

**WOMEN RIGHTS vis-à-vis HUMAN RIGHTS: ANSWERED THROUGH  
INTERNATIONAL CRIMINAL JUSTICE SYSTEM- A TRIBUTE TO JUSTICE  
Dr.NAVANEETHAM PILLAY**

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**Abstract :** Women empowerment not only devoted about imparting the equal opportunities for the women, but also involves the protection of equality of rights predominantly fundamental and human rights. There feminist activist right the way through the world, struggles for the elimination of all sort of discriminations, violence, abuses against women. There are traces about these feminist, but the actual jurisprudential contribution for the protection of human rights and fundamental rights of women for dignity was worked out by vary infrequent members. This paper aims to establish the contributions of such a human being, Justice Dr. Navaneetham Pillay, who rigorously worked for women. Her fanatical and devoted work through her positions as Advocate, Judge of High of South Africa, Presiding Judge of International Criminal Tribunal for Rwanda (ICTR), Judge of International Criminal Court (ICC) and United Nations High Commissioner for Human Rights Committee, for the victims of War Crime, Crime against women, Genocide, Sexual Violence and others international humanitarian law violations. For her trustworthy involvement towards the protection of women human rights, this paper would be a diminutive tribute.

**Key Words:** Crime against Humanity, Genocide, Human Rights, International Humanitarian Law, Women Empowerment.

**Introduction:** “Women empowerment is not only for the women themselves, but a greater freedom and richness for everybody”. The words are uttered by the former High Commissioner for United Nations Human Rights Committee Dr. Navaneetham Pillay. The author, through this article tries to bring out the contributions of Justice Navaneetham Pillay<sup>i</sup> (herein after referred as “Pillay” or “Navi Pillay”) for the empowerment of women through her work as an Advocate, Judge, Presiding officer, High commissioner etc., by protecting the rights and dignity of women during the period of serious violation of international humanitarian law and basic human rights violations. Being Tamil descent women, she has contributed towards the protection of women rights and punishing the offender who committed serious violation of these rights. Mrs. Pillay, has brought out several breakthrough in the International Criminal Justice system through her judgments. She interpreted the *delictum juris gentium* by giving different understanding about the crimes, which were drafted in another view. This paper aims to establish that empowerment for women not only meant for providing equal rights and opportunities but also protection of their rights by removing the disgrace caused to them by same gender or opposite gender. And also, tries to lime light the contribution of a women Mrs.Pillay, to fellow gender for their dignified and peaceful life, with proud and pride that she belongs to Indian origin more particularly TAMIL descent. As there are thousands and thousands of members still projecting and pointing out women issues, but comparatively very less work are traced to show the contributions of women to women. So this

paper would be a TRIBUTE TO JUSTICE PILLAY for her contributions to women for the fore most aim of protecting their human rights values and enhance their livelihood.

**About Mrs.Navaneetham Pillay:** Mrs.Pillay was born on 23rd September in Clairwood, Durban, South Africa.<sup>ii</sup> Her father was a bus driver and details about her mother and even their names could not been traced convincingly. She went to the University of Natal where she graduated with BA in 1963 with the support of fellow Tamils there and with an LLB in 1965 and Master of Laws and a Doctorate in Juridical Sciences in Harvard University. It was at the University that she joined the Unity Movement. After completing her degree she commenced her legal career by doing her articles in Durban under the guidance of Narainsamy Thumbi Naicker who was General Secretary of a banned member of the African National Congress (ANC) who was also under house arrest. She married Gabby Pillay (Paranjothi Anthony Pillay) in January 1965. When Mr.Gabby Pillay was detained by the government she went to court and to rural areas. Her first case was dealt with forced removal of people from lands. She moved out of the National Union when they denied gender freedom. She started her first own law practise at Natal (now kwaZulu Natal in 1967 and provided various legal defences for the different political activists and the detainees of the APARTHIED<sup>iii</sup> government. Apartheid got United Nations attention between 1960's. The United Nations General Assembly and Security Council passed resolutions to take steps to eliminate this crime from the state. The General Assembly in its resolution UNGA/Res/3068(XXVIII)

and Security Council resolution UNSC/Res/556(1984) was regularly condemned and branded apartheid as Crime against humanity.<sup>iv</sup> UN General Assembly drafted an International Convention on the Suppression and Punishment of the Crime of Apartheid, (herein after referred as 'Convention') and adopted on 30th November 1973 by the General Assembly, according to the direction of Article 55 and 56 of the Charter of the United Nations wherein states that

"all the members of the State Parties should take action in co-operation with the Organizations for the achievement of universal respect for, and observance, of human rights and fundamental freedom for all without distinction as to race, sex, language, or religion".

