TRANSFORMING SPACE AND SIGNIFICANCE

A STUDY OF THE CONSTITUTIONAL COURT OF SOUTH AFRICA

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ABSTRACT

TRANSFORMING SPACE AND SIGNIFICANCE

A STUDY OF THE CONSTITUTIONAL COURT OF SOUTH AFRICA

This study examines the process of establishing and building the new South African Constitutional Court as the first intervention in the development of the Constitutional Hill precinct and as part of an endeavour aimed at creating a new national identity. The argument is reliant on the premise that an agency, in this case the judges of the constitutional court, actively seeking out means of transforming space and place and transferring significances in heritage resources, has contributed self-consciously in the process of social transformation. The study is intended to be descriptive of a social reality and explanatory of a special atypical case.

Pierre Nora's seminal concept involving *lieux de mémoire*, their spatial and material potential, and the means by which *lieux* are formed and retained as *lieux* (memory objects/vessels/vestiges of heritage) has framed this study. The premise that space and place embodies and transmits concepts of cultural heritage has inspired ongoing and complimentary theories of the ways in which the built environment manifests narratives of power and the role of place in memory. Nora's *lieux* are social creations often involving built form and it is clear that historically significant built form can be used in social endeavors which contribute to the creation of a society's identity. Research and analysis of the Constitutional Court archive, selected published critique, examination of the artefact itself and by means of interviews with key professional individuals who participated in the programme of the building of the new Constitutional Court, all contribute to an exposure of the process of the endeavour of the judges of the Constitutional Court to establish a "*lieux* of cultural identity".

Key words: Constitutional Court, lieu of national identity, cultural identity, architectural identity

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IF YOU DON'T SEE ME, CHECK FOR ME AT NUMBER FOUR 140

ACRONYMS AND ABBREVIATIONS

ACTAG	Arts and Culture Task Group
AHD	Authorised Heritage Discourse
AMdlT	Avrami, Mason and de la Torre
ANC	African National Congress
ATB	Awaiting Trial Block
BnF	Bibliothèque nationale de France
CODESA	Convention for a Democratic South Africa
CSC	Competition Steering Committee
DOJ	Department of Justice
DPW	Department of Public Works
GJMC	Johannesburg Metropolitan Council
GJTMC	Greater Johannesburg Transitional Metropolitan Council
GNU	Government of National Unity
HET	Heritage, Education and Tourism
ICOMOS	International Charter for the Conservation and Restoration of Monuments and Sites
ICTJ	International Center for Transitional Justice
JDA	Johannesburg Development Agency
MIT	Massachusetts Institute of Technology
MPNF	Multi Party Negotiation Forum
NHRA	National Heritage Resources Act
NMC	National Monuments Council
NP	National Party
OMM	Design Workshop
PAC	Pan African Congress
RDP	Reconstruction and Development Programme
SAHA	South African History Archive
SAHRA	South African Heritage Resources Agency
TRC	Truth and Reconciliation Commission
US	Urban Solutions

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CHAPTER ONE – INTRODUCTION

> *"We no longer inhabit that past, we only commune with it through vestiges − vestiges, moreover, which have become mysterious to us and which [we] would do well to question, since they hold the key to our "identity", to who we are".*[1]

In this study I explore the way in which society successfully sustains, maintains and even enhances cultural significance where radical modifications occur in the historic built environment. I examine the transferring and transforming of significance in the built environment using the recognisably atypical Constitutional Court precinct in Johannesburg as a case. I draw primarily on the work of Pierre Nora who examines a nation's attitudes and authorisation of historical and collective memory in changing times. The ideas underpinning his work, "Realms of Memory", are the basis of my study.

THE QUESTION

The building of the South African Constitutional Court was the first intervention in the development of the Constitutional Hill precinct in Johannesburg. This study examines the process of establishing and building the Court as part of an endeavour aimed at creating a new national identity and as part of the process of transforming a precinct steeped in oppression into that of an idealistically rationalised space as a primary symbol of a new nation.

The aim of this research is to clarify and understand two main issues -

- How the new Constitutional Court building was integrated into the prison precinct (a question about architecture as heritage).
- How the building of the new South African Constitutional Court has contributed to the building of a new national identity (a question about cultural identity)?

This study is intended as a reading of the Court place and space as it stands today. Although I am an architect, this study is not intended to be an evaluation of the Court

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[1] Nora, Pierre. 2002. "Reasons for the current upsurge in memory," First published in *Transit* 22(2002). Original in French, translated source. http://www.eurozine.com/articles/article_2002-04-19-nora-en.html.

project as architecture or even as conservation: it is rather a surfacing of debates around the ostensibly deliberate forging, creating and inventing of a new national identity through the transformation of a historic place and space. It is the intention to examine the Court buildings and the associated Constitutional Hill space in an urban context and to critique the built form as a post-apartheid project, which was clearly intended to play a central role in the formation of a new national identity.

MY INTEREST IN THESE QUESTIONS

Twenty one years into a new democracy, South Africa finds its citizens grappling with broad issues of social transformation in the quest for a coherent national identity – the idea of the Rainbow Nation[2] having faded and the African Renaissance slowly dying.[3] In a narrower field, the management of heritage resources in the built environment is an arena of particular interest: identifying, highlighting and retaining cultural significances in a process of transformation of both society and built material culture. The recent controversy surrounding the Rhodes statue on the University of Cape Town campus has contributed to this. Debate around the statue is not new. The University acknowledged recently that what started as a question about a statue has "become a much larger movement for change, a call to re-imagine and re-engage with what a transformed African and South African university looks like – whether in terms of its ethos, curriculum, research, symbols, policies or demographics".[4]

As part of a research assignment in 2014, I surveyed the opinions of a group of mature students on campus to establish what the view was regarding the statue. I found opinion to be divided.[5] This led to thinking about how the transformation of place and space can facilitate an educating and transforming process in society. Can significance be

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[2] "Each of us is as intimately attached to the soil of this beautiful country as are the famous jacaranda trees of Pretoria and the mimosa trees of the bushveld – a rainbow nation at peace with itself and the world." Desmond Tutu's term used by Nelson Mandela in May 1994. Source: Manzo, K.A. 1996. *Creating Boundaries: The Politics of Race and Nation*, Lynne Rienner. p. 71.

