Zanele Majola Constitutional Court Oral History Project 24th January 2012

Int This is an interview with Zanele Majola, and it's the 24th of January 2012. Zanele, thank you so much for agreeing to participate in the Constitutional Court Oral History Project, we really appreciate it.

ZM It's a pleasure. I'm happy to be here.

Int Zanele, I wondered if we could talk about early childhood, where you were born, a bit about family background, and what are some of your experiences of growing up in South Africa when you did?

ZM Alright. I was born in Durban and grew up in a township called KwaMakhutha. I was the last child of four siblings and I grew up with my mom, who is divorced, and we were sort of protected from stuff that was happening at the time. I was born in 1979. I remember very little actually about, for example what the Constitutional Court now represents, about apartheid, because you were basically growing up, going to school, back home, and my mother wasn't very much of a political attuned person. I think it was only later on when we were witnessing toyi-toying in the late eighties, and houses being petrol bombed, that you started being aware of what was happening. I don't know how much of it you want to know but it was only when I was in my early teens that I started becoming aware of things. I was fortunate…I don't know whether fortunate is the right word: My elder sister went to school with Griffiths and Victoria Mxenge's son, so when Victoria was killed we knew and we knew why it had happened..

Int Both of them were killed?

ZM Yes, Griffith was killed first around 1981 and Victoria was killed in 1985 at the time when my sister was in school with the son, so she would come back at home and relate the stories. My awareness started forming from around those times. Save for these experiences, except obviously for the fact that I was in a township, and I couldn't stay anywhere else, I cannot say I had day-to-day experiences of racial tensions, it was mainly being in this very protected type environment and almost oblivious to what was happening around you.

Int I'm also wondering, growing up at the time that you did, what were some of the things that you witnessed in terms of social injustice? In terms of apartheid during the eighties, what were some of the events that you may have witnessed and observed?

ZM This, I am assuming, was apartheid related, but it was definitely a social injustice. I could be very wrong that it was apartheid related, but one of the things I remember growing up, is that my mother needed to take my two eldest sisters to Home Affairs to have their identity documents made. And they had been born outside of my mother's marriage, which had by that time ended itself. Traditionally they would have taken my mother's surname because they were born out of wedlock. For my mother to get them to have IDs she needed a male adult…the fact that she was their mother was not enough. She needed to have someone from her home, and a male having to go with them and basically confirming that, yes, they are belonging to this surname. To me something was just wrong there. Whether it was happening in White or Indian or Coloured communities is another matter, but this was one of the things that happened they I consider to be a social injustice. Further, my mother was a nurse by profession and she retired last year. She used to tell us that she was not getting paid as much as her white counterparts. It never made sense to me, but it seemed like it was one of those things that they had accepted as a given. I'm not sure whether behind the scenes they would have been complaining about it. So it is very small things like that that you sort of said to yourself: but this doesn't make sense, why is it happening? My specific personal experience was when I was quite older, if older is the right word actually, because I was what, fourteen, thirteen or fifteen. I had studied in a Black school until, what in South Africa we call standard eight, it's now called, what, grade ten. And I decided to move to a predominantly Indian school. I was made to repeat standard eight/grade ten, and I had had good results, but just because I was coming from a township school. At the time, because I was young and naïve, I didn't actually care, I just wanted to be at that school. But when you look back, I'm thinking, I wasted a year, you know, I could have been at 'varsity even earlier. I could have completed matric when I was sixteen. I completed it when I was seventeen. I don't know whether they still do that, I hope they don't do it anymore.

Int Those were your experiences…

ZM Those are some of my experiences.

Int In terms of a legal trajectory, at what point did you decide that you would like to pursue a legal career?

ZM Wow! (*laughs*) I've just been asked that question actually last week by someone else. Look, my choosing law at an earlier stage was because it was something I wanted as a child, it was more of a gut feeling. I just wanted to be a lawyer. There wasn't even any specific incident that had happened, that I connected to it. But then as I started the legal practice itself, when I was at 'varsity and reading case law, and just understanding what law was about, that was only when I saw what a difference one can actually be making by

being a lawyer. My current job now… to do what I'm currently doing now I had to really reflect, because your role as a lawyer within a company is to protect the company. And currently I'm working on a case where we are being sued by former miners, Black miners, who claim, amongst other things, that they had different working conditions compared to their White counterparts. So as one of the legal counsel for the mining company, sometimes my friends would be like, hey, you should be protecting your people(meaning Black people because I am also Black). It's quite a…I don't know how to put it in words, but it's a very interesting position, maybe, for lack of a better word. I remember the other day I bumped into Justice Albie Sachs and I said to him, by the way, I'm working for Anglo now, I'm sure you won't approve. And he said, no, why would I not approve? So long as you don't lose who you are. And that I think is what is important, not losing who you are. But somehow you sort of get the feeling that other people that know your history…for example, having worked at the Constitutional Court, they feel like you are betraying the cause.

Int But early on when you decided to become a lawyer, did you think that law could be used as an instrument of social justice?

ZM The answer is yes. I always thought law could be used to protect people. And I wasn't thinking about it even in racial terms. It was basically just saying, law can protect anyone. You could be accused of killing, of doing whatever, you could be Black, yellow, red, but you still need to be protected. So it was, for me, basically saying, yes, law can be used to protect people, regardless of colour…it wasn't racially motivated.

