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ORAL HISTORY PROJECT

“VOICES OF RESISTANCE”

INTERVIEWEE: JUDGE NAVANEETHAM PILLAY

INTERVIEWER: VINO REDDY

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PLACE: DURBAN

VR: Good morning we are very pleased to welcome to our project, Judge Navaneetham Pillay, who is President of the United Nations International Tribunal for Rwanda and she is based in Arusha, Tanzania. Very warm welcome to you Navi.

NP: Thank you.

VR: Thank you, okay. Can we begin to go back a little in your life? Tell us a little about yourself where you were born, when, where you grew up?

NP: I was born on the 23rd September 1941, in Clairwood. I'm one of eight children. My father was a bus driver and my mother was a housewife. And she always told us that she was prevented from going to school by her father and his reason was that if you taught girls to read and write then they will write letters to boyfriends. And she resented this so much that she taught herself English and Tamil. Of course, she was excellent. And all kinds of other accomplishments such as excellent crocheting and she always supervised our homework, for instance. So I consider her the consummate educated woman. But we grew up in the slums of Clairwood and it was slums because for

over sixty years and right into the year 2000 there has not been a sewerage system there, or any kind of drainage. But it was a very politically active community. I was still a child and in later years I learnt, for instance, that the Communist Party was very active there. I learnt that from the Arensteins. And so, as a child, I grew up involved in activities organised by the community, not necessarily the school. And that included speech contests and gymnastics and cultural concerts. I recall, very distinctly, when I was like 5-years old and my sister seven, and we were coming back from one of these concert or fairs late at night and the moon was shining. And we walked all along the road accompanied by one of the residents. I think he was from the Transkei. And he was playing his musical instrument and we parted company when we reached our gate. And thinking back, all adults were so protective of children in those days. There was absolutely no fear, total trust. And that's what Clairwood meant to us, a mixture of all communities living harmoniously. So I may have lost your question a bit.

VR: Not at all.

NP: But that's the family we grew up in and we were very poor because on a bus driver's salary my father could ill-afford to provide for us but he did provide for our education. Both my parents felt it was very important to educate girls so that we would be independent and so that we would not come back in tears to them saying we were beaten by our husbands, and so on. That was their vision, but I received the bursaries from school and that enabled me to go to high school. I received a bursary, which enabled me to go to university. My bursary was funded by the community of Clairwood - they went around and

collected funds. The principal of Clairwood High led that initiative.

VR: Who was your principal?

NP: The principal was the late Mr V Naidoo and my teacher was the late Mr NG Moodley, who is Strini Moodley's father. And you look back now and the calibre of these teachers who took the initiative to go to the community and say: "Here's a student who has the potential. We have to send her to university." I think I was the first girl to go to university from the community of Clairwood. And it's only because they collected the money and funded me.

VR: Just to go back a little, briefly, can you tell us whether you know anything about your grandparents?

NP: Oh yes, my grandfather from my father's side ran away from India when he was sixteen years or so and he worked in the sugar mill.

VR: Where?

NP: On the South Coast in Natal. And he was at the machines there when his one arm was caught. And he then raised the other arm to release that arm and so both his arms were cut off just below the elbow, one just below the elbow and one above the elbow. So all my life I remember him as this man without two arms with his coat sleeves tied up and he would wear the dhoti and the thalpa on his head and a red dot and red ruby earrings. Very tall imposing man; he had two wives and he was self-supporting until the age of 87 when he died. He had two sons, my father was the younger, and my grandfather also had two wives and I used to hear from people in Clairwood that he was a man who was much feared because he would raise his voice in great anger. After he lost his arms he became a sirdar and he was in charge of the women and child workers in the cane fields.

And he built himself up so he also ran a horse and cart business and he held the reins of the horse in his teeth so his teeth developed, compensated for his arms. And he also fielded the cart and so on with his toes. He ran that business and I think thereafter he acquired a bus, at some stage in his life. I heard that he once kicked a white man and that was tremendous in our society because if you said boo to authorities you were sanctioned in so many ways. And we were also intimidated by the apartheid system to criticise the authorities. So I thought that took a lot of courage on the part of my grandfather. And apparently he was ready to go off, back to India. They were ready to deport him but his family stood on the wharf, he was already on the ship. His family stood on the wharf weeping so he then jumped ship, came back, got the services of a lawyer and defended, himself. So we are talking about, this is in the 1800's or something. That's my grandfather from my father's side. And my grandmother from my father's side was a domestic servant working in a white home. And my father recalls that she could make very nice puddings and she could bake bread in a coal stove and so on. On my mother's side my grandfather also came from India. He had been previously married and when he came here, he, instead of being sent to the sugar plantations, was sent to the mines. And so he had a great deal of experience with the British soldiers. He helped to carry messages across those enemy lines, crawling on his belly and he did the laundry for them. He was paid in gold coins, apparently. And the story about that grandfather, from my mother's father was that he had collected all his pound notes put them in a tin and had it buried under some soil in the garden. And when the heavy rains came it made all those notes into porridge and he lost his money. I

learnt that, and my grandmother lost an eye through some lime that splashed into her eye. It's so sad that there was such lack of medical care and that's how I remember the two of them. They had five children my maternal grandparents. And someone worked out that there are at least five doctorates in that side of my family and they include Dr Devi Rajab. She is my cousin on my mother's side.

VR: Right. You've just glossed over your school education and we will come to university education, but by all accounts you were an exceptional student. Tell us about some of your achievements at high school.

NP: You know, you grew up in a home where there is no newspaper and nobody's speaking English, everybody speaks Tamil. And you go to school and the teachers pick on you because you mispronounce a word. I remember for the word shine that I said chine, and they laugh at you. And so you learn, you know, you just learn slowly. You learn to just read anything. I was telling my daughters that I would pick up pieces of newspaper from the rubbish dump, just to read what's in there. The school had an old cupboard of discarded books and we made a hole at the back of that cupboard and stole those old torn books.

Read them and put them back quietly. So in those days you couldn't get a place in the school until you were about ten or so. My mother says she was just lucky, while all the other parents were pushing and shoving, the principal noticed her sitting patiently with me. And said "look at that woman, she's so patient" and so just a stroke of luck that I got into school before the age of six. Along the way I received a double promotion. So I didn't do standard one. And when I completed my standard six, the primary school education, I

had already won a public-speaking contest so that was in the paper.

