Anver Mahomed **Constitutional Court Oral History Project**

Date 1 December 2011

Int This is an interview with Mr. Anver Mahomed and it's the 1st of December 2011. Anver, thank you so much for agreeing to participate in the Constitutional Court Oral History Project.

AM It's my pleasure.

Int You are here to talk about your brother, Ismail Mahomed, who is such a luminous legal figures in South Africa's annals and I wondered if you could talk about the both of you in terms of your early childhood memories, growing up with your brother and your family structure, where you were born and your experiences growing up with your brother.

AM Well, I'll tell you what I know. It is also important that from time to time you ask me a question, which gives us more ammunition.

Int Sure, okay.

AM My brother was the eldest of six living kids. He was born in 1931 on the 5th of July and the age gap between him and I was, who is number two right now, is thirteen and a half years due to the sad loss that my mother experienced with her three other children. It was difficult times, my brother used to talk to me about the conditions in which he was being brought up by his parents. Very humble, very poor. He was born in Pretoria but as it is traditional among Indian lives, that the first born is always born at the grandparents' home. You know, my maternal grandmo…my maternal grandparents. So, he was born in Pretoria but at that stage our parents were living in Pietersburg, which is now called, Polokwane. He…my father left Pietersburg, some time in the middle to late '30s because my brother's formal school education started in Pretoria. And as it was at the age of six, you were allowed to enter school. So, if my brother was born in 1931, and he went to school in 1937, and by then they were in Pretoria. I am told by my late mother, my father, and of course my brother, that it was difficult and very trying conditions. There was no money. My mother came from an affluent home but my father didn't. And he started his livelihood by being a door-to-door salesman. I came along in 1944. By that time, of course, my brother was already about to enter high school, standard six, being high school. And I was very dear to everybody because there were no other children. Of course, please understand this interview is not about me but this part is necessary to see how the family was built up.

Int Sure.

AM And my brother doted on me. I shared his bed. Needless to say, we didn't have mansions like we have today, thank God. We had one room probably, one kitchen and I shared my bed with my brother. This is my recollection at about five or six years old. Before that I didn't know (couldn't remember) how he studied or what he did or how diligent he was but as I grew older and listened to my brother, he taught me many, many things. I am very proud of having being the brother of Ismail Mahomed. He is not around to ask him but I hope he is just as proud to have me as his brother. He, I am told that he was always a very studious fellow and I remember that someone told me that he read Karl Marx' *Das Kapital* at the age of fifteen. At fifteen, we are reading comics, at best. So, it showed that here was a man who had his own strength. He knew his own direction. Maybe due to the near poverty-stricken childhood, he might have thought that he has to prove himself. Otherwise, at fifteen, I don't know too many people that have read *Das Kapital*. And I remember that it was a very proud day, the day he matriculated because he had six distinctions and I was told by one of my father's friends, "Go and run and buy the newspaper. Your brother has passed." I couldn't really understand what this meant, but just vaguely remember this. But funnily enough, I do remember that I bought that newspaper at the corner of Prinsloo and Vermuelen Street. It was dusk time and I don't who said it and what they said but they…this was a *major* achievement. No body had ever achieved what he had achieved. And of course, the education system at that time, was not segregated. We didn't go to separate Indian schools by government decree. We wrote the same exams like our white counterparts. My late maternal grandfather was very fond of him being the first and for a long time the only grandchild. So, my grandfather saw the result. My late mother said to me that Hajeepe, as he was popularly known, everybody called him Hajeepe was so proud and he uttered the following words: "One day, you will be judge." That's true, dead true. And six months later, as Ismail had entered university, and later in 1951, my grandfather died. And Ismail refused to go to university. He said "the one who wanted to see me become something is no more." And of course, he was persuaded to pursue his career and reluctantly but successful he went back. And he was the only student that did his BA and his BA Honours, a four year degree in three years. Did it together, he was given special permission because of his brilliance. And of course, I am taking you on this stream…you will have to ask me what else you need to know but I am taking you past his education career now.

Int This was at Wits University?

AM This was at Wits.

Int Right.

