – which gave the National Health Service a huge thumbs up, because it really spoke to me. I'd been lying in exactly one of those hospital beds.

SO: Yes, the NHS is a religion here.

AS: It signified a lot to me and it helped to reduce that sense of ambivalence. The last little story that I will tell in this floating around, stream of consciousness reminiscing is [that] I met the Queen once. It was the Institute of Commonwealth Studies (ICwS) that arranged a visit to the Palace. Dr Shula Marks was the Director then, and she arranged for a busload of us [to go]. I was established in the South African Constitutional Study Centre at the ICwS after I'd got out of hospital. We all lined up, and I still remember seeing short Shula Marks with her handbag chatting to short Her Majesty with her handbag, nattering away. It was nice.

SO: That's a charming image!

AS: It was very lovely, actually. Then it was my turn, and you've got like ten seconds, so I quickly said that Oliver Tambo – this would have been 1988, I think – had mentioned that if democracy came to South Africa, there could very well be a return to the Commonwealth. I mentioned that to her, knowing that she was very interested in the Commonwealth. So, I managed to turn even a handshake with Her Majesty…

SO: Do you recall what she said in response to that?

AS: No. She noted [it], she heard it; I could see she registered. I think she said something about [how] she knew Oliver Tambo. She said something gracious about him, so it was a gracious response without committing to anything, and [she gave] some indication that she would be happy to see South Africa back in the Commonwealth. It was something like that. We're fighting on all fronts in the anti-apartheid struggle, so if I could get ten seconds of a statement to that effect, then I would.

On the Commonwealth in South Africa today… I'm going to put it in a double negative: it's not unimportant. I think that sense of family is there. I think people appreciate very much the diversity of the Commonwealth: they see the diversity as a great strength of the Commonwealth – that it's got North/South, and includes very developed countries. The broad commitment to democracy against army coups and negotiations… I think these are themes that appeal. South Africa had done an opinion poll when Mozambique joined the Commonwealth [and] it seemed to make a lot of sense to South Africans. So, I can't put it stronger than that. It's not an important association, but it's not an unimportant one either! South Africa belongs to the UN; it belongs to BRICS – that's Brazil, Russia, India, China and South Africa. [It belongs] to the African Union: it pays a lot of attention to the African Union, and then you get talk about the English-speaking countries, the French-speaking countries, but you don't hear about the Commonwealth countries. It's the English-

speaking/French-speaking distinction which would be the division that is referred to.

SO: So, is there a lasting and residual memory of how key Commonwealth countries or key elements of Commonwealth civil society contributed to the end of apartheid? Or has that dissipated?

AS: I think there's appreciation – very much strengthened by the Eminent Persons Group and Malcolm Fraser, which made it seem less divisive than it had been. But the Commonwealth was certainly promotional of and supportive of change as a large body. It put a fair amount of pressure on apartheid South Africa; it contributed in that way. But, at the same time, that's very diluted by Margaret Thatcher calling Mandela a "terrorist", and it wasn't like a word she let slip at one particular unguarded moment and then was too proud to withdraw it. That's what she really thought.

SO: It's said that Mrs Thatcher had a particular hostility to three-letter acronym movements: the PLO, the IRA, and the ANC. [*Laughter*] So, there is a residual sense in South Africa of the Commonwealth's role, but one which varies depending on which political constituency. After all, time has moved on in South Africa since 1994.

So, if I could go back and ask a number of questions from what you've just said… I've noted your sense of ambivalence while you were here in the UK that first time, after 1966. In your anti-apartheid activities, to what extent were you very involved with the Anti-Apartheid Movement (AAM)? Was Abdul Minty's role as Secretary of the AAM important to you? Was contact with the Secretariat at Marlborough House part of your activities in any way?

