



THE TANG PRIZE RESEARCH GRANT

THE RULE OF LAW 2014



REPORT by JUSTICE ALBIE SACHS

INTRODUCTION

At a memorable ceremony on the 22nd July 2015 at the Vineyard Hotel in Cape Town, Dr Jenn-Chuan Chern [Jesse] and Albie Sachs [Albie] signed a Memorandum of Agreement concerning the use of the Research Grant that had been awarded to Albie Sachs, first recipient of the *Tang Prize for the Rule of Law* the previous year. Jesse represented the Tang Prize Foundation and Albie represented the Albie Sachs Trust for Constitutionalism and the Rule of Law [ASCAROL].

When Albie had received the *Tang Prize for the Rule of Law* his immediate thoughts had been to use the Research Grant component to tell the stories of the Making of the South African Constitution and the Making of the South African Constitutional Court. These stories had to be recorded and archived while he and other primary actors were still alive. Given the wide scope of the undertaking, he had, with the consent of the Tang Prize Foundation, founded the Trust. Its purpose was to provide an enduring legacy involving public understanding of and regard for constitutionalism, democracy, the rule of law, and human rights in South Africa and elsewhere. A Trust Board was created to ensure that the project would be undertaken under the direction of a team of wise and experienced Trustees, and that there would be appropriate financial controls. (***See Annexure I - Trustees and Administrative personnel***). The Trust would also be able to receive further funding from other sources to pursue its Rule of Law objectives.

The Trust was formally registered on 8 July 2015 and later registered as a Not for Profit Organisation and as a Public Benefit Organisation.

A week after the abovementioned signing ceremony, the full amount of NT10 million (Ten Million New Taiwan Dollars) was transferred to the Trust by the Tang Prize Foundation. The effective period for the MOA was 1 August 2015 until 31 July 2020. The Trust was required to submit a report to the Foundation on or before 31 July 2020 on how the Grant has been expended. This is the Report.

THE TWO PROJECTS

In terms of the MOA, ASCaRoL undertook to complete the two projects set out below.

PROJECT ONE: *Telling the story of the making of the South African Constitution.*

This involved three elements:

- The creation of an archive dedicated to the Constitution-making process
- The writing of books dealing with successive phases of the process
- The recording of the story on film.

PROJECT TWO: *Telling the story of the creation and functioning of the Constitutional Court of South Africa.*

This project was to commission the writing and publication of biographical volumes on the first Chief Justices of the new democratic South Africa, included were Chief Justices Arthur Chaskalson, Ismail Mahomed and Pius Langa, respectively. The objective was to publish a compendium of biographical and judicial narratives in relation to each of the three.

In addition, a separate book would be commissioned to tell the story of the making of the Court itself.

ENLARGEMENT OF THE SCOPE OF THE PROJECTS.

Not long after ASCAROL was established, we discovered that another institution, namely, the Constitution Hill Trust [CHT], shared our objectives and was planning to develop an exhibition of the Constitution. A symbiotic relationship rapidly developed between the two organisations. The outcome was that ASCAROL played a key role in the creation of a physical space to house and exhibit the founding story of our democracy, provisionally entitled the Museum and Archive of the Constitution on the Hill [MARCH]. As this Report will show, the establishment of MARCH has been pivotal in vastly extending the objectives and reach of our goals.

This Report will accordingly be divided into two sections. PART ONE will deal with the manner in which ASCAROL helped to set up MARCH and as a result was able to achieve the basic objectives Tang Prize Foundation, research objectives in significantly amplified form. PART TWO will then provide information on how ASCAROL has at the same time used its funding to achieve the specific deliverables identified in the MOA.

PART ONE

HOW ASCAROL FULFILLED, AMPLIFIED AND TRANSFORMED ITS COMMITMENTS THROUGH THE CREATION AND DEVELOPMENT OF THE MUSEUM AND ARCHIVE ON CONSTITUTION HILL [MARCH]

I. Transforming the Old Fort Prison into Constitution Hill

The story starts two decades before Albie received the Tang Prize for the Rule of Law and went on to set up ASCAROL.

It was at the first meeting of the Justices of the Constitutional Court of South Africa, who had been appointed by Nelson Mandela after the country's first democratic elections in 1994, that he and Justice Yvonne Mokgoro were given a small task. They were asked to attend to the décor of a new temporary court chamber under construction. With a total a budget of \$2,000 they bought a painting by an emerging artist, transformed it into a tapestry called 'Humanity' and placed at the entrance to the Court chamber. This turned out to be the first tiny step in a journey that would lead through many byways to the ultimate creation of MARCH and a massive enhancement of what ASCAROL was able to achieve.