[3] Meskell, Lynn. 2012. *The Nature of Heritage: The New South Africa*, Wiley. Meskell discusses the conflation and fabrication of historical narratives and the challenges for the emergent nation in her chapter entitled "Making Heritage pay in the Rainbow Nation".

[4] University of Cape Town, 2015. Website Homepage Introduction to "Transform UCT", accessed on 18th August 2015. http://www.uct.ac.za/news/Transform-UCT/.

[5] The 2014 survey questioned issues around 'Heritage' and Heritage on the University campus. General questions were asked and one specific question was asked with regard to the siting of Rhodes Statue: should the statue stay in its current position unchanged or should it be altered or moved? If it should be altered or moved – give suggestions? Approximately thirty to forty third year, Honour's and Master's students were selected across a range of faculties. The students were a diverse group, some were known to me and others not. They were selected on the basis of their willingness to engage in the debate regarding Rhodes' statue. At least five of the students who participated in the survey had either spoken at or been present at UCT's Debating Union's Public Debate which took place at Leslie Social on the 23rd May 2014. The survey took place in November 2014, prior to any formally organised public discussion at the University.

transferred and transformed successfully in this way? Could the transformation of significance of a resource be achieved truthfully, authentically and with integrity? Schmahmann writes about the contestation of public art in post-apartheid South Africa. She discusses Rhodes' sculptured portrait on the Rhodes University campus, concluding by theorising in ways of dealing with art objects where they could "provide a locus for helpful critical engagement", where they present "opportunities to enrich understandings of complex histories" pointing to a democratic future and having "a positive liberating effect" - reminding us to always be on guard against complacency.[6]

My personal interest in the Constitutional Hill precinct stems from my high school and early university days in Johannesburg when the Old Fort (then a prison complex) sat on the ridge as an impenetrable presence which both fascinated and terrified as we traipsed through the Hillbrow and Braamfontein areas which were familiar for the exciting social facilities that they offered to teenagers and young adults.[7]

Much has been written about the conservation of cultural heritage resources in the post-colonial and apartheid dominated eras,[8] and about South Africa's transformation to democracy: the attempts at building a new nation, remembering and forgetting apartheid, the making of memory space and the memorialisation of space.[9] Conservation professionals are obliged to continuously challenge, revise and rethink methods and philosophies. What constitutes a nation's heritage? A collection of memory

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[6] Schmahmann, Brenda. 2011. "Bringing Cecil out of the closet: Negotiating portraits of Rhodes at two South Africa Universities", *de Arte* no 84. p. 26. Schmahmann is Professor in the Faculty of Art, Design and Architecture at the University of Johannesburg and author of *Picturing Change: Curating visual culture at post-apartheid universities*. 2013.

[7] Anyone growing up in Johannesburg in the late 1970's to early 1990's would recall the social landmarks in Hillbrow and Braamfontein such as Mi Vami for Shwarmas, Fontana for all night roast chicken, Le Chaim, The Chelsea and Mangles for the music (Refer to Roger Lucey *Back in from the Anger.* 2012), the Hillbrow Record Centre and the Metro movie house upstairs.

[8] For example: Autry, Robyn. 2012. "The Monumental Reconstruction of Memory in South Africa: The Voortrekker Monument," *Theory, Culture, Society* November. Buttgens, Peter J. 2010. "Restoration and re/creation of lacunae: The attitudes and principles of Gabriel Fagan architect as expressed in the restoration of the Castle of Good Hoop." M.Phil diss., University of Cape Town. Coetzer, Nicholas. 2013. *Building Apartheid: On Architecture and Order in Imperial Cape Town,* Ashgate. Darke, Nicola S. 2012. "Afrikaner Nationalism and the Production of a White Cultural Heritage." M.Phil diss., University of Cape Town. Liebman, Yvonne. 2012. "The actions of the state in the production of cultural heritage: The treatment of a cultural icon as a bearer of values, identity and meaning at Groot Constantia Cape Town." M.Phil diss., University of Cape Town. Witz, Leslie. 2013. *Apartheid's Festival: Contesting South Africa's National Pasts*, Indiana University Press.

[9] For example: Baines, Gary. 2007. "The Politics of Public History in Post-Apartheid South Africa," *Nordic Africa Institute*. Coombes, Annie E. 2003. *History after Apartheid: Visual Culture and Public Memory in Democratic South Africa*, Duke University Press. Leibowitz, Vicki. 2008. "Making Memory Space: Recollection and Reconciliation in Post-Apartheid South African Architecture." M Arch diss., RMIT University. Lytle, Melanie D. 2011. "A Fundamental Transformation: The Management of South Africa's Heritage for Nation Building in the Post-Apartheid Era." M Arts diss., Welch Centre for Graduate and Professional Studies. Meskell, Lynn. 2011. *The Nature of Heritage: The New South Africa*, Wiley-Blackwell. Murray, Noëleen, Nick Shepherd and Martin Hall. 2007. *Desire Lines, Memory and Identity in the Post-apartheid City*, Architext Series, Routledge. Nuttall, Sarah and Carli Coetzee. 1998. *Negotiating the Past: The making of memory in South Africa*, Oxford University Press.

and memorabilia, a dash of nostalgia, a bundle of differing cultural values all piled up together?[10]

Nora examines a nation's attitudes and authorisation of historical and collective memory in changing times: his work, *Realms of Memory*, forms the basis of my study. Coupled with this, is the necessity for understanding value assessments and cultural identity which are particularly complex yet highly relevant issues in South African society. Research which explores and exposes the pedagogical value of heritage resources and which can help to articulate the didactic effect of heritage that is meaningful to contemporary society is therefore important and challenging. The transforming of built environment heritage resources can act as a contributor to change. As noted by Avrami, Mason and de la Torre, relatively little research has addressed the specifics of cultural heritage conservation and focus still tends toward objects as opposed to contexts.[11]

My argument is reliant on the premise that actively seeking out means of transforming space and place and transferring significances in our heritage resources can enable a collective process in the establishment of social memory and identity. The Constitutional Court precinct is a nationally prominent post-apartheid heritage project where the metamorphosis of prison into the most important court in the land has successfully led to the establishment of a South African "lieux de mémoire", one central to the new national identity and psyche. I note the parallel processes of not adopting or adapting a heritage site or elements thereof, and the self-conscious opposing of the old and the new in the Voortrekker Monument and Freedom Park projects.[12]

THE CASE OF THE CONSTITUTIONAL COURT

In 1994, South Africa held its first democratic elections. Prior to this, in 1993, it had adopted an interim constitution which was replaced three years later by the Constitution.[13] The preamble begins with a description of the transition from the oppressive apartheid regime

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[10] See Ashworth, Graham and Tunbridge's *Pluralising the Past* which refers to South Africa's cultural heritage policy as an example of the "fruit salad" model.