AS: No, not mine. So, when I speak about ambivalence, even the ambivalence was ambivalent! It wasn't something that I walked around with – anger in my heart twenty-four hours a day. It was just the whole damn setup, and then it would be triggered by the support of the Marylebone Cricket Club for cricket tours, always finding excuses, and so that would trigger it. At the same time, we met fantastic British people – and lots of them, from all sectors. I remember once marching from Coventry to Birmingham in an anti-apartheid march and there might have been thirty of us. There was an Anglican cleric, I think, and a couple of other clerics and some university lecturers and then certainly trade union people; somebody from the community. It was pretty eclectic. If you were doing a film and you wanted to select slightly eccentric, oblique characters, you'd have chosen these. There were about thirty of us, including myself in that list, and as we were walking in to Birmingham, the Birmingham City football crowd were emerging [from their stadium], walking the other way, and we seemed such a tiny little group going upstream – like a salmon battling to get through. [*Laughter*]

There were a lot of people, and a lot of support from Scotland. I've just got a couple of honorary degrees from Scotland. And I don't quite know why, specifically but from Edinburgh, from Glasgow and elsewhere in Scotland. And it cut across parties: David Steel was a very strong supporter from the Liberal Party, and the Labour Party, and many more on the Left. It was encouraging and exciting. Perhaps the highlight of all that was the Free Mandela concert at Wembley. I hadn't been long out of hospital, so it would have been 1988, [Mandela's] seventieth or something birthday. It was my first

pop concert, and I don't know what you do at a pop concert. You stand up and say, "Hey, hey, hey!" and wave your arms up – well, I've only got one-and-a-half arms. And there were 70,000 young people and one older guy, me, and it turned out it wasn't so difficult. But that was 70,000 young British people who, at that stage, were being referred to as 'yobs' and not interested in politics. The feeling was just tremendous, and the pop stars were there and great singers from all over the world. This was so heart-warming, and [*Sings*] "Free Nelson Mandela", you know, it wasn't just…

SO: So, that sense of solidarity that really crossed boundaries?

AS: Very, very strongly. Very strongly. And it was a unifying thing in Britain itself. So, it wasn't just the diversity of appearance and politics and geographical diversity in the Commonwealth. Inside Britain, you know, there were black Britons and white Britons and Britons of Asian origin and they were all at that concert. The level and the intensity of emotion! This was for freedom, and it was very marvellous for us to feel [that] South Africa, the "polecat of the world", had created its opposite, the anti-apartheid movement, in a broad sense, that brought people together. In a sense, these were elements that helped us to get our ultimate constitution. We didn't get much in our constitution, interestingly, while I mention this, from the Commonwealth.

SO: Ah, Carolyn McMaster said that actually you did. I wanted to ask you about that. When I interviewed her, she expressly said about inviting people who were drafting the South African Constitution, such as yourself, to Canada, and that there had been a degree of policy input. Also, the Canadian Bill of Rights – which had been, of course, drafted and passed in 1982 – formed an important input in to the South African constitution.

AS: That's absolutely right, and I stand very corrected. But the things that Canada contributed were almost in spite of the Commonwealth history.

SO: If I could go back a little bit, though, because after all Canada sent Archbishop Edward Scott as part of the Eminent Persons Group in 1986. They went down to South Africa – or rather southern Africa, because they visited other capitals before they arrived in South Africa – in early 1986. Did you meet them when they came to Maputo?

AS: No, I wasn't in the upper echelons of the ANC. I was never a full-time ANC person, no. In terms of the anti-apartheid input, that was very varied but was quite powerful, and the Commonwealth as a whole – in spite of the reluctance of the UK almost all the way through to take effective measures against apartheid, and Australia most of the time, New Zealand most of the time, and Canada more ambiguous on that…

SO: That's interesting, because Brian Mulroney and Joe Clark were really consistent in their determination to end apartheid.

AS: Yes, Joe Clark also played a very positive role, now you're mentioning the name. And Brian Mulroney. But that's different from the constitutional text…

SO: Absolutely.