VR: What school was that?

NP: Clairwood Girl's School. So that was already in the papers you see Ranjith Kally took that picture of me with these big eyes staring at the camera. And the primary school then spoke to the high school and once again Mr VN Naidoo gave me a book before I entered the high school. And they raised a bursary and that's what made it possible for me to go to Clairwood High School. He gave me a book on my results in the standard six examination. Because I had scored the highest in English, you know it was a national exam then in English. I still have that book.

VR: What was it?

NP: "A 1000 Beautiful Things." And it's a whole lot of verses. I still have it here in my cupboard with Mr V Naidoo's signature. So that's how I entered high school with the blessing of all these grownups, who took an interest. It was very unusual to go to high school because most of my friends in standard four, standard five, were stopped and were entered into arranged marriages. That's what happened all around me. So it was very unusual to go into high school, and members of my family, uncles and aunts constantly pressured my parents to say: "Why are you educating girls? It's just useless, they are going to get married. Why are you pickling your daughters?" And I admired my parents for resisting that kind of pressure. I entered high school and took part in plays, there was Pygmalion and I was Eliza Doolittle. The play was produced by Professor Devi Bhagwan. And I entered a speech contest on the role of women in South Africa, where I spoke about the political struggle and that women have a role to inculcate values in children. And my English

teacher was then Mr NG Moodley. He had entered me for that contest. It was organised by the Jewish Women of South Africa. And so I still have a picture of that presentation. Also you can see the reach of different communities, the Jewish Women coming to the school. And at Clairwood High we had very, very good relations with the Marian Hill African High School. We had debates and soccer matches and netball matches with them. And as I said in Clairwood we grew up as a mixed community. I won the Hofmeyr speech contest at Clairwood High. That's a national speech contest. And it was held at Sastri College in those days. And while I was there and I was a participant in the debating society, so we won the shield for the whole of South Africa. It just felt good because we were a young new school. That was my career and I was awarded the Dux at the end of four years. But most importantly I had this bursary from the community, which enabled me to go to university.

VR: Which University was this?

NP: This was at Natal University. Durban-Westville had not been created by then. But it was 1960, the Separate University Education's Act had already been passed in 1959. And so we had to apply to the Minister and I put in BA there. So we were on special permission studying at the university. We were in the potato warehouse in Warwick Avenue. Completely separated from the main campus. I built in law courses into my BA degree, because I planned to do law someday. I think I knew when I was six years old that I was going to do law. And where was I? Yes so we had separate lecturers. I remember my majors of course were English and History. There was a History lecturer called Mr Orton who would only lecture to the front row of white students instead of these 100-odd

students in the class. And the very first time in my life that I failed any assignment was when we all wrote on British involvement in India. And he accused us all of thinking with our blood. But as far as we were concerned we were repeating facts as set out in the encyclopaedia. It had to do with the Black Hole in Calcutta. So that's the very first time in my life that I ever failed an assignment. So we really had to put up with racist lecturers or who saw this as a job. There were some good individuals such as Mabel Palmer who established the university but would not want black students to go any further than arm's length in education.

VR: The controls were still there?

NP: The controls were still there but at one opening day address the registrar I think they called him Rector I forget what the rank was. Ian Allen was his name. And he addressed the students and he said that, that year they are going to kind of integrate more of the classes. And he said this is not because of a change of heart it's just economically necessary. So apartheid was just blatantly espoused by everyone and we were supposed to be very grateful for this separate education we were receiving. I then was, in association with students, it was a hotbed of politics: African National Congress; PAC; Unity Movement; and Black Consciousness Movement was just emerging. I'm talking about 1960 to 1963/64.

VR: Who were some of your contemporaries at university?

NP: Judge Vuka Tshabalala who is the Judge President now, he and I were in class together; Justice Poswa, the Senior Counsel; Mr Celo, who's an exile; oh, very many of them. Sidney Dunn a lawyer, we were all together in this class, RD Pillay from Greenwood Park, also a lawyer, J Sundar, Kader Essack, all of us were together. And I wasn't, I was

a BA student a first-year and a second-year BA student, and I was with these students who were already in LLB degree. Now when I completed my BA I was now going into the second year of the LLB degree because I had completed four law courses in my BA. This was the way I had planned it. I wasn't allowed to do the LLB; I enrolled but I wasn't allowed to because they said I didn't have the permission of the Minister of Education, who said that UDW had now started; well then it was on Salisbury Island. But Salisbury Island Indian campus was not offering second year law courses. They were still just beginning the first year law courses. For six months here I was, not knowing what to do, completely desperate. And I then started the teaching course. The UED in six months; I even did, completed the practical teaching course back at my old school in Clairwood High, when in July of that year they set up the Minister of Indian affairs and they were trying to get the cooperation of the Indian community, which was largely boycotting this institution because once again it's another separate institution for Indians. The Indians were not accepting this Minister of Indian affairs because they were all wanting one nation and one country and one government for all. They didn't see themselves as a separate Indian community but as a part of the South African nation. But I then heard about this minister and since my education was important to me, I then applied to him. And I would call his office every time and he would say: "Oh, you are the Miss Naidoo who submitted a hand-written application." Well, of course, I had no access to a typewriter or a typist. I actually wrote this application by hand and in August, he approved it. So there you have two minister's one going against the other. I went back to the university in August and the same Mr Allen the registrar said: "No,

no, no we can't take you in August. You will be spoiling your record." And Professor Dugard was the lecturer there and I went to him and they were ready to take me on. So I started my second year LLB course in August of that year and completed then the LLB degree in one and a half years.

VR: What years are we talking about here?

NP: So let me go back my BA would be 1960/61/62 and the LLB 1963/64.

VR: Okay. Once you completed your degree, where did you serve your Articles?

NP: Well, once I completed my degree I was married in January of 1965, so that means waiting five years to get married.

VR: And whom did you marry?