The second step was the creation of the Constitutional Court Art Collection. The Justices sought with love, and received with love, donations from artists and galleries. For their part, the artists were thrilled to have their works displayed in the corridors of the Court that was upholding the country's hard-won democratic rights, including the right to free artistic creativity.

The third step was taken through expanding 'attending to décor' to include the finding of a suitable location for a permanent building for the Court. The Justices chose a derelict site near the centre of Johannesburg containing the deserted structures of the Old Fort Prison where both MK Gandhi and Nelson Mandela had been locked up, as had prominent women leaders like Winnie Mandela, Fatima Meer and Helen Joseph. The symbolism of locating the new court there was intense.

An international competition for the building was won by young South African architects, whose prize-winning building was based on a warm modern evocation of the traditional notion of justice under a tree.

In the meantime, further steps were being taken to upgrade and transform the former prison blocs into a heritage precinct. With donor support from Atlantic Philanthropy, the deteriorating buildings were stabilised. Ex-prisoners returned to the site to tell stories of the abuse of human rights that had taken place in the overcrowded cells which had been divided along racial lines according to the logic of colonialism and apartheid. The prisoners' stories were transformed

into exhibits so that visitors would be able to confront South Africa's brutal past in order to better understand its present where human rights were now enshrined in the Constitution.

The Commission for Gender Equality installed itself in offices specially built above the isolation cells in the Women's Jail. With tourists and schoolchildren streaming to the area, and the Court achieving international repute for its landmark decisions, the precinct was ready for further development. On the suggestion of Chief Justice Arthur Chaskalson, it was renamed Constitution Hill in 2004.

The new Court building's inauguration on Human Rights Day that year was attended by judges from all over the world. Among them was US Supreme Court Justice Steven Breyer, who had been lifted by helicopter straight from the Court to get to his plane in time. And in an introduction to a book on the Court's art collection, Justice Ruth Bader Ginsberg later wrote that it was the most beautiful courthouse she had ever seen.

In 2009 Albie's fifteen-year term on the Court came to an end and he returned to his home in Cape Town.

II. ASCAROL is formed and Albie re-establishes links with Constitution Hill

Receipt of the Tang Prize in 2014 led Albie to reconnect in two ways with Constitution Hill. In the first place he donated a substantial portion of the main Tang Prize towards sustaining the Constitutional Court Artworks Collection. Secondly, he used a further portion of the Prize to pay for the printing of parchment-type copies of South Africa's Bill of Rights, and the publishing of a new edition of a book entitled *Art and Justice, the Art of the Constitutional Court*. The person to whom he turned for support in managing these endeavours was Lauren Segal, then working as a museum consultant for the Constitution Hill Trust [CHT] on Constitution Hill.

The CHT had been established as a not-for-profit organisation in 2006 to ensure that Constitution Hill would become a centre for the promotion of constitutionalism and respect for human rights. Its founders were the then recently retired Chief Justice, Arthur Chaskalson, and the now President of South Africa, Cyril Ramaphosa. Ramaphosa had chaired the Constitutional Assembly which had drafted the final Constitution and remains as Patron of the CHT today.

The Trust raised funds from philanthropic organisations and corporate donors to enable thousands of learners from disadvantaged schools to visit the Hill. It developed educational materials and programmes around the Constitution and created a 'Flame of Democracy' in the old stairwell of the Awaiting Trial prison, directly opposite the doors of the Constitutional Court.

From its inception the CHT had used the services of filmmaker Lauren Segal and architect Nabeel Essa [Nabeel] to transform the prison precinct into a museum and site for programmatic work on the Hill. At a later stage they had been joined by Lwando Xaso, a former law clerk at the Constitutional Court.

Lauren informed Albie that she, Nabeel and Lwando had been the successful bidders for a tender put out by the Constitution Hill Development Company [CHDC] to develop an exhibition component of a Visitors Centre to be built on the Hill.

The CHDC had been set up as a provincial state-owned entity to manage the day to day activities of Constitution Hill, including tourism, heritage conservation and preservation of three prison bloc museums. Its programme has been to transform the Hill into a hive of social justice activity. The Human Rights Festival that honours Human Rights Day on 21 March, attracts over 10 000 visitors each year. Afro-Punk devotees from all over the world come to Constitution Hill to dance in the New Year against the backdrop of the Constitutional Court. The programme envisages repurposing buildings on the site to create a social justice hub and creative hub.

Lauren asked Albie to collaborate with her team in deciding how best to tell the story of the making of the Constitution in the exhibition space of the Visitors Centre. Albie agreed to do so, and it was from this collaboration that the idea arose of creating MARCH to further overlapping objectives.