AS: …and there the whole theme of parliamentary sovereignty was a barrier to what we wanted to achieve. We got two things from Canada: one very positive and the other negative. The positive one – and you're quite right to point it out – was the Charter of Rights and the whole approach of Oliver Tambo in terms of what was called the 'interests of the minority', which really meant the interests of the very privileged and, generally speaking, pretty well-off whites. He said [that this was] to be achieved not through any special elements of the constitution directed at whites, such as the Lancaster House Constitution for Zimbabwe had had, but through a fundamental Bill of Rights that would protect everybody – the majority and minority – as human beings, with rights of association, religion, language, culture and so on. In that sense, from a drafting structural point of view, the Canadian Charter of Human Rights played a very, very significant role.

The negative aspect was in terms of federalism. Often I'm asked about what countries we drew upon. I mention the United States for the basic separation of powers, Canada for the Charter – which became the Bill of Rights – but also then Germany for the constitutional court and cooperative federalism, cooperative governments, and Namibia for the non-racial ideal. And from India we actually got the Fiscal Commission. Everybody happened to tell us their country was the best for constitutional models – even people from the UK, who didn't have a constitution, said theirs was the best! – except the Canadian experts on federalism, who said, "Whatever you do, don't follow our position, because we have got competitive federalism and it doesn't work. In fact, we overcome it by informal meetings between [provincial] Premiers and the central government. It's not recognised in the Constitution at all." They told us, "Don't follow our example, follow the German and the Swiss approach to federalism. Go for co-operative rather than competitive federalism."

So, what was novel in South Africa, then, was having a Constitutional Court – although this was not completely new because, in effect, Canada's Supreme Court was a Constitutional Court – and an entrenched Bill of Rights. India also had an entrenched Bill of Rights, which is fairly narrow and limited, but the Indian judiciary had high prestige in South Africa: the judiciary from the 70s, the 80s, [and] the 90s, at a very important time for us. So, the concept of the Charter came from Canada and also brilliant jurisprudence from Canada. The first court after the Charter is called the Dixon-Wilson Court. Chief Justice Dixon and Bertha Wilson were two who really helped to establish a new, contemporary way of analysing rights in a social setting, and we drew heavily on that. In India, there was a passion and a role for the courts in giving some voice to the marginalised and the disadvantaged in a way that the other organs of government weren't doing. So, that was an impulse that was quite important. Whereas before, South African courts would look to the House of Lords [and] to some extent Australia and New Zealand…

SO: Old Commonwealth?

AS: Old Commonwealth decisions. When we got going under our new constitution, we got almost nothing of value from them because of that old notion of parliamentary sovereignty, in which judicial review operates in relation to subordinate legislation but not in relation to primary legislation. None of that was appropriate to us.

Now, I like to think that we ourselves have in turn contributed something strong to the Commonwealth family in terms of acting as a bridge towards

acceptance of the fundamental rights notion – striking down Acts of Parliament, which we do quite often, and our courts haven't been reluctant when called upon to do so – and living in a constitutional state, where there are no vacuums. We got rid of the idea of the Royal prerogative, for example. There's no state prerogative in South Africa: the constitution rules, okay! So, there were other themes like that. I had, I suppose, a rather amusing conversation…Growing up in an anti-monarchist family, I seem to find occasions to mention conversations I've had with Royals! This was with Princess Anne in South Africa. I was asking why was it [that], when we were looking to different countries for models, we actually got very little from the UK constitutionally, and very little also from other countries we admired very much – Norway, Sweden, the Netherlands, Denmark. These were open, social democratic countries, with great respect for basic human rights, but also caring societies. But the constitutions there played a very small role in public life. So, I told Princess Anne I had come to the conclusion that it was only when the King was killed that you had to replace the sovereign with a written document or constitutional charter identifying and regulating sovereign power. Where the Royals survived, you had a largely unwritten deal between the middle classes and the sovereign, who became a constitutional monarch. Now, the sovereign is gone because the monarchy had been abolished – or, in the case of the United States, the colonial rule had been repudiated. In France, the monarchy is abolished so you need a written constitution and the written constitution then defines power in a way that's binding on all the institutions of state. So, Princess Anne said, "Well, I do hope that regicide will not be required in the United Kingdom to get a Bill of Rights there." [*Laughter*]

SO: But that suggests that here, in the UK, there's a strong social contract that isn't dependent upon a constitution – that we have constitutionalism without actually having a formal constitution?