[11] Avrami, Erica, Randall Mason and Marta de la Torre. 2000. *Values and Heritage Conservation*, Getty Conservation Institute. p. 6.

[12] The strategic siting of the new (post-apartheid) monument or heritage site of Freedom Park juxtaposed with the old (apartheid) Voortrekker Monument, both located on hills just under 5kms apart and both now recently accessible to one another by means of a road built between two previously divided institutions for the much publicised National Reconciliation Day celebrations in 2012.

[13] The Constitution of South Africa, Act 106 of 1996 (date of commencement; 4 February 1997).

founded on parliamentary sovereignty to a constitutional democracy committed to the creation of a society based on democratic values, social justice and fundamental human rights. The Constitution is the supreme law and it was agreed that a new court would be established to protect, interpret and enforce the Constitution and indeed to symbolise it or make it material. Consideration was given to various sites prior to the selection of 'Number Four and the Old Fort prison'[14] in Johannesburg, as the home of the new court in 1996. The Court judges elected to hold an architectural competition for the designing of a new court building. A brief was formulated and the competition was launched internationally. The jury, which included internationally important architects, chose five finalists from the one hundred and eighty five anonymous entries. The five received comments from the jurors and were given the opportunity to develop their ideas for the second stage of the competition. The winning team was comprised of four young South African architects: Janina Masojada, Andrew Makin, Erik Orts Hansen from OMM Design Workshop (OMM) in Durban and Paul Wijgers, from Urban Solutions (US) in Johannesburg. The Constitutional Court building was officially inaugurated on Human Rights Day on the 21st March 2004.

Information pertaining to the Hill site and the built form specific to this study has been obtained from various sources, although primarily from the semi-official published material – Law-Viljoen's *Light on the Hill*, Lauren Segal's *Number Four, the Making of Constitution Hill* and *Art and Justice* - published by David Krut in collaboration with Law-Viljoen, Papciak-Rose and architects Masojada, Makin and Wijgers. These publications are referred to as semi-official accounts of the programme because they were prepared in consultation and collaboration with the three primary participant communities: the legal community, the built and art-form community and the conservation and heritage community.

Light on the Hill presents a predominantly pictorial account of the site, the architectural competition programme and the built form with visual images of the newly completed Court and precinct by Buckland and short texts from Law-Viljoen, Judges Sachs, Mokgoro, Langa and Kriegler, architects Masojada, Makin and Wijgers and juror Mtintso[15]; *Number Four, the Making of Constitution Hill* tells the story of the making of Constitution Hill with stops at important junctures along the way as an organised record of moments in history.

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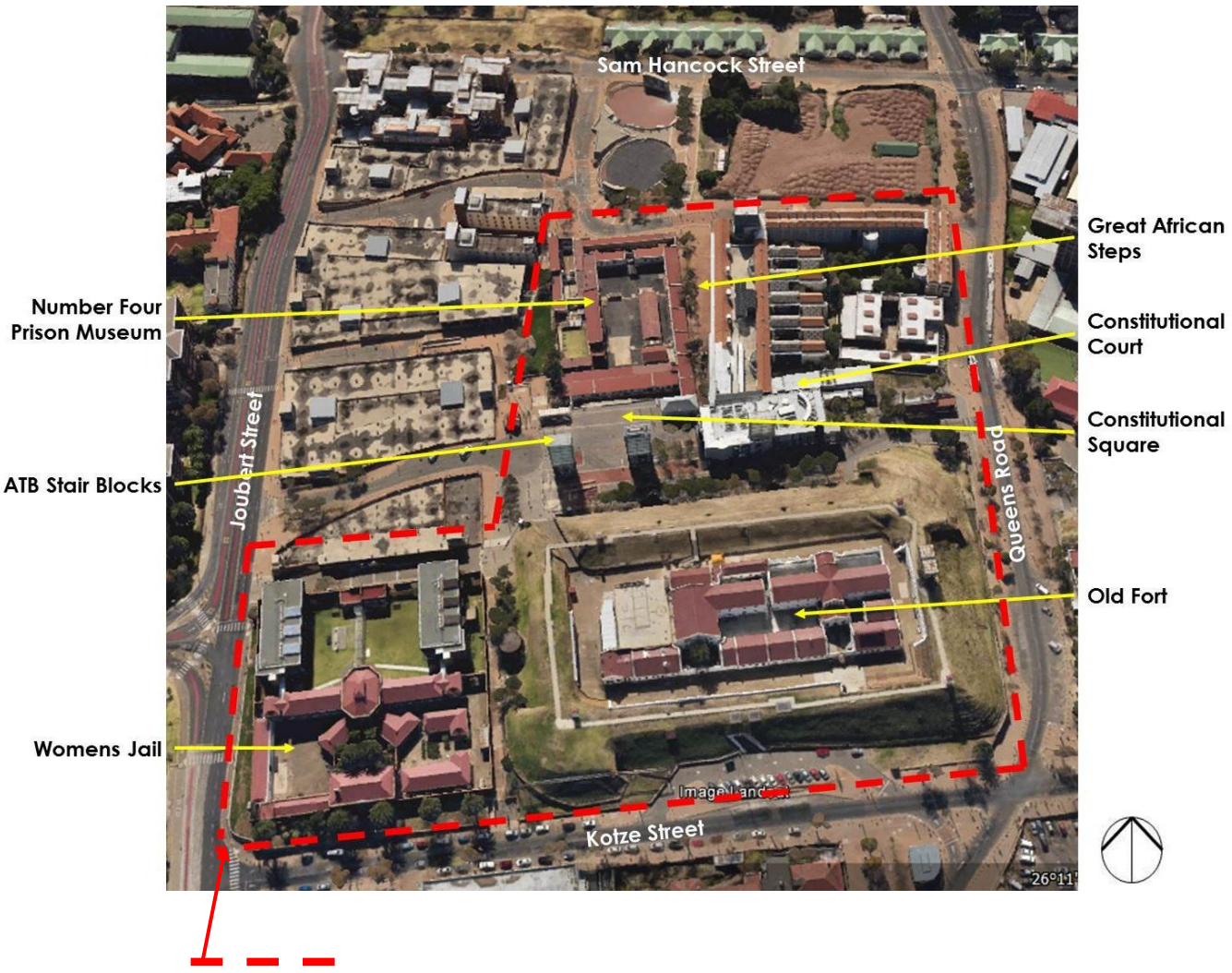
[14] At that time, in 1996, the Hill precinct was commonly known as 'Number Four and the Old Fort' or simply as Number Four. The naming of the site as Constitutional Hill occurred at the time of the competition brief writing.