Int I also wondered, when you left school and you graduated, where did you go in terms of university?

ZM I did my first degree, which was the LLB degree, it's basically your standard law degree, in Natal, at the University of Natal. I had wanted to actually go to UCT, just to leave home; I was born in Durban, you know, studied in Durban, but my mother wanted me in Durban. I did another Masters in Natal. Then later on I studied in Michigan in the United States. I did my Masters there. These were the schools I went to.

Int So when you did your law degree this would have been in the 1990s?

ZM I started in 1997, yes.

Int '97, right and prior to that, when you are at school, had you been privy to the constitutional debates..the negotiations process, had you kept abreast of these…?

ZM Actually, that is actually…it's interesting you ask that because I only became more aware of what was happening, like at first year of 'varsity, and at high school I had been…one of my majors was history, and when I was looking back I was thinking, is it not weird, so you are in the history class, and I suppose the word history, by it's very nature, it would be interpreted as looking back but I wonder to what extent schools have a responsibility to even be discussing things that will be history- the making of history. Because when I finished school it was 1996. Surely the elections or the build-up should have been built somehow into the curriculum. And it was never covered. Instead we were studying about Jan van Riebeeck and whoever and whoever, Louis the XIV in France and the French Revolution. And that wasn't actually covered, so I felt somehow robbed because when I finished my schooling that is actually when this was happening, all this, you know, was happening. You will go home and you will hear that someone's house was burnt down because they suspect he's IFP (Inkatha Freedom Party). But you never then hear about it in school. Almost like it's a completely different world. Almost as if you're experiencing it because you are at a township at that time, as you moved to the suburbia where your school is, it's sort of stops existing.

Int I'm also wondering, at the time that you entered university and studied law, in terms of constitutionalism, what were the courses that interested you, if at all, and what then prompted your decision to come to the Constitutional Court?

ZM When I was doing my LLB, so courses like constitutional law and administrative law, were mandatory, so it wasn't even an elective, we had to do them. And we were fortunate because the professors that took us for those courses were people who were very…who demonstrated that level of knowledge about what was going on. The one professor, I'm not sure whether he still is, but he was a Human Rights Commissioner at some point.

Int Who was that?

ZM Karthy Govender. So he will teach us but also bring it home by examples. You know, like he would have said, I argued on this case, I argued on that case. So that was quite nice. And the other professor was…ooh, what was his name now…?

Int (George) Devenish?

ZM Yes, Devenish! (*laughs*) How did you know? Yes. So he had been also very involved in the negotiations building up to the Constitution. So somehow you'll feel there was a level of showing off, but still it was interesting because he will go like, "I told Mr Mandela, that no, we must compromise". That was like his favourite line, everyone who's taken his class remembers that. But it was…they made it real, you know, compared to having gone to a school

where the new dispensation almost was non-existent, to now being in a platform where you could have these discussions and talk to people who, you know, who've met the Mandelas, who've been in CODESA and stuff like that.

Int In terms of the decision to go to the Constitutional Court had you decided to go down the formal path of articles and what made you decide to apply there?

ZM So when I saw the post advertisement, when I was still doing my LLB, I had known, I think one or two people that had come to work at the Constitutional Court before me, and every year there would be, on our University notice board, there would be this post. So most people obviously they would go the conventional route. You finish your LLB, you serve your articles. And I thought…something in me said, why should I do articles? I can do articles later. Because I knew the Constitutional Court post was not a forever thing. Ordinarily people do it for a year. So I thought, this looks interesting. The highest Court in the land. Working with all those judges. And you know, you're still all fired up, everyone would have been reading, especially *Makwanyane* (*S v Makwanyane and Another)*, and you read about Mokgoro and the whole concept of uBuntu (may be referring to *Dikoko v Mokhatla)*. You know, there's that curiosity at that age. You want to fit the faces to these names. So for me it was curiosity on the one hand and the need to learn more about the Constitution on the other. The judges were these people, …I don't know, like…not even…celebrity is not the word, there was something so special about them. It wasn't popularity, it was just like when Mokgoro wrote about uBuntu, even seeing an African name in a judgment, for me just moved me. And how that word became so popular with everyone regardless of colour. In fact, later on after my Constitutional Court experience when I was studying in Michigan, I went to one of the graduation speeches, and Bill…not Bill Gates…

Int Bill Clinton.

ZM Bill Clinton, yes. How do you know…(*laughs*). Bill Clinton was giving a talk and he made reference to uBuntu. And I was just so proud to be South African and being seated there in the stadium. So yes, I thought I could do articles at any other time, but this was just something I had to do.

Int Thank you for that, Zanele. I was wondering, in terms of your interviews at the Court, how did that process materialise?