III. Imagining and realising MARCH

Albie informed Lauren's team of the work that ASCAROL was doing in relation to telling the stories of the making of the Constitution and the Constitutional Court respectively. He urged them to propose to the CHT and the CHDC something considerably more ambitious than simply an exhibition space in the Visitors Centre. Rather, he said, the CHDC, the CHT should work together with ASCAROL to create a fully-fledged museum and archive to record and tell these stories. Then, as a follow-up to secure additional resources to make this possible –

- He conducted a tour of the Hill by a group from the Mott Foundation, which resulted in a grant of US\$500,000 for the creation of the archival dimension of MARCH. (These funds were later supplemented by a grant of \$450 000 from the RAITH Foundation based in Johannesburg.)
- He conducted a further tour of a team from the Kresge Foundation, which in turn produced US\$350,000 to be used for educational interactives that would enliven the museum experience and attract especially young learners to engage with the exhibits.

- Taking advantage of a visit to Cape Town by Justice Sonia Sotomayor to be in conversation with him at the University of Cape Town, Albie succeeded in getting the US Embassy in Pretoria to provide assistance. The Embassy sponsored a study visit by the museum design team, including Albie Sachs as well as key staff members of the CHDC, to visit similar cultural institutions on the East Coast of the USA.
- The highlight of the tour was a day spent at the Smithsonian National Museum of African American History and Culture at the invitation of its director, Lonnie Bunch. Albie had been involved with him on a project related to a slave ship that had sunk near Cape Town. Dr Bunch agreed to co-sponsor with CHT, ASCAROL and the CHDC a workshop on Constitution Hill to lay the conceptual foundations of what had come to be called MARCH.
- Accompanied by two colleagues from the African American Museum, Dr Bunch went on to spend three days participating actively in a stakeholder workshop at Constitution Hill in March 2018, sponsored by the Open Society Foundation.
- Representatives of the Nelson Mandela Foundation attended the workshop and committed to partnering with ASCAROL and the CHT to help develop a sustainable physical archive as well as to guide the team around best practice in creating a digital archive.
- The workshop was centred on how colonisation and apartheid had distorted, undervalued and excluded the histories, perspectives and cultures of the majority in South Africa from the greater historical narrative – and how MARCH had a unique opportunity to elevate historically marginalized narratives and ensure the preservation of these histories within an inclusive and comprehensive account of the history of the constitution-making process.

As a result, from then onwards the two Projects, which ASCAROL had undertaken with Tang Foundation funding, were extended and amplified by the collaboration with CHT and CHDC to develop MARCH.

IV. ASCAROL achieves its objectives through its involvement in the development of MARCH.

The objectives of ASCAROL have been promoted by the above collaboration in three major respects.

The first relates to the digitisation of Albie's papers at the University of the Western Cape. The digitisation process kickstarted the idea of developing a comprehensive archive of constitutional documents and other materials as a component part of MARCH. This enabled the Albie Sachs Papers to become one of the anchor collections of the Archive based on Constitution Hill.

Secondly, Albie has worked continuously as a member of the CHT team developing the intellectual content of MARCH. In this way he has been able to ensure that the vision and objectives underlying the creation of ASCAROL have been promoted with far greater resources and in a much more substantial and sustainable way than ASCAROL could have achieved on its own.

Thirdly, the relatively modest deliverables promised in the MOU with the Tang Prize Foundation, can take their place in a much wider project than originally envisaged. Each item can be developed at its own pace, in its own way, with the knowledge that it will find a fruitful and enduring home in MARCH.

It should be added that Albie arranged tours of Constitution Hill by the President of the Mellon Foundation, Elizabeth Alexander, and the Chief of Staff in her office, Julie Ehrlich, as a result of which the Foundation has provided preliminary support for the creation of an institutional framework for MARCH, with good prospects of it furnishing more substantive assistance in the future.

At the same time, cooperation between ASCAROL and the CHT was strengthened when last year Albie and Vanessa were appointed to the CHT Board, and even more so when earlier this year Vanessa was appointed CEO of the CHT. One of her tasks is to harmonise the development of MARCH related activities with the development of Constitution Hill Trust projects as a whole.

V. Development of an Electronic Portal to carry curated material of MARCH

When various legal and other problems led to a lengthy delay in the construction of the Visitors Centre, it was decided to shift focus towards developing the electronic portal that would become the key platform for stories related to constitution-making in South Africa. This decision, it should be mentioned, was taken a year before the Covid-19 virus pandemic hit the world.