[15] Law-Viljoen, Bronwen. 2006. *Light on a Hill: Building the Constitutional Court of South Africa*, David Krut Publishing.

It is a collection of archival fragments which narrates the shaping and development of the Hill site and it incorporates valuable information to this study.[16] *Art and Justice* presents a detailed visual account of the art works (both fixed and non-fixed) collected and incorporated into the court building.[17]



Prior to development, all four prisons (Women's Jail, Awaiting Trial Block, Old Fort and Number Four Prison were commonly and colloquially referred to as "Number Four".

Figure 1: Aerial view of Constitution Hill

Source: Google Earth. (Annotated by the author)

16 Segal, Lauren et al. 2006. *Number Four – The Making of Constitution Hill*, Penguin Books.

17 Law-Viljoen, Bronwen ed. 2006. *Art and Justice – The Art of the Constitutional Court*, David Krut Publishing.

A NEW CONSTITUTION, A NEW NATIONAL IDENTITY

The 'never again' principal is one of the foundational themes of the new South African Constitution.[18] This principal guided the new law which was to become the opposite, the antithesis, of everything that had come before. The past is, however, embedded in the text of the Constitution: a past that represents pain, hardship, injustice, inadequacy and inequality, appearing in the present in its demand that it never occur again. A new national identity had to be invented and created from both tangible and intangible places, elements, instances and events in society. Judge Albie Sachs, who played the leading role in the development of the Court project, uses the word 'invent' when he describes how, in the case of the Constitutional Court project, the materials were there and the art and the invention was to get the mix right.[19]

VESTIGES AND REALMS OF MEMORY

A first principle of the theoretical argument underpinning this research relies on Nora's collection, "Realms of Memories",[20] and the premise that spaces and places are able to transmit cultural heritage. Nora examines changes in the attitude of the French toward their national past and the authorisation of a history of France by means of identifying *lieux de mémoire* (memory objects/vessels/vestiges). Nora's work examines what makes the French "French" by distinguishing between historical and collective memory. The third volume of the Realms series, entitled *Les Frances*, is where Nora defines a *lieu de mémoire* as "any significant entity, whether material or non-material in nature, which by dint of human will or the work of time has become a symbolic element of the memorial heritage of any community".[21]

Nora describes how the tracking down of *lieux de mémoire* opened up new vistas – even new concepts – regarding which contemporary symbolic history, as opposed to traditional history, could be inserted into this symbolic classification. The resultant symbolic

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18 Sachs, interview 29th May 2015.

19 Ibid,.

20 *Realms of Memories*: Originally seven volumes, published in French then translated into English and published as three volumes (1984-1992) which represent the collective venture of one hundred and twenty contributors, who at Nora's invitation, produced an analysis and dismantling of French national symbolism and mythology revealing the most French elements of "Frenchness". Written in response to change and rupture in French society post 1930 at a time after the disappearance of peasant culture which coincided with the peak of industrial growth in the 1970's.

21 Nora, P, Dtr, and Kritzman, L, Ed,. 1996. *Realms of Memory: Rethinking the French Past*, translated by Arthur Goldhammer, Colombia University Press. Preface xviii.

history, he argues, would be better suited to the contemporary civic and intellectual needs of society. In addition, he maintains that this concept serves to demonstrate a new approach to national history that might prove useful in other national contexts. He describes how readers can group subjects in the work or proceed chronologically and thereby uncover a centralizing continuity of nineteenth century dominance and beyond that "several sedimentary layers corresponding to key stages of nation-building".[22] The goal for each essay was to "restore the original strangeness" of the lieu[23], to show how each element reflects the whole and is involved in the entire national identity. Nora describes how juxtapositions of the various works may seem to deny that a national dynamic exists and maintains this was the very principle of the project – to think about the nation without a nationalism in which inspiration is ethnographic and directed and dictated by general contemporary tendencies in history and historiography. Methodological revisions in the field of historiography reveal a more critical evaluation by examining new sources, methods and interest where advances are made in history. Nora refers to his work as being exemplified by the attempt to write a history of multiple voices, a new history which is less interested in the causes than the effects, less interested in "what actually happened" than its perpetual reuse and misuse and its influence on successive presents.

THE THEORETICAL ARGUMENT

My argument here is based on the premise that space and place embodies and transmits cultural heritage and this is established by examining Nora's general concept involving *lieux de mémoire,* the fundamental purpose of which is to stop time, block the work of forgetting, establish a state of things and materialise the immaterial to capture the maximum of meaning in the fewest of signs. *Lieux de mémoire* occur at a point in time, a rupture in the equilibrium, causing an internal social dynamic where intellectual, political and historical frameworks are exhausted - retaining only their most spectacular symbols which are fundamentally *lieux de mémoire*.

Against this backdrop, I refer to the report compiled by Avrami, Mason and de la Torre (AMdlT) regarding Values and Heritage in which they maintain that the values people draw from contexts, the functions objects serve for society and the uses to which heritage

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22 Ibid, Preface xx.