Article 1 of the Convention rigorously declares that apartheid is a crime against humanity. Article II of the convention describes the elements of crime of apartheid.<sup>v</sup> Article IX and X of the Convention gives powers to the UN Human rights Commission to take charge of the person committing these crime. But no one was prosecuted for the crime inspite of apartheid lasted in SA. Mrs. Pillay was motivated to pursue legal degree because, as she was charged with robbery case when she was 7 years old. She lost her father's monthly salary of Rs.5/- to the conductor, a white man, and sentenced to 6 months of imprisonment.<sup>vi</sup> She exposed her practise towards the effect of practise of apartheid such as torture, illegal custody, and rights of prisoner. She also established and founded International Women's rights Organization based in New York. After various struggles she became the first Non-White, women appointed as acting judge of the High court in 1995 to 1967, and then she was appointed as Attorney and Conveyancer of the High court of South Africa from 1967 to 1995. During this period she gave much importance to women and children issues.

#### **International Legal Carrier:**

Her noted legal carrier started when she was elected as Judge President of the International Criminal Tribunal for Rwanda, (herein after referred as 'ICTR'), where she pronounced groundbreaking jurisprudence on gender issue and freedom of speech and hate propaganda as 'Genocide'<sup>vii</sup>. Right from there onwards she passionately work for the protection of human rights values of women those who are the victims of either war crime or ethnical conflict. The term "Genocide" was first coined by Polish Prof Raphael Lemkin, in his work in 1945 "Axis Rule in Occupied Europe"<sup>viii</sup> and stressed to include this crime as delicta juris gentium. Based on his work, UNGA drafted the Convention of the Prevention and Punishment of the Crime of Genocide under UNGA/Res/96 (1) on 9th December, 1945. In this Convention, Article II and III defines crime of

Genocide and its punishable acts.<sup>ix</sup> Once Dr. Navi Pillay elected as Judge of ICTR, she took several visits to conflict affected areas of Rwanda particularly during 1994 ethical conflict between Hutu and Tutsi ethnic groups. During January 1 to 31st December there was serious violation of international humanitarian laws in Rwanda by Hutu ethnic group against Tutsi minority ethnic group. The Rwandan government requested the Security Council of UN, to establish an ad hoc tribunal to prosecute and punish the offenders of crime according to the Statute of it. The Security Council of UN, according to Article 32 of the UN Charter, passed resolution in UNSC/Res/955/1994 established the first ad hoc International Criminal Tribunal to prosecute and punish the individuals charged for the crimes according to the Statute of ICTR. Article 2(1) and (2) defines about the elements and punishable acts of genocide. After 50 years of the Genocide Convention, the first judgment to punish for the crime of Genocide was by Justice Navaneetham Pillai in The Prosecutor v. Jeanpaul Akayesu.<sup>x</sup> In this case, Justice Navi Pillay, has categorically interpreted about the crime of Genocide. As Article 2 of the Statute defines the elements and punishable acts of genocide, wherein "rape" as always committed against women does not falls under the category of Crime of Genocide, but under Crime against Humanity (CAH). The intensity and gravity of offence of rape considerably less when compared to genocide. Mrs. Pillay, for the first time distinguished and judged as "RAPE ALSO AN ELEMENT OF GENOCIDE". She along with the other presiding judges, clearly established in the judgement as follows,

"With regard, particularly, to the acts described in paragraphs 12(A) and 12(B) of the Indictment, that is, rape and sexual violence, the Chamber wishes to underscore the fact that in its opinion, they constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflict harm on the victim as he or she suffers both bodily and mental harm. In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above, were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or in other public places, and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was

an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole<sup>xi</sup>.

This judgment created tremendous change in succeeding cases, and the twin tribunal International Criminal Tribunal for Former Yugoslavia (ICTY) also cited the judgment for bringing rape and sexual violence against women under the crime of genocide. Women and children were the target group during the internal or external armed conflict or war or ethnical conflict. Till the Jeanpaul Akayesu judgment, it was considered only as CAH and not as genocide, even before the Nuremberg Tribunal. The importance of inserting these acts in crime of genocide is, though there is no yardstick to determine the gravity of offences in the Statute, Crime of Genocide is considered to be "CRIME OF CRIMES", as it need the 'Special Intent' that is *dolus specialis*. The Article 2(2) of the Statute define the 'special intent' that "Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such". Though rape forms the part of CAH, under Article 3, which includes nearly 11 acts as this crime like, "crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds: a) Murder; b) Extermination; c) Enslavement; d) Deportation; e) Imprisonment; f) Torture; g) Rape; h) Persecutions on political, racial and religious grounds; i) Other inhumane acts". These acts can be committed for any intention and not particularly for destruction of any above mentioned groups. Mrs. Pillay's one of the most valuable contribution for the empowerment of women through protecting their dignity and fundamental rights has been established through this judgment. Any sexual violence against women during any of the above mentioned period would be considered as 'Genocide' and 'CAH' so that, the perpetrators of these crimes will not go unpunished. Justice Navi Pillay again proved that gender development and equal protection of human rights could be achieved through the objectives of Criminal Justice System either nationally or internationally.