AM And then he graduated the academic year, in December 1956 and entered into practice in 1957. In that year, 29th of December 1956, he got married. Unfortunately, the marriage has borne no children. So, I was his eldest child. And from there he's marched on. He then became an expert on certain fields. I think, originally it was necessary for him to make a living. But later on, he could choose what he wanted to do. But we have this..we had this stumbling block about apartheid. Apartheid in my opinion made Ismail Mahomed because if there was no segregation and there was no laws like the Group Areas Act…Ismail might have been another brilliant lawyer. But not outstanding. This is outstanding. And he then specialised in the forced removal of Indians from the established areas and the white areas to be housed into ghettos throughout the country. The laws of the country made it so that in each town one area was allocated, except for Durban, which had a larger population. Therefore, more than one area had to be allocated. But for the rest of the country, each race group had one area. And he then together with a colleague, called Dyson wrote a book on the Group Areas Act. It became a textbook. It was *the* reference book on this particular atrocious act and he just grew from thereon and obviously, his leanings had always been on the right side of politics, which is on the left (laughs). And he then got into defending political trialists, apart from the other matters,…the Group Areas, he…he was quite a brilliant lawyer. He…he didn't attack the law first. He attacked the indictment first. And with words, he was quite a genius, quite an orator and he had the gift of the gab. That's no question about it. But he knew the law of hard work. Ismail Mahomed didn't become prominent because he was just a genius. He also put in a lot of hard work. I recall that he would be working in his library and my late mother would go and say to him, "Son, you haven't eaten or here is apple for you" and she'd skin the apple and when she went back into the library in the morning, the apple was still there, turned black. Ismail hadn't touched it. So, this was…it was his triumph but he worked very hard. He then excelled in defending all our freedom fighters of yesteryear. Some major trials came his way, the most notable, that the world might probably be aware of, was ….Solomon Mahlangu. Solomon was a young boy, there is book written about him, which is very articulately written. He was hanged. Then, there was a very, very…a trial that that was very prominent, and which became known as the 'scissor murder' trial where there was this Coloured person called Choegoe, and Marlene Lehnberg enticed him and the laws of the country didn't allow for cross-intercourse between races and Choegoe was a cripple from the Western Cape. And he defended Choegoe and he knew he could get Choegoe off but for a young white Afrikaner girl to go to the gallows was going to be unheard of. So because he…knew he could get Choegoe off, they had to let Marlene go. It was one of the…that was one of his other famous trials. Then, in 1992, he was appointed at the Supreme Court of South Africa. And he served on that. And 1997, he got his appointment to the Appellate Division and became Chief Justice. He only served three years odd when he was struck by pancreatic cancer.

(*Interviewee is understandably emotional during the ensuing discussion that follows*)

We discovered the…the cancer on the 10th of February 2000. My brother was buried on the 17th of June, 2000. It's was very sad. He was like my father. Not my brother. He was my father. He was my mentor. Ismail Mahomed meant everything to me but not only to me, to every member of the family and the community. He was an extremely helpful fellow. A few years ago, eight, nine years ago, I was at a function at Polokwane and one of his…friends said to me, well, I am calling him a friend because they were at university together but he was much younger. He related an incident that occurred when Ismail was a student and said "you know there is a law passed that blacks cannot go into white universities and they had to go to separate universities. Coloured people had to go to the University of the Western Cape, Indians had to go to Salisbury Island in Natal and blacks, African people had to go to University of the North, Turfloop. And Ismail was very upset about this. He couldn't find a way around it and he probably did his research and work and he found that if you registered as a temporary student, the following year, you could convert to full-time and he called these people and he said 'All of you register temporary. Come temporary. Next year, you register full-time.'" So a lot of these graduates but this didn't last long because they closed the loop-hole very quickly. They…they said "We are thanking Ismail for finding the loophole today. We have got a profession, otherwise, we wouldn't have had a profession." So, that is Ismail's academic life. Insofar, as his family life is concerned, as I have mentioned to you earlier, we are (with him), we were six living kids. My mother had lost four (other) kids. Three between Ismail and I and one much later in 1952. So if we were all living, we would have been ten persons. My father was a very humble person. He arrived from India, somewhere I am guessing, around 1929, 1928, somewhere there, because Ismail was born in 1931. And like I said, he worked in his life, never educated but he taught us good moral values. My father was a very honest fellow. A very, very upright person - he hated lying. He would not be deceptive to anybody. Very honourable. But fundamentally, he wasn't a go-gether. He couldn't be interested in making money. If he made his living, he was happy. So that's his parents. And then I am the second eldest and I have two younger brothers, Firoz (Mahomed) and Faizel (Mahomed) and I have two sisters, Fazila (maiden name Mahomed) and Suraya (maiden name Mahomed). All of us are married now, all of have families and basically we are one very happy unit minus my brother. We miss him dearly, dearly. Insofar, as my sister-in-law (Ismail's wife) is concerned, they married in 1956, December. She was of the last of her siblings. Very humble, very loving, very caring woman. And I have said to this, to many a people, that my brother succeeded because first he had parents that were willing to assist him with their humble beginnings and humble takings and humble money. And then he had a wife, who was willing to be at his side, when he needed her most. My brother in his days, as a practising advocate, would be from time to time gone on a trial, particularly to the High Courts of Pietermaritzburg Natal and there, he was (briefed on)…it