23 Ibid,.

is put are the real sources of the meaning of heritage – the "raison d'etre for conservation in all senses".[24] AMdIT identify fundamental ideas and concepts which contribute to the development of a conceptual framework and the potential of modelling social impacts and influences which could present a theory for describing - not predicting - how heritage is created and given meaning. From their work I apply three fundamental concepts:
First - continuous recognition that objects and places are not in and of themselves important. They are important because of meanings and uses and the values they represent, and these must be understood as an inherent part of sociocultural processes.
Second – conservation is framed as a social activity, not only a technical one, as this framing is critical to enabling the realisation of a goal of supporting and leading or directing civil society. This should be carried out by means of a creative process which is motivated and underpinned by the values of individuals, institutions and communities.
Third – conservation, as a field and as a practice, must explicitly integrate value assessments and facilitate negotiations in order for cultural heritage conservation to play a meaningful and democratic role in civil society.

I draw on AMdIT's distinction between valuing and valorising (the principal of value-based heritage intervention upon which the SA National Heritage Resources Act is founded).[25] Every conservation decision affects the object, place or space, with intervention by individuals and communities giving priority to certain meaning and values. On the one hand, there is the simple act of identifying something as heritage (establishing and assuming value) and on the other, there are the interventionist and the interpretive acts and aspects of heritage conservation which includes the singularising effect of naming as heritage (value-added).

By means of their "identifiable common threads" AMdIT establish "important pointers" which I use in clarifying, understanding and examining *if* and *how* by *assessing the extent* to which this Case of the Constitutional Court exemplifies the notion of the building of new national identity.

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[24] Avrami, Mason and de la Torre. 2000: 8

[25] The SA National Heritage Resources Act of 1999 was implemented in 2000 and replaced the National Monument Act of 1969.

Three important pointers are:
First - identity is negotiated - in the same ways that communities are formed. In this negotiation process, global and local communities will continue to ask more and more from material culture (heritage in particular) as they seek a more "salutary and prosperous future".[26]
Second - culture is best framed as a process, not as a set of objects - heritage and other cultural expressions are not static artefacts. They are created and continually created by social relationships, processes and negotiations.
Third - negotiation and decision-making processes are key to understanding the role heritage plays in society.

In addition to the AMdlT report, I refer to the Nara Document of Authenticity which presents a framework for the discussing of authenticity in "ways which accord full respect to the social and cultural values of all societies".[27] Fundamental pronouncements in this document pertain to diversity as an irreplaceable source of spiritual and intellectual richness for all humankind. As such diversity (and the resultant spiritual and intellectual richness) deserves protection. This is considered to be essential to human development.

In understanding the theory and dynamics around national identity and the built form, I rely on literature dealing with -

Introducing the concept of "*Lieux*" and *built form-lieux*
Cultural heritage and authenticity
Discursive formations of national identities and the role of memory
Built form: power versus gravitas
Architectural metaphorical critique

THE METHOD

I examine the process of establishing and building the Constitutional Court through a case study as a theoretical and empirical enquiry based on a typical linear analytical framework which is exploratory, descriptive and explanatory. The study is positioned in the present day environment and is stitched together and analysed with interview insights

[26] Avrami, Mason and de la Torre. 2000: 14

[27] Unesco, *Nara Document on Authenticity*, 1994, as described in its preamble, was conceived in the spirit of the Charter of Venice 1964 and builds on it and extends it in response to the expanding scope of cultural heritage concerns and interest in our contemporary world. Source: Preamble.

and comment in a process of assessment. The study is both a written and a visual discourse endeavouring to assess and decode the space and place which can only be achieved by accounting for its inception and development over time.
The study is intended to be descriptive of a social reality and explanatory of an atypical case, and the social implications thereof, as it examines various components of a conservation topic. Hence, the argument is presented by research and analysed by means of two strategies –
The one using the research question and objectives for a direct examination and assessment, and the other by interrogation of selected published critique.

I have identified certain specific areas of debate and discussion with regard to the programme of development of the Court building and have labelled them as 'defining decisions'. The published critique that is assessed has been selected from the three professional disciplines – the legal, the built and art form and the conservation and heritage disciplines.

Reference to Groat and Wang has been useful in terms of their explanations of case study involving the case in relation to the complex dynamics with which it intersects and from which it is inseparable.[28]

Flyvbjerg's writing on misunderstandings in case study research has been useful in addressing areas of concern in this study of the Court, specifically with regard to the assessment of one case, and an atypical case at that, and the possibility of a bias towards verification. Flyvbjerg's corrected views and elaboration on the misconceptions of case study describe and illustrate how it is important to avoid linking a case with theories of any one academic specialization and he relates "the case to broader philosophical positions that cut across specializations".[29]

> "Readers are not pointed down any one theoretical path or given the impression that truth might lie at the end of such a path. Readers will have to discover their own path and the truth inside the case."[30]

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[28] Groat, Linda N. and David Wang. 2013. *Architectural Research Method,* Second Edition*,* John Wiley and Sons Inc. p 421.

[29] Flyvbjerg, Bent. 2006. "Five Misunderstandings About Case-Study Research," *Qualitative Inquiry* 12. p. 238.

[30] Ibid,.

Stake explains how the researcher will need to enter a case study scene with sincere interest in examining the *people* and *programme* rather than the event and process, and the willingness to put aside many presumptions while you learn in case study.

This study and analysis of the Constitutional Court design is intended to be an *instrumental case study* of an atypical case where the *issue is dominant*. The study of the case is carried out in order to provide "insight into a particular issue, to redraw generalizations, or build theory and help to illustrate matters overlooked in typical cases".[31] In instrumental case research the case facilitates understanding of something else. In the event, this study is of the production of a "lieu de mémoire" rather than the construction of the Constitutional Court.

Stake identifies a positive example for case study as being "likely neither to establish a generalisation nor to modify one, but may increase the confidence that readers have in their (or the researcher's) generalisation". The real business of case study, that of *particularisation*, places emphasis on uniqueness which in turn implies knowledge of other cases that differ from the one in question.

SOURCES OF RESEARCH MATERIAL

I draw on three main sources of material in the study-

THE ARCHIVE

In assessing material for this study, several archive repositories were scrutinised:
the Constitutional Court Archive, the South African History Archive (SAHA) at Constitution Hill (Constitutional Hill Trust Collection), the University of Cape Town Special Collections Archive (Barnett and Japha Collections), the National Monuments Council Archive, the University of the Western Cape Archive and the University of the Witwatersrand Historical Papers Research Archive (South African Constitutional Court Archive of Oral History).

The built and art form of the Court and the people involved in the programme are also considered to be integral parts of the project archive.

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[31] Stake, Robert E. 1995. *The Art of Case Study Research*. Sage Publications. p. 3.