#### **Hate Speech as direct and public incitement to commit genocide:**

The next ground breaking judgment by her is in the case "The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze"<sup>xii</sup>, in which she again came up with the remarkable interpretation of "Crime of Genocide" by way of mentioning it as "HATE CRIME" or Media Case. The perpetrators of this case was unsympathetically involved in destruction of Tutsi ethnic group and for this they adopted the Media by propagating news in the nature

of instigating and provoke the Hutu ethnic group to exterminate the Tutsi's. This case has wider specification not only because of mass killing of tutsi ethnic group, but also for the interpretation of various International Instruments like UDHR<sup>xiii</sup>, ICCPR<sup>xiv</sup>, ECHR<sup>xv</sup>, IMT<sup>xvi</sup>. The Trial Chamber of ICTR which was Preside over by Justice Navaneetham Pillay with other judges, have elaborately discussed and explained how "Hate Speech" also become the part and parcel of Direct and Public incitement to commit crime of genocide. In this case, the three accused person were individually criminally liable for either broadcasting or publishing derogatory statements, which instigated the Hutu ethnic group to systematically destroy the Tutsi ethnic group. For example, the statement used by them either in Radio (RTLM-'Radio Television Libre desMilles Collines') or Television or News Paper or Magazine('Kangura'"Awaken" in the imperative meaning; Name of newspaper published in Kinyarwanda and French) are as follows,

"...they say the Tutsi are being exterminated, they are being decimated by the Hutu and other things. I would like to tell you, dear listeners of RTLM that the war we are waging is actually between the two ethnic groups the Hutu and the Tutsi"<sup>xvii</sup>, "They should all stand up so that we kill the Inkotanyi"<sup>xviii</sup> and exterminate them... the reason we will exterminate them is that they belong to one ethnic group. Look at the person's height and his physical appearance. Just look at his small nose and then break it". In an article published by Kangura in January 1994, Hassan Ngeze wrote:

"Let's hope the Invenzi<sup>xix</sup> will have the courage to understand what is going to happen and realize that if they make a small mistake, they will be exterminated: if they make the mistake of attacking again, there will be none of them left in Rwanda, not in single accomplice. All Hutu's are united"<sup>xx</sup>.

Jurisprudence evolved through this case was notable contribution to the international criminal justice system, as it involves colossal interpretation of Hate Propaganda being intent for direct and public incitement to commit genocide. In this case, Prof Navi Pillay, has elaborately cited diverse judgment right from Nuremberg Tribunal to European Court of Human Right. She categorically sharpened the judgment by endorsing the findings in famous cases like, Julius Stericher who was sentenced to death by the Nuremberg Tribunal for causing hate propaganda among the Germans to exterminate the Jews in his Magazine *Der Stuermer*. Though he pleaded innocence as he has no intention of causing death of hundreds of thousands of Jews, the Tribunal rightly established that his writing injected poison in the minds of Germans which caused extermination of Jews<sup>xxi</sup>. Not only this, they also referred the Bill of

Human Rights, Universal Declaration of Human Rights, 1948 (herein after referred as "UDHR") for stressing the importance of fundamental rights and human values particularly for women. Under Article 7 of UDHR,

"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination".

The Trial Chamber also quoted the another International Humanitarian Law, International Convention on Civil and Political Rights, 1976, (herein after referred as ICCPR) regarding the freedom of speech with responsibility and restriction. As the hatred speech leads to various serious violations of human rights and fundamental rights particularly against women.<sup>xxii</sup> Article 19(3) of ICCPR impose restriction that Art 19 should carries with its duties and responsibilities subject to certain restrictions such as respect the rights of others and protection of National Security and Public Order and Public Health. Art 20 of the Convention keen directly about the hatred propaganda.<sup>xxiii</sup> Judge Pillay utilized these rights for the protection of women and children from being the victims of any serious violations of human rights against them. They undoubtedly exposed through their findings in the case as follows,

"The Chamber notes that international standards restricting hate speech and the protection of freedom of expression have evolved largely in the context of national initiatives to control the danger and harm represented by various forms of prejudiced communication..... In international law and more particularly in the American legal tradition of free speech, recognize the power dynamic inherent in the circumstances that make minority groups and political opposition vulnerable to the exercise of power by the majority or by the government. These circumstances do not arise in the present case, where at issue is the speech of the so-called "majority population", in support of the government. The special protections for this kind of speech should accordingly be adapted, in the Chamber's view, so that ethnically specific expression would be more rather than less carefully scrutinized to ensure that minorities without equal means of defence are not endangered"<sup>xxiv</sup>.

"With regard to causation, the Chamber recalls that incitement is a crime regardless of whether it has the effect it intends to have. In determining whether communications represent intent to cause genocide and thereby constitute incitement, the Chamber considers it significant that in fact genocide occurred. That the media intended to have this effect is evidenced in part by the fact that it did have this effect"<sup>xxv</sup>.