NP: I married Gaby Pillay. His full name is Paranjothi Anthony Pillay, and his background is he grew up in the Hlobane Mines, the colliery; so of course, his favourite food was the hard porridge that the miners used to eat. He spoke absolutely fluent, beautiful Zulu. And he was at the university with the help of his brothers because he was an orphan. And he started teaching and later became a lawyer and we ended up as partners in the same law firm. So we married in January 1965, he started teaching and I served two years of Articles with Mr NT Naicker who was the secretary-general of the African National Congress, here in Durban. And he was banned and house-arrested, he could not leave his home, which meant that he sent me to cases in, outside Durban and to the rural areas. And I then picked up experience from day one, but also learnt firsthand the suffering of people and how everything was political. My first cases dealt with the forced removal of people from land. And one of the ways in which that was done was to confiscate the cattle of farmers in rural Natal

for failing to dip their cattle. Or they would confiscate the cattle because they grazed onto white lands. And the farmers would explain that the best lands were fenced off and they were white lands and they had the rocks and stones and the cattle would naturally stray onto these grounds that were fenced off. So they were not only charged and fined or imprisoned but they also lost their cattle, the cattle were confiscated. And I gradually thought that you can't defend these kind of matters in the courtroom because there was a political agenda here and no self-respecting lawyer can ignore that. I learnt many lessons from the clients themselves. These rural farmers would explain to me why, on principle grounds, they would refuse to have their cattle dipped because I would say, "Why don't you just dip your cattle in there and then you are over with this case." And they would say no they would rather go to jail because the political movements had taken a stand on these issues and these poor farmers were paying huge sacrifices to stand by that principle.

VR: From what you have said so far your politicisation obviously began very early in your life. Did you at some stage join a political organisation?

NP: When I was at university I joined the Unity Movement. There were very many thinkers there and I was attracted to the Unity Movement because there were members of all race groups and young and old and they taught you to read and they got you to read the great philosophers and political writers. And they always, to my mind, appeared to be slightly to the left of the ANC. And they were against political stunts such as where you saw down an electric light pole and then you serve ten years in prison for that. And they felt we were more useful outside. A criticism of this Unity Movement was that they were

armchair politicians, took no risks, and they were just theorists all the time. I struggled with that Movement, of course, because this was all a learning process. Most of my friends were in the ANC and I liked what they were doing. And I didn't like the controlling atmosphere in the Unity Movement. And the fact that they alienated themselves from many other people; we were all in the struggle together. There were differences of opinion but not excuses to become enemies with other people and I felt people in the Unity Movement were doing just that. Slight air of superiority and creating enemies all round and with regard to gender sensitivity, there was none. And I found that in all these liberatory movements. They felt liberation first and your gender liberation later. Which I felt was wrong, they were all controlled by men. And they didn't think that raising women's issues were integral to liberation. They felt it was a distraction from the liberation strategy. So it was a tremendous learning process but I was loyal to their ideas and still are [am], which were very clear that there should be a non-racial democracy. There should be votes for everyone; and there should be land distribution as part of the policy. And economic redistribution so that the power and resources should be controlled by people generally, and not an elitist group.

VR: Right. How did your family perceive your political affiliation?

NP: Out of fear, they discouraged us completely, because all around they would see students being thrown into jail or not being given any jobs. And because they were so poor they would discourage us from any kind of involvement in politics. And I recall once, my parents saying to me very angrily that: "Do you think now that you are equal to the

Europeans? Is that what you have the presumption to assert?" And I put it down to the fears that controlled them. Maybe listening to them, to an extent, kept me out of prison and enabled me to complete my education.

VR: Would you say that your politicisation had much to do with your choice of career?

NP: Yes, I would say so. But let me just return to the parent's fears. We lived in Clairwood and Clairwood was a victim of race riots in 1949 and that's what caused the fear on part of the residents of Clairwood, including my parents. With me, firstly, when I was six-years old I was the victim of robbery. My mother had given me my father's entire monthly wages, which was R5 to take to him. He was a bus driver I was supposed to meet him at the corner and hand this money to him. Meanwhile he had not asked for the money it was his conductor who had planned that ruse and he grabbed the money from my hand off he went. My mother beat me up for that. I don't know why the victim gets beaten. Anyway, and I ended up giving evidence in court at the age of , (seven) six in the same Durban High Court where I many years later sat as a judge. And this individual was sentenced to three months imprisonment. But what really bugged me is that we didn't get the R5 back and I felt so guilty as a child that I had caused the loss to my parents. But there just seemed to be a lack of justice and then I kept noticing that from primary school when I was in standard five I wrote an essay for Mr Poonan, Anchu Padayachee's father who was doing his PhD, and asked school children to write essays on how we saw justice. And I gave an example of an imaginary court case where for the identical crime, a black man had a heavier sentence and a white man was acquitted. And I said that there was no justice for black people in this

country. So maybe I was motivated by these reasons to pursue a career in law. At high school some teachers discouraged me and they said you know "You can only become a lawyer if your father is very well to do; or if there are lawyers in your family. But you are a bus driver's daughter you shouldn't even think about that." And when I completed my Articles under Mr NT Naicker then, of course, nobody would employ a young woman. And so I had triple burdens I was a woman, I was black, and I was poor. And so that's why I started my own law practice. And I know that some colleagues said, "She's very presumptuous to start a law practice." So mainly, I think, what motivated me, and most of the other law students, is this injustice that we saw all around us. All the laws, which we regarded as immoral and unjust laws and that, we had to defend our people against those laws.

VR: Did your colleagues in the black legal fraternity support your decision to open a practice on your own?

NP: Yes they did. And when I first started, they would send me work so I would be busy in the criminal courts when some of our colleagues would call like at half past one to say, "Can you go to court at two o'clock because I am engaged in the other court." And there was great camaraderie and good spirit amongst us, we supported one another. And I will tell you in which way. Our African colleagues could not rent premises in the CBD and all our offices were in Grey Street because there was no way you can get into West Street or the other white areas. My husband, for instance, signed a lease for three African lawyers. He signed the lease, and of course, the landlords knew all about it. And we were helpful, we were all poor; we were all struggling; we would be very helpful to one another; report to each other on new cases and precedents and

strategies. And exchange material so we were resource persons for another as well.

VR: At what stage in your very fledgling career as an attorney, at that stage, did you get your first taste of political work in terms of defending people for overtly political 'offences'?