Research and fieldwork for this dissertation took place in August through to November 2015. Visits to the site were conducted on three occasions during this period. Archive visits were frequent and as required – to repositories both in Johannesburg and Cape Town. Arrangements were made through Elizabeth Moloto, in her capacity as personal assistant to Justice Edwin Cameron, to scrutinize relevant Court archived files pertaining to the building programme and development. This was done after an exploratory interview with Albie Sachs at his home in Cape Town on the 29th May 2015. Access to the Building Programme files of retired Judges Sachs and O'Regan, both of whom had chaired the building committee, was granted by permission from Judges Sachs and Cameron. A personal photographic record of the site usage during the past three months has been collected. Published architectural drawings and published photographs of the precinct and the site before, during construction and after construction have been examined. Unpublished layout drawings and photographs from the UCT Special Collections contained in the work files of architects Jack Barnett and of Derek and Vivienne Japha were examined in their roles as advisers to the client body – specifically to Sachs. Competition notes, memoranda and accompanying layout drawings referred to herein were obtained from this source. [32]

An examination of published material, public documents, memo's, newspaper and journal articles and presentation material has provided direction in shaping and formulating areas of curiosity for further investigation by means of personal interviews and in-situ observation. From the examination, I identify particular focus areas as being under-researched and of specific interest. These focus areas are encapsulated by three defining decisions in the project's programme:

- The selection of site and the decision to hold a competition,
- The decision regarding the siting of the new building,
- The decision on how the old Awaiting Trial Block would be commemorated.

Graphic and written critique of the built and art form artefact is concentrated within two main locations where physical existing built form and new built form exist as a conservation representation:

[32] Vivienne Japha passed away in June 1999 and Derek Japha donated material to the UCT Archive when he left the country. He currently resides in the USA. Efforts were made to contact Derek Japha with regard to this research. He did not respond to my emails nor to emails from close associates (sent on my behalf).

- Constitution Square and the entrance Foyer with the Awaiting Trail Block remnants and the Court Chamber

INTERVIEWS

Two sets of interview material have been used in this study. The first being the official transcripts of recorded Oral History Interviews contained within the South African Constitutional Court Archive of Oral History (stored at the Historical Papers Research Archive at Wits University).[33] The transcript of an archived oral interview with Masojada (one of the three architects for the Court project) by Roxsana Patel was useful and has been referred to.[34] Other interviews by Patel in the same collection have also been referred to and these are listed in the Bibliography.

The second source of interview material used in this study is the interviews that were conducted by myself and information obtained from selected members of the architectural and legal communities has been referred to. Selected individuals were asked to participate in structured interviews. Respondents were specifically selected from the three disciplines represented in the published critique – the legal, the built and art-form and the heritage and education professionals. In simple terms, these two groups represent and 'the users' and 'the makers'. Further distinctions are drawn between users and makers who were involved in the building project programme between the years of 1994 (the birth date of the new nation) and 2004 (the Court opening date), and those who were not involved in the programme but who have experiential knowledge of the functioning Court and its precinct. Experiential knowledge is defined as having current direct or indirect involvement by working at the Court or having visited the Court and participated in a tour of the interior of the building and the exterior precinct.

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[33] The recording of the Oral History of the Constitutional Court was a project embarked upon after the death of Judge Tholakele Madala in August 2010. He was third amongst the original appointees to the Court to pass away – Judges John Didcott and Ismail Mahomed preceded him. The project's intention was to capture the memories and experiences of the remaining Judges, some of their successors and others active during the formative years of the Court, while these memories were still relatively fresh. Roxsana Patel, oral historian, has conducted one hundred interviews (between November 2011 and February 2012) and about ninety three of these interviews are now available to the public through the Cullen Library at Wits University and the Constitutional Court Library. The project is funded by contributions from the Ford Foundation and the C S Mott Foundation as an important contribution to the lived experience, or 'phenomenological' history of South Africa. In this case, the aim of the project was "to learn how the founding generation perceived their participation and role in the process of realizing South Africa's constitutional ideal. http://www.concourttrust.org.za/content/page/oral-history-of-the-constitutional-court.

[34] South African Constitutional Court Archive of Oral History. Janina Masojada interviewed by Roxsana Patel, 20th January 2012.

Respondents have been categorised as follows:

A: Those who were involved in the building project programme (1994 to 2004).

B: Those with experiential knowledge but who were not involved with the building project programme.

In these two categories, certain individuals who have particular insights into pre-identified areas of curiosity were asked for clarity around focus areas in the study to provide deeper and richer explanations and understandings.

I interviewed Andrew Makin and Paul Wijgers (by telephone) and Janina Masojada (by email) as members of the architectural team. Masojada was not available for a telephonic or in-person interview, but she responded to email enquiries and I have relied on her Oral History interview transcript of January 2012.

I interviewed Herbert Prins,[35] architect and appointed representative for the old National Monuments Council (NMC) and later (post 2000) for the current South African Heritage Resources Agency (SAHRA), and Judge Albie Sachs as two people whose involvement spans the pre and post- building project programmes. They provided useful insight and feedback regarding both decisions and post project experiential observations. Both Prins and Sachs were interviewed in person with follow–up discussions by telephone (with Prins) and by email (with Sachs).

I interviewed by telephone: Clive van den Berg[36] (artist and curator) and Nabeel Essa[37] (architect) as two professionals with heritage and conservation experience who have

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35 Prins, Herbert qualified as an architect at the University of the Witwatersrand (Wits) in 1952, received a Diploma in Town Planning in 1973 and a Master's Degree in Conservation at Wits University in 1990. He has worked in England and South Africa. His practice specialises in heritage consulting. He has been actively involved in committees of the South African Council for Architectural Practice (SACAP) and the National Monuments Council (NMC), the Provisional Heritage Resources Agency in Gauteng (PHRAG), as President of the Transvaal Institute of Architects (TIA) 1978 and 1979, President in Chief of the Institute of South African Architects (ISAA) in 1982, 1983. He lectured as a Senior Lecturer at Wits from 1970 to 1990. He has administered the architectural competitions for Freedom Square in Kliptown, the Northern Cape Legislature Building in Kimberley and was an adjudicator for the Liliesleaf Farm and the Constitutional Court competitions.

