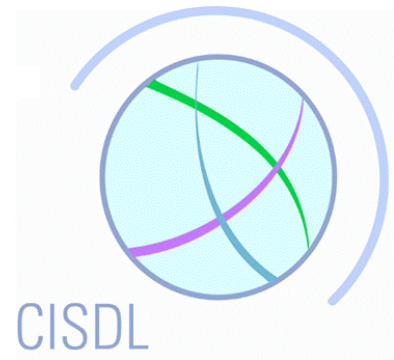


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| CISDL Doc. #: K2-S1N-E | Session: Keynote 2, Legal Expert Keynotes |
| Date & Time: 2002-06-13 11:00 am | Speaker: Hon. Mr. Justice Albie Sachs |
| Rapporteur: [Aida Abraha] | Language: English |



Legal Expert Keynotes

June 13, 2002, Montreal

Hon. Mr. Justice Albie Sachs, Constitutional Court of South Africa

- § In South Africa, do you have to be white to be “green” or an environmentalist? It was an important question that was raised during the years of apartheid. The UN was trying to preserve the white rhinos, but how do you solve the problems of society marked by poverty? Was this a question of being white, thinking white to be “green”?
- § If you like, the imaginative side of life belonged to the relatively rich white of South Africa and that poor could not have access to food or decent housing. The lived experience of the rich white was that they were extremely concerned with their tax returns. The challenge was how could this theme of being “green” be penetrated into the African society? The question was how to mobilize all South Africans?
- § I was feeling pleased that there was a sense of shared vision. All the emphasis was placed on conservation.
- § Today, the constitution of South Africa gives its citizen the right to a healthy environment and ecological sustainability.
- § South Africa suffers mainly from drought; but lately there have been floods. The most affected are the poor. The government stepped in and created empty rooms in prison, which were close to a prosperous white neighbourhood. The neighbourhood was concerned with the depreciation of their homes. They got an order from the court that they were there illegally, saying that the government did not follow proper authority; having a negative impact on ; environment concepts being used to protect quality of air and beautiful nature of trees against people who have been swept away by flooding river.
- § What is significant is that the major cases that have been received have not dealt with environment rights; they have dealt with economic, social and political rights.
- § What about our right for access to housing? The question had to be looked at not only quantitatively but also qualitatively. Emergency programs had to be in place.
- § Now we have cases for access to reasonable health. The Treatment Action Campaign, which demanded more access to health facilities (18 pilot sites for Aid/HIV treatment), was seen as unreasonable.
- § The solution may be in the area of sustainable justice.
- § House of lords – This is a transnational responsibility. India and SriLanka are leading in the area of jurisprudence. Concerning the environment, law does not fit. It is intergenerational, transnational and focused not on individual claimants but on groups. Its emphasis is on duties of the states to preserve and protect. It is not about disputes about litigants, it’s a dispute that has implication for humanity
- § How do judges respond to this lack of fit between the judicial aspect of the law and the new emerging issues? Will we say that it is for the politicians? We have to find new means that are not invented from nowhere. We must expand the judicial instrument of the law. We need a whole new approach to standing for claims for future generation. The question of externalities must be brought into operation and must not be on economic efficiency. It must take account of the health and lives of individuals. This must be factored into the calculation of impact.
- § Conclusion – we’re putting up building on old historical building; the architectures that won wanted the building to have a natural climate; one of the features of building is to

focus on the energy and to enable individuals to feel that they are in touch with nature; the way it's being done is to trap the night air; 11 chimney for the hot air; artists from all over the world to decorate and provide the finish so that the imagery of our building will be constant with the values of our constitution. In integrating development and sustainability – and poetry.