NP: My first case was when Phyllis Naidoo, who's extremely well-known in the ANC circles, and she has written a book, she is also a lawyer, was charged for failing to report on a Monday. She was a banned person and she was required to report every Monday morning. She had her young baby whom she was nursing, she was studying the whole night for her law exams and she forgot to report the next morning, by Monday. And when she remembered it was three or four days later. She was charged for that, and she asked me to defend her. I had just opened practice for three or four months and I said to her, "Shouldn't you get somebody more experienced?" But of course, Phyllis couldn't afford a lawyer and I then represented her. At that time the sentence was one year, where they suspend most of it and people would serve four days. But poor Phyllis was required to serve seven days. But Phyllis being Phyllis, went into prison and came out with the actual accounts of the atrocities inside the women's prison. So that took on another dimension of things we had to do. That was my first case. Before that I acted for my boss, Mr NT Naicker, who also was charged for failing to report; for the late Mr Dawood Seedat, who was the brother-in-law of Minister of Transport, Mr Omar. And he had failed to report and over there we produced medical reports that he was ill and couldn't report. I felt it was so unreasonable for courts to have already determined that forgetting is not an excuse. So you can't go to court and say I forgot, even though there

was all these circumstances in Phyllis' case why it was so reasonable as to why she forgot. That was my first case, and after that was, you know, I can't give you this in chronological order but in 1971, there were ten members of the Unity Movement were charged under the Terrorism Act. My husband Gaby Pillay was detained and so I went as a wife to the Security Police, shivering and weeping like any other wife, shocked by these events. Suddenly your husband is detained and the Security Police, I said to him, "Under what law are you detaining him?" Because as far as we knew, a person could only be detained for 48-hours and has to be brought to court after that. And the Security Policeman said to me: "You call yourself a lawyer, and you don't know which law." And then he wrote it down for me, that it was the Terrorism Act of 1967 or something. And as far as we were concerned that law was passed in Parliament - they said at the time in Parliament "to arrest infiltrators at the borders." And here it was being used for ordinary people. It was first used to detain Winnie Mandela and a whole lot of people who had held meetings or called a street march, or something. Shanthi Naidoo, Winnie Mandela, all these people were detained and this was the second incident where the act was used for people who had held meetings. And I took that note that he had written to an advocate. Well I could talk a lot about those cases but I handled the trial as defence counsel. They were all found guilty and sentenced to Robben Island. They were Kader Hassim, Sunny Venkatrathnum, people from the Transkei, people from the Cape. And they were sentenced to periods of imprisonment from five to eight years. In the course of that I had brought an application for relief for my husband, Gaby Pillay. And I could do that because he had left a power of attorney, in my favour. Now that's the first

time that an application was made for a detainee because under the Terrorism Act, courts cannot rule on the validity of detentions under the Terrorism Act. And because detainees were inside, they're in custody, nobody could bring an application for them. So I could do that because he left this power of attorney, and he had also, after a previous detention, written down his experiences, all the threats that were made to him. We brought this application before Justice Harcourt in the Pietermaritzburg High Court and he granted the order that the police are not to use unlawful methods of interrogation against him and that the order must be served on him by the sheriff. And that he must not be moved from where he is because the judge said when he was a prisoner of war he was moved, in Italy, from place to place and his family didn't know where he was. And when that order was served on Gaby he said he wept in detention because they didn't ill-treat him after that. That application was supported by affidavits from the ten Unity Movement members who were on trial and all of whom had been tortured. And that application became a UN document. Later we made an application supported by affidavits from mainly ANC people in exile in England, who had been tortured by the security people under the command of Colonel Swanepoel, who was known as the "Rooinek", because of all the red veins sticking out in his neck. He was a fearsome character. And I know that he was in charge of Security Police investigations over Namibians, all of whom who had been tortured. So we endeavoured to show that he was using the same system of torture to extract information. We didn't succeed in the Hassim and Venkatruthnum trial, but we succeeded in a similar application in the Harry Gwala trial. Once again using affidavits to show the impacts of solitary

confinement. We called an American expert over and he described the DDD syndrome, which is a Dread, Degradation and Dependency. And that decision is recorded in our appeal chamber and once again all these applications became UN documents. For the first time, the world had documentary accounts of torture before they had heard stories, rumours and individual accounts. Now they became court documents. So that's my account and, of course, then I acted for the Black Consciousness Movement at which time I met you, Vino, and these young people were charged for having been in touch with the FRELIMO Movement, and staging a rally in Durban. It was a new experience to me to meet young students who had so much courage, who did not, like the older politicians, play by the rules. For instance, there was Saths Cooper and Strini Moodley who refused to apply to the magistrate for permission for relief of their banning orders, and the magistrate would phone me to say, "You know, your clients are so discourteous, they refuse to say Your Worship or Dear Sir." These are young people who came in with new strategies and taught the older generation not to be so compliant. I also represented the 1973 Durban Strike so-called instigators, and one of them was Chris Albertyn who became a famous lawyer thereafter. June Rosenala, Mr Khumalo, I forget his first name. Those were all 1973 cases, so you are talking about me starting a law practice in 1967 and within five years being thrown into political cases.

VR: How did all this impact on your family and personal life?

NP: Oh, you know firstly, you didn't earn any money for these cases. So it was a huge struggle. And we lived in a little out-building for many years. The stress and strain also affected me physically. Gaby and I just longed to have a

family and we could not have children. There was nothing wrong with us, we were told it's the stress. And we were later, seven years into my marriage, very lucky to adopt Esvari and three years later Karmani, so we have now our grown-up daughters. And I very readily mixed career and motherhood, and I think that's possible. I do believe women are multi-taskers, and their names are Esvari and Karmani, which means that we adhered to our tradition and our culture when we named our children. I went through nineteen surgeries, some of them major surgeries because I felt it was a personal failure that I was not having a child. And I did this in conjunction with the law practice. Because I had completed conveyancing and was doing property transfers, this helped with the practice. But I became known as a human rights lawyer and human rights activist, and in later years I discovered when the TRC obtained documents from the Bureau of State Security that I was also on their hit-list. I didn't know it at that time, it would have intimidated me more I think. We were not allowed to travel outside Natal; we were not given passports; we were refused passports. But otherwise I was not arrested and detained and forbidden from practising law like my other colleagues. And I really felt for them.

VR: May we pause for a moment please?