It was agreed that the website, which will have the unique domain name of *OurConstitution.za*, would document, preserve and share the known and unknown stories of the making of the South African Constitution and its guardian – the Constitutional Court so as to become:

- An accessible virtual way to understand the South African Constitution – its making and its structure – through a comprehensive archive of the times.
- A portal and easy access point for scholars of seminal archival collections.
- A platform for debate and contestation around controversial issues in South Africa's democracy today and where South Africans are going as a nation.

- A pathway for users to become informed active citizens who can contribute to the enormous challenges of making the constitutional values a reality for all.
- A go-to site for learners and teachers on the country's constitutional democracy and a way for them to curate their own stories.

VI. Progress to date of the Constitution Hill website

Over the course of the last eighteen months the creative team have been working hard to curate the content for the website to achieve a compelling online experience. Work is far advanced to ensure that the following materials will be ready for public access at an official launch later this year:

1. The South African Constitution

This component of the website will have:

- Copies of the Constitution in all 11 official languages.
- An innovative 10-minute animation on the making of the Constitution.
- An illustrated in-depth story on the writing of the final Constitution by the Constitutional Assembly between 1994 and 1996.
- A chapter-by-chapter overview and explanation of the Constitution.
- The uniquely told story of the writing of the Preamble of the Constitution along with audio of the Preamble in 11 official languages recorded by local choirs.
- The Founding Provisions of the Constitution explained.
- An overview of constitutions from around the World.

2. The Bill of Rights

This component of the website will have:

- An animated depiction of the 27 rights in the Bill of Rights with artist-drawn icons for each of the Rights, for example, freedom, dignity and equality.
- The story behind the development of each of the Rights.
 - A history of the journey to the Bill of Rights by introducing key documents that contributed to its development, such as the Freedom Charter.

3. The Timelines

This component of the website will have 9 individual timelines with relevant archive for each beat of the timeline. This component will be particularly useful for learners wishing to gain a snapshot of constitution-making in South Africa with a focus on constitutional issues:

In addition, there will be four themed timelines which focus on key struggles for:

- Rights for Women
- Workers' Rights
- Land Rights
- Sexual Orientation Rights

4. Constitutional Pioneers, Rebels and Activists

This component of the website will have profiles of constitutional pioneers, rebels, activists and constitution-makers who contributed to the struggle for human rights over the decades. It will invite users to add new people.

5. Negotiations 1985 – 1994

This component of the website will depict twenty-five key moments in South Africa's negotiated revolution such as the first meeting of the government and the ANC in 1990. Each moment will tell the story of the historical event through an iconic photograph looked at from multiple points of view.

6. Constitutional Assembly 1994-1996

Similar key moments in the drafting of the final Constitution.

7. The Story of the Constitutional Court

This component of the website will have four sections:

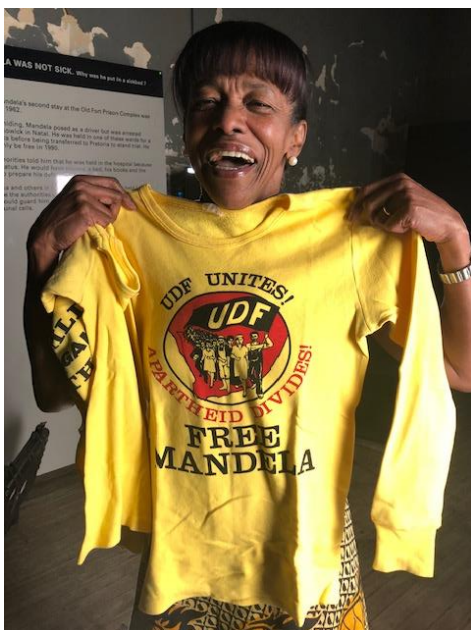
- A Court is born – the story of the building of the Constitutional Court.
- How the Court works – an explanation of the functioning of the Court.
- 25 Landmark Cases – that have shaped the judicial landscape.
- Meet the Judges – who have sat on the Constitutional Court.

8. The Archive

This component of the website will allow users to browse the constitution-making archive. Over the course of 2019, the team catalogued, preserved, restored and digitized the five collections of archival documents that tell the remarkable story of the founding of constitutional democracy in SA. These materials have lain unsorted in boxes at the National Archives for more than two decades and were deteriorating rapidly as these photos show.



The collections speak fundamentally to the values of respect for human dignity, equality, freedom and acknowledgment of cultural, linguistic and religious diversity. They demonstrate the public participation process that was established during the constitution-making process and show how a nation at war with itself was able to come together to bring apartheid to an end, and start building a country that truly belonged to all who lived in it.



