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Decoding Memories:  
South African Artists at the  
Constitutional Court of South Africa

A thesis submitted in partial satisfaction  
of the requirements for the degree of Master of Arts  
in African Studies

by

Mary Ann Braubach

2017

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## ABSTRACT OF THESIS

Decoding Memories:

South African Artists at the Constitutional Court of South Africa

by

Mary Ann Braubach

Master of Arts in African Studies

University of California, Los Angeles, 2017

Professor William H. Worger, Chair

This paper examines the decoding of the memory of apartheid and post apartheid years of South Africa's recent history. And it contextualizes how the struggle influenced the visual arts. Also analyzed are the history of the Constitution and Constitutional Court of South Africa. It interrogates the formation of the Constitutional Court art collection. by Justices Albie Sachs and Yvonne Mokgoro for the yet-to-be-constructed Constitutional Court building in Johannesburg. Many donated artworks are responsive both to the anti-apartheid struggles and also to the new democracy. The essay also examines the underlying politic that now hangs in the Constitutional Court building. Select works, that function as signifiers of the new Constitution, are examined. I draw on interviews with South African artists, Court Justices and curators to investigate the role of memory, the archeology of the site, and the significance of the collection to the artists, the Justices, and citizens of South Africans twenty years post apartheid.



The thesis of Mary Ann Braubach is approved.

Andrew Apter

Allen Fraleigh Roberts

William H. Worger, Committee Chair

University of California, Los Angeles

2017

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## ACRONYMS

ANC	African Nation Congress
AWB	Afrikaner Weerstandsbeweging
AWC	Art Works Committee
CAP	Community Arts Project
CODESA	Committee for a Democratic South Africa
CA	Constitutional Assembly
CC	Constitutional Court
CCAC	Constitutional Court Art Collection
CCT	Constitutional Court Trust
IFP	Inkatha Freedom Party
JAG	Johannesburg Art Gallery
JCC	Johannesburg City Council
JSC	Judicial Services Commission
NMC	National Museum Council
NP	National Party
MK	Umkonto we Siwze
MPNF	Multi-Party Negotiating Forum
PAC	Pan African Congress
SACP	South African Communist Party
SADF	South African Defense Force
SAM	South African Museum
SANG	South African National Gallery
SANNC	South African Native Nation Congress
TRC	Truth and Reconciliation Committee

## ACKNOWLEDGMENTS

The inspiration for this thesis is owed to Justice Albie Sachs, former justice of the Constitutional Court of South Africa, appointed to the first Constitutional Court in 1994 by President Mandela. Justice Sachs and Justice Yvonne Mokgoro co – curated the South Africa Constitutional Court Art Collection.

In 2009 Justice Sachs spoke in Los Angeles, a guest of Artists for New South Africa (ANSA). Standing at the lectern Justice Sachs informed the Hollywood crowd about South African’s new democracy, the Constitutional Court and its art collection and signed copies of *Art and Justice*, a book on the South African Constitutional Court art collection. In the spring of 2011, Mark Rutstein, a board member of ANSA, hosted a reception for Justice Sachs. I asked Justice Sachs if there a US exhibition of works from the collection would be possible. His reply, “That would be great, we could do that as a fundraiser for ANSA.” And it because of Justice Sachs’s enthusiastic reply that I embarked on this research project.

Taking a break from filmmaking I enrolled in UCLA art history classes with the goal of applying for a PhD. in Contemporary Spanish art. Needing one credit in nonwestern art I eyed Professor Steven Nelson’s class in African Architecture and Urbanism, of which my knowledge was limited to the pyramids. Two years later I enrolled in African Studies program. Never did I imagine conducting research in one of South Africa’s architectural gems, the South African Constitutional Court.

I am indebted to the academic support of the Committee members for my thesis, Professor William Woreger, Professor Allen Roberts, and Professor Andrew Apter. I am grateful to the African Studies Department. Professor Worger's seminars on South African history have been invaluable. The book, *South Africa, the Rise and fall or Apartheid*, he co-authored with his wife, Nancy L. Clarke, is never far from my reach. Professors Allen and Polly Roberts encouraged and guided me; they introduced me to curators in Durban, which involved an extra trip to the Eastern Cape. Professor Apter's seminar on the Black Atlantic enriched my explorations of the Slave Lodge in Cape Town. Professor Nelson's seminars on Contemporary African art informed my research in South Africa. Without the guidance of the librarians, Robert Gore and Ruby Bell-Gam the bibliography would be nonexistent.

It is for the generosity and support of the Justices of the South African Constitutional Court that I am most grateful. On arrival in JoBurg I was given an office at the Constitutional Court adjacent to Justice Edwin Cameron's chamber. The curator of the art collection, Stacey Vorster offered her wisdom. South African artists who donated work to the Collection, gallery owners and curators who generously donated works, publishers, former Justices, Collection trustees all generously offered their knowledge about the formation of the collection and their country's new democracy. The South African term Ubuntu, human kindness, applies to every person I have met and worked with on this project.

## Introduction

This paper examines the formation of the South African Constitutional Court Art Collection, which is on permanent exhibition at the South African Constitutional Court building in downtown Johannesburg, South Africa. Court Justice Albie Sachs's respect for the role of art in social justice movements inspired the formation of the art collection. He describes the collection as “not intended to represent a moment even though it came from a certain historical moment, ... represent[ing] art works that express optimism, hope against a background of pain” (Sachs 2016). I examine how the collection embeds memories of National Party apartheid rule from 1948 to 1994, together with memories and hopes for democratic rule protected by the Constitution. I also examine how the Court building and the collection housed within it offer South Africans opportunities to reflect on their shared histories and imagine their futures.

This paper relies heavily on the legal, historical, and critical writings of Justice Albie Sachs, a chief architect of the South African Constitution. In his 1987 essay “Preparing Ourselves for Freedom, Culture and ANC Constitutional Guidelines”, Sachs challenged artists to separate art and politics. He asks: “Are we still trapped in the multiple apartheid ghettos of the apartheid imagination? Are we ready for freedom, or do we prefer to be angry victims?” (Sachs 1987: 1) Justice Sachs co-curated the art collection with former Constitutional Court Justice Yvonne Mokgoro. The paper also relies on the texts and oral histories of artists/ visual activists Sue Williamson and Kim Berman, who are committed to illustrating stories of lesser-known anti-apartheid activists. The writings of South African art historians, heritage and museologists such as

Ciraj Rassool founder of the District Six Museum in Cape Town. And the influences of numerous South African curators, artists, art historians, playwrights, and novelists such as Nadine Gordimer are referenced in works in the Court's collection.

The paper is also informed by research I conducted in South Africa and Europe, interviewing artists, curators, Justices, and trustees of the collection. I would ask them: "What does it mean to you as a South African to have your work exhibited in or to be involved with the Constitutional Court Collection, which was formed at the most historic moment in South Africa's history?" These recorded interviews offer a subjective look at the collection. They reveal South Africans who find their connection to the Constitutional Court and Art Collection deeply gratifying, representing as it does their country's first democracy.

The years surrounding the 1990 release of Nelson Mandela from prison saw a great deal of violence. In the years before his release, the NP government executed a brutal crackdown on anti-apartheid resisters, with house arrest and mass detentions. After Mandela's release, the negotiations for a democratic transition began in late 1990. The six year drafting process for the first Constitution commenced.

These turbulent years are the backdrop for the story that this paper tells. The first democratic elections were in 1994. And in 1994 President Mandela established the Constitutional Court of the Republic of South Africa and appointed a Constitutional Court of eleven Justices. The Constitution was enacted in 1996.

The Court was constructed on the Old Fort Prison. Elements of the former prison are incorporated into the walls of the Court; it is literally an archeological site of memory. The complex that houses the Court, Constitution Hill, is a regenerated area in downtown

Johannesburg, surrounded by diverse neighborhoods. Ten years after Mandela's historic election, President Mbeki opened the South African Constitutional Court building on Human Rights Day, 2004. Justice Albie Sachs described the significance of the Court and its building:

A court is three things – it's an institution, created by the constitution, it's a building, and it's eleven judges and we somehow had to connect up all three and eventually we got, what I think is, a very beautiful building, on that memorable site, interacted with that site. And some brilliant young, progressive, architect with democracy in their souls, in touch with the world and eager to produce a building with a resonance and significance and, uh, a friendliness that was very much in touch with all the different communities and people in our country. (Sachs 2016)

When describing the building of the art collection, the South African word Ubuntu, meaning “human kindness”, comes to mind. Artists, galleries, curators, citizens, judges donated almost all of the art works. Justice Sachs and Justice Mokgoro were given the task of building the collection. South Africans who could afford to donate works did. The Court had a strict policy of “not accepting support from private firms or individuals who one day could be litigants before the court” (Sachs 2008: 22); art works had to be either gifted or secured with funds from international foundations. The Artworks Committee, Constitutional Court Justices, and Trustees of the Court Collection oversaw this project.

The Court art collection is housed in a building constructed on the site of a notorious jail, where countless injustices against blacks, coloureds, Indians and opponents of the brutal regime were perpetuated. It is a way of acknowledging the painful past, so that South Africans can move forward with their new democracy. The architects and Justices succeeded in creating a dialogue between past and present.



The paper consists of four sections that address the history of the first democratic Constitution and formation of the Constitutional Court; the history of the new Court building on Constitution Hill, the formation of the Court Art collection, and a selected number of art works. The first section briefly summarizes South Africa's transition from apartheid state to constitutional democracy. The second section examines the formation of the Court Art Collection, utilizing oral histories with artists, curators, Justices, and trustees involved in establishing and preserving the collection. These sections show how the art works contextualize South Africa's cultural, historical, and legal history for visitors to the court and the underlying politics that now hang in the Court building.

The third section outlines the construction of the South African Constitutional Court, and how it contextualizes South African history, particularly in the salvaging and repurposing of elements from the former jail into the Court structure; also examined are works linked to the apartheid penal system, David Goldblatt, Willem, Boshoff and the flag of the new republic by the African Arts Centre in Durban that hangs against a wall constructed of repurposed bricks from the Awaiting Trial Block at the Old Fort. In the final section, I explore the significance of the works of Marlene Dumas and Jo Ractliffe in relation to the Constitution.

Explored is the the lack of representation by African and coloured artists, reflective of the lack of established South African black artists in 1996 financially able to donate works to the court.

This thesis is a culmination of a master's degree at UCLA's African Studies Department, and reflects the intellectual curiosities of graduate seminars in contemporary African arts, South African history, and Museum Studies.

## Chapter 1a: History of South African Constitutions and the South African Constitutional Court

On December 10, 1996, in a packed football stadium in the township of Sharpeville, in Vereeniging,<sup>1</sup> South Africa, people reflecting the nation's diverse population witnessed President Nelson Mandela sign into law the first democratic constitution of the Republic of South Africa. The moment was especially significant because it happened on Human Rights Day<sup>2</sup> in Sharpeville, the site of one of the bloodiest massacres of the National Party's apartheid government.<sup>3</sup> South Africa's three-hundred-and-forty-four-year history of oppressive Dutch, British, and apartheid governments had ended. The audience, all now equal in the eyes of the Constitution, listened as President Mandela stated:

As we close a chapter of exclusion and a chapter of heroic struggle, we reaffirm our determination to build a society of which each of us can be proud as South Africans, as Africans, as citizens of the world. (qtd. in Segal and Cort 2011: 219)

South Africa's first constitution, approved by the British House of Commons in 1910, established the Union of South Africa, a whites-only nation, made up of the British and the Boers. This constitution ushered in nearly a century of segregationist laws that disenfranchised the majority-black population. This constitution was replaced by the

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<sup>1</sup> The Peace of Vereeniging, 1902, signed in Pretoria set terms for end of South African War between British and Boers, established self-governing white governments, under British sovereignty, disenfranchised blacks, set course for a white South Africa. See Thompson (2001).

<sup>2</sup> Human Rights Day commemorates the day the United Nations General Assembly adopted the Universal Declaration of Human Rights on December 10, 1948. For further reading see Office of High Commissioner of Human Rights, United Nations (n.d.).

<sup>3</sup> In the Sharpeville Massacre, South African Police killed at least 69 people and wounded 186 protesting the pass laws; most were shot in the back. For further reading, see Clark and Worger (2011).

Republican Constitution of 1961, which severed the National Party apartheid government's ties to the British Commonwealth. But that constitution was fundamentally the 1910 Constitution, only substituting "state" for "King," "Queen," or "Crown" (Segal and Cort, 2011: 36). In 1983, facing international pressure and heightened domestic violence, the apartheid government adopted South Africa's third Constitution, the Tricameral Constitution. This constitution gave limited power to Indians and coloureds and dismissed the majority-black population to permanent "alien" status, which led to increased violence and further destabilization.