TAPE SWITCHED OFF

ON RESUMPTION

VR: We are back again. You were saying, Navi, about your practice, how in order to keep your family going and continue your political work you did a bit of conveyancing and so on.

NP: Yes, so in other words, you would do the ordinary commercial work in estates, and so on. And pretty soon I had a huge clientele and I felt I was providing a service and

that's why I never switched from the side-bar to the Bar, which most people encouraged me to do. I just loved my daily rapport with people. Whereas if I joined the Bar, I wouldn't see people I'd just be receiving instructions from attorneys. But I would have made a decent living in the Bar if I had switched. I then did very many political cases after that, because once you've acquired the experience people look to you for help. We worked very closely with other law firms, the whole of Natal. Our late Chief Justice Ismail Mohamed was the instructing, the counsel in the Hassim case and I worked very closely with him, even when he defended the Essack case. Lawyers in Port Elizabeth; Johannesburg; Shun Chetty in Johannesburg; Priscilla Jana; we would all work together and inform one another about cases or decisions that were helpful. I got to know judges such as Judge Didcott, Judge Milne personally, but when Harry Gwala and others were convicted and sentenced to life imprisonment and I went to see them on Robben Island it was they who encouraged me. And they said: "Don't blame yourself, you have done your best as a lawyer. But you have to understand that this is a political struggle and you have apartheid courts. They are going to take a certain political line." And they said to me, "Take our court records, take it overseas and put it to other judges and ask them if they, on that evidence, would have convicted us." And I thought that is an idea, because by then I felt that I was deluding my clients into thinking that there's justice in the courts. I had, when I was 20-years old, read all the Nuremberg Court records because I had so much time at the university. I read these and always felt that political leaders and even judges, should one day be made accountable in an international tribunal. And so the Nuremberg Court records inspired me. I applied for a

scholarship and because I saw this little notice in the Sunday newspaper, I applied for it. And when the letterhead came to me I saw the name of John Samuels there and John Samuels is, in my view, the most brilliant English writer I had ever come across. And I called John Samuels and said, "this says it's for black students, this scholarship, does it include Indians?" And he said to me "of course yes." And this was in 1981. I applied for the scholarship and was successful. I went to Harvard and completed my Master of Law at Harvard. And at Harvard I was truly inspired into thinking about international issues. International law and spoke endlessly about the Harry Gwala case. Spoke to judges, there was the famous black American judge, Leon Higginbottom who said to me that on that evidence, with witnesses being tortured, they would never have convicted because it's against the US Constitution and fundamental freedom. I realised then that in our courtroom you have to use human rights arguments; natural justice arguments; you have to argue in the court that there are international conventions outside there that the international community observes for fair trial. We could never raise those arguments in our courtrooms because we were shouted down. And look where we are today? We are in the constitutional law; all international decisions are received and considered; international conventions have now been ratified by our government. So these were early days in 1981, when I completed my Masters. My thesis was on Law and Change in South Africa through Trade Unions. Because, at that time, there was a great deal of trade union activity and I felt that, that's where the pressure would come [from] for change. There were sanctions and I spoke on television and numerous speaking engagements on how I saw sanctions

and whether it would make a change in our struggle here. I used to say that primarily we, black South Africans, look to ourselves. We were in control of our liberation and we would make a change. But any supportive measures outside there would be seen as support but we didn't depend on outside support. Yes?

VR: On that, just on that point. You talked about jurists from across the world and so on. I remember during the SASO/BPC trial there were many observers who came, and amongst them was a group of lawyers from the United States, Lawyers Committee for Civil Rights under Law. How much did these people really do when they went back home, having observed, you know, the lack of justice in our country. I mean blatant wrongful convictions, travesty of justice in terms of [inaudible]?

NP: I think the lawyers owe a great deal to their colleagues and jurists outside because they gave us the courage to take the initiative. Courtrooms are highly intimidating atmosphere because judges will say, "we are not interested in hearing these other arguments. Stick to the law, that's the law. And that's the Pass Law and this woman is in the city without a pass. Out she goes."

You can't raise human rights arguments such as, "listen you are separating her from her husband and that's contra bonos mores." Outside lawyers taught us that. Now in the Hassim trial, there was a young American lawyer. She was the wife of the American Consul-General here. She observed the trial for eight months and she told me how disappointed she was that we lawyers did not raise the issue of torture being used by the state to extract information from witnesses. And we did not raise it because our own defence lawyers were reluctant to do so including David Soggot and Harry Pitman and our late

Chief Justice Ismail Mohamed. Why we were lawyers thinking like that is because they said their interest was to get their clients out. And they said to their clients, "look if you speak about your ill-treatment under detention you are going to antagonise the judge, he's not going to believe you on that, so he won't believe you on the merits of your defence." And I was one of those together with Roley Arenstein who felt you had to attack torture and say that the evidence extracted under these circumstances is unreliable. It could be true, it could be false, you cannot rely on it. Other jurists came over and this group the Lawyers Committee for Civil Rights under Law, headed by Gay McDougall, I'm still in touch with her, sent us this American psychiatrist who explained what happened to people who were detained. So they were very helpful these lawyers. And they were very consistent in supporting us. They were very supportive to Reverend Sullivan who first came out with the principles for fair practice in factories. And they really inspired us to use fair trial arguments in the courtroom.

VR: Okay, now this brings us to after you came back from Harvard.

NP: Well I came back from Harvard, still continued in my law practice. And then three years later went back to Harvard. This time I paid my own way and enrolled for the doctorate at Harvard Law School. And this time I wrote on the political role of the South African Judiciary. That was my doctoral thesis, and it was accepted by Harvard, so it's in the Harvard library now. And my thesis was that as long as you are implementing immoral, unjust laws you cannot be performing your task as a judge. No matter how liberal you were. You have to say these laws are unjust. You have to say so.

VR: What year was this, Navi?

NP: I completed my doctoral thesis in 1988, I graduated in 1988. But in 1988 no one would touch that thesis here - it was too inflammatory. Some professors read it; some newspapers read it; I know Carmel Ricard took it and read it. Not a word was reported on that thesis. And it was not published here until the change of government came in the 1990's, when my thesis was then read out; when all the lawyers got together under the auspices of the Minister of Justice to talk about the change in the legal system and the court system and so on.

VR: You are talking of our Minister of Justice, Dullah Omar?