Cheryl Carolus, Chairperson of the CHT, handing over her United Democratic Front [UDF] t-shirt - an example of the types of donations being made to the MARCH collection.

9. Oral Histories

The MARCH team has conducted over 70 oral history interviews with remarkable South Africans from across the spectrum. It gained invaluable historical and present-day insights ranging from those who are the veterans of the struggle for freedom to today's student activists who are continuing this tradition of resistance against any forms of discrimination that hold back meaningful nation building.



The MARCH team interviewing Mac Maharaj anti-apartheid struggle icon. (January 2019)

A large and diverse range of collections will appear on the web platform. Two particularly valuable collections are ready to be displayed:

- A digitised version of 30,000 pages, photos and slides from the Albie Sachs collection at the Mayibuye Centre at the University of the Western Cape, already completed.
- Audio and audio-visual proceedings of the Constitutional Assembly which drafted the final Constitution, hitherto unavailable.

In summary, at the click of a button, users of *Constitution.za* will be able to learn the stories of how...

- the struggle for the country's constitutional democracy had deep historical African roots
- different political formations contributed to the struggle
- ordinary people from all walks of life took part
- after 27 years in prison Nelson Mandela headed the team that negotiated a relatively peaceful settlement for SA after centuries of violent oppression
- a repressive racist state was transformed into a democracy
- the Constitution was negotiated and written in just two years by representatives elected in the first democratic elections in April '94
- nearly two million South Africans participated in the constitution-making process by writing submissions, signing petitions and attending public meetings
- non-sexism and non-racism became foundational values of a transformative constitution
- an emancipatory Bills of Rights, based on human dignity, equality and freedom, has offered special protection and support for the marginalised and the poor.
- South Africa's constitution became the first in the world to protect environmental rights and include sexual orientation in the equality clause
- In a uniquely designed two-stage constitution-making process, the Constitutional Court became the only court in the world to certify that the country's constitution met certain constitutional standards
- the Constitutional Court declared capital punishment to be unconstitutional
- the Court ruled on the right to same sex marriage, the rights of prisoners to vote and the rights of African women to equality within customary marriages
- the Constitution came to be a living document that is both contested and revered.

We the People Landing Page

- The Preamble of the South African Constitution begins with the words, We the People. These words emphasise the country's collective struggle to move from oppression and division to unity and the fulfilment of the promise of human rights. They emphasise the need for the continued collective struggle to transform hard-won rights into reality. The landing page of the website depicts a rotating number of people – both well-known and ordinary South Africans - talking about what the Constitution means to them.



An early iteration of the landing page of the *OurConstitution.za* website

PART TWO

REPORT ON ORIGINAL ASCAROL PROJECT ONE – Telling the Story of the Making of the Constitution

I. How the digitisation of the Albie Sachs papers at the University of the Western Cape paved the way for creating a comprehensive digital archive of materials relating to the making of the Constitution.

One of the first activities undertaken by ASCAROL was to secure the digitisation of the Albie Sachs papers housed at the Mayibuye Centre at the University of the Western Cape. Professor Andre Odendaal, formerly Director of the Robben Island Museum, was commissioned to project-manage a process to secure digitisation. He arranged for Albie to go through his papers and identify documents for digitisation. At a later stage he put ASCAROL in touch with Professor David Wallace of the University of Michigan, who was doing a considerable amount of work in South Africa. Professor Wallace prepared a report about the archival strategy to be followed and recommended Andile Nceba to serve as a trainee. He further proposed that Africa Media Online (AMO) be appointed to conduct the digitisation. Albie selected a large number of documents, photographs and slides for digitisation. AMO went on site at the Mayibuye Centre and duly delivered processed scans and metadata. Hard drive copies of 30 000 pages were deposited with Albie, Mayibuye and the Constitution Hill Trust (CHT).

Andre also arranged for Albie to be filmed identifying and speaking about a number of documents from his period in exile where key foundational elements of the Constitution were being laid by the Constitutional Committee of the ANC. He then had 12 transcriptions made of hour-long film commentaries. After that, he amplified the transcriptions with a view to making them available both in hard copy and electronic form to historians, political activists and others interested in the origins of the Constitution.

As described in PART ONE, the digitisation of the Albie Sachs Archive served to kickstart an extensive process of digitising key materials relevant to the South African Constitution-making process.