Even in this case also, Navi Pillay quoted Akayesu judgment for declaring hatred speech as an element of Direct and Public incite to commit genocide.<sup>xxvi</sup>

Due to this hate propaganda, many of the Hutu's were involved themselves in destroying the Tutsi ethnic by either committing murder, causing severe bodily or mental harm including sexual violence against women. Some witnesses testified how the Hutu population harasses even pregnant women. In the judgment, the Chamber noted in para 210 as, "Several cartoons published in Kangura depicted UNAMIR General Dallaire with women. In Kangura No. 53, he is shown kneeling and sucking the breast of a woman, who is saying to two other women standing in line behind her, "When I would have finished, I would also asked you to breast feed Dallaire. In Kangura he is shown with his arms around two women, one of whom is kissing him. The title reads: "General Dallaire and his army fell prey to the traps femmes fales. Kabanda testified that the cartoon was to show how women had corrupted the UNAMIR head, which was there to oversee peace and the implementation of the Arushu Accords. He said this and other cartoons in Kangura portrayed Tutsi women as spies".

In this aspect, Judge Navi Pillay tries her best to bring out that attack on women population not only inflict the bodily harm, but also physiological issues. It is immaterial whether the harm is temporary or permanent, but the aftermath of this sexual violence compelled most of the women either to end their life or not willing to enter into family life. Children born out of rape were considered to be symbol of shame, some mothers goes to the extent of killing them. All these ailing effects were not to be compensated, but, through the judgment by Justice Pillay, they felt that the perpetrators of the crime have been rewarded for their action through penal sanction irrespective of their positions.

Dr. Navaneetham Pillay also judged other cases<sup>xxvii</sup> in the Trial Chamber of ICTR, in which she again and again projected the sufferings of women and children due to either war or ethnic conflict, and worked for their reconciliation. Her committed and dignified contribution to the International Humanitarian Law through the ad hoc tribunal elevated her to the First Permanent International Criminal Court. Her interpretation about "widespread and systematic attack" as the element of CAH in 'The Prosecutor v. Alfred Musema' and distinctly discussed in Para 942 to 951 of the judgment. Though the facts of the case seems to be the same nature as that commission of crimes like Genocide, CAH and War crimes, but the jurisprudence evolved through the legal findings of Pillay and other judges intercepted the elements of each crime into different

levels. Thus till her tenure in ICTR, she worked for the rights of women though they may or may not be the victims of armed conflict or ethnical conflict.

In 1999 she was elected as Judge President of ICTR and in 2003, she was elected as Judge of the first permanent International Criminal Court.<sup>xxviii</sup> Till 200 she served there as acting judge of the Appellate chamber.

#### **In the International Human Rights Committee:**

On 28 July 2008, United Nations Secretary-General Ban Ki-moon, following approval by the General Assembly, appointed her as the new High Commissioner for Human Rights. Judge Pillay's nomination came at the end of an extensive selection process, which included consultations with Member States and with the broad-based non-governmental organization community as has outstanding credentials in human rights and justice. Her contributions during her tenure as Judge of ICTR brought her such a laurel and she deserve that. Till 31st August 2014, she never stopped working for the upliftment of women and children in the war affected areas. She trashed every State party those who are the perpetrators of any crime which violates the human rights of every individuals. She submitted various report about serious violations of humanitarian law either State or external armed conflict. She visited nearly 170 countries particularly African countries to bring out reconciliation in that State and more specifically to the victims of human rights violations. She has placed quite a number of reports before the General Secretary of UN General Assembly about either War Crimes or armed conflict or ethnic conflict and recommend for serious action against the perpetrators of the offence. Out of various report, two reports on Palestine and Sri Lanka was considered to be most important. These two States are still facing either external or internal armed conflict within two ethnic or religious groups. Her service as the High commissioner of United Nations Human Rights Council brought her into the lime light, when she sternly made statement about human rights violations by the States itself against their citizens. The author of this article would like to bring the attention of the readers of this paper, regarding two important reports of Justice Pillay, based on Palestine and Sri Lanka.

#### **United Nations Human Rights Council: (UNHRC)**

The Charter of the United Nations (1945) proclaims that one of the purposes of the United Nations is to promote and encourage respect for human rights and fundamental freedoms for all. The UNGA again drafted another two international instrument for the protection and establishment of human rights for the international community. They were by now thinking of binding its state party by way of creating a legal entity for the enforcement of

human rights in 1948.<sup>xxix</sup> The two important conventions are International Convention on Civil and Political Rights 1966 (ICCPR)<sup>xxx</sup>, and the International Covenant on Economic, Social and Cultural Rights,(ICESCR). The two International Covenants on Human Rights form the cornerstone of an extensive series of internationally binding treaties covering a wide variety of issues in the field of human rights. The treaties define human rights and fundamental freedoms and set basic standards that have inspired more than 100 international and regional human rights conventions, declarations, sets of rules and principles. UNHRC was established according to article 28 of ICCPR<sup>xxxi</sup>, and suggested the qualification for the members to be appointed for the committee as "high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience". No doubt none other than Mrs. Navi Pillay would have has such an extensive and vast experience in participation of providing and protecting human rights. The members of the committee have to work as the representative of the Council and not in his personal character and should avoid political bias. The Committee will work according to the rules and procedures of UN High commission for Human Rights. The UNHCHR will receive reports and complaints from Human Rights Council and direct the State party to compile with the directions. In this regard, Mrs. Navaneetham has visited Palestine and Sri Lanka based on the report of various peace keeping bodies about the war internal and external armed conflict. She submitted the report before the General Assembly for its perusal and final decision over it.

