

African international scholars and their contribution to the development of international law



United Nations High Commissioner
for Human Rights
Navi Pillay

(Ms) Navanethem (Navi) Pillay

Date of birth: 23 September 1941
Nationality: South African
Gender: Female
Family: Two daughters
Marital Status: Widow

Education

Harvard University, USA, 1988

Doctor of Juridical Science (SJD)
Doctoral Thesis: *The Political Role of the South African Judiciary*
Courses taken: International law and institutions

Harvard University, USA, 1982

Master of Law (LLM)
Master's Thesis: *Law and Economic Change in South Africa*
Courses taken: International law, human rights law and indigenous law

Natal University, South Africa, 1965

Bachelor of Law (LLB)

Natal University, South Africa, 1963

Bachelor of Arts (BA)

Professional Experience

United Nations High Commissioner for Human Rights (USG), September 2008-to present

- The appointment was approved by the General Assembly on 28 July 2008 for a four year term
- The Mandate was extended by the General Assembly for a further period of two years on 24 May 2012

Judge, International Criminal Court (ICC), March 2003 – August 2008

- Elected on 4 February 2003 by the Assembly of States Parties to the Rome Statute of the international Criminal Court as Judge for a 6 year period.
- Served on the Appeal Chamber of the ICC

Judge President, UN International Criminal Tribunal For Rwanda (ICTR), May 1999-2003

- Elected Judge President of the ICTR by Plenary of Judges, 1999 and re-elected for a second term in 2001

Judge, International Criminal Tribunal for Rwanda, May 1995-2003

Record as International Judge

Short listed by the UN Security Council and elected by the UN General Assembly as judge of the International Criminal Tribunal for Rwanda in May 1995 for a four-year term and re-elected for a second four-year term in November 1998. In both elections, received the highest number of votes in the first ballot in the General Assembly.

Member of the bench of 16 judges comprising 3 trial chambers (of 3 judges each) and one appeal chamber (7 judges).

Elected President of the Tribunal by a plenary of judges for a 2-year term in May 1999 and re-elected for a second 2-year term in June 2001.

Presiding Judge of Trial Chamber I.

Participated in 10 of the 17 trial judgments delivered by the Tribunal 1998 - 2004.

1 Jean Kambanda, Prime Minister of Rwanda, was convicted on a plea of guilty, of genocide, crimes against humanity and violations of the Geneva Convention and Common Article II and sentenced to life imprisonment. This is the first conviction of a head of government by an international court and serves as a precedent for the trial of Milosovic in the ICTY.

2 Jean-Paul Akayesu, Bourgmestre of Taba was convicted of genocide, crimes against humanity and rape and sentenced to life imprisonment. This judgment was the first pronouncement in history since the Genocide Convention of 1948, on the crime of Genocide by an international court. It defines for the first time the legal elements of the crime of genocide and the criteria constituting the categories of national, religious, racial and ethnic groups.

The judgment also set a precedent in its conviction of Akayesu of rape as an act of genocide, after having found that rapes were perpetrated against Tutsi women with the intention of destruction of the ethnic group. The chamber wrote a new definition of rape, which has been followed at the ICTY and in the rules of the anticipated International Criminal Court.

3 Alfred Musema, Director of the Tea Factory was convicted of Genocide and sentenced to life imprisonment.

4 Georges Rutaganda, Vice-President of the Interhamwe Militia at the national level was convicted of genocide and crimes against humanity and sentenced to life imprisonment.

5 Omar Serushago, military leader was convicted and sentenced to 15 years imprisonment.

- 6 Bernard Ntuyahaga was granted a withdrawal of prosecution and the Chamber denied the amicus brief application of the Belgian Government for his transfer to face trial in Belgium.
- 7 George Ruggiu, a radio journalist and Belgian national (the first non-Rwandan) was convicted and sentenced to 12 years imprisonment for incitement to genocide.
- 8 Eliezer Niyitegeka, Minister of Information, was sentenced to life imprisonment.
- 9 Pastor, Elizaphan and his son, Doctor Gerard Ntakirutimana. Elizaphan Ntakirutimana was convicted and sentenced to 10 years and Gérard Ntakirutimana was convicted and sentenced to 25 years.
- 10 Judge Pillay presided over the ‘Media’ case of three persons; Ferdinand Nahimara, founder of RTL radio, Jean Bosco Barayagwiza, President of the CDR political party and Hassan Ngeze, owner and editor of Kangura Newspaper. This case focused on the role of the written, audio and video media in incitement to genocide. The 3 accused were convicted and Nahimara and Ngeze were sentenced to life imprisonment and Barayagwiza to 35 years imprisonment.
- 11 All the above decisions were confirmed by the Appeal Chamber

Acting Judge, High Court Of South Africa, 1995

- Appointed by the Minister of Justice to the High Court (NPD) as acting judge.
- Served as first black woman and first attorney on the bench in South Africa.
- Presided over criminal and civil cases.