ZM Obviously I was nervous. I was going to be seeing judges of the Constitutional Court…I remember I saw Justice (Laurie) Ackermann, Justice (Pius) Langa, Justice (Sandile) Ngcobo, Justice (Yvonne) Mokgoro, and with Albie (Sachs), he wasn't around, I had a telephone interview with him the following day. So the fact that I was seeing so many judges… as this potential clerk, the fact that you are seeing more than one judge is always regarded as a plus, that it

means that there is potential. I had never been to Johannesburg before, so I came here and there were all these very well dressed clerks from Wits and and other Universities, and I remember I was just wearing a skirt and some jacket to make it a suit. And you suddenly feel like, god, am I even worth being here. And you see all these confident White potential clerks talking about this judgment and that judgment, and you think, oh, my god, why am I here? (*laughs*) But when I started talking to the judges, I actually felt calmer because they were just so human. Maybe this sounds silly, but they're just people. When we did our final year at 'varsity, we had to go to Court and sit in courts, and there is that difference between, you know, the judge and the magistrate and the people and the attorneys. You can just sense the hierarchy just by sitting there. But with them (Constitutional Court judges) they were just people and they were talking about their experiences. I remember in one of my interviews with Justice (Yvonne) Mokgoro, she was telling me about how she got arrested, I can't remember in which year, and you were like, wow, because I hadn't been that much exposed as a child to all these things. You just think, wow, like how come these people are not bitter. When I finally got a call from Albie (Sachs), and then I got an offer, and I was reading his book the night before I came to Jo'burg to start, because I said, okay, I need to know this guy.

Int Which book did you read?

ZM '*The Soft Vengeance of a Freedom Fighter'*, and I was thinking, wow! This guy! You know, so it was just like you think, wow, these people, I don't know, it's…I don't know how to put it in words, it's just, you realise how amazing they are, and to be working for them it's like, I don't care what articles had to offer really, it's just one of those things that I don't regret at all having done. The sad thing with the legal profession is that each time you are supposed to be promoted or looking for a new role, they would always ask you, when were you admitted. It is as if your legal career life starts only on admission. And I always argue with people that my experience at the Constitutional Court is priceless to what an article clerk experiences at a law firm. So it's a very sad and very conservative kind of thinking. But it's still the case in South Africa.

Int Zanele, I wondered whether you could talk about working with Albie Sachs…initially you clerked with Albie Sachs and then you moved to Dikgang Moseneke's…

ZM Yes. Yes.

Int But let's start with Albie Sachs. What was your experience of that particular chamber; when you started it was 2002?

ZM 2002, yes. I remember the very first day we got to his chamber, it was around the time the floor-crossing case started. So it was one, you were a bit overwhelmed by this case and not being sure what is expected of you. You felt like what do you know about floor crossing and issues of national importance. But Albie (Sachs) is such a…I don't know how to put it…one of the things that makes him, I think, calm people, is that, you'll get all these court papers including pleadings, and you'll read them frantically because he needs to discuss it with you at two or whichever time, and he will just say, Zanele, what do you think as Zanele the person, not Zanele the lawyer? And that was just his theme the whole time I was there. And even today this has been one of those things that has stayed with me forever, because we are trained in thinking, section this or article four of this Act says this and that. And for him I think the focus on training you is that we know that section 10 says this, but one, your role as a lawyer is to interpret that section to the best that you can as much as the legalities allow you to expand it. And then your human element should matter than just reading the Act. It's not as simple as just what is written in black and white. So every time, even today, I am faced with an issue, I try to say as Zanele, what do I think? Like, is this right? And then you use the law to see if you can fit it to what you as a person think, as opposed to the other way around to make the law just be…what's the word…so it's about basically thinking as a human and then using the law to fit into that space, as opposed to just being this person who says what is in black and white and then you apply it as it is. I don't know if that makes sense?

Int No, that makes perfect sense. And then in terms of other law clerks and discussions, how was your chambers perceived?

ZM (*laughs*) The funny thing is, because of Albie's (Sachs') unique perspective and take on things, it was almost like…what's the word…in an…sorry, let me make an example with the law firms that I…and let me know if it doesn't make sense. In a law firm, ordinarily commercial teams are seen to be the prominent ones because they are the guys that deal with mergers and acquisitions. So in terms of billing they are bringing the 'moola'. And then the environmental team, for example, regardless of its significance, because we know how important environmental issues are, they will have sort of…I don't want to say less respect, they're not as prominent because it's like, you guys are worried about the soft issues, kind of thing. So the feeling that I got, and I could be very wrong, was that it was almost like Albie (Sachs) shouldn't be a lawyer, he's too much of a social economic type person. And in fact, when I was in Michigan, I experienced the opposite perception about Albie (Sachs). He is worldwide adored and respected for his views. Some of the professors I interacted with…there was a guy who used to come to Michigan but he's based in Oxford, Professor McCrudden, I think, he was like just wowed by Albie (Sachs). Which was a completely, in my experience, a different experience on how people experience him, compared to how people in South Africa experience him. I almost felt like that he was a soft guy…

Int In South Africa?

ZM In South Africa, yes.

Int When you say 'soft' what do you mean?

ZM Soft in the sense that he will focus too much on touchy-feely issues as opposed to just being this hard-core lawyer who is just going to say what the Constitution says, and come to a conclusion. So clerks, at least, I think they had that perception of him.

Int I'm also wondering in terms of the cases that came here during the year that you clerked for Albie (Sachs); what were the key cases and how did you and Albie (Sachs) and other clerks in your chambers, approach those particular judgments?