II. Books

(a) Laying the foundation stones of the South African Constitution 1985-1990

Andre Odendaal, author of the classic study of the birth of the ANC in 1912, *The Founders*, was commissioned by ASCAROL to write the story of the work of the ANC's Constitutional Committee in Lusaka from 1985 to 1990. The Committee was set up by ANC President Oliver Tambo and reported directly to him. Its work was robustly reviewed by the National Executive Committee of the ANC and went on to lay the foundations for South Africa's current non-racial, non-sexist Constitution.

In October 2019 Professor Odendaal handed to ASCAROL a manuscript of 150 000 words (360 pages). The manuscript is based on extensive research of hitherto not publicly-known documents together with many interviews with people who were directly involved in the process. It is now being subjected to intensive review and critique. It is our belief that it will become the standard reference work on the origins of South Africa's non-racial, non-sexist constitutional democracy. It is expected to be ready for publication later this year.

(b) Telling the story of Pre-Negotiations Workshops

Professor Heinz Klug, a South African currently based at the University of Wisconsin - Madison, worked as a researcher and administrative assistant to Zola Skweyiya, Chairperson of the ANC Constitutional Committee in the period 1990-1993. He was doing research on the history of the Constitutional Committee and was requested by ASCAROL to collect, digitise and comment on the materials from the pre-negotiation workshops held by the ANC Constitutional Committee and the Centre for Development Studies at UWC during that period.

Professor Klug informs us that his manuscript which explores the history and role of the ANC Constitutional Committee during this period is very close to completion and should be ready for publication later this year. He has assembled a substantial collection of documents from that period which he has had digitalised and will make available to ASCAROL, the Mayibuye Centre at UWC and the MARCH Archive.

(c) Book on the meaning of constitutionalism for rural African women.

Dr Nomalanga Mkhize, Professor of History at the Nelson Mandela University in Port Elizabeth, has been commissioned by ASCAROL to prepare a book provisionally entitled *Constitutionalism and the ontology of Memory: Land, Sacredness and the Search for African Personhood after 1994*.

She informs us that the manuscript is very close to completion. She commissioned an artist to provide appropriate images.

Dr Mbongiseni Buthelezi has contributed a chapter. The book should be ready for publication later this year.

III. The production of film(s) dealing with the Constitution-making process.

ASCAROL entered into an agreement with Urban Brew Studios, a filming unit of Kagiso Media, with the objective of producing a documentary film or films on the Making of the Constitution and the Making of the Constitutional Court. The first phase of the project was to record extensive interviews with a number of key personalities who had been involved in the Constitution-making process. The aim was to use material from these interviews as the basis for raising funds for the making of the film(s). The costs of this stage of the work were to be shared equally between ASCAROL and Urban Brew. Under the direction of Gordon Metz of Urban Brew, using Adam Asmal as the cameraperson, the following six persons were interviewed:

- Mac Maharaj – who spent 10 years on Robben Island together with Nelson Mandela, continued afterwards to work in the resistance, and when negotiations started, became one of the key administrators.
- Baleka Mbete – who was active with cultural groups of the ANC in exile in the Frontline States, played a significant role in negotiations and went on to become Speaker of the National Assembly and for a short period Deputy President of South Africa.
- Roelf Meyer – a significant figure in the last years of the apartheid government, who became the principal negotiator for that government and played an important role in the later stages of Constitution-making.
- Albie Sachs – who was on the Constitutional Committee established in Lusaka by ANC President Oliver Tambo, worked with the Committee at the University of the Western Cape and was appointed to South Africa's first Constitutional Court.
- Cyril Ramaphosa – principal negotiator for the ANC and Chairperson of the Constitutional Assembly that drafted South Africa's final Constitution. At the time of the interview he was Deputy President of South Africa. He is now the President of South Africa. This was a relatively short interview highlighting certain key moments in the process.
- Thabo Mbeki – former President of South Africa, who gave an interview about the preparation under the leadership of Oliver Tambo of the Harare Declaration which was adopted by the United Nations and became the foundation for the initiation of the negotiation process.

At a later stage Urban Brew extracted a compilation of 280 minutes of the interviews. This was used as the basis for producing a short show reel, referred to as a sizzler, as an aid to securing external funding for the film production. (See link here) <https://www.dropbox.com/s/5y60ghw9w8rucjf/Negotiating%20a%20Revolution%20Promo.mp4?dl=0>

In the meanwhile, Dr Lonnie Bunch, then Director of the Smithsonian National African American Museum of History and Culture, had attended a workshop organised by Albie Sachs and others to prepare for the creation of MARCH. Dr Bunch had expressed interest in collaborating with ASCAROL to produce two films for MARCH, one on the Making of the Constitution and one on the Making of the Constitutional Court. ASCAROL responded by sending the sizzler together with proposed treatment of films with the working titles *A Negotiated Revolution* and *Sentinels of Justice*.