AS: Yes. If you ask me which country I would rather be locked up in: France, the United States or the UK… France and the US have very strong constitutions, playing an important role in public life, whereas the UK has elements of a constitution but [these] can be overridden by Parliament at any stage. They are not, in that sense, fundamental rights. I'd rather be locked up in the UK! And that's to do with the general culture, the political culture, and the society. The fact is [that] it works here, because deals have been done historically between the Royals and the middle class, [and] then between the middle class and the working class. Practices have been established: ways of doing things that are very powerful. And you can have a constitution as you had in the United States and still have slavery. My knowledge of the French legal system is based mainly on Georges Simenon novels, but they didn't make me want to feel that I'd rather be locked up in a French prison on a particular charge than in an English gaol!

SO: Albie, if I could just take you back to your first time in Britain and then again to your second time, and also your involvement in writing the South African Constitution… How far were you intellectually linked to the Institute of Commonwealth Studies in the late 1960s and 1970s? Shula become Director of the Institute in 1983 and was a leading member of the anti-apartheid movement here, in the intellectual sphere, and is of course a South African herself.

AS: In the late 1960s, I was working on my PhD and I don't remember…I might have given a paper at the Institute of Commonwealth Studies. I was

registered at Sussex University. Most of the chapters of my thesis – which became chapters of my book, *Justice in South Africa*, I'd presented as seminar papers first. But I don't recall the ICwS as being very important at that stage for us. Certainly in 1988 – for me, personally. Shula Marks and Mary Simons came to see me: I'd just come out of hospital. I was physically very frail, very weak, and Shula asked what was I planning to do. I said I'd been offered a Fellowship at Warwick University, and [that] Christchurch University in New Zealand had offered me a temporary position. They said, "Well, what would you like to do?" And I said, "I'd love to work full time on preparing for a new constitution for South Africa," and Shula said, "Great! We've got a bathroom upstairs in the ICwS building which we can convert into an office, and I'm sure we'll get funding from the Swedish International Development Agency (SIDA) and Ford Foundation." A few weeks later, I was in that office, with funding as anticipated.

SO: So, this was the old building on Russell Square?

AS: Yes, yes. And I did a lot of work there: I met people, I wrote papers on religion [and] on freedom of speech in the new South Africa, on the future of the whites in South Africa, on judges and gender. It was a marvellous period.

SO: Yes. So, you were based at the Institute for two years?

AS: I was there maybe even a little longer, and I commuted from there to South Africa after 1990 for a while. Then I transferred the Centre to South Africa – it was the South African Constitution Studies Centre. Those years gave me the time to sit down and think, to do a bit of research and write up the implications of what were really the ANC's approaches to all these issues, to spell them out. I think they would have been read certainly by lawyers on the other side: by people interested to know what the ANC's positions were. The advantage was [that] I was doing this as a professor. So, people knew I was from the ANC, but if it's an official ANC document then you have to send it to the committee, the National Executive, and they disagree with this formulation or that formulation and nothing ever gets out and everything formally approved becomes rather bland. So, that was very, very positive. I think it was then that I met Chandrika Kumaratunga: she was in exile, I was in exile, and she went on to become President in Sri Lanka. I met people from the West Indies – that's what stands out in my memory. One of them, I forget even her name, but she wrote about West Indian women being "the other of the other". That was quite a striking concept at that stage.

SO: So, were the Commonwealth Lawyers Association or the Commonwealth Magistrates and Judges Association particularly valuable networks for you? I'm just trying to think of the wider Commonwealth 'family'.