ZM Alright. There were a couple of interesting cases that when they were heard I was not here, but when they were written I was here. So for example the *Jordan* (*S v Jordan and Others Sex Workers Education and Advocacy Task Force and Others as Amici Curiae*) case on prostitution. And Albie (Sachs)…I had never thought like that, like you know when someone thinks something and you think, wow, actually that makes sense. His primary focus in the reasoning building up to the judgment, was that…so for all of us, I'm assuming, as young lawyers, it was like, okay, this case criminalises prostitution, what is happening in other jurisdictions? Should it be criminalised? Is it discrimination against women? But his angle was more the discrimination is in fact not just because it's normally the women that are prostitutes, but the buyer, who is normally the guy, is basically excluded from any form of liability. See, now it seems to simple because I've gone through the process but at the time I said, wow, actually that makes sense. I got involved with him…that sounds weird…I got involved working with him in *Phillips (Phillips and Another v Director of Public Prosecutions and Others)*, a case dealing with…what do you call this…strip clubs, and again his creativity as a lawyer was evident. Because he said to us…so I'm Zulu, and in African tradition I don't do it now because we've been modernized, but if I had to go back rural, rural, where my mother was born, when there are ceremonies women still dance with their breasts out and just wearing like just something to cover their private parts. And you are saying, what is wrong with that? Like is there anyone complaining about that. And generally when women are dancing there are drunk men drinking African beer. It might be wrong on whatever levels but no-one is complaining about that, so why are we complaining about strip clubs, where people are not there by force, they've come to pay for the dance and people are dancing as a form of employment. So he was just so fresh in his thinking. I think fresh (*laughs*) is the best word. And as a result, whenever he looked at the case, you tried as well to just dream and not just

be this focused person restricted by legislation. You become a dreamer because you can see…you really can see that the law can do more than just the words that it's written on.

Int I'm also wondering, in terms of…Albie (Sachs) is known for key judgments, in the same sex marriage (*Minister of Home Affairs v Fourie and Another; Lesbian and Gay Equality Project and Others v Minister of Home Affairs and Others*)…in terms of gender issues it sounds like there quite key debates in your chambers and I wondered whether you could reflect on that?

ZM (*laughs*) You know (*laughs*), sorry, it's not funny, Albie…I will start after the chambers, then I will go back, we were…I did a course lectured by Catharine MacKinnon, as she's sort of one of the founders, for lack of a better word, of feminist jurisprudence. And in the class we were discussing different cases dealing with gender issues.

Int This was when you were abroad?

ZM Yes. So post my ConCourt experience. And then we discussed, I think it was the *Fourie* (*Minister of Home Affairs v Fourie and Another; Lesbian and Gay Equality Project and Others v Minister of Home Affairs and Others*) case, which was then after my time, and then one of the students, a very bright student, said, you know, Judge Albie Sachs, she is…and she continued commenting on the judgment. So then I said, he is, he's a man. Then Catharine MacKinnon said, you know what, Albie (Sachs), he is so good, you will think he's a woman (*laughs*)…so that's how…I mean for me that statement was just so like funny, but also so spot on. Because Albie (Sachs) was one of the people…so when we were discussing all these gender issues, you didn't feel like…so I was brought up in an environment where people don't just talk about sex, and especially with an elder male. But with him he will say things that you'd like, ha! And I remember…I can't remember which judgment it was we were discussing and he was saying, the reality is that there's only one thing that both poor and rich people enjoy and that is sex. So sex for him is such a…he understands it, maybe I should say that. And I remember, I don't think I even said this to him, I could be wrong, but I was just thinking in my head, I was like, with HIV/AIDS I doubt that that's still applicable because you still have to afford condoms. Obviously there are government ones, but you know, so there's now an element of money involved. But I don't think I even told him that. But the thing is, he was so passionate about gender issues that you…it was almost as if he was a woman. Because with my experiences normally with people, even within the legal profession, if you talk about racism for example, sometimes it's hard for your White colleague to get it because if it's not happening to you then it does not exist, kind of mentality. But with him he was…or he is, very tuned on, and I'm not sure actually, it's interesting that you point on his gender issues…gender cases, I'm not sure where it emanates from, like that level of just understanding….

Int I'm also curious, in terms of your interactions with other judges, particularly around that time, so Kate O'Regan, Justice Chaskalson, etc, what were some of your interactions, what were your observations of them in Court?

ZM Um…phew…I was quite scared of judges to be honest. I knew having had interviews with them that they were very relaxed individuals, but still like when they were walking in corridors, they looked so serious, and so it will normally be, good morning, judge, hi, judge, and you sort of try to disappear. And then it was normally them who would start a conversation. So I remember, for example, Judge (Sandile) Ngcobo, we are both from KZN, and he will be like, hey when are you going home? And he will talk in vernacular (*laughs*), and you know in a working environment there's something special in a way about hearing someone speak your language, because it's not something that you hear every day. Or you'll bump to Justice (Zak) Yacoob, and I never knew what to do about bumping into him because I didn't know whether he knew me enough, because he's blind, like whether I'd be imposing, but I remember we saw him with one of his former clerks in Melrose Arch and we went to him, and he was quite very nice about it, and he will ask you, so when were you at the Court? Judge (Pius) Langa as well he was our Chancellor at the University to Natal. When I finished my Masters degree it was nice to see that they recognise us and they remember us, when he was tapping my head, he said, "hey, congratulations Zanele", he made a quick conversation. Justice (Kate) O'Regan, is also great and when there were teas she would chat to us, but not as this judge and an adult. They were just chilled, they were relaxed people. I went to a dinner once when I had left the Court and Judge Chaskalson was there. He did not have that sense of self-importance, which has made my work ethic quite different because when you work for law firms, as an example, senior partners take themselves so seriously. And for me I always say, hey, I was at the Constitutional Court with the highest judges in the country, so just chill. They're just people.