Lonnie Bunch agreed to approach the Smithsonian TV Channel to broadcast and hopefully fund the filming, When Lonnie Bunch was appointed Director of the Smithsonian Museums as a whole, correspondence continued with Paul Gardullo , the Director of the Center for Study of Global Slavery at the NMAAHC. After some delay, a representative of Smithsonian TV invited ASCAROL to revise its proposal with a view to seeking collaboration in the making of a single film which would combine the stories of the Making of the Constitution and the Making of the Constitutional Court. She also proposed that specific elements of the connection be introduced to show relevance for an American audience. A revised proposal prepared by Albie and Gordon Metz for the Smithsonian TV was sent in November 2019 (***Annexure II***). We are waiting for a response.

IV. Audio Book project The Trustees felt that Albie himself was a living archive of the process of Constitution-making and that arrangements should be made for him to record his experiences on the journey to create a constitutional democracy. It was agreed to use extracts from the many hours of film interviews conducted by Urban Brew as the basis for producing an audiobook. Gordon Metz offered to create a team of experienced people to bring out the audiobook in a form suitable for broadcasting and domestic use. His offer was accepted. The audiobook is now close to completion. The South African Broadcasting Corporation (SABC) has listened to extracts and has committed to broadcasting it.

V. Interview on the Preamble to the Constitution

Gordon Metz also helped to set up an interview by Albie with Justice Kate Savage on her experience in helping with the drafting of the Preamble to the Constitution. This filming followed on a request from the Constitution Hill Trust (CHT) to get material for its website concerning the making of the Constitution. The film of the interview was sent to the CHT and has been incorporated into the section on the website dealing with the Preamble.

REPORT ON ASCAROL'S PROJECT TWO: *Telling the story of the creation and functioning of the Constitutional Court of South Africa.*

(i) Biographical volumes of the first three Chief Justices appointed in the democratic South Africa.

Arthur Chaskalson, Ismail Mahomed and Pius Langa were founding members of South Africa's first Constitutional Court and went on to become the first three persons appointed as Chief Justice in democratic South Africa. ASCAROL set up different teams to prepare volumes on the life stories of each one of them. The objective was to produce books made up of three parts - the first to include a biographical profile together with personal recollections of the Judge by persons who had been close to them; the second to contain an overview of the court decisions delivered by the Judge; and the third to carry selected extracts from published judgments and Lectures given by the Judge concerned.

- Arthur Chaskalson – political journalist Mpumelelo Mkhabela was commissioned to write a 50-page profile. He has produced a first draft running to about 100 pages. A team of Chaskalson's former law clerks volunteered to undertake most of the rest of the work required for the volume. Compilations have been made of his judgments, Lectures and speeches. Former law clerk Happy Masondo wrote up research she had done on Chaskalson's contribution to the constitution-making process of Namibia. Former law clerk Susannah Cowen is working on the overview of his judicial work as well as making the selection of extracts for the third part of the book.

The bulk of the basic material for the volume has been assembled. A considerable degree of editorial work is still required. It is expected that the volume will be ready for publication in hard copy and electronic form by the end of the year.

- Pius Langa – Mandla Langa, a distinguished writer, agreed to prepare a 50-page profile of his late brother Justice Langa. Former law clerks of Justice Langa have agreed to do further work on this volume. Personal recollections by Advocate Moerane and Albie are available for inclusion. Although not much progress has been made, it is felt that this is an important project, which should continue to be pursued by ASCAROL in the coming period.
- Ismail Mahomed – Professor Penny Andrews, former Dean of the University of Cape Town Law School, and Aneesa Mahomed, a lawyer who is the niece of Justice Mahomed, have undertaken to write a profile. His first law clerk Judy Cowan has contributed her recollections of working with him. Although there is not much further progress to be reported, we feel that the life and work of the late Chief Justice Ismail Mahomed is of great importance and ASCAROL proposes to continue seeking completion of this volume.

(ii) The story of the Making of the Constitutional Court

Peter Harris, a well-known attorney and acclaimed writer, has agreed to write a book for a general readership on the making and functioning of the Constitutional Court. He has done a considerable degree of research. ASCAROL has made someone available to do further research as and when needed by him. He has undertaken to complete a draft manuscript before the end of this year. He is very committed to the Project and we are hopeful that his book will be ready later this year for publication in hard copy and electronic form.