The battle for a democratic Constitution began decades before President Mandela signed the 1996 Constitution. The South African Native Nation Congress (SANNC)<sup>4</sup> was founded in 1912 to protest racial inequality and the exclusion of blacks from political power. SANNC was later reorganized as the African Nation Congress (ANC), in 1923. In 1914, Sol Plaatje unsuccessfully petitioned the British King for a consultation with black Africans. The years of 1910-1994 gave rise to petitions, protests, marches, massacres, bombings, detainments, and boycotts. The Defiance Campaign of 1952, the Treason Trial of 1957, the Sharpeville Pass Protest of 1960, the Rivonia Trial of 1964, and the Soweto Uprising of 1976 all brought South Africans one step closer to a democratic constitution.

1980-90 was a decade of mass protests and violent eruptions. The National Party (NP) apartheid government declared states of emergency in 1985 and 1986, and rescinded them in 1990. But on February 10, 1990, President F.W. De Klerk unbanned the ANC and allowed their leaders to return from exile. On February 12, 1990, De Klerk freed Nelson Mandela. This happened in part because of secret negotiations between the still banned ANC and the NP —one negotiation initiated by prisoner Mandela between

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<sup>4</sup> For further discussion, see Clark and Worger (2011).

his jailers the and Minister of Justice, the other negotiation between exiled ANC head, Thabo Mbeki, his team, and the NP government through intermediaries.

In May of 1990, the Groote Schuur agreement was signed in Cape Town, and the ANC and the NP apartheid government committed to peaceful negotiations.<sup>5</sup> The two parties also agreed to the release of more political prisoners and to the ANC ending its armed struggle. However, in June 1991, the ANC halted all meetings with the NP, because they discovered that the South African Defense Force's (SADF) death squads had been targeting anti-apartheid activists, and also discovered that the Inkatha Freedom Party (IFP)<sup>6</sup> was covertly funded by the NP, as it instigated violence from Natal to Johannesburg. Seven months later, the ANC and F.W. de Klerk's government agreed on a two-stage transition to a new government. In December 1991, the Committee for a Democratic South Africa (CODESA)<sup>7</sup> adopted a declaration of intent, and the NP agreed on an elected constituent assembly, which also acted as an interim government (Constitutional Court n.d.). However, the IFP and the independent Bophuthatswana government refused to sign. The IFP demanded an equal negotiating role with the NP and the ANC and refused to join the negotiations (Ramaphosa 2001: 73). The Pan African Congress (PAC) accused the ANC of selling out and left the CODESA negotiating table.<sup>8</sup> Cyril Ramaphosa, the former leader of the National Trade Union of Mineworkers, who

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<sup>5</sup> For Further reading see Segal and Court (2011).

<sup>6</sup> Inkatha Freedom Party (IFP) was "a Zulu cultural organization that transformed into a political party under the leadership of Buthelezi in the late 1980s. IFP was responsible for brutal attacks against the ANC (Clark and Worger 2011: xxiii, 107-108).

<sup>7</sup> For further reading see Segal and Court (2011).

<sup>8</sup> For further reading see Clark and Worger (2011).

was appointed secretary general of ANC in 1992, stated, “entering negotiations does not necessarily mean the absence of conflict, violence or hardship” (Ramaphosa 2001: 73).

The National Party maintained power for forty-two years by oppression, not negotiation. A minority ANC faction wanted a military victory, a decisive end to apartheid, but the ANC majority favored negotiations. The end of the Cold War and the effectiveness of international sanctions on South Africa further pressured the NP government into peaceful negotiations.

In February 1992, the NP accepted the ANC’s demand for an interim government that was non-racial, non-sexist, and democratic. Albie Sachs, ANC Committee member and future Justice of the Constitutional Court, noted the ANC committees consisted of men and women, while the NP consisted of only men. Sachs joked that the “first nonparty alliance” was when the ANC and NP smokers gathered on one side of the conference room and the ANC and NP anti-smokers on the opposite side (Sachs 2000: 215). Conditions were set for an election. A “transition to democracy act” was drafted, which established two stages of government; the first resulted in a Transitional Executive Council (TEC). This second act would commence post-election and was composed of an interim government and constituent assembly that functioned alongside Parliament (Constitutional Court, n.d.). CODESA collapsed after their May meeting failed to produce any agreement over terms for the adoption of a final constitution.

The ANC broke off all negotiations after the June 17, 1992 massacre in Boipatong. Forty-five people were killed, primarily women and children, by Zulu steel workers and hostel dwellers.<sup>9</sup> The ANC accused the NP of collaborating with the IFP

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<sup>9</sup> “The apartheid government provided single-sex housing for African migrant workers. Under influx control regulations, Africans were not allowed to remain in urban areas without official permission and

(Thompson, 2001: 254). De Klerk denied involvement in this tragedy. During this time, he became increasingly opposed to majority rule, requesting international assistance for resisting it. In July 1992, the ANC, the SACP, and the Congress of South African Trade Unions began a mass-action Campaign for Peace and Democracy, utilizing their well-hewn organization of mass demonstrations (Constitutional Court n.d.). Mobilizing the black majority, not just party leaders, proved crucial to the peace process.<sup>10</sup> The ANC appointed their secretary general, Cyril Ramaphosa, to lead negotiations; his NP counterpart was Roelf Meyer. A democratic constitution was not every South African's dream (Ramaphosa 2001: 71). The United Nations Committee arrived in August 1992 to monitor negotiations.

In early September of the same year, South African Defense Forces (SADF) fired on a group of ANC mass-action campaign protesters, who were demonstrating in Ciskei against homeland governments, killing many (Constitutional Court n.d.). The murder of innocent protesters brought the ANC and the NP back to the bargaining table. In the same month, the NP and the ANC agreed to elect a Constitutional Assembly – an interim government that would function as a parliament. Its aim was to facilitate the release of political prisoners, to increase security at hostels, to prohibit dangerous weapons, and to ensure rights for all groups to peacefully protest (Ramaphosa 2001: 77). In April 1993, the Multi-Party Negotiating Forum (MPNF) – comprised of twenty-six political parties – held a conference, successfully setting the terms for negotiating a new transition to power. The assassination of Chris Hani, the leader of the South African Communist Party

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were restricted to particular spaces, of which the hostel is the most infamous. Migrant's families were not allowed to accompany them" (Judin and Vladislavic 1999: 23).

<sup>10</sup> See Andrews and Elmann (2001).

(SACP), by a right-wing anti-communist Polish immigrant in April 1993, intensified ANC's demands to set an election date and pass a transitional constitution. The election was set for April 27, 1994.

As the ANC and the NP reached an agreement in October on a government of national unity, attempts to derail the transition escalated (Constitutional Court n.d.). Unlikely alliances formed; Afrikaner right-wingers partnered with Bantustan leaders and the IFP. "The IFP threatened to boycott the election if greater regional powers were not drafted into the Constitutional Principles" (Segal and Cort, 2011: 124). Riots tore through the township of East Rand, and a civil war between the ANC and the IFP appeared imminent.<sup>11</sup> But the ANC, the NP, and the Constitutional Assembly continued to redraft the third constitution. Mandela and de Klerk intervened and prodded both sides to reach a "six-pack" agreement: an agreement on six issues, one involving greater autonomy for the Constitutional Court (Segal and Cort, 2011: 118). The Multi-Party Negotiating Process (MPNP) ratified the interim constitution on November 18, 1993. ANC Chair Cyril Ramaphosa said: "few experiences could easily match sharing my birthday with the adoption of South Africa's interim constitution on November 17, 1993" (qtd. in Ebrahim 1998: xvii). Local news broadcast an ANC Committee member, Albie Sachs, dancing with the NP members (Sachs 2000: xiv) – all the more striking because it been only five years since the NP ordered the South African Defense Forces to assassinate Sachs while he was in forced exile in Mozambique (Sachs 2000: xiv). Apparently, it was possible for former enemies to drink and dance together.

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<sup>11</sup> For further reading see Clark and Worger (2011).

The third chapter of the interim constitution protected fundamental rights, for the first time in history. They are now included in the Bill of Rights, which is chapter two of the final Constitution (Constitutional Court n.d.). On November 22, 1993, Parliament passed the Interim Constitution of South Africa, which was the country's first officially democratic Constitution. This constitution "defined thirty-four Constitutional Principles that determined the parameters from which the final Constitution would be drafted" (Ebrahim 2001: 88). South Africa's Constitution was now the highest law to be enforced by the judicial system (Segal and Cort, 2011: 119). The first Constitutional Court was established by the interim Constitution.

The international community lent invaluable support to the drafters of the Constitution. The German Constitution influenced the role of Parliament. Advisors from the United States, Canada, the UN, and India were influential in drafting the final Bill of Rights. But the IFP escalated violent attempts to halt democracy, even as the drafters met with international legal teams. Nelson Mandela's ill-fated March 1994 meeting with the Zulu leader, Buthelezi, and the IFP's continued threats to a peaceful transition created roadblocks to democracy. Bombs exploded in downtown Johannesburg. Eight IFP demonstrators were killed and many more were wounded outside the ANC's Johannesburg headquarters. Afrikaner Weerstandsbeweging (AWB) defended Bophuthatswana leader, Lucas Mangope, who refused to hold the election in his independent state of Bophuthatswana.<sup>12</sup> The ambush and killing of AWB militia forced most Afrikaners and other right wing groups determined to derail the peace process to surrender to the reality of an election.

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<sup>12</sup> For further reading see Clark and Worger (2011).



Days before the April 1994 election, the ANC, the NP, and the IFP reached an agreement through Kenyan intermediaries. The Pan African Congress (PAC) finally agreed to participate in the election process. The country steeled itself for its first fair, non-racial election. Millions of South Africans, most of whom had previously been denied the right to vote, stood for hours in lines that wound through townships, cities, and villages. The ANC candidate, Nelson Mandela, defeated his main rival, the NP candidate F. W. de Klerk. Former Prisoner Number 46664 became President Nelson Mandela, the first African elected President of the Republic of South Africa, in its very first democratic election.

Even after the country had a new President, the final Constitution was still being drafted. President Mandela was inaugurated on May 10, 1994. The day before his inauguration, the National Assembly and the Senate formed the Constitutional Assembly (CA) according to Section 68(1) of the interim Constitution (Constitutional Court n.d.). In June 1994, the Assembly established the Constitutional Committee, led by the ANC and the NP's chief negotiators, Cyril Ramaphosa and Roelf Meyer, respectively. Six theme committees were formed to address issues of all parties. Former adversaries worked toward the goal of a peaceful transition to democracy.

The Bill of Rights, a critical section of the interim Constitution, can be traced back to an ANC document from the early 1920s, which was carried forward in the 1955 Freedom Charter. While in exile, the ANC activist, lawyer and future Constitutional Court Justice Albie Sachs wrote a paper for the 1988 ANC Constitutional Committee stating the need to set up "an Anti-Anti-Bill of Rights Committee, a document that does not limit the power of government to effect change, but rather advances the claims of the

dispossessed” (Sachs, 2009: 166). As early as 1991, the ANC Constitutional Committee drafted a version of the Bill of Rights, based on Sachs’ work. The committee decided that a new constitution needed a new court, one untainted by the past, to protect the constitution.

In January 1995, the Constitutional Assembly (CA), headed by Leon Wessels and Cyril Ramaphosa, launched an advertising campaign in the eleven languages of South Africa to engage all citizens. Mailers with stamped return envelopes advertising the slogan, “make sure the constitution contains your ideas – it is your democracy” were sent to ordinary South Africans. The CA fanned out across the country’s 470,900 square miles, holding workshops in hostels, factories, and settlements (Segal and Cort, 2001: 149). Posters, town hall meetings, websites, educational forums, newspaper ads, television, and radio shows all helped increase democratic participation in the drafting of the final constitution. Even President Mandela’s former Pollsmoor Prison warden, Christo Brand, was hired in the printing department (Ebrahim 1998: 47). A true democratic process was at work.

In March, the Zulu leader, Chief Gatsha Buthelezi, and the IFP stormed out of Parliament, demanding once again more self-governing rights. The IFP quit the CA entirely, leaving the ANC to frantically wrangle votes to pass the constitution. If the other opposition parties vetoed, the ANC would lack a majority. As a result, NP votes were crucial. De Klerk wanted protection for minority rights, “not a smokescreen to preserve apartheid or privilege” (Segal and Cort 2011: 160). His demands were met. Marchers and protesters filled the streets outside the CA’s offices; South Africans demanded their voices be heard.