Int I'm also curious in terms of your particular group of law clerks in 2002, what was the sense of amongst you in terms of, was it a pleasant group, did you find that you made friends easily, what were experiences of read-through, etc?

ZM Okay. My experience, I was here at the time when one of the issues was that some people don't participate in…what did we call them…seminars, I think. Where just before the hearing the chamber that was responsible for the judgment will then host these seminars, and then people would debate issues. We had a meeting the one time on this issue and what was interesting was that I remember one of my colleagues at the time, and now she's quite a good friend of mine, she said…and she was a very capable clerk…and she said, the problem was…and looking back I think she was very spot on…so people come to the Constitutional Court, they all have law degrees, but they are

coming from completely different backgrounds in terms of having a conversation in English, some people would have gone to predominantly Black universities, not just Black schools, and it's not easy for them to communicate. So sometimes the silence doesn't mean that it's because they don't have anything to say, or they haven't read their stuff or they're clueless, but for them they will have to process whatever is being said in their vernacular, be it Sotho or whatever, and then have to process the answer or the response in that language, and then have to translate it to English…so by the time you are done with all the processing, the boat is moving. Someone has said something, and you know, it's too late. And another issue was…this I think I raised…was that… there was a clerk that when we spoke in whatever language, he was very free and relaxed but he appeared shy in these seminars. Perhaps the factor could be that sometimes when people speak, and because they are still processing through the languages, you can see people's disinterest when you talk to them, and there's nothing as a put-off as feeling like what you are saying doesn't add value or is not understood. So there were all those dynamics at the time. And there were racial cliques as well, we used to have birthday teas as clerks, and there will be that group or that group, and some of us will sort of belong in between, and there was the chamber link as well. I mean, people I worked with Albie, they're still my friends today. I'm celebrating someone's birthday in two weeks, you know, so there were always those cliques. So those are some of the issues. And there would be people who would be quite dominating and then some people would just relax and just allow them to be. So it was…

Int Where did you fit into all of this…the dynamics?

ZM (*laughs*) I wasn't dominating, I think. What used to be my frustration, for me, was that I wanted to be with people who were…I didn't want to feel that you were looking at a Black woman. I wanted to be with people who felt I was a law clerk, full stop. And maybe I was also at fault for judging people sometimes. So people who I could see that they wanted to belong into their respective groups, I just stayed away from those people. I would normally…I used to spend a lot of time with foreign clerks. Some of the American clerks that were there, we still meet now, when they are in South Africa. I have a friend who used to clerk for (Justice Sandile) Ngcobo, she's writing a book on land restitution, so she still comes to Johannesburg, we meet. Another Korean-American friend of mine, has just resigned from the Chief Justice's Office, she had been here a couple of years back, clerking for (Sandile) Ngcobo then went back to Chicago and is now back in South Africa. We are great buddies. So I used to, for some reason, I had quite a good link (*laughs*) with the foreign clerks. But I never wanted to subject myself to discomfort where I felt uncomfortable. Maybe that was wrong, looking back, but I just stayed away from sides, yes. Otherwise, I think we were a happy group. We were not bitter. There were those issues, yes, but we were happy, and we were young and we were relaxed and we worked really hard. I was surprised later on when I was told last year to dress all formally. We came here in jeans,

and we still got the work done. Albie (Sachs), for example, used to work…his energy levels started in the afternoon up until late, so we used to work for until forever. But we were just happy. Like there was no bickering about, oh, God, this judge is back, we were just happy people, we enjoyed our work.

Int I'm curious, Zanele, in terms of these racial dynamics, did they ever get resolved, were they ever confronted? Or was it something that was evident but never really discussed?

ZM I could be very, very wrong, but as I remember, I remember Albie (Sachs) was aware of what was happening, and he will ask us about what was…what would have been an outcome of this or that. But as I recall, I think it's something that was just allowed to be, you know…I don't know, it would be interesting to know whether it still exists now, but I don't remember any specific intervention at the time.

Int In your observations of the Bench as well, did you find that there was a sense of racial, or gender tensions amongst the judges at all?

ZM That's interesting, actually. Because when I was looking at that racial or cliques within the clerks, I didn't see that with the judges. I just…there were…at least if there was, they covered it very well. They were just people. Whether you are (Yvonne) Mokgoro or you are (Arthur) Chaskalson, they seemed to have respect for each other. If there were issues, honestly, those issues were kept in their judges conferences. I never witnessed any negative vibes from them. And even from having worked with Albie (Sachs) and Justice (Dikgang) Moseneke, I don't recall them saying any negative thing about any of the other judges. If it existed they kept it very professional.

Int I'm wondering…how…were you involved in the art tours? As I understand it, Albie's (Sachs') clerks used to be involved in the art tours.

ZM (*laughs*) That became one of your duties while you're working for Albie (Sachs). So…so my very first day here, the UDM *(United Democratic Movement v President of the Republic of South Africa and Others (African Christian Democratic Party and Others Intervening; Institute for Democracy in South Africa and Another as Amici Curiae)* case papers arrived, but we had to have the tour. So I'm like, okay, that's weird. So we went…it was before this Court. We were still…

Int In Braampark?