AS: It wasn't for me at that stage; I wasn't a judge. Afterwards, after I became a judge, I went to a couple of the Commonwealth Lawyers Association meetings. The first one I went to was in Cyprus. I think that was before I was a judge, and that was just a place to push ANC and their positions. And then I went years later to one in Melbourne, [and] two years ago [to the meeting] in Hyderabad. I missed the one in Cape Town this year.

SO: Going back to 1988… While you were writing papers concerning ANC positions on important reconfigurations of the South African

Constitution, were you liaising with members of the Commonwealth Secretariat? Were they providing information, intellectual support or administrative support in any way?

AS: Not to me. The one person I had contact with was Reg Austin, whom I'd stayed with in Zimbabwe when he was Dean of the Law School at the University of Zimbabwe. I'd been an external examiner, and we'd been friends for a number of years. And I remember him writing to me from the Commonwealth Secretariat [where he was then Director of Legal and Constitutional Affairs], and I remember exchanging interesting notes. But I don't think that actually got anywhere. Maybe he moved on.

SO: What of the internal politics of constitution-making in South Africa? The story you presented earlier suggested a united phalanx of those who were rewriting the constitution. But how hard fought was it internally within the ANC, quite apart from dealing with the other side? Where should I look to for a good summary of that?

AS: You'll have to wait for an oral history [that] some of us are working on; which could take a year or two. For the internal things. I don't think it's come out anywhere. I've got thirteen hours of transcripts on discussions we had in Lusaka in 1997-98 about which way to go. Are you going to Cape Town at all?

SO: I will be, yes. I'm going back there. I've been down to South Africa twice for this project, but…

AS: All right, you'll go to the Mayibuye Centre…

SO: It's in the Mayibuye Centre, is it?

AS: Yes. But it is a lot of material, and we're still working out a sort of index to it. But you'll see some of the earliest discussions we had. One of them deals with a paper that I'd prepared for the Constitution Committee of the ANC – which was set up by Oliver Tambo for the National Executive – on three models for a future constitution order. The one would be your classical constitution in which the constitution limits government; your second would be a people's power constitution in which there's a revolutionary party that's central to the function of the state; and the third is what I called a 'post-dictatorship constitution'. I knew that, if you gave them those options, people would go for the third one. The third one meant you didn't have a constitution simply to limit the impact of majority rule; rather, that the constitution had to play a role in the reconstruction of institutions, in introducing new values in the country and achieving equality – an active, dynamic constitution. And after some debate, that third one was accepted. Oliver Tambo never had any doubts himself. From 1958, when he had worked on the ANC Statutes with Albert Lutuli – who was then President of the ANC – they introduced the non-racial vision of ANC membership, even though it took twenty years before it came to be actually applied. And he believed in the Bill of Rights: that became ANC policy in, I think, 1987, when the ANC opted clearly for multi-party democracy, and in 1988, for an entrenched Bill of Rights. That had nothing to do with the fall of the Berlin Wall. I think Perestroika helped in the sense of diminishing the hard ideological positions that some people had adopted inside.

SO: Can I ask you something from my own research point of view? How important do you think was the position of the South African Communist Party (SACP) within the ANC as a broad church? How far did you see it as being a key, influential factor in its ideological approach, or was it more because of the relationship with Moscow?

AS: I think the South African Communist Party was important for several reasons. First, very early in its life it became a non-racial organisation and for decades was the only multi-racial or non-racial political body in South Africa. Second, it had a vision of struggle, transformation, revolution, [and] change that people in ANC and elsewhere found to be very attractive. Third, its members by and large were very dedicated – willing to go into the trenches and work hard, [to] give their lives for the struggle. Finally, they included people who'd been in the white South African Army in World War II, had carried guns, who knew how to use explosives and played an important role in the establishment of Umkhonto we Sizwe.