In April, the CA was still negotiating on many clauses, including the death penalty, a national anthem, lockout and property clauses, as well as the appointment of judges and the attorney general. ANC committee member Albie Sachs insisted on the inclusion of words “ ‘Nkosi Sikelel’ iAfrica’—God watch over Africa—in the text of the new Constitution. The opening words of the anthem of sacrifice and hope had united the nation” (Sachs 2000: 219). Meyer and Ramaphosa negotiated until the final hours of May 7, 1996. On May 8, 1996, four hundred and ninety members of the CA gathered in Cape Town to celebrate South Africa’s final constitution and its landmark Bill of Rights, on the steps of the stark white neoclassical-style Parliament building, the seat of the former apartheid government. President Mandela unveiled a mural in honor of the Constitution. This historic moment was documented by South African photographer, David Goldblatt (Segal and Cort 2011: 188-89). The resulting Bill of Rights “is often heralded as the crowning achievement of the democratic transition” and as producing “some of the most progressive decision-making in the world” (Klug 2010: 113). Chapter Two of the Bill of Rights, sections Seven through Thirty-Nine of the Constitution, guarantees equal citizenship and dignity for all South Africans. These sections echo Gandhian ideals and the philosophy of Nehru (Sachs, 2009: 91).

The hearings to certify the constitution began in July 1996. But in September the Justices of the Constitutional Court ruled that the draft did not comply with constitutional principles. In response, amendments were drafted and approved by the Constitutional Assembly and reviewed by the Constitutional Court. The rallying cry of the new Constitution was: “never again will courts rubber stamp or stand helplessly by while

unjust laws are made to take away peoples' rights, detain, torture, deny them their dignity" (qtd. in Segal and Cort, 2011: 9).

On December 10, 1996, when President Nelson Mandela signed the final draft of the fifth Constitution of the Republic of South Africa into law, he stated

the Constitution therefore commits us to build a nation based on the democratic values of human dignity, equality and freedom, through constitutionalism and the rule of the law . . . There are no shortcuts on the road to freedom. The Constitution describes the path which we must and shall follow. (Mandela 2001: vii)

The Bill of Rights grants all citizens rights to citizenship, education, fair trial, freedom of expression, and privacy. As the court itself noted, "the Bill of Rights is arguably the part of the Constitution that has had the greatest impact on life in this country... [it] is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality, and freedom" (Constitutional Court n.d.). March 17-21 was proclaimed Constitution Week, and the Constitutional Court distributed over seven million copies of the Constitution in the country's eleven languages. Justice Sachs reflected, "I was one of the founding parents" (Sachs 2000: 218). Almost seven years since President Mandela was released from prison, on February 4, 1997, the Constitution officially became the highest law of South Africa; its Preamble reads:

We, the people of South Africa  
Recognise the injustices of our past;  
Honour those who suffered for justice and freedom in our land;  
Respect those who have worked to build and develop our country; and  
Believe that South Africa belongs to all who live in it, united in our  
diversity.(qtd. in Segal and Cort 2011: 223)

## Chapter 1b. Protecting the Constitution- The Formation of the Constitutional Court

President Mandela inaugurated the first Constitutional Court of South Africa on the morning of February 14, 1995. The historic moment took place in the Court's modest offices in Braamfontein, Johannesburg. President Mandela reflected on the last day of the Rivonia Trial, June 12, 1964.

The last time I appeared in court was to hear whether or not I was going to be sentenced to death. Fortunately for my colleagues and myself, we were not. Today I rise not as an accused, but on behalf of the people of South Africa, to inaugurate a court South Africa has never had, a court on which hinges the future of our democracy. (Segal and Cort 2011: 202)

The Justices, clad in green robes, took the oath to uphold and defend the Constitution. Representing the diverse peoples of their nation, the Justices pledged in their native languages—six in English, one in Afrikaans, one in isiZulu, one in Setswana, and one in isiXhosa. The first democratic South African Constitution went into effect on February 4, 1997. As President Mandela stated, “The Constitution speaks of both the past and the future...The Constitution describes the path which we must and shall follow” (Mandela 2001: vii).

The Constitutional Court was established in the interim Constitution of 1993. Patric Mtshaulana, Justice's Chaskalson's law clerk and former ANC Umkonto we Siwze<sup>13</sup> (MK) combatant reflected that Section 174 (2) “provides that the Constitution is the supreme law of the Republic and all law or conduct inconsistent with it are invalid” (Mtshaulana 2001: 528). It dictates the legislation process and determines if laws passed are contrary to the Constitution. The Court was the culmination of decades of struggles for a fair judiciary in South Africa.

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<sup>13</sup> Umkhonto we Sizwe was the militant wing of the ANC; it was established in 1961 (Clark and Worger 2011: 62).

The presiding Chief Justice of the Supreme Court was Justice Michael Corbett. “The more liberal Justice Corbett” was appointed by de Klerk at the beginning of the democratic transition (Klug 2010: 230). Justice Corbett smartly recommended Arthur Chaskalson for President of the SACC. (The title Chief Justice was substituted for President in 1999). Chaskalson, a Human Rights lawyer, was then serving as president of the Legal Resources Centre, which he founded in 1964. Chaskalson had a long history of representing anti-apartheid activists, including being on the Rivonia Trialists’ defense team. Chaskalson had provided a critical voice in the drafting of the interim constitution. He served as Chief Justice of the SACC from June 1994 until his retirement in 2005.

The Constitution indicated the appointment process for Court Justices and established an independent Judicial Services Commission (JSC), composed of judges, lawyers, and laypersons to nominate candidates and holds public interviews. During apartheid judicial appointments were a secretive process (Mtshaulana 2011: 504). But in 1994 the media and citizens were invited to hear the candidates for the SACC questioned by the JSC. The JSC made recommendations to the President, who then consulted with the Chief Justice of the SACC and leaders of the main political parties in the National Assembly to select the remaining six seats on the SACC. Justices would serve twelve to fifteen years, with a mandatory retirement age of seventy years. Justice Kate O’Regan, who served on the first SACC, spoke of the interview process “as an important mechanism for judicial accountability” (qtd. in Segal and Cort 2011: 200).

The first SACC faced many legal challenges; their judicial system was no longer based on colonial or apartheid law. The Justices were faced with “deciding on issues of both practical and principle” (Segal and Cort 2011: 202). And they needed to build public

confidence in the new court. The first case before the Court was “State vs. Makwanyane, which raised questions of constitutionality of the death penalty” (Segal and Cort 2011: 202). The courtroom was filled with citizens and judicial officers for the three days of hearings.

The Court’s unanimous decision was that the death penalty was unconstitutional. Each concurring judgment emphasized the value of human dignity. Justice Yvonne Mokgoro stated, “even the most vile criminal remains a human being” (qtd. in Segal and Cort 2011: 203). There was great opposition to the ruling – the NP and ordinary citizens demanded the Court reverse their ruling. After weighing both public opinion and NP opposition, President Chaskalson said,

The question before us is not what the majority of South Africans believe a proper sentence for a murder should be. It is whether the Constitution allows the sentence...if public opinion were to be decisive then there would be no need for Constitutional adjudication. The protection of rights could then be left to Parliament which has a mandate from the public...but this would be a return to parliamentary sovereignty and a retreat from the new legal order established by the 1993 Interim Constitution. (qtd. in Segal and Cort 2011: 203)

The Court’s ruling that the death penalty was unconstitutional stood.

A daunting task for the new Court was certifying the text of the Constitution. The Court did not want the Constitution to be viewed as political, or as the ANC Constitution; “the Court had to acknowledge that itself was a new institution, it was in the process of establishing its own legitimacy” (Segal and Cort 2011: 205). Hence, Chief Justice Chaskalson, in an effort to be fully transparent, immediately asked citizens and political parties to submit all objections to the Court. Even the Inkatha Freedom Party (IFP) – a party that had quit the Constitutional Assembly – submitted objections.

Additional Court staff were hired to process the one hundred and fifty-five objections to the Constitution's text. Advocates for the Constitution, led by George Bizos of the Rivonia Trial defense team, were hired by the Constitutional Assembly to defend the text. A team of forty-eight advocates represented the objectors.<sup>14</sup> After a full review, the Court agreed to hear twenty-seven cases over ten days. Every objection was heard before the highest Court in the new nation. CA advocate Wim Trengove stated, "We were now going to be debating the underlying foundation of our law. We knew at the time that this was a highly unusual once-in-a-lifetime event" (Segal and Cort 2011: 207). After eleven days of hearings that commenced on July 1, 1996, the Court adjourned for two months to debate and write their judgment.

The court ruled that the Constitution did not comply with eight of the thirty-four Constitutional Principles.<sup>15</sup> For example, the Court held that "the failure to provide a higher degree of protection against amendment of the Bill of Rights as compared to other sources was inconsistent with Principle II, which required an entrenched Bill of Rights" (Klug 2010: 94). There was a Parliamentary review. Those eight principles were amended, and the Constitution was resubmitted to the Constitutional Assembly. The Constitutional Court certified the text of the final Constitution on December 4, 1996. The Constitutional Court logo, designed by Carolyn Parton, depicts people, both black and white finding shelter under a tree. It is a traditional African concept of "justice under a

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<sup>14</sup> Some justices objected to the whole process. For example, Justice O'Regan complained that "the Court has no power, no mandate, and no right to express any view on the political choices made by the Constitutional Assembly, the wisdom of any provision of the [draft text] is not the Court's business" (qtd. in Segal and Cort 2011: 205).

<sup>15</sup> See the thirty-four Constitutional Principles in Schedule 4 on p. 91 of Klug (2010).



tree” (Segal and Cort 2011: 204). It is this concept that is embodied in the Constitution and in its guardian, the Constitutional Court of South Africa.

## Chapter 2: The Founding of the Constitutional Court Art Collection

A public art collection is born in the flurry and euphoria of a social and political revolution and comes into being in the first flush of a new democracy – Bronwyn Law-Viljoen and Karel Nel<sup>16</sup>

The Constitutional Court of South Africa’s Art Collection<sup>17</sup> evolved from an interior design project — to visually enhance the Justices’ temporary workspace—to a renowned art collection that reflects the humanitarian ideals embodied in the Constitution, the Bill of Rights, and their judicial protector, the Constitutional Court of South Africa (CCSA). A collection that began with a budget of ten thousand rand (two thousand dollars) entirely spent on the purchase of one tapestry now boasts more than four hundred artworks valued at over five million dollars.

The South Africa of 1994 was an economically broken country. Funds for the new nation’s infrastructure were primarily allocated to health, education, and housing—not the Arts. Constitutional Court President<sup>18</sup> Chaskalson set the stage well, “We need to think back ...to the South Africa of 1988, a country isolated from most of the world, racked with conflict, ruled by decree under a state of emergency, with thousands detained in prison under emergency regulations” (qtd. in Ebrahim 1998: xiii). Informed by and in response to the country’s recent past, the Constitutional Court’s art collection was ‘born’

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<sup>16</sup> Law-Viljoen and Nel 2008: 113.

<sup>17</sup> The Collection was renamed the Constitutional Court Art Collection (CCAC) in 2014

<sup>18</sup> The title “Constitutional Court President” was changed in 2001, “Chief Justice of the Constitutional Court” (Constitutional Court n.d.).

on October 31, 1994, at the first official meeting of the Justices of the first Constitutional Court of South Africa.

Eleven of South Africa's most distinguished legal scholars convened in their undistinguished rented offices in the Braampark complex in Braamfontein, Johannesburg to discuss the functions and practicalities of the Constitutional Court and the site of their permanent home.<sup>19</sup> Court President Chaskalson assigned each justice a job — to build the Human Rights Library, to buy computers, to select the style and color of the justices' robes, to establish the rules of the Court, and to enhance the office décor. Office décor was delegated to Justice Yvonne Mokgoro and Justice Albie Sachs. Justice Sachs has repeatedly joked to visitors at the Court and audiences around the globe that President Chaskalson ran out of jobs and invented the décor committee. That joke is almost folklore in arts and legal circles, but Justices Mokgoro and Sachs were indeed entrusted with ten thousand rand to 'decorate' the Court offices.

Before ordering drapes and desks, Justices Mokgoro and Sachs commissioned Joseph Ndlovu to create a tapestry that engaged the themes of the Bill of Rights. The work, entitled *Humanity*, (Fig.1) was constructed of wool fibres, hand-dyed in warm tones of reds, yellows, oranges, browns, crèmes, and blacks, woven into a design portraying a multi-racial assemblage of human bodies nestled together under vibrantly colored striped blankets. Ndlovu employed the weaving traditions taught at Rorke's Drift<sup>20</sup> in KwaZulu-Natal. And the angular faces depicted are representative of the bold

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<sup>19</sup> I discuss these functions in in Chapter 2.

<sup>20</sup> Swedish Lutheran missionaries founded ELC Art and Craft Centre, Rorke's Drift, in 1962 at the site of Rorke's Drift, a bloody battle in the Anglo-Zulu War of 1897. It was one of the few art schools that allowed black students to enroll in printmaking, crafts, and weaving classes. See Philippa Hobbes and Elizabeth Rankin (1997).

gashes cut into linoleum blocks used in printing linocuts, a printmaking medium that Ndlovu learned at Rorke's Drift. The tapestry depleted the Justices' budget. The Justices were left to rely only on their burgeoning relationships with artists and curators, who were honored to participate in an arts project for the first Constitutional Court; "...the Court had a strict policy of not accepting any support from Private firms or individuals who could one day be litigants before it" (Sachs 2008: 22). The décor project quickly grew from ordering drapes to building an art collection.

