

**APPLICANT: JUDGE DHAYANIGHIE PILLAY**

**COURT FOR WHICH APPLICANT APPLIES: THE  
CONSTITUTIONAL COURT**

**1. The candidate's appropriate qualifications**

- 1.1. The candidate is 62 years old and is a South African citizen. She is single and does not have any children. The candidate holds the following qualifications:
  - 1.1.1. B. Proc. (UNISA) 19 May 1982
  - 1.1.2. Master in Laws – LLM (Labour) (UND) March 1993)
  - 1.1.3. Certificate in Constitutional Law (UND) August – October 1994
  - 1.1.4. Bachelor of Laws – LLB (UNISA) October 2002
  - 1.1.5. Certificate for Participation in Legal Writing Programme for Judges issued by Seattle University School of Law – 21 – 22 April 2007
  - 1.1.6. Certificate for Participation in Legal Writing Programme for Trainers issued by the Seattle University School of Law – end of June 2008
- 1.2. Admitted as an attorney on 12 December 1982
- 1.3. Admitted to appear in the High Court (1996)

- 1.4. Admitted to Independent Mediation Services of South Africa (IMSSA) panels as Arbitrator – July 1992; Mediator (July 1994, Trainer (July 1995); Labour Relations Act, 1996 training (1995), Dispute Resolution Systems Design (August 1996)
- 1.5. Arbitrator on panel of Arbitration Foundation of South Africa (AFSA) (October 1997 – October 1999)
- 1.6. Academic appointments:
  - 1.6.1. Seattle University School of Law: Adjunct Professor: October 2004
  - 1.6.2. New York Law School: Visiting Academic – a week in November 2004
  - 1.6.3. Seattle University School of Law: Adjunct Professor: January 2006
  - 1.6.4. Faculty of Law, University of Pretoria: Extra-ordinary Professor renewed for third three-year term: January 2010 – 2012; January 2013 – 2015 and January 2016 – 2019
  - 1.6.5. Open University, Milton Keynes, United Kingdom: Visiting Professor of Law for five years: 2010 – 2015
  - 1.6.6. Open University, Milton Keynes, United Kingdom: Consultancy to prepare course material on International Labour Law: February 2012
  - 1.6.7. School of Law, University of KwaZulu-Natal: Honourary Research Fellow: August 2013 – July 2016

- 1.6.8. Penbrook College, Oxford, United Kingdom: Visiting Fellow Research Proposal Topic: Choosing to eliminate discrimination: January – March 2014
- 1.6.9. Oxford Human Rights Hub: Visiting Fellow – January – March 2014
- 1.6.10. Human rights for Future Generations, Oxford Martin School: Visiting Fellow: January – March 2014
- 1.6.11. Harvard Law School: Visiting Scholar with the Graduate Programme to conduct research on project titled “Can Litigation Solve Problems and Build Organization through Transformative Constitutionalism?” – 1 September 2018 to 31 January 2019
- 1.7. After a lengthy career as an attorney Judge Pillay was appointed to the Labour Court where she was a Judge from 2000 to June 2010. She acted in the High Court on several occasions and was appointed to the High Court, KwaZulu-Natal Division in July 2010 where she presently presides. She acted as Judge in the Supreme Court of Appeal from January to June 2018.
- 1.8. The candidate is eminently qualified to take up a position of Judge in the Constitutional Court.

## **2. Whether the candidate is a fit and proper person**

- 2.1. Quite apart from her academic achievements and her illustrious career on the Bench where she penned more than 1 000 judgments, the candidate has actively participated in various community organisations and NGO’s. In serving her community she has made a

huge contribution to the law and continues to do so. Some of the bodies on which she has served are the Chatsworth Housing Action Committee, Prisoners' Education Campaign; Support Housing Action Committee, Democratic Lawyers Association, Release Mandela Committee (Durban), Detainees' Parent Support Committee, Phoenix Working Committee, Reservoir Hills Ratepayers Association, Nadel, Durban Constitutional Law Discussion Group, Academics Promoting the Pedagogy of Effective Advocacy in Law, (L) Appeal and Clarity (A UK based NGO with members internationally committed to clear writing).