ZM In Braampark, yes. So he took us around the Court there as it stood, and then we walked across. And I'm thinking, God, it's so cold, because I'm used to Durban weather. Durban is so nice and warm. And it's freezing here, it was the 1st of July, exactly mid winter. So we went all the way to the Women's Jail, as it was called at the time. We came here…but there wasn't this, you couldn't see this, but he would tell us what would happen. And then over time, as the months passed and this building was coming to form, you got to know everything so well that when his guests arrived and he wasn't around, or he was busy, you could take people around. And what was interesting as well in those tours was, I've taken students, I've taken important people, important being your…

Int Dignitaries?

ZM Your dignitaries, yes... But the reaction is always the same. I thought that was really amazing, and even when you witnessed Albie (Sachs) giving those tours, he wouldn't change it because, oh, now, it's Melinda Gates…because we took Melinda Gates the one time. So he wouldn't change it because now we have this super rich woman. People would be treated the same. But, I mean, ultimately you know this so well that I remember the one time I took my boyfriend at this building, but it was closed, it was at night, and we could only just see the paintings as you walk on the African Steps. And I was telling him this that and the other, and he was looking at me funny I used to do art before I finished school, I did art for like five years, so I'm sure he dismissed it as, ah, it is my artistic creativity in me. I was jealous when they moved here, because I had known so much about it, I've said so much about it to so many different people, and I didn't get the chance to work here.

Int How does it feel to come back to this building, the building that you had envisioned?

ZM I was telling Annette (Vosloo) when we were walking here that, you know, it feels slightly sad that the faces have changed so much, there are judges I have never met, like Judge (Bess) Nkabinde. And so it almost feels like, you know when you go back to your school and all the teachers are gone (*laughs*), and there's no one...not in this case because there's still Justice (Dikgang) Moseneke, for example. But it's almost like there's that sadness slightly but also an appreciation of what the people who are here are going to be experiencing going forward. And for me there's that hope as well that the new faces that are here, will continue what the other guys started, and make it even better. I hope we do not reverse it, I hope that we still have similar people as those that when I read their judgments at law school I was just wowed by them.

Int That's interesting and I'll come back to that later. I'm wondering in terms of your move then to continue at the Constitutional Court, how that came about and then the process of clerking for Justice (Dikgang) Moseneke, how that came about?

ZM Sorry, the first part, the move…?

Int Your decision to actually stay on at the Court?

ZM Ah, alright. So, what happened was, we started in July, and then in January, the following year, after our six months, Justice Albie Sachs was on sabbatical leave, it actually feels weird to say Justice Albie Sachs (*laughs*)…

Int Albie (Sachs).

ZM Albie (Sachs) was on sabbatical leave. I can't remember where he had gone to. And Justice (Dikgang) Moseneke had just started. So he needed clerks. So we sort of became the natural occupiers of that position, both myself and my colleague, Farzana (Badat). And then when that time was done, when the six months was over, Albie (Sachs) asked if I can stay on and I thought, ah! Why not? Because I wanted to start my articles anyway in January, just to have a proper start.

Int Sure. So what was your experience of clerking for (Dikgang) Moseneke?

ZM It was so different because obviously Albie (Sachs) and (Dikgang) Moseneke are just so different. And so one, I think my admiration for both of them was coming from completely different influences, because Albie (Sachs) was just so human and so amazing in his own way. And I admired (Dikgang) Moseneke for being, one, he was this Black man, very smart and very neat. I think all the girls were sort of like, ooh, that's a nice guy. And for me as a Black, young woman, I really admired him because he represented what, when I was young, we didn't have. If that makes sense. Like, just him, his presence when he's in the room, there was that respect. And then he was just so smart and he made things look so simple, and we'd think, how did he think of that? And he was almost for me, and no disrespect to him now that I'm thinking about it, he was coming from a completely different world. So he will speak about…I remember the one day his shoes were slightly dusty and he had been to his farm, so he represented to me, at least what black empowerment is, because he had been in business before he came to the Bench. So for me he was black empowerment in motion. Maybe a symbol of what Black people can also achieve post the new South Africa. In a positive way. And as a lawyer as well, I was a bit worried that, mm, you know, working for this new guy, I wonder how it's going to be like, because he had not been

a judge for long before joining the Court, but he was very quick to be on top of things. And we respected him dearly. It was obviously a completely different experience than Albie (Sachs), because he thought, in my view, more as a conventional lawyer, and Albie (Sachs) had his own dynamism, for lack of a better word, in how he thought. But it was good.

Int In terms of the judgments that came through when you worked for Dikgang (Moseneke), what were those?

ZM There's one actually that I remember well because, you know there's this wrong perception when I meet people and they hear that you've worked at the Court, that they will say, oh, so is it true that you guys write judgments there? No, we don't write judgments. What happens is you do your research as a researcher, and then sometimes part of your research you will see it there, in the judgment; it doesn't mean you wrote the judgment, you researched part of it and found those parts for your judge, which is what you are paid to do. So there was a judgment, *S versus Thebus*, it dealt with the doctrine of common purpose, whether it is constitutional to be liable for a criminal offence even though individually all the elements have not been proved but you are just being liable because you were part of a group. That's the whole principle of common purpose. So we had done a lot of research on that. And I had taught criminal law before I moved to Jo'burg to work at the Constitutional Court, so I was quite excited about the case.