NP: Dullah Omar, yes.

VR: Okay. In 1988 and 1989 there were a few laws that were being changed by the Nationalist Government. The Immorality Act, and so on and so forth. Did you sense that something was afoot in terms of changes coming to the country by 1990?

NP: I did, because more and more there were no prosecutions under the Immorality Act for instance. (a) Because of the terrible publicity this was giving the country as far as the apartheid government was concerned. So it wasn't on moral grounds, it was the fact that it was bad for them, they stopped prosecution. And then, of course, there was that infamous case in Excelsior when like sixteen white farmers were charged for propagating a whole village of coloured children. And the overseas media was here to focus on it, and they stopped prosecutions. So I saw that coming and then, because of the courage of one judge who said, "you cannot have forced removal or group areas removal if the person concerned has no alternative but to stay there." So if there is no other area that's declared for Indians; there's no area where an African could live in the

city; then you can't eject. So that's a courageous decision by a High Court, which stopped prosecutions under those two acts. I saw it coming, so in 1989 I lectured at Natal University in public law and my lecture was on race legislation and how they should for instance re-argue the Hoffmann-case in Cape Town, on the vote. And argued natural justice arguments and there were quite a few white students in that class who banged their desks and walked off, they were just so angry and they said, "well these laws are going anyway, and why should we discuss them now, or even study them?" So there was a great deal of resistance to the change. I think we all know that.

VR: Yes. So when 1990 finally came, was it in any way, a surprise to you in terms of...?

NP: It was a surprise to me because none - we all hated the idea of compromise; we hated the settlement that we had to make with our former oppressors; that we had to sit around the same table with them. I had nothing to do with the coalition for the Constitution building. I was involved with the Women's National Movement at the level of lawyers. And while we were arguing all the theories of equity and equality, we had sent out these circulars to every supermarket and village. Along came the responses of women, as to what they wanted. And women wanted basic rights; they wanted education for their children; they wanted opportunities for work; and they wanted proper salaries; they wanted respect; they wanted to be free from violence. And this is what we put in, we thought we were drawing a charter, we put it into the Women's Charter it was chaired by Frene Ginwala, our Speaker. I don't think that whole initiative would have succeeded if it wasn't for strong chairing by Frene. Once again, I learnt many lessons; a teenager would chair one day; a woman in a

wheelchair would chair the next day. So it was not dominated by older women; it was not dominated by lawyers. It had everyone there, there was INKATHA; there was the Afrikaner Women Movement from Bloemfontein; women from various churches; women from completely disparate political viewpoints; there were Afrikaans women there, for instance, who had supported the idea that women should remain minors in law because they did not want to hurt the feelings of their husbands for instance. And yet we all got together. Women of South Africa taught the men in South Africa that it was possible to get together, to respect differences, but to unite on the issues that were common to all of us. And there were very many issues common to all of us. As a result of the work of the Women's National Coalition, we then had a 108 women MP's, and we had all these principles inserted in our Constitution. And everywhere I travel today, people say we have one of the most progressive Constitutions in the whole world.

VR: Do you agree?

NP: Yes, I agree.

VR: You do. What did you think, did you think at the time, too many concessions were made in terms of the settlements before the elections, and so on? And what did you think of the Sunset Clauses?

NP: I certainly think that many concessions were made. But I suppose it's the people who agonised over the clauses during the negotiations who bore the brunt of it. Because I know, in law you never come out as a total victor, sometimes you have to give in. So while I respect that process, like everyone else, I was disappointed that we provided for indemnity for so many people. We provided huge remittances and pay packages for people here who had

grown rich under apartheid and were now retiring. For instance when the former Minister of Defence, Malan, and nine others were charged in Durban and they were acquitted, then we taxpayers had to foot that huge [legal] defence bill. Because all that was written into the Constitution. And it's not only my view, but just last week I was in Australia and people said to me, "what do you think of this former Prime Minister, De Klerk sharing the Nobel Prize?" So people are shocked by that and that seemed to me some kind of political wheeling and dealing there that he shared the Nobel Prize with former President Mandela. So there were many other clauses, but I suppose it has turned out alright, because what we are concerned with is that the majority population should be in control of the government.

VR: Okay. Do you think the government, the ANC Government, has delivered on its promises in terms of the people and their needs? In terms of education, housing, the land issues?

NP: Everywhere you see evidence that they have been doing so, and that they're trying to do so. I think there have been spectacular changes in the legal system. We have the Constitutional Court and respect for those decisions. And there is ample evidence of housing being provided. I mean, Mrs Hlope, who works for me now owns a house. It's true she obtained help from me, but even with that kind of help she wouldn't have had a house. So that's a positive impact in her life. Another positive impact is one of - look where I am today. I would never have had that position if we didn't have the ANC Government in place. And I think that they have delivered on their promises in very many respects, and I see President Mbeki taking a role in Africa and from outside Africa. They

respect him highly for that. There are many buts, and those
buts you hear from ordinary people. (a) That education is
now so expensive. People say that under apartheid they
did not have to pay for education and now an ordinary
person who is earning R1 000 a month has to pay R600 in
school fees. To me that is entirely unacceptable. If you are
a people's government you have to put your money there,
in education; housing; relieving poverty, instead of
increasing salaries and buying jets for the Head of State.
Those are alarming tendencies if you are going to build a
black elitist who will replace the white elitist group. If
you do that then I, as a judge, working outside Africa, I see
dictatorships unending, and I see politicians stealing the
money out of the pockets of the poor. People being heavily
taxed; I see aid being misappropriated. And I would hate
to see our country going in that direction. And the only
precaution would be that people should be alert to this.
That we should have a free and independent press that
should be watchful and critical of leaders.

VR: Okay. When did you join the court that you are involved
in now? Where were you when you were invited to join?

NP: Well you know that in 1994/95, I was appointed to act as a
judge in the High Court in Natal. And that was the first
for a person of colour, first for an Indian, as well.

VR: And a woman.