2.2. We have no hesitation in endorsing that the candidate is a fit and proper person.

**3. Whether the candidate's appointment will help to reflect the racial and gender composition of South Africa**

3.1. The candidate is a black female of Indian origin.

3.2. The appointment of the candidate to the Constitutional Court would advance transformation from a race perspective and a gender perspective. If appointed, the candidate would be the first black female of Indian origin to be appointed to the Constitutional Court.

**4. The candidate's knowledge of the law, including constitutional law**

4.1. The candidate has produced a number of publications which appear under paragraph 12 of the JSC's questionnaire. Many of her publications have been cited with approval by eminent legal writers and some have been cited with approval in court cases.

4.2. The candidate has penned innumerable judgments, many of which have been reported in the Law Reports and on SAFLII. Her judgments are well articulated and are supported with sound reasons based on the law and on logic. Many of her judgments are infused with the application of constitutional principles. Many of her judgments have been confirmed on appeal. A few of her judgments have been overturned on appeal.

4.3. Her contribution to the law and her pursuit of justice in South Africa is documented under paragraph 18 of the JSC's questionnaire which confirms her knowledge of the law including constitutional law. The information provided also confirms that she has made a major contribution to law. Her judgments are on diversified subjects which cover the major facets of the law which equips her to deal with any matter which may arise before her in the Constitutional Court.

## **5. The candidate's commitment to the values of the Constitution**

5.1. The candidate has had a human rights ethic from the time that she was a young lawyer. This is substantiated by her involvement in many bodies and associations.

5.2. The candidate also gives recognition to the values of the Constitution in her publications and her judgments.

## **6. Whether any judgments have been overturned on appeal**

6.1. Under paragraph 16.4 of the JSC's questionnaire the candidate lists those judgments delivered by her which were overturned on appeal. Having regard to the huge number of judgments which were delivered by the candidate, both in the Labour Court and the High

Court, the successful appeals under those judgments comprise a minor fraction of the judgments delivered by her.

**7. The extent and breadth of the candidate's professional experience**

7.1. This has been dealt with above.

7.2. The candidate has vast professional experience on virtually all fields of the law.

**8. The candidate's linguistic and communication skills**

8.1. The candidate has excellent English linguistic and communication skills. This is borne out by her publications and her judgments.

**9. The candidate's ability to produce judgments promptly**

9.1. Two hundred and forty-three of the candidate's judgments have been reported on SAFLII and many of her judgments were published in Law Reports being the Butterworths Constitutional Law Reports, South African Law Reports, South African Criminal Law Reports, all South African Law Reports and the Industrial Law Journal. The latter has 113 publications. It is a well-known fact that the candidate produces her judgments promptly.

**10. The candidate's fairness and impartiality**

10.1. There is no reason to believe that the candidate is not fair and impartial to litigating parties that appear before her and to their legal representatives. The candidate's independence and open-mindedness are displayed in her judgments.

**11. The candidate's independent mindedness**

11.1. No comment is offered.

**12. The candidate's ability to conduct court proceedings**

12.1. The candidate is more than qualified to conduct court proceedings and does in fact conduct court proceedings in accordance with the procedural rules and with the requisite decorum.

**13. The candidate's administrative ability**

13.1. The candidate has excellent administrative skills as evident from the information furnished in her application.

**14. The candidate's reputation for integrity and ethical behaviour**

14.1. No adverse comments have been received.

14.2. The candidate conducts herself with the required integrity and ethos of a Judge.

14.3. The candidate has not been convicted of any offence involving dishonesty, or any other disreputable, dishonourable conduct.

**15. The candidate's judicial temperament**

15.1. There is no reason to believe that the candidate does not have the required judicial temperament. She is firm and assertive in Court.

**16. The candidate's commitment to human rights and experience with regard to the values and needs of the community**

16.1. The information furnished in the candidate's application clearly speaks to the candidate's commitment to human rights and to the values and needs of her community.

16.2. The candidate's involvement in many associations, bodies and NGO's indicate that the candidate promotes human rights and contributes to the needs of her community.

**17. The candidate's potential**

17.1. The candidate has already made her mark in the legal field both as a legal writer and as a Judge. There is every reason to believe that the candidate will further develop her legal skills if appointed to the Constitutional Court.

**18. The message that the candidate's appointment would send to the community at large**

18.1. The candidate is a black female of Indian origin and her appointment would be in line with the need for racial and gender transformation of the courts. She would be the first black female of Indian origin to be appointed to the Constitutional Court.

18.2. We fully support her appointment to the Constitutional Court.