#### **Report on Palestine:**

UNGA receives report from the Council in 2012 during 19th and 20th Session of Human Rights council and 67th Session of GA (Supplement No:53(A/67/53)).<sup>xxxii</sup> In its report number 19/15, the then High Commissioner, Mrs. Pillay, anxious about the Right to self determination of the people of Palestine. She placed relevance of various international instruments like ICCPR<sup>xxxiii</sup> and ICESCR which provide Right to Self determination as their fundamental rights. She also referred the applicable resolutions passed by the General Assembly and Security Council in protecting this rights respectively as UNGA/Res/ 181 A and B (II) of 29 November 1947 and 194 (III) of 11 December 1948 and UNSC/Res/ 242 (1967) of 22 November 1967, 338 (1973) of 22 October 1973, 1397 (2002) of 12 March 2002 and 1402 (2002) of 30 March 2002,<sup>xxxiv</sup> She relentlessly condemn the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures

previously taken, severely impedes the right of the Palestinian people to self-determination. She reaffirmed that the Right of Self Determination of the Palestine people was safeguarded by the UN Charter and mentioned that, that right s inalienable, permanent and unqualified which<sup>xxxv</sup> includes right to live in freedom, justice and dignity, and to establish their sovereign, independent, democratic and viable contiguous State; and reaffirms for the support to bring out the solution between two States Palestine and Israel to live in peace and security. She also submitted a report of East Jerusalem and prevailing human rights condition n occupied Palestine.<sup>xxxvi</sup> She stressed for the responsibility of the international community in promoting human rights values in these States and wants to apply Four Geneva Convention<sup>xxxvii</sup> particularly Article 146 to 147 of Fourth Geneva Convention with regard penal sanctions, grave breaches and responsibilities of the High Contracting Parties, on the on Protection of civilian persons in time of War. She again stressed for the full compliance of Israeli-Palestinian agreements reached within the context of the Middle East peace process and stressed for the need to end the closure of the Gaza Strip and for the full implementation of the Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing, to allow for the freedom of movement of the Palestinian civilian population within and into and out of the Gaza Strip, taking into account Israeli concerns. The High commissioner expressed her grave concern over serious violation of human rights in Gaza-Strips and expressed as follows,

“Expressing grave concern about the continuing systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, including that arising from the excessive use of force and military operations causing death and injury to Palestinian civilians, including children, women and non-violent, peaceful demonstrators; the use of collective punishment; the closure of areas; the confiscation of land; the establishment and expansion of settlements; the construction of a wall in the Occupied Palestinian Territory in departure from the Armistice Line of 1949; the destruction of property and infrastructure; and all other actions by it designed to change the legal status, geographical nature and demographic composition of the Occupied Palestinian Territory, including East Jerusalem,

Gravely concerned in particular about the critical humanitarian and security situation in the Gaza Strip, including that resulting from the prolonged closures and severe economic and movement restrictions that in effect amount to a blockade and the military operations between December 2008 and January 2009, which caused extensive loss of life and injury,

particularly among Palestinian civilians, including children and women, widespread destruction and damage to Palestinian homes, properties, vital infrastructure and public institutions, including hospitals, schools and United Nations facilities and the internal displacement of civilians, as well as about the firing of rockets into Israel” , to give the real concern of the High Commissioner, the author reproduced the words of her as it s in the report.<sup>xxxviii</sup>

Through the report the Commission demands for ceasing all practices that violates human rights of the Palestinian people, including killing, illegal detention, destruction of their properties and also demand for respect of human rights values. She again demanded for the proper implementation of 4th Geneva Convention. In the same session she presented the report on Israeli settlements in the Occupied Palestinian Territory, including East in Jerusalem, and in the occupied Syrian Golan in Report Number 19/17. In Report Number 19/18 she submitted the Follow up report of the UN Fact Finding Mission of Gaza Conflict.

#### **Annual Report on Sri Lanka:**

The Report on Sri Lanka about its serious violation of human rights during the internal armed conflict between the State and LTTE receives wider importance, as in the report she calculatingly recommend for the international enquiry on War crimes committed by the State agencies. The report was submitted during 22nd and 23rd Sessions of UNHRC dated 14th to 29th of Jan, 25th of Feb to 22nd of March 2013 and 27th May to 14th June of 2013 and 68th Sessions of General Assemble in 2013. In its Twenty Second Session, 1st Resolution was for the Promoting reconciliation and accountability in Sri Lanka.<sup>xxxix</sup> In this Report, the Human Rights committee have emphatically discussed and suggested the steps in promoting reconciliation process and accountability of the perpetrators of the crime of serious violation of human rights. In the report, the Council reaffirm the State to take effective measures to comply with the condition of International law particularly International humanitarian law and international refugee laws and combat terrorism.