The phrase 'South African museums' calls to mind museums with a mission to interrogate apartheid history—The Apartheid Museum, Robben Island Museum, perhaps the less frequented District Six Museum in Cape Town, together with heritage sites such as Nelson Mandela's Soweto home. Of those museums only the District Six Museum existed in 1994. Post-apartheid South Africa would develop a dramatically different art landscape, with many new art galleries and cultural festivals. But in 1994 only a short list of South African artists, galleries, and art museums were on the radar of international art curators, collectors or art historians. One prominent reason was the United Nations cultural ban<sup>21</sup> on South Africa, which discouraged UN members from promoting South African artists and exhibitions of their work. The UN cultural ban was only lifted in 1992, and after a twenty-seven-year lockout, twenty South African artists were officially invited to exhibit at the 1993 Venice Biennale.

The Court collection was from the beginning in dialogue with and in response to South Africa's history of arts exhibitions, galleries, and museums during colonial and

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<sup>21</sup> UN Resolution 2396 was adopted by the UN Assembly on December 2, 1968, encouraging all UN members to ban cultural, educational and sports exchanges with South Africa. The ban was lifted in 1992 (South Africa History Online, n. d.). For further discussion, see Wellington Winter Nyangoni (1985).

apartheid years. South African museums and galleries had historically excluded blacks and coloured artists from exhibiting works. For example, the South African Museum (SAM), founded in 1825 in Cape Town, was primarily a history, science, and ethnographic museum; representation of the native population was limited to dioramas (Leibhammer 2011:43).<sup>22</sup> In 1895 SAM was renamed the South African National Gallery (SANG), and acquisition and curatorial policies were government-dictated. The exhibitions and collections of the state funded Durban Art Gallery (1907) “consisted mainly of British and European artworks that were constantly promoted as examples that local artists should emulate” (Hillebrand 2011: 139). The privately funded Johannesburg Art Gallery (JAG), which opened in 1910, was the first South African art museum to exhibit British modern art (Carman 2011: 29). Johannesburg<sup>23</sup>, dubbed the “city of gold”, was the financial capital of sub-Saharan Africa.

When the Union of South Africa<sup>24</sup> was founded in 1910, the country had fourteen museums, all mainly ethnographic. These museums aimed at reconnecting whites with their European heritage, and reinforcing the Europeans’ belief in their superiority over the native population (Hillebrand 2011: 134-55). The curatorial practices of museums and

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<sup>22</sup> Annie Coombes explains that “it was hard to avoid associations with the kinds of anthropological scrutiny that resulted in the diorama and was responsible for authorizing so many of the racial theories that underpinned apartheid” (Coomes 2003: 255n). See also an interview with Tracey Rose, where she says that Span II “is a tribute to women who were put on display like Saartjie Baartman” (qtd. in Chinzima 1999: 89).

<sup>23</sup> <sup>23</sup> The gold mines opened in Johannesburg in 1886. Diamond mines had opened in Kimberley much earlier, in 1870 (discovered in 1867; not really opened as mines until the early 1870s). The British annexed these territories, wanting control of the wealth.

<sup>24</sup> The Union would include the Cape Colony, Natal, the Transvaal, and the Orange Free state.

their racist representation of the African population were shaped by the Natives Land Act of 1913, which was passed to insure that South Africa was a whites-only nation.<sup>25</sup>

Natural history museums displayed artworks by blacks and coloureds with the label “anonymous” (Martin 2000: 38). Rejecting the curatorial policies of government museums, the privately held Africana Museum, which opened in the early 1900s, endeavored to create a dialogue between races with exhibitions about all South African ethnicities.<sup>26</sup> Its opening highlighted “the contested nature of discourse on race during the first half of the twentieth century” (Leibhammer 2011:51). But the Africana was very much an exception, and it closed after its founder died in 1936. Museums generally archived artworks by blacks and coloureds as craft or township art. An early exception was Moses Tladi,<sup>27</sup> a self-trained painter who was the first black artist to gain national recognition; SANG exhibited his idyllic, apolitical landscapes in 1931.

Gerald Sekoto, considered the “father of modern art” in South Africa (Peffer 2009: 30) sold three paintings to the Johannesburg Art Gallery (JAG) in 1940. The JAG loaned them to the *1948-49- Exhibition of Contemporary South African Paintings, Drawings and Sculpture* at the Tate Gallery in London. Sekoto was the only black South African artist included in the exhibition (Carman 2011:39). His reflective self-portrait was featured in *Time Magazine* to publicize the exhibition’s opening at the Washington National Gallery of Art in 1949 (Williamson 2009: 55).

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<sup>25</sup>“The Native’s Land Act prohibited Africans from purchasing or leasing land outside the reserves from people who were not Africans. The act listed areas, totaling seven percent of the total land designated for Africans (Thomson 2001: 163).

<sup>26</sup> The Africana Museum reopened as the African Museum (Coomes 2003: 174).

<sup>27</sup> Tladi died young. SANG exhibited his first retrospective in October 2015; see Mabaso (2015).

Back home, Sekoto's paintings were disparaged as township art; "the term 'township art' was often applied as a blanket categorisation of blackness in art" (Friedman 2011:45). In spite of that label, his sold-out gallery shows financed his dream of escape to Paris and an arts education off-limits to him as an African. Few South African artists responded to Sharpeville, but Sekoto did from exile, with his watercolor *Untitled (Violent scenes in a township)* (c. 1960).<sup>28</sup> It took twenty-four years for SANG to follow the JAG in buying a Sekoto painting. SANG would later make an indefinite loan to the Court collection of seven Sekoto paintings,<sup>29</sup> including *The Song of the Pick* (1978), a later version of his seminal painting *Song of the Pick* (1946), which was "sourced partially from a photograph of black day laborers, singing in harmony as they worked" (Williamson 2009: 37).<sup>30</sup>

Educational opportunities for blacks worsened. The Bantu Education Act (No. 47) of 1953<sup>31</sup> restricted blacks to the inferior government-run blacks-only schools. The Reservation of Separate Amenities Act of 1953<sup>32</sup> forbade blacks and coloureds from sharing public spaces with whites: "black persons were not allowed at most art museums unless accompanied by a white person." (Peffer 2009: 30). These two Acts denied

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<sup>28</sup> Williamson 2009: 37.

<sup>29</sup> Sekoto works loaned to the Court included: *African Woman with Turban* (1988), *Buildings across the Seine* (1978), *Nude of a Young African Woman* (1979), *The Professor* (1968), *Senegal Women* (1978), *The Smoker* (1993) and *The Song of the Pick* (1978).

<sup>30</sup> SANG's 2014 recall of the Sekoto paintings would create a gap in the collection of works by black artists depicting the everyday African life in pre-apartheid South Africa.

<sup>31</sup> The "Bantu Education Act (No. 47) of 1953 removed state subsidies from the 43,60 missionary schools, where the majority of black population received their education. The missionary school closed and blacks were left with few educational possibilities. (Clark and Worger 2011: 52).

<sup>32</sup> The Act stated all races would have separate amenities (Clark and Worger 2011: 52).

aspiring black and coloured artists a decent education, the opportunity to study museum collections, and the chance to collaborate with white artists.

Yet with every repressive act passed, resistance mounted. Artists and educators opened independent galleries and community workshops for those marginalized by their color. The community workshops trained many artists whose works would be represented in the Court collection. Artist Cecil Skotnes, a lifelong advocate for education for blacks, became the Cultural Director of the Johannesburg-based Polly Street Art Centre in 1952.<sup>33</sup> Polly Street offered weekly night classes to black students. Sowetan artist Lucky Sibiyi studied with Skotnes at Polly Street and later at Amadolzi; Sibiyi's color woodcut *Ritual* is held in the Court collection. Skotnes mentored Dumile Feni,<sup>34</sup> whose nine ink drawings and sculpture *History* (Fig.2) are cornerstones of the Court collection. Feni was a master draftsman; his drawings of emaciated, broken human bodies received critical acclaim from the local art world but harassment from the apartheid government. In 1968 Feni was forced into exile.

In 1959 Jo Thorpe founded the African Arts Centre in Durban, to exhibit works by black artists. Forty years later, women artists trained at the African Art Centre would construct one of the most iconic artworks in the Court collection: the beaded flag of the Republic of South Africa that hangs behind the Justices' bench in the Constitutional Court building. And Rorke's Drift played a pivotal role in training black artists – printmakers, fine artists and weavers – from 1962-1982. Prints by black artists trained at

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<sup>33</sup> Polly Street was originally an adult extramural education center established by the Johannesburg Local Committee for Adult Education History, chaired by the commercial attaché of the American Embassy. Skotnes' leadership insured that Polly Street remained open. For discussion, see Elizabeth Rankin (2011).

<sup>34</sup> For discussion, see Christine Eyene (2011) and Peffer (2009: 44).



Rorke's Drift were exhibited at Durban Art Gallery in 1968 and at SANG in 1972. Azaria Mbatha and Joseph Ndlovu trained at Rorke's Drift; Mbatha's screenprint *Chariot* and Ndlovu's tapestry *Humanity* are held in the collection.

The artists trained in the community workshops benefited from an explosion of art galleries due to the country's short-lived economic boom in the 1960s. Art dealer Egon Guenther, along with founding member Cecil Skotnes, established the Amadlozi Group in 1963 (Peffer 2009: 21-2); it was a community workshop for non-white artists that offered exhibition spaces and classes. In 1966 Linda Givon founded the Goodman Gallery in Johannesburg to exhibit works by both black and white artists. She would later play a critical role in the formation of the Court's collection. But from the beginning, the Gallery supported and displayed work by artists trained at the Polly Street Art Centre, Rorke's Drift, and other community workshops. And galleries like the Goodman became even more important after the 1968 UN cultural ban hindered international exchange of performances and artworks by South African artists.<sup>35</sup>

For black and coloured artists, community workshops continued to be the best opportunity for an education. White artist and ANC supporter Bill Ainslie<sup>36</sup> opened his studio to black artists as early as 1960. In 1972 he launched an arts school; the tuition monies from white students paid for the black students. And that workshop became the JAF in 1982, a certificate-granting non-racial institution (Peffer 2009: 137-8). In the 1970s, the Wits Art Gallery was the first arts museum to exhibit traditional arts—beadwork, pottery, and basketry—by black artists. And beadwork, pottery, and basketry

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<sup>35</sup>For discussion, see van Robbroeck (2011).

<sup>36</sup> Ainslie developed the talents of many black artists, including Dumille Feni (Peffer 2009: 130-138).

would play a pivotal role in the Court's art collection. Galleries were taking notice of the works by black and coloured artists trained at community workshops.

In 1977 white students protesting racist policies at University of Cape Town's art department founded the non-racial Community Arts Project (CAP) (Seidman 2011: 107). CAP students Willie Bester and Hamilton Budaza have works in the collection.; Bester's dealer, Linda Givon, donated his tapestry *Discussion* in 1997. And Budaza would collaborate with his former teacher Cecil Skotnes on *Freedom*.

As apartheid began to unravel in the mid 1980s, artists gained more training and exhibition opportunities. Caversham Press, the country's first professional printmaking facility, was founded in KwaZulu-Natal in 1985, for both black and white artists. The artists Norman Catherine, Robert Hodgins, and William Kentridge trained at Caversham Press; they would later donate works to the collection. In 1989 the world-renowned South African photographer David Goldblatt opened Market Street Photo Workshop to train the next generation of South African photographers. And the artist and activist Kim Berman founded the printmaking workshop Artists Proof Studios in 1992, after returning from forced exile in Boston. Berman would gift nine drypoint/ mono prints to the Court collection.

The art community had a sharp but mixed reaction in 1989 to a controversial paper by ANC activist and future CC Justice Albie Sachs. Sachs called for artists to stop making protest art, and to incorporate styles from other artistic schools.<sup>37</sup> "The visual work of colonial denunciation had come to an end, and artists were now faced with the challenges of remaking South Africa" (Oliphant 2011: 181-82). Sachs wanted to free

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<sup>37</sup> The paper – "Preparing Ourselves for Freedom" – was delivered at an ANC in-house conference in Lusaka and later circulated through the popular press in South Africa. For discussion, see Oliphant (2011).

artists to create works responsive to the new democracy and not just to the oppressive past.

Justice Sachs grew up with activists and artists; he and fellow youth activists painted murals inspired by the Mexican artists Orozco, Rivera, and Siqueiros, only to see them whitewashed by the police. Sachs spent his twenty-four-year exile (1966 – 1990) in university lecture halls and museums. While in exile in Mozambique in the 1980s, he painted political murals with local and exiled Chilean artists, before the SADF's failed assassination attempt in 1988. Art and social justice were inseparable for Justice Sachs.