NP: And a woman. And also, first for an attorney. Usually the
judges came from the Bar not the side-bar. So there was
some concern expressed by the white law body mainly the
advocate's body, but just some of them on whether I was
qualified to sit. And I also asked myself that. I was not
experienced as a judge, but I was now a lawyer in active
practice for almost thirty years of my life. And most people
become judges after seven or ten years. I had a great

deal of experience. That was just announced that I was appointed to act as the judge when, early in the morning at about seven a.m, my telephone rang near my kitchen and the person at the other end said: "hold on for the President." And I thought it was my brother playing the fool. But it was former President Mandela who called me and said: "I rang you to express my personal joy that you are now a judge and that I hope you can be permanent." And we talked a little because I had done a great deal of work for inmates on Robben Island when President Mandela was there. I had brought an application which spelt out the rights of political prisoners for the very first time. And in that application, conditions on Robben Island were exposed - that also became a UN document. And Mr Mandela was aware of that. It was just a wonderful moment when he called me and we had this discussion. And I was serving as a judge when the Human Rights Movement, outside the country who knew of me, called me. I had like five different calls before I paid attention to it. And they said to me there was this international tribunal being set up for Rwanda, you have to get your government to nominate you. You have to agree to stand. If you don't, we will not get a woman on the Bench; and we will not get an African on the Bench; because these international positions are usually dominated by people from the north. And that's when I informed the government that I was willing to stand for this tribunal and I thought I will go and serve for one year and resign. Because it was inconceivable for me to leave my country, my children, my home, and to leave at a time when there were tremendous changes in my country. But I felt I had to respond to this request. The government nominated me. I was elected by the General Assembly and I received

the highest number of votes; which to me indicated that Africa was not chauvinist; that they would elect a woman; that South Africa had a good name internationally; the new South Africa and the new government. And all those qualifications that I had picked up at Harvard in my masters and doctorate were useful to me. I had studied international law. I served as the judge on the tribunal, the international tribunal for four years. I was the only woman, one of six judges, at that time. And then I was re-elected for another four years. I'm now entering the eighth year of the service. Now we have three women judges, out of nine judges. And all the judges, including the five judges from The Hague, who sit in our appeal chamber, so that's sixteen of us. So I was elected by the fifteen judges as the President of the Tribunal. I completed the first two years as President and they re-elected me. I'm now in the second term. My mandate comes to an end in May next year. So instead of one year I've now worked seven years out of the country.

VR: You are based in Arusha.

NP: We are based in Arusha.

VR: Tell us a little bit about your work, Navi.

NP: Well as you know, and we also saw on our television screens: what happened in Rwanda was that 800 000 people who are Tutsi, were massacred, not by bombs or armoured vehicles and so on but by hand-held machetes. So it was one-on-one, ordinary men women and children were killed. Hutus were also killed. Apparently they were Hutu's who were not supportive of the government's policy of exterminating the Tutsis. And they were killed by other men women and children. So it's ordinary civilians were involved in these killings. And if you think of 800 000 people; almost a million people killed over a period of 100-

days; then you are talking of killings on a scale far more vast than the Holocaust and World War Two; and bombs dropped in Hiroshima and Nagasaki or any other conflict anywhere else in world. And this is conflict inside the country, it's not an international war situation. The Rwandan Government asked the Security Council to set up a tribunal and because the UN had set up the first International Criminal Tribunal for former Yugoslavia a year before that, that enabled them to set up this tribunal. And part of the statute is that judges must be qualified; and of high moral character; and must come from all over the world; and from different jurisdictions. So we are English-speaking; French-speaking; there are Norwegian; Russian; Senegalese; now we have a judge from Madagascar, Lesotho, and we speak English and French. We come from common law and civil law. We drew up the rules, the judges, and we have completed nine trials - these are all major trials. Each case takes like one year. And as Mr Kofi Anan, the Secretary-General, announced that the jurisprudence of international criminal justice emerged from this tribunal in Rwanda first, rather than the other tribunal because the Yugoslav tribunal is struggling to secure arrests of leaders. It's only now that they have Milosovic under trial. In the Rwanda tribunal 80 indictments were issued; 60 people have been arrested; 20 are at large; and amongst the 60 we have already convicted and sentenced to life imprisonment, the former Prime Minister of Rwanda, John Kambanda. I sat in on that case, and we have almost 14 ministers of government in custody and on trial. Military leaders; professors; journalists; mayors; governors; these people were arrested in African countries; and European countries; Switzerland, France, UK, United States, at least three people were arrested in

South Africa and transferred to us. Three chambers with three judges each are currently trying 22 persons, so it's a very active tribunal that I am presiding over as President, and it's very challenging, it's very new, but people still refer to me as the South African of Indian origin.

VR: Do they?

NP: Yes because you know they say you don't look African. So you are South African of Indian origin.

VR: How did it feel for you coming from our political history, to go and sit in on a tribunal of this nature in Africa?

NP: Firstly, you felt apartheid was declared a crime against humanity. And yet the international community didn't take the next step of setting up a tribunal to put on trial the perpetrators of apartheid. That is a level of injustice we had to live with. So we see exciting developments now internationally, because after these two ad hoc tribunals showed that international criminal justice is possible. That it's a reality, and these are the rules and these are the ways in which you can hold trials. The world is now - well a certain part of the world anyway - has formally established the International Criminal Court as, you know, which came into being on the 1st July this year. So again and again I'm asked questions about how do you feel as a victim of apartheid? And so I understand when witnesses from Rwanda come and say, "we waited for this day to see justice being done." And I'm constantly being asked to compare the International Criminal Court to our TRC.

VR: Yes, now can you tell us what you had said about the TRC?