Attorney and Conveyancer, High Court Of South Africa, 1967 – 1995

- First woman to start a law practice in Natal Province in South Africa, in 1967
- Twenty-eight years of experience as an attorney in the practice of law in criminal and civil courts
- Provided legal defence for opponents of apartheid, including members of the African National Congress (ANC), Unity Movement, Black Consciousness Movement and Azanian People’s Organisation (AZAPO)
- Handled precedent-setting cases to establish the effects of solitary confinement on detainees, the rights of political prisoners in Robben Island Prison to due process in disciplinary matters, and the family violence syndrome as a defence.

Record as defence attorney in some important South African cases

1965 to 1990 – defence attorney for anti-apartheid activists and trade unionists in Natal

including Phyllis Naidoo, Dawood Seedat, NT Naicker, Chris Albertyn, John Copelyn, June Nala, Saths Cooper and Strini Moodley. Defence attorney in many cases involving members of Liberation Movements including ANC, Unity Movement, Azapo, PAC, and Swapo.

Trials under the Terrorism Act

1971-1972 NPD

State v Kader Hassim, JB Vusani, R Wilcox, SK Venkatrathnam and 8 others of Unity Movement.

Instructing attorney to counsel: the late Chief Justice Ismail Mahomed, Advocate David Soggot and the late Advocate Harry Pitman. Interviewed witnesses in Zambia on a travel document valid for 4 days travel. The case exposed the use of torture and unlawful methods of interrogation. Sentences of 5 years to 8 years were served on Robben Island.

1979-1980 NPD

State v Harry Gwala, William Khanyile, Anton Xaba and 7 others.

ANC trial. Sentences ranged from 15 years to life imprisonment served on Robben Island. An expert witness, psychiatrist, Dr Louis Jolyn West of UCLA was consulted in co-operation with the Lawyers Committee for Civil Rights under Law of Washington, DC. He testified to the effects of solitary confinement, detention and interrogation under the Terrorism Act pointing to the unreliability of testimony extracted under these conditions. The application itself was not successful; but the Appellate Division acknowledged the expertise of Dr West on the Dependence, Debility and Depression (DDD) syndrome related to detentions.

1972 NPD

State v Maleka and 1975 AD: State v Indhrasen Moodley AD were rare cases of acquittals under the Terrorism Act at the time.

Precedential Applications

1971 –

Judge Pillay successfully brought a *habeas corpus* application on behalf of her husband Paranjothee Anthony Pillay (Gaby) who was detained under the Terrorism Act in Pietermaritzburg. Mr Justice Harcourt ordered that the police should not use unlawful methods of interrogation, that the detainee may not be moved from his place of detention and that the order be served on the detainee, by the Sheriff, despite the incommunicado provisions of the Terrorism Act. The application was supported by affidavits of the 10 accused facing trial in the Hassim case testifying to their torture and ill treatment in detention. The application and affidavits now form part of UN documentation on the crime of apartheid.

1973 CPD – Robben Island Prison application

In the course of many visits to clients on Robben Island Prison, Judge Pillay received instructions and brought a successful application against the Officer Commanding, Robben Island Prison on behalf of Kader Hassim and SK Venkatrathnam. In a groundbreaking decision, Judge Diemont (1973 SALR CPD) ruled that political prisoners on Robben Island had rights and privileges. They had right of access to

lawyers and right of trial, for alleged violations of prison regulations. The ruling enabled former president Mandela and all Robben Island prisoners to have access to lawyers, which had until then been largely denied to them. The application also exposed prison conditions inspiring the then *Rand Daily Mail* to carry a full front page report headed ‘The curtain has been lifted on Robben Island prison for the first time’.

The fact that Judge Pillay and her firm had represented many political organisations opposed to apartheid had invited the unwelcome attention of the Security forces and she was denied a passport for many years. The extent to which she was viewed as a threat to the Apartheid government was revealed when the Truth and Reconciliation Commission published a list compiled in 1987 by the Bureau of State Security containing her name among those of Archbishop Tutu, Minister Abdulla Omar, Judge Arthur Chaskalson and many other human rights activists.

Criminal law

In one of her last cases in the nineties, before appointment to the bench, Judge Pillay undertook on a *pro bono* basis, at the request of the Family Advocate, and together with Advocate CM Marnewick SC, the defence of Xerxes Nursingh the teenager charged with the murder of his mother and grandparents. The defence of ‘sane automatism’ was raised and resulted in an acquittal before Justice Squires in the NPD. Judge Pillay did extensive research on parricide cases in the USA and called an expert psychiatric witness to testify to the long-term effects of child abuse. The trial received wide coverage and one of the repercussions was media focus on sexual abuse of children.