In 1990 Justice Sachs returned to a South Africa on the brink of civil war, and an arts community exploding with creativity. His time was devoted to helping to draft the new democratic Constitution, as a member of the ANC Constitution Committee. He also reconnected with old friends and befriended gallery owners, artists, and arts educators. He instantly became lauded as “the most popular speaker” for art exhibitions. His new friendships with artists and gallerists would later serve him and the collection well.

The Court collection was part of the wave of arts museums and galleries that interrogated the visual culture of the post-apartheid landscape. “We were very cut off from art from the rest of the world, due to the cultural boycott...people from South Africa very seldom saw art that was made anywhere else” (Brown 2014). The 1995 Johannesburg Biennale, *Africus*, was a failure. Its title evokes a colonized Africa – not the title for South Africa's first post-apartheid international arts exhibition! Caroline Jones addressed the challenges of staging an international art fair in 1995 South Africa; “often set in cities grappling with the history of totalitarian regimes, post-nineteen-eighties biennials such as those in Johannesburg... deploy the art experience to frame and

aestheticize aging urban facilities” (Jones 2010: 75). The 1997 Johannesburg biennale *Trade Routes and Geography* was much more successful. It was curated by Okwui Enwezor, and, as Sue Williamson notes, “the artists and curators [Enwezor] brought to Johannesburg were a turning point in the international reception of contemporary African art” (Williamson 2016).

The décor committee’s first task, before assembling an arts collection, was to refurbish a low-ceilinged, wood-paneled room into a courtroom and to create a new Court logo for the Court’s inauguration on February 14, 1995. The Justices worked in tandem with the Public Works Department in installing soft, contrasting-colored curtains to create the semblance of a courtroom; “... you [had] to open the curtain as [the judges] file in to the Court, because this was an office space” (Mokgoro 2014). They rejected the old South African logo that represented the inhumane apartheid Acts; as Sachs put it, “We fought hard for our justice and our freedom” (Sachs 2016).

The ad hoc arts committee – Justice Sachs, the head of the arts committee, and Justice Mokgoro – hired a Cape Town designer, Carolyn Parton, to design the logo. Their ambition was to create a distinctively South African logo: “...not European type heraldry, ...not the blind-folded woman, ...not taken from Greek classics” (Sachs 2016). Parton’s design depicted black and white people finding shelter and commune under a tree, illustrating the African concept of justice under a tree. The tree’s eleven branches symbolized the Court’s eleven justices. The logo (Fig.3) was a sign right from the beginning that “we were going to follow our own road and path and invent our own kind of ambience” (Sachs 2016).

After spending all their budget on Ndlovu’s tapestry, the Justices “begged from the heart” (Sachs 2016), convincing donors to participate in the CCSA and thereby in their country’s democratic transformation. Justices Sachs and Mokgoro built the collection with the generosity of the artistic community, from 1994 until the Art Works Committee (AWC) was formed in 2003. The AWC worked with the Justices in continuing to build the art collection.

Justice Mokgoro’s words on Ubuntu address the role that many communities played in the project. “Ubuntu, it can mean so many different things, values...it’s a value system, which unifies people within a community.... it could be a neighborhood... It could be a whole nation” (Mokgoro 2014). Galleries and artists who were financially able were generous. Many non-white South African artists were not able to donate, since they had been marginalized for centuries.<sup>38</sup> Works by non-whites currently comprise only 30% of the collection. Kim Berman emphasizes that the proportions must change: “Artists who didn’t give [Sachs] work couldn’t afford to give him work for nothing. And I think the asking of that at the time during the early 90s was an issue ...that’s a part of the collection that needs addressing” (Berman 2014).

Justice Mokgoro credits Justice Sachs with acquiring 90% of the art works. Justice Sachs always traveled during Court recesses and returned with “a lot of goodies” (Mokgoro 2014). Justices Sachs’ goodies included a drawing by the Mozambiquan artist Idassa, a painting by Hamlet Habib purchased at a bazaar in Cairo, batiks purchased at a roadside stand in Sri Lanka, a mixed media work by the Nigerian artist Aina Ayo, and two still-life paintings purchased at an Angolan roadside stand. Justice Mokgoro and the

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<sup>38</sup> Sachs recognized this fact: “Who are the artists who can afford to donate? They come from the advantaged sections of the community” (Sachs 2014).

rest of the arts committee members played a critical role in evaluating if Justice Sachs' recent acquisitions "fit the values of the Constitution and symbolism of the Court to our democracy" (Mokgoro 2014). Some art works were respectfully returned to the Justice.

The first artwork installed in the Court's permanent Braampark offices was a triptych created by white artist Cecil Skotnes and black artist Hamilton Budaza. When Skotnes offered to create a new work for the collection, Sachs asked him to collaborate on it with a black artist. Skotnes' former student Hamilton Budaza, who trained at CAP and exhibited with artists from Polly Street, carved two panels for Skotnes's wood construction, thus creating the hand-carved wood triptych, *Freedom*,<sup>39</sup> (Fig. 4) a "semi-abstract, African-style figures in reds and browns, with side panels containing faces, upraised hands and doves" (Sachs 2014). Justice Chaskalson consulted an undisclosed party about *Freedom*, to see if it was appropriate for the CCSA. The work received a 'thumbs up' (Sachs 2016). Justices Mokogoro and Sachs got a green light to assemble the collection.

Linda Givon of the Goodman Gallery was instrumental in building the collection; "she squeezed the necks of three of her prominent artists..." (Sachs 2014). Clients of Givon who donated to the the collection included Willy Bester (the tapestry *Discussion*) (Fig. 5), William Kentridge (the etching *Sleeper (Black)* (Fig.6), and Robert Hodgins (the paintings *Hotel with Landscape (Spy)* and *The Scene of the Crime*). When the Justices were able to say 'Linda Givon donated a Kentridge work', the collection had immediate legitimacy and prestige.<sup>40</sup> News spread. Artists and galleries were honored to be

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<sup>39</sup> *Freedom* was the first art work *hung* in the temporary Court offices, while Ndlovu's *Humanity* was the first *commission* by the décor committee.

represented in the Court collection. As Karel Nel said, “No money has been made available from the state to buy art for this building but the very act of the art community putting their weight behind the collection ...has created another sense of vision for the country” (Nel 2014).

In Tony Bennet’s essay “Exhibitionary Complexes”, he notes that “museums, galleries, and, more intermittently, exhibitions played a pivotal role in the formations of the modern state and are fundamental to its conception as, among other things, a set of educative and civilizing agencies” (Bennett 1999: 79). Bennet’s words reflect the role that the Court collection played (and continues to play) in creating dialogues about the Constitution and the CCSA, drawing visitors to reflect on the themes of human dignity embodied in the Constitution and Bill of Rights.

The arts committee did not operate like a museum committee, even though it was. Nel emphasized that “many of the artworks are really evidence of the social changes that have occurred, what it is to live within an environment and a political system that was so repressive” (Nel 2014). Justice Sachs’ eye and passion for art works gave the collection a unique flavor. He and other members rejected “art that denounces. Because it is always denouncing somebody. And there is a need for denunciatory art. And we would defend as Judges freedom of expression, which would allow for that, but not in the court” (Sachs 2016).

A three-piece artwork by Judith Mason, *The Man Who Sang and the Woman Who Kept Silent* (Fig 7) depicts the stories of two ANC Umkhonto we Sizwe fighters who

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<sup>40</sup> As Sue Williamson notes, the Goodman Gallery has been in the forefront of the art world ever since [a brief blip where Linda Govin considered closing it]. Passionate about art, and strongly supportive of her artists, Givon has never felt herself restricted to the gallery, and has sat on committees, banged on government doors to loosen up cultural funds, curated, trod on a number of authoritarian toes, and been immensely enabling in helping art and artists participate in international exhibitions” (Williamson 1999).

were murdered by the SADF. The artwork consists of two paintings and a blue dress constructed of discarded plastic bags, swinging freely in the the Court's exhibition gallery. We know the stories of the two ANC fighters only because their murderers told them in petitioning for amnesty from the Truth and Reconciliation Commission (Sachs 2009: vii). The artwork was donated by Justice Sachs, the artist, and a third party. They are undoubtedly the most written about works in the collection.

In 2000 Kim Berman donated nine Drypoint/ mono prints (Fig. 8) responsive to the TRC. In 2003 Justice Sachs donated fifteen drawings by Dumile Feni (Fig.9) that he acquired when Feni and Sachs were both in exile in London in the 1970s. Feni died destitute in exile. The Feni drawings were a significant addition, both artistically and politically.

The Constitutional Court Trust (CCT),<sup>41</sup> a nonprofit independent of the South African government and the CCSA, was established in 1995 to manage funds donated in support of the newly established Constitutional Court and to protect the collection. The CCT owns the collection's artworks. It administers the collection's funds, supervises its acquisitions, and pays the salary of its curator. The Trust's main jobs are to insure proper functioning of the Constitutional Court: funding the Library, employing law clerks, promoting the rule of law, constitutionalism, and judicial independence, and finally promoting constitutionalism in the South African region. The Trustees are current and former Constitutional Court Judges.

The Durban architects Janina Masojada and Andrew Makin won the international competition in 1998 to design the Court building. They were dedicated to integrating works of art by South African craftspeople and artists into the architectural design and

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<sup>41</sup> See [concourtrust.org.za/content/page/artworks](http://concourtrust.org.za/content/page/artworks).



building structure. The Trust officially established an Arts Works Committee (AWC) in 2003 to involve the arts community (Segal 2006: 107); the AWC selected artists and craftspeople to design works for thirty-one sites around the Court, as designated by the architects.

Members of Art Works Committee also worked with Justices Sachs and Mokgoro on the acquisition of works for exhibition in the Court, selecting only works reflecting human dignity and the Constitution.<sup>42</sup> They were self-aware of “the ways in which artworks are collected, catalogued, conserved, and displayed express a culture’s ideas of the ontology of objects, and of selves” (Roberts 1994a: 37). When the CC moved to its permanent home on Constitution Hill in 2004, the bulk of the collection had been acquired. “It came at a time when artists were producing work that expressed, if you like, new optimism, new hope, but against the background of pain” (Sachs 2016).

Justices Sachs and Mokgoro, Art Works Committee members, and architect Janina Masojada had overseen the installation of art works in the new Court. Information and documentation on the works had been handled by office assistants and the Justices’ clerks. But the collection still needed a fulltime “curator”. Carol Brown, Director of the Durban Art Gallery, was hired in 2006 to play that role. She hired Johannesburg-based curator Jane Lane to assist in organizing and assessing the collection. And together they established selection committees and donation policies, evaluated the donated artworks, advised on acquisitions, created a catalogue system, established the provenance of works, and curated installations in the new CC building on Constitution Hill.

Brown and Lane worked with the AWC on new acquisitions. Lane described the initial acquisition policies as a “laissez-faire kind of arrangement”. And they had to be

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<sup>42</sup> The committee was formed in ADD DATE, and included architects as well.

laissez-faire; the first Justices of the Court had to fundraise for the collection, because no government funding was available. The Constitutional Court Justices wanted the Court Trust to own the works, to insure they were not loaned to other branches of the judicial system (Lane 2014).

Brown's curatorial experience was invaluable in determining the gaps in the collection. A senior curator at the Goodman Gallery, Neil Dundas, described Brown as the voice of reason in acquiring art works (Dundas 2014). Brown's critical eye balanced Justice Sachs' passion to collect. Brown assessed how "the works all speak to each other and what they make up as a whole" (Brown 2014). As the prestige of the collection grew, it received more donations that demanded a curatorial eye.

Brown was instrumental in the production of the Human Rights Portfolio<sup>43</sup> – a series of twenty-seven lino and woodcut prints by twenty-seven artists, with each print representing an artist's interpretation of one of the twenty-seven rights guaranteed in the Bill of Rights in the Constitution. An edition of the prints was gifted to the collection in 1996. Brown's interviews with artists who donated works to the collection, combined with her research on the collection's inception, provided critical contributions to the publication *Art and Justice: The Art of the Constitutional Court of South Africa*, an illustrated overview of the collection.

David Krut was instrumental in the formation and promotion of the collection; his press, David Krut Publishing, would later publish *Art and Justice*. The press is a highly respected publisher of art books and fine art prints; it also published William Kentridge's print *Sleeper (Black)*. Krut claims the Court collection was not an art collection until

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<sup>43</sup> The Human Rights Portfolio was designed and printed by Jan Jordan of Art for Humanity (Law-Viljoen and Karel 2008: 172).

South African artist Marlene Dumas, donated the tapestry triptych *Benefit of the Doubt* (Fig.11) in 2001. Her triptych was originally designed for the Dutch appellate court in Den Bosch Netherlands in 1996. Fortunately, though, the triptych was industrially made, so two sets existed. And Dumas still had a deep connection to her home country, which she left in 1976 to study art in Amsterdam. So she facilitated the Dutch government's donation of the three works.