NP: What I say when I'm asked that? People say, "Well, you are uniquely placed to tell us this because you come from South Africa and here you are a judge on an international criminal tribunal which supports the principle of punishment as a deterrent to future crimes." And criminal

justice as a way of dealing with past atrocities. So clearly when you set up a criminal court you are saying that perpetrators of serious violations of international law; people who have committed crimes against humanity and genocide; people who have committed massive crimes against society should not be able to get away. Whereas you charge a person who has stolen half a loaf of bread, so above all then, you have to have respect for the Rule of Law, and for that to happen you have to have criminal prosecutions. I have been very supportive of this. I have spoken very strongly in favour of this to end the culture of impunity of political leaders, particularly in Africa. And already you can see the tribunal has imposed five sentences of life imprisonment to show that courts view these kinds of crimes by people in positions of leadership, as very serious. And also I have been saying that you can have no lasting peace unless you have justice. If you do not have a sense of justice being demonstrated you are going to have, continually, people taking the law into their own hands, acts of revenge. I went to Guatemala and participated in just this kind of process and discussions about starting prosecutions of their generals. And even while we were having these discussions there were twenty-five incidents of people hanging, in the village square, individuals whom they thought were guilty. So people would take the law into their own hands and these were all random acts of justice as people saw it. Very much like the township courts and the burning tyres that we went through. So if you don't regulate it, you are going to have disrespect for the Rule of Law. I was once at negotiations with the Burundi Government representatives of various parties when Bishop Tutu extolled the virtues of the TRC and he also said how it cost less and it's truth-telling. You

cleanse your soul and you forgive and you get on with it. And I was sitting next to him and I leaned over and said to him: "oh, you've almost convinced me." And he said to me: "no, no, no, you carry on with the work you are doing because it's so important." Now in that conversation what emerges is that these two processes, criminal justice and the TRC are complementary to one another, to each other, they are not in conflict. You have to have both. And everybody actually admired this TRC that we went through, which many of us have great difficulty with. The part we have difficulty with is the fact that hardened criminals are being granted indemnity. And it just grates against our soul because we all went through the suffering and to see killers walking away is very hard to accept. But I have listened to Justice Albie Sachs who has this approach of turn the other cheek. He shook hands with the person who planted the bomb in his car. I have listened to Justice Hassan Mall who was the chairman of the Indemnity Court and he said how difficult it was for him, he was formerly banned and house arrested, was never allowed to travel outside South Africa. And here he was sitting, granting indemnity to hardened criminals. He said it was very hard. But it was part of the process where you have to have some incentive for perpetrators to come forward and speak the truth. So I think this is the way we have to view this. I sympathise with the Biko family; the family of Griffiths Mxenge; a colleague of mine, that their rights to claim compensation; their right to institute private prosecution; has been denied. But when you look back you see this as a politically expedient solution, which the government adopted.

VR: This expediency - [interruption]

NP: Expediency is not justice. It's the way of dealing with your past, dealing with the atrocities committed by the past regime, and getting on with the future. Why have I kind of changed my views somewhat? Because I have been to Rwanda, been in and out of Rwanda. Daily I am sitting listening to the most terrible atrocities where babies were killed by their heads being bashed against walls, and thousands and thousands of people were herded into churches and stadiums and killed. I see inside Rwanda the government wrestling with the problem of 120 000 alleged perpetrators being held in custody, in prisons built for 8000 people. Those people are already in prison for eight years now. When are they all going to be brought to trial? So if you think in terms of trial court cases, when are you going to bring them to trial and what kind of sentences are you going to impose? Where their maximum penalty for crimes of murder is death. The government is interested in reconciliation and building a state. So they have come out with a system of traditional justice, which is called the Gachacha system, to deal with the foreplayer, the least seriously involved. And I have seen some of that where villagers come forward and say "oh no, no, he didn't do the killing, let him go." Or so and so "yes he raped me, killed my husband, but I forgive him." I actually heard this woman say, "I forgive him." So then I've come to realise that there are many complementary ways of addressing the situation. You can never do without criminal prosecution and punishment. That is intrinsic to the legal system but you can also have these other ways of reaching your goals of reconciling and letting people get on with their lives.

VR: Well you have come a long way in you career, Navi, who are the people, or are there certain individuals who have

impacted strongly on your life, and your choices and things that have made you the person you are?

NP: I think it's firstly, it's all our comrades and colleagues and those who died in the struggle. You think of the indentured labourers; my grandparents; who struggled so much; ate so poorly; and starved so that they could send us to school. That's a total inspiration to me, when I hear of how those women struggled cutting cane, and they were bitten by snakes, and they brought up their babies in the bush. They are the first inspiration. And then you have women leaders like Dr Goonam and Fatima Meer. We learnt about them when we were in primary school. And all around was so much fear about what will happen to you - and Fatima Meer was banned again and again. And you have her and teachers like Mr NG Moodley, Strini's father, whom I mentioned, who politicised me. And taught us that you have a right, you have certain rights, and you should demand those rights. And above all, all my colleagues, some of whom who have lost their lives in the struggle.

VR: Of course. Would you have done anything differently in your life. Is there anything that you might have changed?

NP: Oh, I think many of us, looking back, wish you could turn the clock back so you can do things differently. I was so timid in the courts, I would like to start again. We used to wait outside the door, we would tap on the door of the magistrate's office, and wait timidly, outside, for them to call us in. And when you walked in they would continue a conversation, a personal conversation, and totally ignore you. They would never ask you to sit. Other lawyers before us, the older lawyers, like BJ Chowdrey, I mean he would have his hat in his hand. They were obsequious; we learnt a little bit more; and then you have people like Saths Cooper and Strini Moodley who would just barge, in grab a

chair, and sit down start talking. So I might have done things differently if I had another chance. Shown much more courage, perhaps.

VR: Before we go, and before we end this interview, is there something you can say to young people today, especially in terms of our history and what you are doing in your work today. What can you offer them?

NP: You know, you can see where I am today. I have an international involvement. I work with 850 people, who come from 87 different countries, all of whom have so much respect for their own language, their own culture. Every Friday we all are in traditional dress, and the West Africans, in the most glorious gowns. So I have an international profile and you may think then, that I have moved far away from my culture and traditions. I see in Rwanda ordinary men, women and children, who were involved in doing the actual killings, what happened to them what happened to their values that didn't strengthen them against the pressure to kill? So my message, my strong advice is, that our traditional values and morals are the bedrock of what saves us in situations like this. To me, it's Indian values. I feel that there is less promiscuity and less AIDS in certain communities because of the way you were brought up. We should return to those values. In the African community women and girls were never raped before, that's the true tradition we need to return to, that tradition. And I feel it is a saving factor to respect our culture. You need not follow all the practices, I mean some were really backward. Some were oppressive. I just heard the other day there is a woman in India who committed Sati - just because her husband died she killed herself in the same grave. Now so you don't have to go back to archaic

oppressive practices but there is so much good that we can adopt and propagate.

VR: Okay. On behalf of the Documentation Centre, the University of Durban-Westville, we thank you for your time, Navi.

NP: Thank you, it's a great pleasure.

INTERVIEW ENDS

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