Int When you say taught criminal law, you had been teaching?

ZM Yes, I was a lecturer in Natal before I came to work at the Constitutional Court. And I was teaching criminal law and specific offences. Specific offences is really a continuation of criminal law. You're just looking at each offence and the elements. So I was very excited with the case because it was something that I had taught. And he… (Dikgang) Moseneke is more of a…at least my experience at the time now that I'm reflecting …he leads, I think…like he will take a stance and you sort of find material as a researcher that support his…

Int Views?

ZM Yes. Yes, actually, he is quite a leader. I never thought of this actually (*laughs*) until today with this conversation. So he basically just, in his mind, I remember he compared it to vicarious liability. I can't even remember now his nitty-gritty thinking on it, but it just made sense, that there was nothing wrong with the doctrine of common purpose. Whereas when I initially got the papers, I was thinking actually, yes, this is not right. Because I was thinking as Zanele. He just made sense that, surely yes, this should be allowed. So he, at the time, and this was his very first six months, he might have changed over the

years, I don't know, he was more of a leading type of person and your research was very much guided by his thinking. I think whereas with Albie (Sachs) you could sort of go crazy with your research and present everything to him for him to see what works.

Int I'm also wondering, Zanele, in terms of being listened to and the way in which you interacted with Albie (Sachs), how was it different with Dikgang (Moseneke)?

ZM Albie (Sachs) just almost becomes like family. I think with everyone actually. Like even today I can drop Albie (Sachs) an email and say, hey, I saw you on TV, what's up with whatever? He's just…I have never grown up with a father, and I don't even look at Albie (Sachs), as a father, so my relationship with men, and older men, I don't have any blueprint on how it's supposed to be, but with Albie (Sachs) it was just so easy. I stayed with him a month when I moved to Jo'burg, they offered me to stay while I looked for my place, and I hear it's not even unique with me. I know Maryanne, one of the former clerks, had stayed with him. And I was thinking, oh, god, I'm going to be staying with my boss, a judge, I was just so traumatised (*laughs*). But he was just…you know, he's…I don't know how to put it, Albie's (Sachs) just Albie (Sachs), he's relaxed, he's…, you can talk to him about anything, I could cry at work when I was having a fight with my boyfriend in Durban and I could talk to him about that. (Dikgang) Moseneke, at the time, I'll qualify (*laughs*), was, you felt you were in a professional environment. Not to say Albie was not professional. But more on what happens in your life, stays in your life. No one will say that, but you just felt like you needed to get your work done. I remember (Dikgang) Moseneke called me once, I was in Rosebank, to buy a top or something, god, I nearly died, because I was thinking, oh, my God, I'm going to be fired today. And then he wanted something else, and I was relieved. Actually he wanted something in Rosebank, which happened to be where I was. But the…, but it was more of a professional relationship. Whereas with Albie (Sachs) you can sit and eat…there's a habit of his that he liked, he will order some mustard and something from downstairs, and if there's too much mustard he will take his serviette and wipe the mustard out, he's a relaxed guy.

Int And what was it like then making the transition back to work with Albie (Sachs) for that last six months?

ZM I was happy to have had the (Dikgang) Moseneke experience actually, because it's sort of having best of both worlds. And moving back it was just so easy because I think Albie (Sachs) has…he has such a deep understanding about people that I'm sure he made it easy as well. And…because he doesn't even…I remember in our team, he wouldn't even allow anyone to dominate anyone. Because he would say, so what do you guys think about this? And then you will say something, and if someone talks more than the other one,

then he'll say, what do you think? And he can even…he would even use our backgrounds…we were both from Durban, myself and Farzana (Badat), like he would use something personal to you and like how with the *Phillips (Phillips and Another v Director of Public Prosecutions and Others)* case, the Zulu dancing thing, in my case. So he was just able to bring us on board. So it just becomes…I honestly never felt any…it was just a seamless transition really going back to him.

Int And what did you do subsequently after your experience at the Court?

ZM I decided that, oh, maybe I should serve articles (*laughs*). And then I went to serve articles and…

Int Where did you serve articles?

ZM At Edward Nathan. It's now…

Int In Johannesburg?

ZM Here in Jo'burg, it's now called ENS (Edward Nathan Sonnenberg). And because of my Constitutional Court background, they put me in a public sector in utilities team, I did a yearlong project on administrative justice, involving interviewing various government departments. And my manager at the time, had been at the Constitutional Court. She had worked with Judge (Kate) O'Regan, Pippa Reyburn.

Int Who?

ZM Pippa Reyburn. Yes. And my other colleague had also been at the Constitutional Court, which was like a Constitutional Court team. Claire Barclay, she had clerked for…I don't know whether it was (Kate) O'Regan as well. I can't remember. So I did that, and I decided that, you know, maybe I should have some commercial experience, because I'd never done any commercial law. So I moved to do commercial law. And I've sort of done commercial law since then until now at Anglo. And I've always felt that maybe Albie (Sachs) was slightly disappointed because I think for him his idea after working at the Court is that you then do something more closer to what the Court represents. Like your LRC (Legal Resources Centre) type of work…I remember we'd had some discussions towards the end of my time about the LRC (Legal Resources Centre) and the likes. But he also said, because I was feeling quite torn at some point…oh, I mentioned to you about the Anglo example, for example, then he said, you know what, don't lose who you are. And he said I should also remember that these organisations, a couple of

years back, you couldn't be employed in those organisations at the capacity that you're employed in. So for you just being there it's a victory in a way.