It was challenging to exhibit art works in the new Court building. Natural light flooded the main gallery. The open courtyard caused gallery temperatures to fluctuate. It was not ideal for the exhibition of art works, so the care of the collection became a primary focus. The curators were careful to avoid exhibiting works on paper near sunlight. And the sculptures installed in the open courtyard are constructed of materials that are impervious to the elements.

In the foreword to *Art and Justice*, US Supreme Court Justice Ruth Bader Ginsburg reflects on her 2006 visit to the CCSA, "Imbued with the spirit of emancipated humanity, it is the most vibrant collection I have seen in any courthouse in the world.... the art is of, by, and for 'the people of South Africa,' [now] united in [their] diversity" (qtd. in Law-Viljoen 2008: 11). Kim Berman responded to her tour of the Court, "art brings people into a very human one-on-one level, ordinary people walking into the court experience the art and that's what makes it such a potent space. They're not the people who are walking in to a gallery to see art" (Berman 2014). Lane's tours of the Court collection and educational outreach programs have become increasingly important in establishing the prominence of the collection.

The JoBerg art scene was roiling with controversy on the twenty-year anniversary of the nation and the collection, in 2014. The controversy was about whether to expand the collection. Trustees were reluctant to discuss the topic. The then-current curator Stacey Vorster was adamant that it must expand, to reflect the changing landscape of the nascent democracy. The former consulting curator, Carol Brown, disagreed: “Leave it as it is. It’s a beautiful collection. Let it stay” (Brown Interview 2014). Nel and fellow AWC members have considered inviting additional artists to contribute, to “reflect the changes that have occurred in the society as well as acting as a form of curation of the collection” (Nel 2014).

Educational programs at Constitution Hill are operated and funded by the Constitution Hill Deed Trust, to insure that the collection’s importance is conveyed to future generations. “...We do Saturday morning schools, and we have hundreds of school kids who we bus in. ... The work of constitutional outreach, of rule of law education, of securing our legacy. The legacy that was fought for under Apartheid to replace an unjust system, but a legacy that is not yet secure” (Cameron 2014). The Court collection plays an important part in this sort of constitutional outreach. As Justice Sachs dryly notes, “We have the works on our website and my colleagues were distressed to see that there were more hits for the artworks than the opinions and judgments of the Court” (Sachs 2016).

The collection is at the intersection of law and justice. As Justin Cameron notes,

the works are integrally tied to our process of transformation over the last twenty or twenty-five years in South Africa. They reflect themes of justice, reconciliation, social transition, of social injury and social healing. And that is what most of our cases deal with in a very practical way. (Cameron 2014)

People from all over the world visit the collection at the Constitutional Court. But it has a special meaning to South Africans; as Justice Mokgoro emphasized, “Most of the art works were created in South Africa, by South Africans with South Africa in mind” (Mokgoro 2014). She also highlighted how the works represent the work of the Court; she exhorts us to “look at the art works as an instrument of justice” (Mokgoro 2014). ‘Art as an instrument of justice’ was not just a slogan – the focus on art as an instrument of justice even shaped the construction of the Court building itself, as we see in the next chapter.

### Chapter 3: Constitution Hill –The Bricks of Pain, Repurposed as the Bricks of Democracy

Men are not born brothers; they have to discover each other, and it is this discovery that apartheid seeks to prevent. – Nadine Gordimer<sup>44</sup>

The Constitutional Court (CC) was constructed on the site of the Old Fort Prison: the most notorious prison in South Africa. Infamously, it is only prison in the world to have imprisoned Nelson Mandela<sup>45</sup> and Mahatma Gandhi both. The CC is one structure in a large complex, now called Constitution Hill, which also includes the Women’s Jail, now an exhibition space, and the remaining Number Four Prison. The complex is at the crossroads of Johannesburg, uniting four diverse districts: the poor and immigrant neighborhood of Hillbrow, affluent residential suburb Lower Houghton, the business hub of Braamfontein, and downtown Johannesburg.

One of the CC’s first priorities after it was formed in 1994 was to find a permanent home. The justices unanimously agreed in 1995 they would build a Court on the site of the Old Fort Prison. The justices trusted that a court on the grounds of this notorious prison would signal South Africa’s ability to successfully build a new democracy on its painful colonial and apartheid past. Justice Yvonne Mokgoro put the ambition this way: “the court is a symbol of the bridge which is our democracy that intends to carry all people into a life of dignity ... here it is, converting our pain into democratic joy” (qtd in Law-Viiljoen 2006: 31). And the court building is indeed a bridge

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<sup>44</sup> Gordimer 1959

<sup>45</sup> Nelson Mandela was imprisoned three times at Number Four (Segal 2006: 157).

– rooted in South Africa’s authoritarian past, but carrying its occupants to a democratic future.

The Old Fort was built in 1893 by Paul Kruger, the Boer president of the South African Republic (the *Zuid-Afrikaansche Republiek*), as a fortress to surround the existing jail and to control the railways, mines, and the town of Johannesburg. When the British won the Anglo-Boer War of 1902 and founded the Union of South Africa in 1910, they converted the Old Fort into a prison. In 1904 they built a native prison named Number Four for convicted black male prisoners, and a women’s jail in 1910. The Awaiting Trial Block was built in 1928 to house black male prisoners awaiting trials (Segal 2006: 005).

The Old Fort incarcerated many leaders of the struggle against apartheid, those accused in the Treason Trial,<sup>46</sup> the leaders of the Defiance Campaign, ANC youth, and the Soweto protestors. The Women’s Jail imprisoned the wives of the Rivonia Trialists: Albertina Sisulu, Winne Mandela, and Barbara Hogan,<sup>47</sup> at times in solitary confinement. The apartheid government declared the Old Fort a national monument in 1964, against the protests of whites and blacks. Tens of thousands of prisoners were incarcerated at the Old Fort during its eighty-year history. When it closed in 1983, the prisoners were relocated to Diepkloof Prison. The site was abandoned.

Government departments concocted many unimaginative and disrespectful plans for transforming the site: a neighborhood park, a nursery school, a tourist venue, a museum, an entertainment complex; and the Transvaal Scottish Regiment’s headquarters (Segal 2006: 037). The Transvaal Scottish Regiment’s proposal was approved by the

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<sup>46</sup> Former President Mandela was jailed at the Old Fort during the Treason Trial and for a portion of the Rivonia Trial. For further discussion, see Mandela (1994), pp. 202 and 519.

<sup>47</sup> Barbara Hogan met and married Rivonia Trialist Ahmed Kathrada after his release from prison in 1989.

Johannesburg City Council (JCC) and National Museum Council (NMC). But the Scottish Regiment was unable to raise development funds, and their lease expired. The Rand Light Infantry Division moved into the Old Fort, cleared the debris, and insured its availability for official government visits (Segal 2006: 004).

The justices' search for a site commenced in 1995. They rejected Pretoria because of its associations with the apartheid government. Cape Town was also rejected for its apartheid associations and because it houses the South African Parliament building.. The committee decided on Johannesburg, in the heart of South Africa.

The Old Fort had been constructed in 1893 to protect and control Johannesburg, a new and booming financial capital. Gold was discovered on the Witwatersrand in 1886, and Johannesburg became the 'city of gold.'<sup>48</sup> Husbands of every ethnicity in what is now South Africa left their families in search of paying jobs (Thompson 2001: 194). Overnight, Johannesburg became the largest industrial complex in sub-Saharan, producing 27.55% of the world's gold (Thompson 2001: 120). Many of the black men who migrated to work in the mines would later be incarcerated at the Old Fort, for no reason except the color of their skin.

The Johannesburg City Council (JCC) helped the Justices investigate sites – a synagogue, the old post office, and an early-1900s bank building. But the options were all on congested city blocks. The JCC suggested the Old Fort. The Justices climbed the majestic hill overlooking the city of gold, plodding through overgrown fields of weeds. With each step, each Justice became more certain – the Fort was only site for the

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<sup>48</sup> For further discussion see Thompson (2001). As early as 1050, the Kingdom of Mapungubwe was already crafting gold ornamental artifacts (South Africa History n.d.). Gold made the kingdom a trading center with India and Egypt. In the following centuries the area came to be primarily populated by Tswana and Sotho peoples.



Constitutional Court. No other site in Johannesburg offered the view, the light, or the open spaces of the Old Fort, and no site possessed the painful past of the Old Fort, where “at least one member of almost every family in the township disappeared into Number Four for a period of time” (Segal 2006: 001).

The field trip in 1996 triggered painful memories. Justice Yvonne Mokgoro’s father was jailed there for six months for a pass law offense (Segal 2006: 053). And the solitary confinement cells triggered Justice Sachs’ memories of the days he spent in solitary confinement in other prisons (Sachs 2009:12) Justice Sachs immediately recognized the challenges that the site posed: “Justice Johann Kriegler and I, from the start, knew it just had to be there...Building there would mean responding to the intense negativity associated with the site, and converting that negativity into the optimism of our work.” (qtd. in Law-Viljoen 2006: 15).

The NMC and the CC held an international architectural design competition for the new Court. The Jury was comprised of eight people; Justice Sachs represented the Court; Isaac Mogase, a former detainee of Number Four and the mayor of Johannesburg, represented the city ; Thenjiwe Mtintso, a former detainee in the Women’s Jail, represented the Commission for Gender Equality. Mtintso expressed her expectation that “the building had to be an invitation for women—particularly black, poor and rural women—to come in and talk” (qtd. in Segal 2006: 072.)

The winners of the competition to design the Court building were Janina Masojada and Andrew Makin, of OM Design in Durban. At the ceremony announcing the winner was held at the Old Fort, President Mandela began by looking seriously at the crowd, and noting that he had

given strict instructions to my security guards to get me out of here as soon as possible. ... I feel quite uncomfortable at this moment. To begin with, I am in dangerous company, surrounded by jailbirds. I see Judge Albie Sachs sitting over there, I don't feel safe with people like him around. ... Then to add to my already distinct sense of unease, I realize that we are in the middle of a notorious prison where I and thousands of others have spent various parts of our lives. I am always afraid that someone will lose the key and I will find myself back inside again. (qtd. in Sachs 2000: 235-36)

Justice Sachs emphasized the role the Court played in the design of the building, “We spent months on the brief... The difficult thing was describing the character of the building” (qtd. in Law-Viljoen 2006: 69) The architects integrated artists’ works into the very structure of the Court building. They made a point of establishing an Arts Work Committee, which in 2003 “issued a formal call for submissions from artists and crafters” (Segal 2006: 107). The Committee aimed to find artists who could create glasswork, wood-carved doors, metal sunscreens, wrought-iron works, lighting, mosaics, and weavings and rugs. Their mission was, as Justice Sachs put it, to use “the eyes, hands and hearts of all our artists, famous and unknown” (qtd. in Segal 2006: 108).

The architects designs were informed by Thenjiwe Mtintso’ stories from her time in the Women’s Jail and other stories from other former prisoners. The Old Fort prison had been a constant, looming threat for black and coloured residents of Johannesburg. Pass offender Nolundi Ntamo evokes the environment: “My grandmother had taught us to say goodbye when we went to shop in town ... We used to say ‘if you don’t see me, check Number Four”” (qtd. in Segal 2006). And the experience in the prison was brutal. Former prisoner Henry Nxumalo was held in the Awaiting Trial Block. He remembers: “My crime was being found without a night pass five minutes before midnight.... I was

kicked and thrashed every day.... All prisoners were called *Kaffir* at all times” (Segal 2006: 30.)

The architects decided on a design that threatened to erase this memory, because their design required demolishing the Awaiting Trial Block. However, the architects did not want to erase the memory of the tens of thousands of black men like Henry, men who were inhumanely held at the AWB. So Makin and Masojada instead designed the Court structure to incorporate one hundred and fifty thousand bricks and four stairwell towers from the AWB. The design incorporated two AWB stairwells into the building structure but left two in their original location in what is now Constitution Square, repurposed into light towers, as a immediate visual reminder of the past. As Janina Masojada put their ambition, it was that the materials “have become integrated into the functioning of the Court” (qtd. in Law-Viljoen 2006: 39). “The integration of the new building with the existing site structures captures our history, bringing the past into contact with the present” (qtd. in Law-Viljoen 2006: 15).