So, those were all important factors. In terms of ideology, although the Party tended to be pro-Soviet as against pro-Chinese, pro-Soviet as against the West, it got quite a lot of material backing in terms of military training but also technical training, studying and so on. That counted quite a lot. I think that was one of the reasons why also the Scandinavian countries came strongly to the table: it was to prevent, as they saw it, undue Soviet influence.

SO: So, the Nordic countries really pushed for neutralism?

AS: You know, when ANC was getting very little from the West… Extremely little. Just abhorring apartheid, but no solid support. It was strong support and material support – not for the armed struggle, but anything short of the armed struggle.

SO: Tor Sellstrom has written about the role of the Nordic countries [i.e. *Sweden and National Liberation in South* Africa] and I know that the South African Democracy Educational Trust (SADET) has really emphasised the role of the Nordic countries in the volumes it has published.

AS: And it was very, very significant. The hard ideological/political issues didn't impinge very much on South Africa, and happily the interference from the state security organs and so on of countries calling themselves socialist countries would have been minimal. We were fighting on South African soil; we were fighting for freedom in South Africa. Albert Lutuli often said, "If I want to know what the workers are thinking, I call Moses Kotane." And Kotane, the non-believing General Secretary of the Communist Party, loved going to speak to Albert Lutuli, who was a very staunch Christian. So, somehow the hard ideological divisions that might have applied elsewhere were much softer in South Africa.

SO: Yes, I was going to say that these boundaries seem much more blurred, more porous.

AS: Yes. And to the extent that the South African Communist Party accepted National Liberation as being the central theme of transformation and rejected the idea of a pure working class struggle to establish socialism, the gap was very slight. You probably find most of our generation of ANC leaders were in

the Communist Party until 1990. So, Thabo Mbeki was a leading member of the Communist Party and he became…

SO: So, you would not be surprised if Professor Stephen Ellis was right when he writes that Nelson Mandela had indeed been a member in the 1960s?

AS: Oh, Stephen Ellis is rubbish! I'm sorry to put it that crudely, but… Walter Sisulu was the General Secretary of the Communist Party. Mandela worked closely with the Communist Party. You didn't have membership lists and Party cards and anything like that. But Sisulu had a very high up position, and he was the most marvellous, wonderful person. On Robben Island, somebody took me round the first time. They said, "We all used to go to Mandela when we had problems. But who did he go to? He went to Walter Sisulu."

SO: Yes.

AS: And there were other people like Bram Fischer [and] Yusuf Dadoo: strong, very admired figures in the public/political life, inside and outside the ANC.

SO: So, between 1990 and 1994, while you were focussing on the drafting of the Constitution of South Africa, you've made reference to Reg Austin and your personal links with him. To what extent were you aware of what the Commonwealth was trying to do to assist in promoting transition? The new Secretary General, Chief Emeka Anyaoku, was sending Moses Anafu as his representative, along with other observers, down to KwaZulu Natal, trying to assist in whatever way possible to reduce the violence there. [They were] offering training for the police, offering independent advice and support to help in whatever way possible. Did this feature, as far as you were concerned? Were you aware of it, or was this just not part of your remit?

AS: It wasn't the front on which I was working.

SO: No. Fair enough.

AS: I do remember Canadians sending experts on public administration to actually train people. They were very direct and very valuable, and they were good people. Very good people. In terms of the peacekeeping aspects, that wasn't the area that I was involved in.

SO: Oh, these Commonwealth representatives from the Secretariat were more monitors than peacekeepers. They were small groups that were going into KwaZulu Natal… Moses Anafu was known as 'Mr Africa' in the Commonwealth Secretariat.

AS: Yes, but by 'peacekeeping' I mean supporting peacekeeping. Now that you remind me, I do recall special efforts to promote peace between ANC and Inkatha Freedom Party (IFP) in Natal. Who was the Secretary General before Chief Emeka?

SO: Sonny Ramphal.