The report also acknowledged the decision of the Sri Lankan Government to conduct election in the Northern Province and noted down the efforts of the government in rebuilding the infrastructure, resettling of internally displaced people, resumption of livelihood and full participation of local populations in civil society and administration. At the same time, the report also doesn't failed to indicated from the recommendation of the Commission, that government failed in addressing fully the national plan for reconciliation. It again rightly highlighted the findings of the Commission regarding call for

investigation for the widespread allegations of extra judicial killings, enforced disappearance; demilitarize the North Sri Lankan Province.

The Commission's report also speaks about the failure for not addressing the severe violations of international humanitarian and human rights law. The report also renowned that call by the High Commissioner for an independent and credible international investigation into suspected violations. It accepted the report of the UNHCHR on advice and technical assistance for the promotion of reconciliation and establishment of truth-seeking mechanism. The report also calls upon the government of Sri Lanka to conduct an independent investigation for the above said crime as applicable. The Commission also encourages the government in extending its support for fulfilling the procedures.

In the same session the Council also submitted a report on women empowerment and freedom of expression.<sup>xi</sup> She recognizes the contributions of women have achieved through representing various governments. She also noted down the importance of freedom expression through women journalists and how they are defending them from human rights violations and also expressed the concern for the risk faced by the women at work place. She highly concerned about that woman every part of the world being the subject of violence without any distinction of race, ethnic, religious or minorities groups. She affirms that the women empowerment could be achieved only through providing platform to enjoy the right to expression at all levels of the decision-making which is essential for the sustainable development.

Through this frame work, Mrs.Navaneetham Pillay still continuing her contributions for the

#### References:

1. Dr.Rita Kumari, Political Participation of Women in Gram Panchayat; Human Rights International Research Journal : ISSN 2320-6942 Volume 2 Issue 1 (2014), Pg 280-285
2. [1]. John Hagan and Wenone Reymond-Richardmond, "Darfur and the Crime of Genocide", Cambridge University Press, New York, 2009, pp.13-43.
3. [2]. Caroline Fournet, "The Crime of Destruction and the Law of Genocide-Their impact on Collective meaning ", Ashgate Publication, England, 2007, pp.23-62.
4. Yadam Ram Kumar, A Study on the Development of Women's Rights; Human Rights International Research Journal : ISSN 2320-6942 Volume 2 Issue 1 (2014), Pg 275-279
5. [3]. Gideon Boas and William A. Schabas, "International Criminal Law Development in the Case laws of ICTY" Edited book, International

betterment and empowerment of women. This paper considers being a tribute to her and for her contributions to the women gender for promoting their human rights values or taking efforts to safe guard their dignity. Let her contributions be uncovered, so that the indigenous and people in need may come to know about their rights.

#### Conclusion:

Judge Navaneetham Pillay calls upon every State Party to provide the following measures for the full participation of women n economic, social, cultural and political affairs as, (i)respect and promote freedom of opinion from the grass root level, (ii) ensure the exercise of freedom of expression by girls and women with discrimination in and outer surface the house, (iii) to facilitate the full and equal opportunity of participation in decision-making in all levels in the societies, (iv) to facilitate to access to communication technologies, (v) most importantly educate the girls and women to access the remedy for violations of their rights including violence (physical and verbal).<sup>xii</sup> With this goal and target of the endeavour work of Mrs. Navaneetham Pllay, we should shoulder the responsibility in enhancing the women empowerment. As expressed by her, nothing is an empowerment unless you empower women.

**"PROUD TO BE A WOMAN"**

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- Humanitarian Law Series, Martin Nijhoff Publications, Boston, 2003.
- [4]. Theoder Meron, "The Humanization of International Law", The Hague Academy of International Law, Martin Nijhoff Publications, Boston, 2006, pp.29-50.
- [5]. Andreas O' Shea, "Amnesty for Crime in International Law and Practice", Kluwer Law International Publications, New York, 2002, pp.115-117.
- Prof.S.Silambarasan*, A Study on Personal Accident Insurance; Human Rights International Research Journal : ISSN 2320-6942 Volume 1 Issue 2 (2013), Pg 370-376
- [6]. Fabian O. Raimondo, "General Principles of Law in the Dimensions of International Criminal Court and Tribunals", Martin Nijhoff Publications, Boston, 2008, pp.143-149.

10. [7]. Ilias Bantekas and Susan Nash, "International Criminal Law", 2<sup>nd</sup> edition, Cavendish Publications, London, 2003 pp.281-291.
11. [8] Mohamed C. Othman, "Accountability for International Humanitarian Law Violations: The case of Rwanda and East Timor", Spinger Publication, New York, 2006, pp 8-30.
12. [9]. Dale C.Tatum," Genocide at the Dawn of the 21<sup>st</sup> Century-Rwanda, Bosnia, Kosova,Darfur", Palgrave Macmillan Publications, New York, 2010, pp.38-41.
13. *Pragya Pandey*, Piracy In Global Waters and Maritime ; Human Rights International Research Journal : ISSN 2320-6942 Volume 1 Issue 2 (2013), Pg 393-398
14. [10]. Cherif Bassiouni.M, " Crimes Against Humanity – Historical Evolution and Contemporary Application", Cambridge University Press, New York, 2011, pp. 74-80.