The builders salvaged bricks from the ATB to construct the Great African Steps, a wall in the Court Chamber directly behind the Justices’ bench, and a wall in the Court foyer. The foyer wall also incorporated a salvaged ATB stairwell. The bricks and stairwell serve as a constant reminder of the history of the site. The bricks that once kept men apart in apartheid now bring them together in the Constitutional Court. They echo stories. They are ghosts; they tell stories of tortured prisoners, separated from their families for months because they forgot their passbook. The repurposed bricks gain new meaning,

As visitors walk on up the African Steps they tread on the reconstituted bricks embedded with prisoners' memories. The salvaged bricks in the Court Chamber also are a constant reminder to the Justices of their responsibility to uphold the Constitution. (Justice Pius Langa remarks that "one doesn't inhabit this building without being reminded of what kind of a space it is" (qtd. in Law-Viljoen 2006: 37) Ciraj Rassol draws out the significance of this sort of repurposing:

In the museum, and aesthetic arena for working with memory provided a place for the community to come together and share their experiences and memories... it was the eloquence of voice through which the museum alcoves were witness to poignant stories hitherto untold. (Rassol 2006: 291)

The bricks from the ATW bear witness to the untold stories of men once imprisoned there.

The CC building functions for South Africans as a heritage site and as a site of memory, pain, but also renewal. The CC justices and architects did not intend to recreate a past but rather to build on the past. The CC is the door to all South Africans' futures. And the CC houses an art collection that embodies and celebrates the long struggle for democracy.

Visitors who enter from the plaza on Constitution Hill hear recordings of former prisoners of Number Four that are broadcast from the ATB staircase adjacent to the CC's front doors. The broadcast includes prisoners singing *Nkosi Sikelel' iAfrika*. From lockup at 3 p.m. until light-outs at 8 p.m., the prisoners sang. Their singing culminated with *Nkosi Sikelel' iAfrika*, now the national anthem of South Africa.

The discussion now turns to three of the art works in the collection, David Goldblatt's photographs, Willem Boshoff's sculpture *Prison Sentences*, and the beaded flag of the Republic of South Africa. The first two are discussed as signifiers of and links

to the painful past, while the flag is discussed as a glistening symbol of South Africa's bright future. The flag hangs on the wall directly behind the Justices' bench, which is constructed of repurposed bricks from the AWB.

Renowned South African photographer David Goldblatt was asked to document the Old Fort and the prisons, before construction of the new Court began on October 28, 2001. Goldblatt had shot a series of photographs at the old Fort shortly after it was decommissioned as a prison in 1983. At that time Goldblatt was only allowed access to the sections for white prisoners. Only after the prison authorities moved out was Goldblatt allowed to roam the Hill, and, as he recalls, "I did indeed. And went into what is Number Four, I think, the black prison. And for the first time saw these solitary confinement cells units." (Goldblatt 2014).

Mark Gevisser, a curator in Constitutional Hill, captures the atmosphere of those cells:

you walk under an observation bridge ...and down into what really is the darkest place in the darkness of the prison: the solitary punishment cells....in this punishment section, the outdoor courtyard has wire mesh between you and the sky. So you're outside but you're caged. (qtd in Segal 2006: 194)

And the conditions in the cells were brutal. They would sometimes house inmates "for more than a year, with a diet of rice water (starch water), and locked up for 23 hours of the day. Many lost their sanity, whilst many died in there" (Baloiyi 2014).

It is only fitting that Goldblatt would be the one to capture these cells. The cells exemplify "the wreckage that defines South Africa's past" (Enwezor 2004: 32-33). Goldblatt has been documenting the landscape, the visual space of apartheid for almost seventy years. He has, as he modestly said in a discussion with South African novelist Marlene van Niekerk, " 'the eye'. I do believe one secret I have is the ability to find in

all the chaos of utter reality, and assess not so much an order as of a concatenation, a lot of things coming together, things coming together. I can only say I see myself blessed by that” (Goldblatt 2014b). The Court Collection includes his record of the chaos of utter reality at the Old Fort: his photographs *Twenty –six punishment cells and lavatory. Number Four, Hillbrow, Johannesburg. 31 December 1999.* (Fig.12)

Ivan Vladislavić’s novel *Double Negative* describes some photographs as “annihilate[ing] memory; they swallow the available light and cast everything around them into shadow” (Vladislavić 2013: 87). The *ekhulukhuthu* or isolation cells had the same effect on prisoners caged within their red brick walls.<sup>49</sup> The actual bricks of the confinement cells were not repurposed for the walls of the Justices’ chamber, but the ATB bricks that were repurposed are the same color and same texture as the ones in the isolation cells. Goldblatt writes with Nadine Gordimer that “what white South Africans have done to black South Africans seeps like an indelible stain through fiction and photographs. The repression and tragedy of black lives is there; we did not have to look for it” (Gordimer and Goldblatt 1986).

Goldblatt’s process was fairly complicate.

I photographed each cell separately on a view camera. And then finally we put all of the photographs together. We didn't stitch them, which is the common technique used now. That's using digital technology. I didn't want to stitch them. I wanted to show them as separate units. But effectively it makes one long photograph. (Goldblatt 2014a)

Goldblatt<sup>50</sup> employed a 4x5 field camera to photograph the cells. Jo Ractliffe, a fellow photographer, discussed in the following chapter, captures the significance of Goldblatt’s work: “David would never say his work is synonymous with the struggle. And he worked

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<sup>49</sup> For further discussion, see Segal (2006), pp. 19ff

<sup>50</sup> The camera was custom built by Andrew Meintjes for Goldblatt in 1983 (Stevenson 2008: 102).

apart. David is our archivist. That's what he really is. He's the archivist of South Africa's shifting changing sets of values" (Ractliffe 2014). Goldblatt 's photographs of South African life and landscape document the ruins of of apartheid that were built upon the ruins of colonialism.

Another central work in the Court Collection that reflects its location is *Prison Sentences*,<sup>51</sup> (Fig 13) a sculpture by Willem Boshoff. The sculpture is constructed of eight black granite slabs from Zimbabwe, and is permanently installed in an open courtyard in the Constitutional Court gallery. *Prison Sentences* is adjacent to a sculpture by Wilma Cruise *Right to Life*, another example of concrete poetry;<sup>52</sup> the sculpture is inscribed with Nelson Mandela's words from the Rivonia Trial: "it is an ideal for which I hope to live for and achieve. But if needs be, an ideal for which I am prepared to die" (qtd in Law-Viljoen 2008: 130).

Boshoff etched each slab in *Prison Sentences* with a series of six vertical lines crossed out by a single diagonal line, an index for the days Rivonia Trialists were imprisoned.<sup>53</sup> The total is staggering.

Nelson Mandela: 11 June 1964- 11 February 1990 (9, 377 days)  
Walter Sisulu: 11 June 1964- 15 October 1989 (9,292 days)  
Dennis Goldberg: 11 June 1964- June 1985 (+8,030 days)  
Ahmed Kathrada: 11 June 1964- 15 October 1989 (9, 269 days)  
Govan Mbeki: 11 June 1964- 5 November 1987 (8,548 days)  
Raymond Mhlaba: 11 June 1964 - 15 October 1989 (9,292 days)  
Andrew Mokeke Mlangeni: 11 June 1964 – 15 October 1989 (9269 days)  
Elias Motosoledi: 11 June 1964- 5 October 1989 (9,292 days)

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<sup>51</sup> The sculpture is titled *Hackers* in the Constitutional Court art collection. Boshoff renamed the work *Prison Sentences* since each prisoner was released.

<sup>52</sup> "In the 1950s an international movement known as concrete poetry sought to break down existing barrier between the visual arts and the written word. The Getty exhibited works from this movement, in the exhibition *Concrete Poetry: Words and Sounds in Graphic Space*. 2017

<sup>53</sup> For further discussion see Broun (2012).

The presiding Judge Quartus de Wet intended for the sentences to not have a full stop, that the trialists would stay in prison for life. Boshoff, whose works often meditate on language, notes that sentences all had a full stop, despite de Wet's intentions: all the prisoners were released. He explains, "That is why I call them *Prison Sentences*" (Boshoff 2014).

*Prison Sentences* is a both monument and a monumental sculpture. The slabs refer to the courageous lives of eight ANC leaders. Though not intended to, the black granite slabs recall tombstones or shrines. Roberts captures one role that *Prison Sentences* plays for visitors to the court: "as visitors left offerings on the altars, they also took something with them in their memories of the enactment. In this way, the exhibition became a dialogue between objects and visitors" (Roberts 1994a: 54). Boshoff etched each slab with a series of six vertical lines crossed out by a single diagonal line to represent the number of days each man served in prison.

The inscriptions create graphic patterns. "A handful of such signs is a cliché, cartoon shorthand for a prison cell; repeated precisely, exhaustively, they capture the immensity of the prison sentences endured by the Rivonia Trialists." (Vladislavić 2004: 98). The inscriptions are also directly linked to how the prisoners spent their days. Ahmed Kathrada recounts their long grueling days in the quarry: "pick and shovels. It was very difficult – bleeding hands, blisters, mercurochrome balm... hard labour was part of our punishment... we were at the quarry for thirteen years" (Kathrada and Couzens: 7).

The genesis of *Prison Sentences* can be traced to Boshoff's compulsory conscription in the South African Defense Force (SADF) in 1978. In the increasingly militarized apartheid South Africa, all white men were conscripted into the SADF for the



protection of white citizens and also “for the attainment of good citizenship and manhood for white men” (Conway 2012: 17). When Boshoff refused to carry a rifle or wear a uniform, he was ordered to sit behind a partition at the back of the operation’s tent. This experience influenced his work *Bangboek* (1978-1981); his refusal to continue in his military service had drawn him to reflect on the idea of prison. He notes that he “ wanted to create a link between the two works, which were made 24 years apart. . . . I liked the title *Prison Hacks*, because a hack is a term for a person hired to do dull routine work, but also means a line that you draw through something” (Boschoff 2007a).

During his first military service, he wrote a book about why not to serve. When conscripted a year later, he transcribed the book into a secret code that only he could read. He feared a significant jail sentence if his anti-authoritarian and anti-apartheid views were discovered. He has been meditating on language ever since; “in some of my work I try to expose and then to deconstruct the dominance and power of privileged tongues. . . .” (Boshoff 2007b: 154). This secret language was the genesis of *Prison Sentences* (Boshoff 2014).<sup>54</sup>

*Prison Sentences* is a deeply personal work. Boshoff’s wife was a law professor and legal researcher for Justice Sachs while he was drafting the Constitution. Boshoff believes that his work chronicles a moment and event in history directly related to the court itself, and therefore believes the constitutional court is the perfect place to house it. Boshoff simply states “showing that eight lives, 27 years of a life. It’s a long, long time. It just shows such a – that a court can have such a say over someone’s life” (Boshoff 2014).

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<sup>54</sup> Enwezor notes that “like many concrete poets, Boshoff has great interest in the spatialization of language, images, and trophies, In his small, soft-cover book of concrete poems entitled *Kykafrikaans*, the artist seeks to literally “concretize” the meaning of the typed word, embedding “its verbal complexity in a material visual form from which it cannot be separated” (Enwezor 1999: 115). For further discussion, see Harney 2007.

Goldblatt and Boschoff both contributed works that look to the past. But other works look to the future. The hand-beaded and embroidered flag (Fig. 14) of the new Republic of South Africa hangs on a red brick wall directly behind the Justices' bench, in the Court chamber at the Constitutional Court (Law-Viljoen 2008: 86). Janina Masojada, one of the Court architects, commissioned the African Arts Centre in Durban to create a flag for the Court.

The women's workshop, comprised of Hlengiwe Dube, Zibuyisile Zulu and Sphindile Nkosi, were both honored and overwhelmed when the director of the African Arts Centre, Anthea Martin asked them to design and execute the flag. They had a well-known reputation in KwaZulu-Natal as master beaders. However, they had never embarked on a beaded construct of this size, so they added Leionie Malherbe as project manager.

Architect Janina Masojada had a simple requirement for the commission: that it "have a handmade look" (Masojada) So we could do that because we are all crafters." (Malherbe 2014). The women knew that they were to make a beaded replica of the flag of the new Republic of South Africa, and they knew the dimensions. But that was the extent of their instructions.

The first workshop for the flag was held on November 18, 2005 at the African Arts Centre. "We had a few workshops... stitching a few panels and figuring out a few patterns and designs and the types of beads we were going to use." (Malherbe 2014) It took much drawing, tracing, and experimenting with fabric samples to arrive at a plan. They decided to employ a 100% cotton Fasco fabric milled in the exact colors as the flag of the new Republic: red, green, blue, white, yellow and black. Plastic beads were

chosen for size, cost and weight (African Art Centre 2006). A major concern was the weight of the finished flag and how to stitch the beaded panels together.

Just three years after the first democratic election, Okwui Enwezor wrote a powerful essay on a flag's symbol of nationalistic identification. He recounted the tale of his neighbor who once a week proudly flew the flag of apartheid South Africa. He characterizes the flag "ideological prop of ..the lost dream of a fallen nation" and as "the uneasy light that illuminates South Africa's return to the ranks of the modern nations, the flag display reveals, and at times masks, certain anxieties around the transition from apartheid to a representative, tolerant, liberal democracy" (Enwezor 1997: ). It is this nationalistic ideal of the old South Africa that the women's workshop in Durban set out to challenge.