Int I'm wondering, since you have left, have you kept, have you observed and kept a close eye on the Court and the judgments?

ZM Yes, yes, yes. I must say I'm not as good as I was before. Because obviously there are all these work demands and stuff. But I have kept in touch with what is happening at the Court, and sometimes you get concerned. For example with the whole Judge Hlophe issue, and wanting to appeal to the same people that you are complaining about. You know, all those dynamics. You're think, this is getting nasty. And then with the judgments, in so far as the jurisprudence, the constitutional jurisprudence is concerned, I haven't seen anything that is disappointing, or anything that makes me think, these new guys, something is amiss. Although there are obviously people who complain saying that the Constitutional Court doesn't have any space for White males. Whether that's true or not it's another matter, but I have not seen anything that has disappointed me. I mean, we were all thrilled when Justice (Sandile) Ngcobo was appointed as the Chief Justice, because we knew, when we spent our time with him here, how capable he was. He was an extraordinary guy, smart, fair, you know, so everyone was just thrilled. I've never worked with Justice (Mogoeng) Mogoeng and there were all these comments, and my question has always been, is it right to comment when someone is being interviewed for being a Chief Justice? Why were these comments not being brought…was he 'bad' but good enough, bad in inverted commas, to be a judge of the Constitutional Court, and now it's too bad because he's a Chief Justice? So those things I don't understand. And if you understand the workings of the Court, it's not like this one person makes all the judgments. It's a very involved process. So no matter how 'bad', in inverted commas you are, it's not like a judgment will go to press without the input of the other ten people. So I've kept in touch with the going-ons of the Constitutional Court.

Int Do you have any concerns and fears for the future of the Constitution and the Constitutional Court in South Africa?

ZM Look, my only concern is that if the appointment of judges ends up being a political motivated exercise, we will end up with a Bench that represents a particular group of the South African political landscape. And which will then favour whoever will be in that group. And for me, that takes away the sense of what the Constitutional Court is about. Currently how the Chief Justice gets appointed, take the whole issue around the appointment of Chief Justice (Mogoeng) Mogoeng for example, I am concerned that in future we might see people who are here because they represent someone else. It might very well be comforting if the Judicial Service Commission had the final say on who gets to the Bench, because even though they might also be politically connected, they are a larger group, one hopes there will be that balancing of

sorts. So that's my concern, because the Court started very well and it's been going very well, but you know, you never know, people's interest, this is the most powerful Court in the land, and people who want to gain an advantage, what better way to gain it but to influence people who sit at this level. And also obviously you shouldn't be a Constitutional Court judge because you were a struggle hero or anything like that. But it will be interesting to see maybe ten, fifteen years time, when maybe the faces that sit here have no connection at all with what happened in the past. The guys that retired, most of them had been involved in the struggle…for example Albie (Sachs) and Justice (Pius) Langa. And I think they recognise what the Constitution means because of what they've gone through more than anyone else. I hope we don't dilute the symbolism of the Constitution, that value of what it's all about. Let's not make it a Court like any other Court. I think that distinction should still remain.

Int Zanele, I've asked you a range of questions, I'm wondering whether there's something I've neglected to ask you which you think ought to be included in your oral history?

ZM Hmm…this is my question, I don't know whether you've covered this as well, because when I was thinking about this interview, I was just thinking about whether will you be talking to… I don't know whether Godfrey (Disemelo) is still even here, the security guard called Godfrey (Disemelo).

Int The oral history it's an institutional history, so it's very inclusive and we're including security personnel, cleaning personnel, administrative staff. We hope to maybe include litigants if funding provides. We're interviewing counsel. We've interviewed the founding judges, some of them families of those who have passed away. Acting judges, current judges. ..

ZM Okay, good. Because I think it will be interesting to see someone who was here or is here, without having any legal knowledge, how all of this impacts on them, what it means. Because I remember when I was still here, I would come back quite early from Durban, sometimes I will take an overnight bus like on a Sunday evening and arrive in Jo'burg in the morning. I was too poor then to afford flying (*laughs*). And the one time I was here at five, and I'll make Albie's (Sachs') famous coffee, and there was the cleaning lady, I doubt she will still be here because she was very old already at the time, and it was quite interesting to see that she was here at five to work.

Int Is that Monica (Makgoga)?

ZM She might actually be Monica (Makgoga), yes.

Int She's still around.

ZM Are you kidding me! Wow! Because I was thinking it was so interesting that she would have woken up God knows at what time to make her way here at five, and how, as lawyers, we have this thing of, I don't know whether it's even showing off that you've worked until one am or one or whatever, and here is this lady who is there to clean for you, and she's actually been there from five. She might have left earlier than you, because obviously she needs to catch her train and stuff, but just the impact such people make, because they made our days possible, from making the place clean, the tea and it would be interesting to hear what their stories are, how they experienced all this and what it meant for them, seeing all these lawyers and the advocates that were coming in and stuff…

Int Zanele, thank you so much, it's been delightful interviewing you, I really enjoyed it.

ZM Thank you. Thank you for the experience.