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- <sup>i</sup>. Judge-High Court of South Africa, Judge/Presiding Officer International Criminal Tribunal for Rwanda (ICTR) and International Criminal Court (ICC) & Judge/Presiding Officer International Criminal Tribunal for Rwanda (ICTR) and International Criminal Court (ICC).
- <sup>ii</sup>. Large number of Tamils from India were taken by the British colonist to many different countries to work in plantation and mines, and most of these people were ethnically Tamil from the then Madras Presidency. Available at [www.sashistory.org](http://www.sashistory.org) viewed on 05-01-2015.
- <sup>iii</sup>. Apartheid was practiced from 194 to 1990 in South Africa based on discriminatory racial policies.
- <sup>iv</sup>. UNGA/Res/2202A(XX1) of 16 December 1966. Available at [www.un.org/law/avl](http://www.un.org/law/avl) accessed on 12-01-2015.
- <sup>v</sup>. Any policies and practises of racial discrimination and segregation by one racial group of persons over any other racial group of persons and systematically oppressing them, by denial of right to life and liberty, murder of member of groups or groups, causing serious bodily or mental harm, deliberately inflicting living condition calculated to caused its physical destruction and legislative measures. Available at [www.international.convention.of.suppression.and.punishment.of.crime.of.apartheid.org](http://www.international.convention.of.suppression.and.punishment.of.crime.of.apartheid.org) accessed on 27-12-2014.
- <sup>vi</sup>. Also see [www.newsbbc.co.uk](http://www.newsbbc.co.uk) and [www.ounhchr.org](http://www.ounhchr.org), accessed on 13-11-14.
- <sup>vii</sup>. Also see [www.newsbbc.co.uk](http://www.newsbbc.co.uk) and [www.ounhchr.org](http://www.ounhchr.org), viewed on 30-01-2015.
- <sup>viii</sup>. This word is made from the ancient Greek word *genos* (race, clan) and the Latin suffix *cide* (killing). Thus, genocide in its formation would correspond to, homicide. Available at [www.preventgenocide.org](http://www.preventgenocide.org) accessed on 02-02-15.
- <sup>ix</sup>. Article II
- In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such :
- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.
- Article III
- The following acts shall be punishable:
- (a) Genocide;
- (b) Conspiracy to commit genocide ;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide ;
- (e) Complicity in genocide.
- <sup>x</sup>. Case:ICTR-96-4-T, dated 2 September 1998. Available at [www.ictr.org/cases](http://www.ictr.org/cases). Jeanpaul Akayesu, was the bougmester of Taba Commune in Rwanda, where he directly participated in committing crime of genocide, war crime and crime against humanity and indirectly instigated, conspired and ordered his sub-ordinate to commit the crime between Jan 1 to Dec 31st of 1994. He was charged for all the three crimes coming under the jurisdiction of ICTR.
- <sup>xi</sup>. The Prosecutor v. Jeanpaul Akayesu, ICTR-96-4-T, Para 731-734, page 177.
- <sup>xii</sup>. Case:ICTR-99-52-T dated 3rd December 2003, Available at [www.ictr.org/cases](http://www.ictr.org/cases). 1. Ferdinand Nahimana was born on 15 June 1950. in Gatondc Commune. Rubengeri prefecture. Rwanda. Nahimana and others founded a comite d 'initiative to set up the company known as Radio Television Libre des Miille Collines.. He was a member of known as Mouvement Revotutionnaire National pourtc Developpemeut .2. Jean-Bosco Braryagwiza was born in 1950 in

Mutura commune, Giscnyi prefecture. Rwanda he was a founding member of the Coalition Defensed de la Republique (CDR) party, which was formed in 1992, He was a member of the comite d'initiative which organized the founding of the company RTLM 3. Hassan Ngeze was born on 25 December 1957 in Rubavu commune, Gisenyi prefecture. Rwanda. From 1978, he worked as a journalist, and in 1990, he founded the newspaper Kangura and held the post of Editor-in-Chief. Prior to this, he was the distributor of the Kanguka newspaper in Gisenyi. He was a founding member of the Coalition pour la Defense de la Republique (CDR) party).

<sup>xiii</sup> . Universal Declaration of Human Rights, 1948.

<sup>xiv</sup> . International Convention on Civil and Political Rights, 1966.

<sup>xv</sup> . European Convention on Human Rights, 1948

<sup>xvi</sup> . International Military Tribunal, popularly known as “Nuremberg Tribunal” established by the victorious powers of World War II to prosecute and punish war criminals, It was established according to the Moscow Declaration on October 1943 to prosecute persons charged for the offences like Crime Against Peace, War Crime and Crime Against Humanity. The Tribunal was governed by Nuremberg Charter. Available at [www.ushmm.org](http://www.ushmm.org) and <http://avalon.law.yale.edu> accessed on 09-01-2015.

<sup>xvii</sup> . The prosecutor v. Ferdinand Nahimana and others, Paras 958, Page 320.

<sup>xviii</sup> . RPF soldier; sometimes used to refer to 'Tutsi'.