As the project advanced, additional beaders were added to the team, including some male beaders. There was significant trial and error; "anyway, so we had a few workshops trying to – stitching panels, figuring out patterns and designs ,and the types of beads we were going to use,." (Malherbe 2014). The team met weekly at the AAC; every beader was given a panel of fabric, threads, and beads to work on at home.

Creating the flag was a tedious, laborious process. Sometimes the tension of the stitches would pull the fabric and the beader would have to unstitch and restitch. The panels had to align perfectly. The most challenging and painful process was pinning the panels together. They were laid out on the gallery floor. The women knelt on cushions as they bent over the beaded panels to inspect and stitch.

And accidents happened. A nephew was helping a his aunt and spilled wax all over the beads; they were working by candlelight in a rural area with no electricity. It

took four months to complete the flag. The AAC enlisted a “paint and oil company” to machine-stitch the panels together, because they required an industrial size sewing machine.

And Masojada visited the AAC, to inspect the project she was overwhelmed. “She stood there without saying a thing. I started quaking. Eventually she looked up and there were tears in her eyes. She was crying” (Malherbe 2014). The beaded panels were stitched together. Then the two halves of the flag were assembled on an industrial sewing machine.

The flag was completed on March 3, 2006 “each time I see the flag on TV I get bumps because it’s remind me of all the challenges and everything that faces me when we’re working on this flag. ...it was honor. You know my name because it is also embroidered there, so I’m delighted” (Dube 2014).

The panels of the flag did not reflect the beader’s personal style. But each beader stitched her name on the panel she beaded. This stitching stands in sharp rebuke to the practice of many museums in South Africa to label work by black women ‘anonymous’. These black women artists have their names inscribed in the Constitutional Court.

Chapter Four: The Ever-Shifting Landscape of the New South Africa: Negotiating Space  
in the Post-Apartheid Landscape

Dumas' tapestry triptych *Benefit of the Doubt* hangs in the Palace of Justice, a Dutch appellate court in Hall of Justice in 'S-Hertogenbosch Netherlands. A duplicate triptych hangs in the Constitutional Court of South Africa. The tapestries were commissioned in 1996 by the Dutch government and the building's architect, Charles Vandenhove, who incorporated art works into many of his architectural designs. "Here you can see it better from a little further away in the Dutch Court and here you can see the three sides" (Dumas 2014) The Dutch tapestries were gifted by the Dutch Court to the CCSA in 2001 and installed in the lobby of the temporary Court offices in Braampark. She observes that, *Benefit of the Doubt* is a significant work in her canon, despite being a commissioned work:

In all my work in all my life I have been interested in the relationship between what is free and what is destiny, fate, and they are all a little bit different. The fact that this could happen, that I was asked to contribute something to the Constitutional Court, while I already had something for the Palace of Justice. That seemed to be so strange coming together, be it destiny or be it fate. (Dumas Amsterdam 2016)

It is ironic and fitting that the Dutch government, the former colonizer of South Africa, gifted the works to the Court. The phrase, "benefit of the doubt", often considered a legal term, is only a phrase used by lawyers when analyzing a jury. "Dumas call the doubt the 'basis of the constitutional state'. Here, she believes, the roles of judge and artist meet one another, with the necessity of viewing truth and reality from all angles, achieving understanding of the various elements, and finally reaching a verdict" (De Wispelaere and Vandenhove 1998: 51). How fortunate it was the Dutch tapestries were produced on an industrial machine at the Desso factory in the Netherlands. The project

supervisor told the artists that Desso could manufacture two tapestries for the same price. It is the set-up time of the looms was costly, since “behind every weaving loom is a forest of 6000 bobbins which take several days to set up for production” (De Wispelaere and Vandenhove 1998: 29) All the artists designing tapestries for the Den Bosch courtroom were restricted to the same palette, as it was too costly to change thread bobbins for each work. The Desso process is technologically sophisticated: “ an image put together in a photographic manner, and then the pixels, the tiny dots it is composed of, are translated into the individual tufts of the pile. What is to be hung in the hall of Justice .... is not a carpet, it is not a painting, it is not a photograph, and certainly not a decoration; it is all of these at the same time.” (De Wispelaere and Vandenhove 1998: 22-23)

The second set of Dutch tapestries are in the CCSA as a result of a talk Justice Sachs delivered at The Hague in 1999. Dumas was in the audience. They met afterwards.

Justice Sachs

came to ask me to do something for the court. he first suggested maybe I work with you know people of, uh, oh children or whatever and do something directly there. but I don't really work like that and I said to him “I'm so honored to be ask but I, I don't quite know how to treat this...” And then at one point I said, but you know what I actually have a tapestry that is hanging in the court and the whole relationship – the colonial relationship with the Dutch and the South Africa and so actually that could be very - yeah - interesting to have one in the court there and one in the court there and I remember telling him. (Dumas 2014)

Dumas, a South African, left in 1976 to study art in Amsterdam. She wanted to study in London, but her Afrikaaner mother never forgave the British for their brutal treatment of the Boers. Dumas was away during the most violent years of the struggle, but her many of her images are haunted by apartheid horrors. Dumas reflected on the sadness of being separated from her homeland: “Yeah I still want to cry when we talk about it. That uh,

because I always wanted to go back but then I stayed in Holland and stayed longer so to be able to hang there I find it such a privilege” (Dumas 2014). It’s also a privilege for the CC collection; “Dumas is considered one of the most important painters and also the highest selling female artist in the world (Messud 2014). Her tapestries are the most valuable works in the CC art collection.

Dumas’ work process involves researching photographs and historical images. She does not duplicate them but rather allows those images to seep into her subconscious and inform her images; for her, “The meaning doesn’t reside in the source but what you do with it” (Williamson 2009: 60). The young male figure in the middle of the tapestry was inspired by the Renaissance painter de Messina’s 15<sup>th</sup> century painting of *The Martyrdom of Saint Sebastian* that hangs in the Staatliche Kunstmmlungen, in Dresden. The *St. Sebastian* painting was originally a panel of an altar triptych in a church in San Guilano, Italy. As the historian Gioacchino Barbera notes, “The artist demonstrates the unique ability to render the details of everyday life with a tender radiance” (Barbera 2005: 28). Dumas’s depiction of St. Sebastian is the image of a forlorn androgynous figure, lost to the world; there is no life radiating from her St. Sebastian.

The haunted faces and figures in *Benefit of the Doubt* speak to Dumas conflicted feeling about exile. She asks herself, “Did I not do enough to help out South Africa? Should you be living here? And not there. Should you be living where you were born? All these things came together when I came to think about this artwork” (Dumas 2016). The figure, *Liberty*, in the third woven panel alludes to Delacroix’s seminal work *Lady Leading the People* (1830).<sup>55</sup> Delacroix’s *Liberty* is a strong, victorious, and sexual

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<sup>55</sup> For further discussion, see Noon and Riobpelle (2016).

woman, brandishing the French flag in one arm and a rifle in the other. Dumas' *Liberty* is a young girl, whose arms or wings appear broken. Dumas' *Liberty* is not sexual. The prepubescent girl is the opposite of Delacroix's victorious depiction of *Liberty*. The image is sourced from an earlier Dumas painting *Liberty* (1993) "However, the stained hands and sidelong glance confound easy readings. Rather, an unsettling ambiguity raises questions about degrees of culpability and innocence especially in relation to youth" (Perryer 2004: 98).

She captures the enthusiasm widely shared among many artists who contributed to the collection. "I also thought it was so lovely that [Sachs] did that also. Because you know...the white government wasn't at all interested in art...And I thought that was lovely that he brought art to the court." (Dumas 2014).

Photographer Jo Ractliffe's color photographic series *Johannesburg Inner City Works* (2000 – 2004) are representative of the role the Constitution, the Court and its new Court building play in moving South Africa forward. Ractliffe's photographs physically and metaphorically transport the Collection from the years of apartheid to the new South Africa – the new Johannesburg surrounding the Constitution Hill. The series is installed in the Court's library, above the windows that overlook the city center.

Ractliffe's photographic technique reflects her attention to the ephemeral and peripheral; the effect of her use of cheap cameras is to draw the viewer's attention to the liminal. "The conceptual premise of Ractliffe's work is always in her attempt to grapple with and undermine the apparatus, to use the vulnerability of the technology to her advantage" (Enwezor 2006: 39)



In the series the artist is exploring the post-apartheid Johannesburg, still a city of great racial disparity. And still a city of migrants, but the migrants are no longer only black South Africans workers leaving their homes to work in the mines; they are also migrants from other African nations looking for work in the new nation. Johannesburg will always be a city of many ethnicities, cultures, and classes colliding. Ractliffe reflects that

it represents a place where, you know, extraordinary things have happened and it's amiss...we continue in our odd and at times horrific and painful and brilliant and amazing manner. So there is something about that and I know I'm saying all of this in emotional terms, but it is that kind of, it is a felt thing for me what places like that represent. And now about memory and forgetting and they're about a kind of a strange blindness and a kind of a need to really see, so, you know, there's a lot of rhetoric that happens around this rainbow nation and what this building represents and how extraordinary it is and wonderful. (Ractliffe 2014)

Ractliffe's technique reflects her attention to the ephemeral and peripheral. The effect of her use of the cheap cameras that she began employing in the 1990s is to draw the viewer's attention to the liminal. The cameras capture a series of images, but in essence create one long panorama. Thus the individual images are all in dialogue with one another. As Sue Williamson puts it, "for photographer Jo Ractliffe, centrality of focus has been an issue to approach carefully. Often it has been the peripheral glance, the slightly out of focus view already sliding past, the has engaged her interest, rather than the one directly ahead" (Williamson 2009: 296)

The viewer watched a street vendor, a taxi, pedestrians all in movement on the congested city streets. The viewer's experience is stated by critic Enwezor<sup>56</sup>. "This work, as well as the photographs in the exhibition, are shot like a drive-by- shooting, literally

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<sup>56</sup> For further discussion, see Corinne Diserens (2011), in addition to Enwezor (2006).

through the scene of a crime, from the point of view of a traveler moving through and between moments of analysis and documentation” (Enwezor 2006: 39).

When asked by the author what it means to her personally to have her work included in the Court collection Ractliffe replied, “It’s, you want – if you are wanting to be in the Constitutional Court collection as far as I’m concerned or what it means, is not because of the collection. It’s actually because of the place and the geography and the moment” (Ractliffe 2014). And Ractliffe’s cityscape represents that moment in South African history. She employs the language of landscape photography to construct the panorama of the ever-shifting downtown Johannesburg – representative of the collection’s and the country’s gaze to the future.



**Figure 1**  
Joseph Ndlovu  
*Humanity*  
1995  
181.4 x 150.5 cm  
Fibre  
Courtesy of David Krut Publishing





**Figure 2**  
Dumile Feni  
*History*  
1987  
100 x 296 x 170 cm  
Bronze tubing  
Courtesy of David Krut Publishing





**Figure 3**  
Carolyn Parton  
Court Logo  
1995  
Courtesy of David Krut Publishing





**Figure 4**  
Hamilton Budaza and Cecil Skotnes  
*Freedom*  
1995  
engraved wood panels  
Courtesy of David Krut Publishing



**Figure 5**  
Willie Bester  
*Discussion*  
1994  
wool  
Courtesy of David Krut Publishing





**Figure 6**  
William Kentridge  
*Sleeper (Black)*  
1997  
print  
Courtesy of David Krut Publishing





**Figure 7**

Judith Mason

*The Man Who Sang and the Woman Who Kept Silent 2*

1995

221 x 70 x 45 cm

mixed media

Courtesy of David Krut Publishing



**Figure 8**  
Kim Berman  
*Fires of the Truth Commission 1, 3, 5, 7*  
2000  
80 x 129  
monotype  
Courtesy of David Krut Publishing



**Figure 9**  
Dumile Feni  
*Three Figures*  
1968  
pen and ink on paper  
Courtesy of David Krut Publishing





**Figure 10**  
Marlene Dumas  
*The Benefit of the Doubt*  
2000  
textile  
Courtesy of David Krut Publishing



**Figure 11**

David Goldblatt

*Twenty-six punishment cells and lavatory, Number Four, Hillbrow, Johannesburg 31 December 1999*

1999

digital print on paper

Courtesy of David Krut Publishing



**Figure 12**  
Willem Boshoff  
*Prison Sentences*  
2003  
Zimbabwe black granite  
Courtesy of David Krut Publishing





**Figure 13**

**South African Beaded Flag**

Coordinators/Designers: Anthea Martin, Hlengiwe Dube, Leonie Malherbe, African Art Center Durban

Beadwork: Brenda David, Anthony Joseph, Ntombi Agnes Mbatha, Tholani Mbatha, Ntombifikilie Greta Nkosi, Sphindile Nkosi, Zibuyisile Pretty Zulu  
2006

cotton fabric, silk thread, plastic beads  
Courtesy of David Krut Publishing

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