FINANCES

The Trust was initiated / established with a research grant from the Tang Prize of R3 929 024. Albie donated a further R60 976 to start the account on the round figure of R 4 000 000.00. The grant funds were allocated towards the two projects and 6.25% was reserved for administration costs. Over the period of five years, the credit balance in ASCAROL's account at the First National Bank account generated interest income of R819 582.00. This extra income was used to employ the services of the administrative assistant.

The Funds were allocated as follows:

	Project	Allocated	Spent	Allocated/ unspent
1	<u>Project 1 – Making of the Constitution</u> Including: Project management to develop, plan and realise the process of digitising the Archive of Albie Sachs collection of 30 000 pages; Books and editorial assistance about the history of the process of making the constitution; Film and audio of Albie Sachs and other participants in the negotiations process; and associated research and travel costs.	R3 350 000,00	R2 849 747,00	R500 253,00
2	<u>Project 2 – Making of the Constitutional Court</u> Including: Books and editorial assistance about the first three Chief Justices of democratic South Africa; a book and editorial assistance about the creation and functioning of the Constitutional Court of South Africa; and associated research and travels costs .	R 400 000,00	R 214 034,00	R185 966,00
3	<u>General Administration</u> Including: Bookkeeping, auditing, printing and general administration costs. The administrative assistant was remunerated with funds collected from earned interest on the credit balance of the account.	R 250 000,00	R 114 609,00	R135 391,00
	TOTAL	R4 000 000,00	R3 178390,00	R821 610.00

The ASCaRoL Board has agreed to keep the Trust active for at least two further years in order to supervise the completion of the projects. The unspent amount has accordingly been retained and allocated towards particular projects that are still in the process of completion. We have also allowed for payment of further administration costs, including those for bookkeeping and auditing.

CONCLUSION AND THANKS

We started with a relatively modest project to tell the story of how our constitution was made. We are ending with a project that has grown beyond what we had envisaged when we signed the MOA. Our collaboration with the Constitution Hill Trust has enabled the participants and the list of funders of the project to grow exponentially. In September the website and archive referred to above will be launched. A body of work will be made public that is deeply engaging and creative with intimate stories, extensive timelines and beautifully illustrated animations. It will embody the imaginations, hands and voices of the many diverse people in our country. It will help in South Africa and the world to build trust in constitutional democracy.

Finally, allow me to express to the Tang Prize Foundation deep and genuine personal thanks on behalf of Vanessa and myself, to which I must add the most sincere gratitude from all the other members of the ASCAROL Board. Without the Tang Foundation there would never have been the ASCAROL Trust! Working together over these past five years has been for us a fulfilling process of sharing, learning and engaging, a great delight.

So, on the principle that seeing is believing, we look forward to inviting Jesse and his family, - so full of laughter on the front page of this Report, as well as the many other great friends that we have made with people from the Tang Foundation, to witness with their own eyes the beautiful, evocative and thought-provoking visual tableaux that would never have come into being without the Tang Foundation's trust in us. In late September we plan to have an international launch of our website *OurConstitution.za*. *We would love you all to be our virtual guests.*



Albie Sachs
PATRON OF ASCAROL

27.07.2020



Vanessa September
CHAIR OF ASCAROL

Attachments:

Annexure I : Trustees and Administrators

Annexure II : Film proposal

ANNEXURE 1

ASCAROL TRUSTEES and ADMINISTRATIVE PERSONNEL

The Trustees of the ASCAROL Trust appointed for a period of 5 years are:

- Kate O'Regan - former Justice of the Constitutional Court of South Africa. Kate was head of the building committee for the Constitutional Court and was heavily involved in developing the character of Constitution Hill.
- Justice Vincent Saldanha - Justice of the Western Cape High Court, former Director of the Legal Resources Centre in the Western Cape.
- Advocate Nazreen Bawa of the Western Cape Bar, one of the first law clerks at the Constitutional Court.
- Vanessa September – Architect, Urban Designer, Lecturer and CEO of the Constitution Hill Trust
- Albie Sachs – Former Justice of the Constitutional Court, part of the team that chose the Constitution Hill site for the Constitutional Court and on the jury that chose the winning entry for the building. Former head of the Artworks Committee, he donated a portion of his Tang Prize money to the Constitutional Court Artworks Programme, and has financed a collaborative effort between ASCAROL AND the Constitution Hill Trust to reprint parchment-type copies of the Bill of Rights and copies of the book *Art and Justice, the Art of the Constitutional Court*.

Professional Support and Administration

- Ms Jill Singer - Attorney and advisor to the Trust
- Mr Marx Gore - Auditors to conduct annual audits
- Ms Susan Rabinowitz - Assistant to Albie Sachs & Administrator of the Trust
- Ms Jeanette Kleu - Bookkeeper.