36 van den Berg, Clive describes himself as an artist, curator, designer, writer and teacher, who lives and works in Johannesburg, South Africa He is responsible for the art and design of several of South Africa's most prominent public projects, including the landmark Freedom Park, which was in the design and planning stage for 6 years, the Northern Cape Legislature buildings, and numerous projects with the Nelson Mandela Foundation as well as the museums of Constitution Hill.
On large-scale institutional projects, van den Berg typically operates with teams representing diverse constituencies, urban planners and policy makers, architects, landscape designers, museum curators, community liaison officials and representatives of local governments.

worked extensively within the Hill precinct as consultants and facilitators in several post competition and pre-building project programmes since 2000. They were referred to me by Lauren Segal who felt that they would be better placed than herself to contribute to my study as their professions are more closely aligned to the topic.

Gerard Damstra[38] is qualified in architecture and law and represented the Department of Public Works (DPW)[39] in the building project programme. He has been with the DPW for over thirty years and was interviewed by telephone.

Stacey Vorster, art curator,[40] and Katlego Lefine, art project manager,[41] both of the Constitutional Court Art Collection Trust, were interviewed in respect of their views and comment on defining decisions and their on-going post project observations in the main areas of focus. Vorster was interviewed at the Court and the interview extended into a tour of some of the significant art works. Lefine participated in the tour and was interviewed on a separate occasion by telephone.

Judge Kate O'Regan was interviewed in person. As one of the first eleven Constitutional Court Judges elected by Nelson Mandela in 1994, she has both pre and post-competition award experience of the Court project both as a Judge and as a member of the Building Committee on which she served from 2001 onwards. O'Regan was appointed as

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37 Essa, Nabeel studied towards a Bachelor of Arts in Fine Arts, University of the Witwatersrand, years 1 & 2 only, WITS (1990-1), Bachelor of Architectural studies, WITS (1992 – 6), Bachelor of Architecture – with distinction, WITS (1998-9), Master in Landscape Urbanism, Architectural Association, London (2001). Essa's thesis at the University of the Witwatersrand looked at critically engaging marginal histories, spurring an interest in issues of identity and difference and its construction in post-apartheid South Africa and his Master's degree in landscape urbanism involved the understanding of growth, evolution, change and scale in informing urban development and regeneration.

38 Damstra, Gerard qualified with a Bachelor's Degree in Architecture from the University of the Free State and an LLB from the University of South Africa. He has worked within the Department of Public Works for thirty years and currently holds the position of Chief Director: Inner City Regeneration.

39 The Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), mandates the Minister and Department of Public Works, as the custodian and manager of all national governments' fixed assets, for which other legislation does not make another department or institution responsible. This includes the determination of accommodation requirements, rendering expert built environment services to client departments, the acquisition, maintenance and disposal of such assets.

40 Vorster, Stacey studied for her Bachelor of Fine Arts at the University of the Witwatersrand in 2009 and completed an MA in History of Art in 2012 where she researched curatorial practice in contemporary African Art. She is associate lecturer in History of Art at Wits. She is chief curator of the Constitutional Court Art Collection (CCAC) and is currently preparing a PhD which is aimed at examining the CCAC's potential in developing narrative capacity and an ability to create transformative aesthetic experiences to contribute to the "long ending of apartheid" (Coetzee, 2013: x) as referenced by Vorster.

41 Lefine, Katlego graduated in Fine Arts from the University of Witwatersrand in 2009. He obtained a Project Graduate Diploma in Management from Wits in 2010. Lefine has been working at the Court as a project manager for the Constitutional Court Art Trust for six months and prior to that he worked as an intern at the Old Fort for eighteen months. He is at the Court for three days a week and spends one day a week doing Court Trust work from home. He has recently published (jointly with Marishane, Lebogang) via SangoNet (South African NGO network). The title of the publication is "The value of Memorial Sites in Democratic States".

Chairperson of the Committee when Laurie Ackermann left in December 2003 and continued in that position until leaving the Court in 2009.[42]

Justice Edwin Cameron was not available for a personal interview, and answered questions sent to him via email. Reference has been made to his comments in the concluding chapter of this study.

I interviewed Lebogang Marishane, Strategic Executive Assistant at the Constitutional Hill Trust, who provided valuable statistics regarding visits to the Court, as well as programmes and exhibitions managed by the Trust

Peter Davey, then editor of *Architectural Digest* and a competition Juror involved in the programme felt that he could not remember as much as he had hoped to and therefore was "not able to assist much".

In summary, I interviewed thirteen people: in person, by telephone or by email. Certain of these, who are not well known in the public domain were researched prior to being interviewed with particular regard to their "background, mentality, attitudes, and values".[43] Relevant information in this regard is presented in footnotes and, in the case of the architects, in Appendix One. In all instances, an "outline of the structured interview" was emailed to the interviewee in advance. The personal and telephonic interviews were recorded and transcribed. Notes from these transcriptions were emailed to the respondents for their verification and further comment. Where replies were received, adjustments have accordingly been made (mainly with respect to dates and names). Where replies have not been received, I have presumed that the interviewees were satisfied with the contents.

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42 Judge O'Regan, Kate was appointed as Constitutional Court Judge at the age of thirty seven and served up until her retirement in 2009. She was one of only two female judges for the first thirteen years of the Court's existence. She has very recently been awarded the Degree of Doctor of Law (LLD) Honorus Causa from the University of Stellenbosch "for her fine and progressive mind and her unwavering commitment to the law both within and outside the Constitutional Court, which has seen justice prevail for particularly women and other vulnerable groups of society". In 2008, the secretary general of the United Nations (UN) appointed her as chair of the Internal Justice Council. She is an ad hoc judge for the Namibian High Court, chair of the International Monetary Fund's Administrative tribunal and member of the World Bank Sanctions Board.

43 Foucault specifically referred to these attributes as one to look for in Architects in his interview by Rabinow, Paul of *Skyline*, entitled "Space, Knowledge and Power", March 1982. Refer to Chapter Two of this study.

PUBLISHED CRITIQUE

The country's peaceful "negotiated revolution" of its constitutional underpinnings, has raised the profile of the Constitutional Hill complex and published critique on the Court Building from professionals both within and outside the country is voluminous.