AS: Yes, he stood out as a great supporter of the anti-apartheid movement, and he gave more 'umph'. He acted with more 'umph' and panache, and gave a

lot of moral support. This was moral and political support at important moments, and that I remember very specifically.

SO: So, before 1994, then, you're painting a picture of the Commonwealth family assisting towards transition to black majority government in myriad and diverse ways – toward the Government of National Unity of April 1994. There was Commonwealth support in the first independent and secret multi-party elections in South Africa in April 1994. Since then, there appears to have been a dissipation of the perception of the contribution of the Commonwealth towards the end of apartheid?

AS: I would say that the Commonwealth played a very supportive role: lots of observers in the elections came from Commonwealth countries and I think even directly through the Commonwealth. I don't think it was just bilateral. And I met some of them at that stage and it was an exciting period. It seemed like a miracle, and people were inspired and encouraged and it worked two ways. I remember that as being quite valuable. I'm not sure if the Commonwealth played a role with the Goldstone Commission earlier than that. I do know that a former Chief Justice of India, PN Bhagwati, sat on the Commission, and that might have been arranged through the Commonwealth. I know the issue of transforming the police was a very lively issue.

SO: What also of the particular contribution of the Front Line States as individual Commonwealth members? Did you have a particular view of the role of Zimbabwe, say, between 1980 and 1994?

AS: The Front Line States played a crucial role and paid a very heavy price. The strongest participants were, without a doubt, Angola and Mozambique – but they weren't in the Commonwealth.

SO: Botswana was compromised by its geographic position.

AS: Yes, Lesotho [was] also under heavy constraints with the military and the King, which was a very complicated set up. Swaziland was virtually ruled by South Africa. Nevertheless, they were key states for people to escape to and to come back in to the country from. And then Zimbabwe. It was complicated by the fact that, historically, ZANU had had close relations with the Pan-Africanist Congress (PAC), not with the ANC, and was very cool towards the ANC.

SO: Did that relationship not change after ZANU [which became ZANU-PF in the Unity Accord of 1987] came to power in 1980? Isn't too much made of this historic link between ZANU and the PAC, whereas in reality the relationship between ZANU and the ANC altered and improved post-1980?

AS: It didn't change. It was modified, and I believe, towards the end, maybe, there would certainly have been varying degrees of support from Zimbabwe. Even in the case of Mozambique, there would be the 1984 Nkomati Accord, but it didn't stop people passing through. It certainly didn't stop the South Africans from grossly violating the Nkomati agreement through continued support for RENAMO. But Zambia was a very crucial state.

SO: Yes, of course.

AS: For all the criticism people had of Kenneth Kaunda – his personalised mode of leadership and one-Party rule and so on – there was a consistency of support there which was highly appreciated. Tanzania was very important, particularly in the Julius Nyerere period. Not just with the ANC camps there, but strong political support, as well.

SO: In terms of your personal story, did you benefit particularly from intellectual support, solidarity, material support, links with Zimbabwean lawyers, or advice on constitution-building? I'm trying to think of the specifics, in addition to your comments on the consistency of political support.

AS: In the case of Zimbabwe, very, very little. I enjoyed my work at the University of Zimbabwe as external examiner in their Law Department. I met some excellent people there, one of them being Welshman Ncube. There were a whole range of others. Interesting conversations with Walter Kamba, whom I'd known in exile: I'd known him first at the University of Cape Town, and then in exile in London, and then he became the Principal of the University. But the country that, for me, was very significant was Mozambique. It was not in the Commonwealth, but the whole different philosophy and ethos and intelligentsia, [the] ways of framing issues…

SO: Yes, in other words, a particularly non-Commonwealth way of doing things! Despite their later joining the Commonwealth in 1995.

AS: But Tanzania was more important. I taught at the University at Dar es Salam for one term – at the time of Ujamaa and Julius Nyerere. That was an important intellectual centre. It was a critical approach to law: law in the service of emancipation and humanity rather than a purely technical law as an instrument of control. So, Tanzania, I would say, was intellectually influential. The government gave a lot of support to the military and a lot of political support – consistent political support – all the way through.