<sup>xix</sup> . Cockroach: group of refugees set up in 1959 to overthrow the new regime; sympathizer of RPF; sometimes used to refer to Tutsi.

<sup>xx</sup> . *ibid* at Para 961, page-320

<sup>xxi</sup> . Julius Streicher was born in 1885. He became a school teacher in Nurnberg and formed a party of his own, which he called the German Socialist Party. The chief policy of that party was anti-semitism. In 1922 he handed over his party to Hitler. The propaganda which Streicher carried out throughout those years was chiefly done through the medium of his newspapers. He was the editor and publisher of "Der Stuermer" from 1922 until 1933, and thereafter the publisher and owner of the paper. [www.jewishvirtuallibrary.org](http://www.jewishvirtuallibrary.org) and Para 981 –Page 326 of ICTR-99-52-T, The Prosecutor v. Ferdinand Nahimana and Others, Available at [www.ictr.org/cases](http://www.ictr.org/cases) viewed on 04-02-2015.

<sup>xxii</sup> . Para 984-page 326 of the case.

<sup>xxiii</sup> . Art 20: Any propaganda for war shall be prohibited by law and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. [www.internationalconventiononcivilandpoliticalrights.org](http://www.internationalconventiononcivilandpoliticalrights.org) accessed on 08-12-2014.

<sup>xxiv</sup> . Ferdinand Nahimana Case-Para 1008-Page 336.

<sup>xxv</sup> . *ibid* at para 1029.

<sup>xxvi</sup> . In Para 1015 of the judgment the Chamber discussed as “In Akayesu the Tribunal considered in its legal findings on the charge of direct and public incitement to genocide that "there was a causal relationship between the Defendant's speech to [the] crowd and the ensuing widespread massacres of Tutsis in the community". The Chamber notes that this causal relationship is not requisite to a finding of incitement. It is the potential of the communication to cause genocide that makes it incitement. As set forth in the Legal Findings on Genocide, when this potential is realized, a crime of genocide as well as incitement to genocide has occurred”. ICTR-99-52-T, [www.ictr.org/cases](http://www.ictr.org/cases), accessed on 13-02-2015.

<sup>xxvii</sup> . 1. The Prosecutor v. Jean Kambanda, ICTR-97-73-S, dated 4th September, 1998,

2. The Prosecutor v. Alfred Musema, ICTR-96- 13-A, dated 27th January 2000,

3. The Prosecutor v. Elizaphan and Ntakirutimana, ICTR-96-10 & 17-T, dated 21st of February 2003,

4. The Prosecutor v. Elizer Niyitegeka ICTR-96-14-T dated 16th May 2003. Available at [www.ictr.org](http://www.ictr.org)

<sup>xxviii</sup> . International Criminal Court was established by the UN General Assembly in resolution number UNGA/Res/52/160 (1997) and UNGA/Res/49/53 on its 49th Session meeting International Law commission decided to establish an International Criminal Court (ICC). The UNGA drafted Roman statute as a governing body of ICC and determines its jurisdiction to try the individuals committing serious violation in their or neighbouring territories of international crimes such as War crimes, Genocide and CAH.

<sup>xxix</sup> . Four Geneva Convention, 12 August 19489 and Additional Protocols. [www.genevaconvention.org](http://www.genevaconvention.org) accessed on 12-12-2014.

<sup>xxx</sup> . The convention was drafted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. Available at [www.un.org/treaties/iccpr](http://www.un.org/treaties/iccpr) viewed on 25-11-2014.

<sup>xxxi</sup> . Article 28 reads as follows, “There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided. 2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience. 3. The members of the Committee shall be elected and shall serve in their personal capacity.

<sup>xxxii</sup> . Also see [www.ohchr.org](http://www.ohchr.org) accessed on 16-11-2014.

<sup>xxxiii</sup> . Article 1 of both the Covenants.

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- <sup>xxxiv</sup> . Refer [www.ohchr.org/annualreports](http://www.ohchr.org/annualreports), accessed on 04-02-15.
- <sup>xxxv</sup> . Report by UNHCHR on Palestine people Right to self determination in page 46 of the 2012 Annual report.
- <sup>xxxvi</sup> . Report 19/16 of 2012.
- <sup>xxxvii</sup> .
1. Geneva convention protects wounded and sick soldiers on land during war,
  2. Protects wounded and sick shipwrecked soldiers at sea during war,
  3. Applies to Prisoners of war and
  4. Affords protection to Civilians including occupied territory. Available at <http://www.icrc.org>
- <sup>xxxviii</sup> . UNHCHR Annual Report 19/16 page n:47. Refer [www.ohchr.org](http://www.ohchr.org) viewed on 03-03-2015.
- <sup>xxxix</sup> . Twenty Second Session-Resolution Number 22/1-page 12. Refer Annual Report of UNHCHR. Refer Annual Report of [www.ohchr.org](http://www.ohchr.org) viewed on 13-12-14.
- <sup>xl</sup> . Resolution number 23/2 of 2013 Annual report.
- <sup>xli</sup> . This resolution was adopted in 38th meeting on 13th June 2013 of the council, which went without a vote.