Official appointments

- Vice-Chairperson, Council of University of Durban-Westville, 1995-1998, appointed by President Nelson Mandela
- Member of Rules Board for Courts, 1997-1998, appointed by the Minister of Justice
- Member, Expert Group Meeting on Gender Persecution, 1997, appointed by the UN Secretary General

Organisational affiliations

- Trustee, Legal Resources Centre 1995-1998
- Former Trustee, Lawyers for Human Rights
- Former Honorary Chair, Equality Now
- President, Women Lawyers Association 1995-1998
- President, Advice Desk for Abused Women 1989-1999
- Former Board Member, Harvard- South Africa Scholarship Committee
- Board of Directors, Nozala Investments (women’s component of National Economic Initiative)
- Member, Women’s National Coalition 1992-1993
- Member, Black Lawyers Association
- Member, Advisory Board of the International Criminal Law Network (ICLN 2002)
- Member, Advisory Board of the Journal of International Criminal Justice (2002)

- Member, Advisory Committee of the project 'Process and Legitimacy in the Nomination, Election and Appointment of International Judges' (2006)
- Editor, *International Journal of Transitional Justice*, Oxford University Press (2006)
- Member, Board of Consultants World Law Institute, Emory University (2007)
- Special Adviser to International Criminal Law Services long term international law capacity-strengthening programme in southern Africa (2007)
- Honorary member of the Society of Legal Scholars, University of Nottingham (2007)

Awards and Citations for Human Rights Achievements 1996 – to present

- Center for Human Rights and the University of Pretoria 'Woman and the Law Award'
- Association of Law Society in South Africa (Awards to Judges Goldstone and Pillay)
- Black Lawyers Association, South Africa
- The California Legislative Assembly
- KwaZulu Natal University, 1997, Dr Edgar Brookes Award
- Advice Desk for the Abused, Durban
- Equality Now, international women's' rights organization in New York
- 'One Hundred Heroines' Award in Washington, USA
- International Association of Women Judges, Washington and Buenos Aires
- UNIFEM and Noel Foundation Life Award, Ceremony in Los Angeles, December 1999
- Feminist Expo 2000, Baltimore Washington, March 2000 (attended by 7000 people)
- Feminist Majority, Washington, USA
- Center for Human Rights and the University of Pretoria 'Woman and the Law Award'
- International Bar Association – International Woman Lawyer Award, UK
- National Bar Association Award, USA
- Association of Law Societies of South Africa for excellence in the pursuit of human rights
- Elected honorary member of the American Society of International Law (ASIL)
- KwaZulu Natal University, Doctor of Laws *honoris-causa* 2003
- Peter Gruber Foundation Women's Rights Prize at the UN, 2003
- Harvard Law School Association Award, 2004
- Honorary doctorate of Laws (LLD) Rhodes University, Grahamstown, South Africa, 2005
- Honorary doctorate of Laws (LLD) The City University of New York, NY, USA, 19 May 2006
- Honorary doctorate of Civil Law, The University of Durham, June 2007
- Golden Plate Award, International Academy of Achievements, Cape Town, July 2009
- Degree Doctor Legum, *honoris-causa*, Nelson Mandela Metropolitan University, Port Elizabeth, South Africa, April 2010

- Honorary Doctor of Science (Economics), London School of Economics and Political Science, London July 2010
- Stockholm Human Rights Award, Swedish Bar Association, ILAC, November 2010
- Honorary Doctor of Laws, *honoris causa*, University of Cape Town, Cape Town, December 2010
- Honorary Diploma and Medal – Distinguished Guest, Ciudad de Mexico, Mexico, July 2011
- Honorary Doctorate, *honoris causa*, University of South Africa, Johannesburg, May 2012
- Honorary Doctorate, *honoris causa*, University of Venda, South Africa, May 2012
- Honorary Doctorate, *honoris causa*, Katholieke Universiteit Leuven, Belgium June 2012
- Living Legends Award, 5th EtheKwini Living Legends Award, Durban, September 2012
- Honorary Award, Rule of Law Award, American Bar Association, Washington, October 2012
- Honorary Doctorate, *honoris causa*, University of Geneva, Geneva, Switzerland, October 2012
- 2012 Prize for Promotion, Dissemination and Teaching of International Humanitarian Law, International Institute of Humanitarian Law, San Remo, Italy, March 2013
- Honour of the City of Bogota, Keys of the City (Decree 321), Bogota, Colombia, July 2013