was the M.D. Naidoo trial. I think it lasted four months and my brother would go for four months and come home weekends and every second weekend and my…my sister-in-law accepted all of this. I think that's a tremendous feather in her cap. So, that's how he…he got to where he got. He got some sore points, the greatest sore point was when he was made Chief Justice and asked to go to Bloemfontein and he was very, very unhappy about Bloemfontein. For those that are unaware of what Bloemfontein meant to Indians - there were a special law passed against Indians that they were not allowed to reside in the Free State. The only concession they allowed us was 24 hours transit because that was the only route to go to Cape Town from Johannesburg. But nobody worked out that one day maybe there would be a black advocate like Ismail Mahomed, who would have to fight a trial on appeal in Bloemfontein and he would go on these appeals and argue the whole day at the Supreme Court of Appeal and go and sleep in Kimberly, a hundred kilometres away because he was an Indian. There was no Robing Room for him (at Court). They never thought that black people would ever reach this status - that was the attitude of whites. And he had his sandwiches sitting on the pavement, that also if he could find a pavement because all the benches were reserved for whites. That was probably very, very trying times and it was only a determined person like Ismail Mahomed that could have fought it. A lot of people in his age group couldn't take it…the pressure. They migrated or just gave up. It was just not worth it. But Ismail Mahomed stayed and he fought the system from within. And he said, "No, Bloemfontein, I am not going." And Mandela said to him " Why?" And he said "No, it's a terrible place, terrible memories for me." That he ate in the streets, no toilet to visit, slept in Kimberly, argued the whole day, couldn't get a sandwich because a white restaurant wouldn't serve me". Even the cafes those days had separate entrances for blacks and whites. Post offices were separate entrances - was pretty trying times. And Mandela said " You will have to go." He said "No, I won't go. I don't like Bloemfontein." And Mandela showed his anger. He said: "Did you think that I liked to sit in prison for 27 years. Some things we have to do. Ismail, you will go and you are going to be Chief Justice." So, I don't know the intimate details of how they planned what they planned but he said, "nobody likes to do something, sometimes we have to do it. And if I didn't like to sit in prison for 27 years, you didn't like Bloemfontein, I had to sit, you shall go. You will go." And when that appointment came through, it was obviously 1994, late. My brother was still stationed in Bloemfontein and at that time, he fell ill and he was already appointed Chief Justice but the new Cabinet was being also being decided and there was all speculation who's going to be Minister of Justice and who's going to be Minister of that and this. All of us, the newspapers, everybody was asking those questions. What will the new cabinet look like. And I remember on that day, he was going for bypass surgery. And the cell phone was a new innovation. The cell phone would last for two hours, not talk time, two hours total. So, if you spoke for fifteen minutes, your battery went flat. And I remember being in the hospital, as I was very close to him. On the one side talking to the doctors and I would tell him on the cell phone - its Priscilla Jana on the line, it's the…Madiba on the line, its…Dullah Omar on the line and I would walk out. I have this habit of never

just sitting in a conversation. It's not my business. And he would fling the phone to me and say," This bloody phone is gone dead" And I would say" I have got the spare one for you." I would do this running with one…when one cell phone operator was very good to me, he says "Anver, you are in a crisis, your brother is sick, you just come and drop this phone , you put it on charge and you take the other one." But that was about twelve kilometres, I was doing running around and eventually of course, the Cabinet was announced and Ismail Mahomed had his bypass surgery. And in earlier days, he told me that one thing he would like to do is to merge the Supreme Court of Appeals. He wants to move it. And then start a Constitutional Court and then the two courts merge and the Constitutional Court becomes the authority for the country. And this idea that we are sitting now here at Constitutional Hill, was first mooted by Ismail Mahomed. That was an interesting development when I think about his legal story. On the family life, coming back to the family life, he then worried about all of us. We were young and hadn't had experience and through a very close friend of his, we started a business in 1970, which to this day continues. When he was gravely ill, it was March 2000, my niece was getting married. This was the first wedding in our house after us siblings. First (grand)child. And he called her and he said, "I am attending your wedding today but I won't see your children" and he didn't. Now you tell me what you want to ask me?