SO: In terms of actual intellectual ideas, obviously South Africa has Roman Dutch Law and you did your first degree in law in South Africa. Your fellow drafters of the Constitution…Were they all similarly educated within the South African system? Or were you drawing upon different Commonwealth legal intellectual threads in the framing of the Constitution?

AS: Roman Dutch Law as such played no role. It was part of our history. One of the articles I wrote whilst I was at the South African Constitutional Study Centre was on the future of Roman Dutch Law. It had become South African law, and would take its place, but in the framework of the new Constitution Order. The answer is [that] we drew very little on other than what I've mentioned. Canada – their Charter was very significant. Advice from Canadians: don't follow their model of competitive federalism. Practical support from Canada in terms of training people – preparing people to be in the Civil Service [and] in the administration, if I remember very specifically. In my own case, meeting Canadian judges. In 1998, I went to a conference of the Judicial Training Institute held in Newfoundland, and I thought I should go there to pick up some gravitas – that the Canadian judges would be very down-the-line and serious.

The first judge I met was Claire L'Heureux-Dubé. "Albie," she said to me afterwards, "I need you! You must come to Sri Lanka. We are educating the men judges in being less chauvinistic!" "Albie, we must go to Nepal." And I went both times. Her close friend was Rosalie Abella – she's now on the Supreme Court of Canada. She's marvellous and seen as a bit unusual on a whole range of issues: a very strong, intellectually brilliant feminist. She doesn't walk like a judge and talk like a judge or surround herself with all the boring paraphernalia of a judge. Her place is filled with interesting, provocative art. And so I didn't pick up gravitas!

SO: But it was very refreshing!

AS: It was marvellous. I made great friendships, and it was very invigorating intellectually. Very important. And that was with the Canadian judges, I would say, more than anywhere else. I also to some extent became friendly with Bhagwati from India. We chatted a bit about their approach and philosophy in India, receiving letters from prisoners and dealing with the marginalised, the poor, changing the whole role that the judiciary had been playing, from being highly formalistic – very pedantic, very British, if you like, very old-fashioned Commonwealth in its character – to redefining what Commonwealth law could be like, introducing quite a lot. Michael Kirby from Australia became a great friend of many of us, and it was partly his style but also his openness, his approach, and his concern for human rights. As a creative legal thinker, he played a very, very positive role. We cited some Australian judgements afterwards, although I'm not sure if we ever cited Michael Kirby in our actual decisions. And there was one New Zealand Chief Justice, Robin Cooke, who also served on the Privy Council, who became quite friendly with our Chief Justice Arthur Chaskalson. He also had quite a big influence. He was very forward looking from a New Zealand point of view, and quite distinguished – serving on the Privy Council in London.

SO: So, you're outlining a Commonwealth network of ideas and personal friendships – a cross-fertilisation of ideas – rather than formal Commonwealth structures.

AS: Well, you see, you say 'Commonwealth', yet it wasn't through the Commonwealth as an institution. I had connections with German judges. One, in particular, Dieter Grimm, was very influential for me. I met judges from the European Court of Human Rights, and there was a chap, Isi Foighel… I'd often cite comments that he made to me at an important moment. I'm friendly with a number of US Supreme Court Judges. So, it wasn't like a Commonwealth coterie. Enoch Dumbutshena and Anthony Gubbay from Zimbabwe were quite important at a certain moment. For very good, serious, thoughtful judgements – in the modern idiom, 'pro-human rights' – that would have been decisions in the late 1980s and 1990s.

SO: Albie, thank you. You've done a terrific job in setting the Commonwealth – in its various guises and forms – firmly in context in South Africa's transition from apartheid, so that we shouldn't over-inflate its importance but, as you say, it's not been insignificant. Thanks very much indeed.

[END OF AUDIOFILE]