Int I am very curious…when 1994 came and you mentioned that he was ill, in terms of the Constitutional Court, when he was appointed as one of the judges, did he ever say to you, that he might have wanted to be the Chief Justice or…?

AM He was Chief Justice. I think the system changed after and that the President of the Constitutional Court then becomes the Chief Justice but until he was alive, that hadn't come to fruition because the Constitutional Court was theoretically born and he was made Deputy Chief…Deputy President of the Court…

Int Yes…

AM because he was ill that time. And if it was, if it was going to be a straightforward, I think he would have just moving from one address to the other. But the country had to move. You can't wait and see when will this potential Chief Justice join us. So they made him Deputy President [of the Constitutional Court]. I think that I am just speculating. He never told anything. You know, Ismail Mahomed would never talk ill about anybody. Even if he had reservations about somebody, he's said "Ahh let it pass. Its not important." That was his attitude. Now lets say that well, the, the Chief Justice was somebody that was now appointed that wasn't of his fancy. He would never let you know. He would….he would work his way in to say, okay, if that's the position I wanted, I have got to work for it, I'll get it. But he wasn't going to

bribe somebody or pet somebody on the back and say you know, hey you can't ignore me. That he won't do. If you don't select him on merit, he didn't want it.

Int What sort of person was he, in terms of his personality? Was he was emotional, what sort of person was he?

AM My brother was a very, very emotional person. It takes me a…story my mother lost her sister and she was a very loving person. This aunty of ours. And when she passed on, you couldn't control Ismail with his tears for days. I also remember that in 1952, and when my younger…my baby brother passed away, he started screaming and his tongue came out of his mouth. They couldn't put it back. The doctors had to force it in. Otherwise the screaming wasn't stopping. I had an incident with the Security Police and I was arrested and that time, my brother went to the Security Branch. He said "You arrested my brother. You don't want him, you want me. Leave my brother, take me." That's the kind of emotion, Ismail showed. When my mother passed on, he went to my uncle, who is also late now and said "Please get me a plot in this cemetery, I want to sleep next to my mother." So, very, very emotional, very sensitive also. Very, very sensitive, you upset Ismail, you upset him forever. And some of his colleagues, one of them being, his name will come back to me, he is now in London and they would be arguing a case, and Ismail knew his work and he would say to him, "go and refer to certain book and then you will find the case" and assuming the guy would come back and say "Ismail its not there." He says "You bloody imbecile." And he would actually take the law report and Clifford Mailer said that he would fling it at us and he says "Now go and look at page 344." "And you can open your book on 344 was actually what Ismail Mahomed told me the page would be." So, he had a temper but never a violent one. I have never, I was…he was my father, I never remember hitting me or you know, shouting me. When he was very upset, he would just turn his face and walk away or he would call you an imbecile or something like that. Also, very select in his words, he won't just use a vulgar word and says that he has nothing to do. But a very emotional person, yes.

Int And then when he was actually sent to Bloemfontein, and he went, what was his experience? Did he ever talk about his work, his cases?

AM No, as a rule Ismail never. As an advocate or as a judge, he never would never ever tell us about what he's involved in. He never tried to look for prominence. He did say that "how have things changed, where I couldn't find a bench to sit and have a sandwich. Today, I am occupying the White House in Bloemfontein". And we all went to visit him there. We spent time with him. And he was not one of those guys that wanted (status) when he was officially told that he needs to have a government car and chauffeur, he said "I can drive myself." They said "No protocol does not allow this." So, he was not a showy type of person and I think that he would lynch each one independently

if, if he's got a case against somebody, he would fight him alone. He wouldn't expose him for the guy never to walk in the streets again. That way he was very secretive. I was also told after his death that many a people he has helped. He's paid somebody's university fees, he's done some free cases. There's one particular cases, it's a very close friend of his, who got married to this girl from a very poor home but a very nice person and they came to ask Ismail, what do you say about that? And the guy's name was Joe and I said, Joe is very nice, good boy, this, that and the other. And after one child, Joe divorced his wife and Ismail took it up. He said, "No, I gave a recommendation, turned out to be rubbish." He went to court, he fought the case and he got maintenance for that woman and he never spoke to Joe in this life, he said: "you did me down. I stood up for you, it was a poor, humble woman, you did this to her. I will never talk to you." To this day, Joe is alive, when he sees me he says: "You know, Ismail was my friend." And I wouldn't tell him anything. You think Ismail was your friend, Ismail says you weren't his friend.

Int You mentioned to me that Albie Sachs spoke at a memorial; I wondered if you could talk about that?

AM You know, he, he actually talked…it would be easier frankly for you to…there is a transcript around…

Int Sure…

AM But he basically spoke about his life, his life with Ismail. How articulate he was, how hard working he was. What a sharp mind he had. His academic excellence. But this is what people wanted to know about his experience. So, I mean, I would be sort of reproducing and I don't think that I have got such a phenomenal memory.

Int Right. And you also mentioned to me, that there is a Juta Prize, in honour of your brother?

AM It's just a name. The Juta Prize award for essays written for the best student…I think anybody can enter and the adjudicator…and it's called the Ismail Mahomed Essay….Ismail Mahomed Essay Competition.

Int Right and is that for law students?

AM No, I think its not only for law students because some of the papers were presented there were obviously nothing to do…probably would be all law [it was open to all but obviously dealt with some aspect of the law or its impact].

But it's such a wide branch. You think law, and you say does it involve law? Simple thing like taking a photograph, so yes, I would think it is more law orientated.

Int I was also wondering in terms of what motivated him to actually study law? He could have done many things, given his brilliance, why do you think he decided to study law?

AM A very difficult question to answer. I was too young, I never got his input on it, why he did law. It could have been several reasons. First of all, I think because he had an analytical mind and I don't think he would have ever been happy as a doctor, he likes to dissect things and I don't think, he was too emotional for example to handle a body. He couldn't handle it. I don't think he would be able to handle anything that's confrontational in terms of physical violence. He wouldn't handle it. And I can't think…and then of course, there was a restriction. What do you do, as a black man in this country. You could only do medicine or law. Certain other faculties were closed to you. Engineering, aeronautical engineering, sciences, mathematics, those things, white people perceived you as potential saboteur. So, they didn't want to let you know anything about chemistry, maybe you make a bomb. So, first of all, your entry to university would have confined you to law or medicine, I think. And if that was the only choice, it was quite clear why he became a lawyer.

Int Anver, I have asked you a range of questions and you have of course been so wonderfully articulate, is there something that I have neglected to ask that you would like to add to the oral history on your brother, Ismail Mahomed?

AM No, look…he was also very proud of my daughter when she graduated. And he said to her: "Your dad had the mind but he didn't have the sustenance. He didn't want to apply himself. He was too playful. And I'm so, so happy that you joined me and you have become a lawyer." And then about two or three years after that, Aneesa graduated around 1995. He said to her: "Come with me at the Constitutional Court, work with me as my research clerk and I'll get you on the Bench." And Aneesa said "No, I can't do that. When I get to the Bench, I'll get their on merit but not because I was Ismail Mahomed's niece." And he was very proud with that answer. Even when she became a lawyer and she joined this very big firm, she didn't tell them that she was Ismail Mahomed's niece and when he died, there was a memorial meeting by the State, at the State Theatre in Pretoria, and she said she wouldn't be in. He says: "Aneesa, where you going?" He says "But is that your family?" And she says "My uncle" But she didn't put it in the CV. I don't need that. Ismail was very proud of that. That here is girl who is prepared to go ahead. We knew one thing for certain that Aneesa would never ever go through the stumbling blocks that Ismail went through because she could put one call and said, we used to affectionately call him Bha, and say, "Bha" and her problem would have been solved, whether it was money or connections or entrée or open a door. It was

Ismail Mahomed, by this time, he was the man. So, how can he be a problem for his daughter because she was his daughter. Up to the age of ten, my daughter slept (at Ismail's) every weekend. We lived in the same house. But he would take her upstairs and say Aneesa is living by me…and every whim and fancy, he would think of Aneesa. The other thing that Ismail did is never went on a holiday with Bhabi (my sister-in-law) alone. He would either take Aneesa or my brother's children, two, one, two, he must take, whether he was going to London or to Thailand, he will take the kids with.

Int Anver, thank you so much for sharing your memories of your brother. I really appreciate your time.

AM You are very welcome. I hope I have satisfied you and I hope your venture is a successful one. This is only one part of what you doing and I hope it enhances what your project…

Int Thank you so much for sharing your memories, we really appreciate it.

AM You are very welcome.