For example, Ashcroft reads the Constitutional Court building to "show the function of memory in visions of the future". He describes the adaptive re-use of prison to court as reinforcing a discourse of rebuilding and reconciliation which coincides with the post-colonial utopian programme of the new South Africa and its vision of reconciliation and hope. In his view, there is a paradox between the existence of the building in the service of the state, and the concepts of ideology and utopia. He concludes however, that the Court building, in both its art and architecture "carries a spiritual surplus that escapes the confines of state ideology and it is within this surplus that the utopian intention to change the future, the belief in a better world, operates ……".[44] Le Roux,[45] presents a highly complex and persuasive critique of post-apartheid Constitutional law-making processes in which he critiques the law within a framework of architectural metaphors of bridges, clearings and labyrinths. He concludes that "the constitution has become a labyrinth without a centre"[46] and questions the jurisprudential significance of the new Constitutional Court building as the reincarnation of a former prison site. He describes the concept of counter monumental strategies of memory, and in doing so presents the notion of the Constitutional Court building itself as a counter-monument. He maintains that it institutes a politics of memory which can be read as either monument or memorial and continues with this argument to declare the Constitutional Court building as an apartheid memorial. And Herwitz narrates the country's journey through transitional moments and surmises the possibility of the flexibility of the constitution becoming its undoing (under a bad set of judges)[47] and the building subsequently becoming a monument to the subversion of power.

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44 Ashcroft, Bill. 2014. "Constitution Hill: Memory, ideology and utopia." *Tydskrif vir letterkunde*, Vol 51. p. 19.

45 Le Roux, Wessel is Professor in Public Law at the University of the Western Cape (UWC) since 2011. University of Pretoria BLC LLB (cum laude) 1988, LLD in Legal Philosophy (jurisprudence) 2002, Thesis title "The aesthetic republic: Law and judgement in Nietzche, Arendt and Lyotard". Before assuming his position at the UWC, he taught constitutional law at the University of South Africa (UNISA).

46 Le Roux, Wessel. 2004. "Bridges, clearings and labyrinths: the architectural framing of post-apartheid constitutionalism", *Academia*.

47 Herwitz, Daniel. 2011. "Monument, Ruin and Redress in South African Heritage" *The Germanic Review: Literature, Culture, Theory*, 86:4. p. 232-248.

Discussion, critique, and the drawing of analogies and comparisons with other cases provide further suppositions of how notions of authentic significances are narrated or curated in places and spaces that we design and create.

THE LIMITATIONS OF THE STUDY

This study is the examination of a single case and does not undertake a broad consideration of pre or post-apartheid heritage projects. In addition, it does not examine other similar or general modified or adapted places in historic contexts. It undertakes a particular study of one case, the Constitutional Court building of South Africa, as a means to uncovering and understanding if there are specific ingredients that could ensure the successful transformation of social significance in the historic built environment. I do not intend to critique the constitution per se, but inevitably refer to linkages between the principles of the constitution, the extent to which the built form adheres to or is reliant on these, and how these linkages presented opportunities in the creating of a new national identity.

STRUCTURE OF THE DISSERTATION

This dissertation consists of five chapters (including this Chapter One) and a conclusion.

Chapter Two, A *New Nation, National Identity and Built Form,* introduces Nora's concept of lieux de mémoire and built-form lieux and then moves to briefly outline historical progression of thought on cultural heritage, the valorising of cultural identity as a negotiated process and discusses authenticity. National identity-making and the role of memory in this process and theoretical discussion on the public architecture of new nations and the ways in which built form communicates ideologies of power and identity along with concepts of diversity, subjectivity as heritage built form narrative are investigated. The notion of gravitas is introduced as an antidote to power and metaphorical critique from the legal and the built form professions is surveyed - selected works are explored and discussed.

Chapter Three, *The Making of the Court Building* is comprised of three parts:
Part one presents the negotiation of a South African national identity by means of a history of the Constitutional Hill precinct and national events leading up to the launch of the competition. Research regarding the pre-competition process is presented within the

parameters of three decisions: namely the decision to launch an international competition, the decision as to where to site the Court building, and the decision to demolish and commemorate the Awaiting Trial Block. Part two describes the competition and the adjudication process, part three, the design development, demolition and new building processes as the realisation of the new Court building.

Chapter Four, *The Artefact* presents a critique on the built form, the Court building, and focusses on the Court Chamber and the Foyer space (as those spaces with adapted historical fabric).

Chapter Five, *Concluding Arguments* summarises the findings regarding the defining decisions and examines the issue of

- the new Constitutional Court building reliant on historic built space and place - question about architecture as heritage.
- the building process and its contributed to a new national identity or not?

The analysis of this case will answer this question: is the Court a South African "*lieu de mémoire*", or "*lieu de identité*" central to the new national identity and psyche?
Can the Court be classified as a Lieu?

CHAPTER TWO – A NEW NATION, NATIONAL IDENTITY AND BUILT FORM

INTRODUCING THE CONCEPT OF LIEUX AND BUILT FORM LIEUX

As Nora insists, in the first paragraph of his general introduction to *Between Memory and History*, "Memory is constantly on our lips because it no longer exists".[48] In a story of an accelerating history, lieux de mémoire play a transitional role and serve as sites of a "residual sense of continuity". "Lieux de mémoire exist, because there are no longer milieux de mémoire, as settings in which memory is a real part of everyday experience".[49]

The founding principles of this argument are derived from Nora's concepts of *lieux de mémoire* and particularly his study which examines how *lieux* are created, conceptually and with respect to spatial and material content, and how *lieux* are retained as *lieux de mémoire*. Fundamentally, in Nora's terms, a *lieu* occurs as a social dynamic or a social construct at a point in history "when an immense and intimate fund of memory disappears", but it survives as "a reconstituted object beneath the gaze of critical history".[50] A critical history, or a secondary history evolves at a time of social change or at a rupture of equilibrium. This is a history that responds to the needs of the moment. This critical history manifests as a *lieu de mémoire* which can be any number of things: an event, a museum, an institution, a monument, the archive, a symbol or even an important figure. The recognition and retention of historical memory is a primary purpose, or Raison d'etre, of the material object/vessel/vestige. Critical history stories are invested in *lieux* as embodiments of a commemorative consciousness. *Lieux* with material content enable these 'transferential' and re-awaking actions, events or activities performed by society which are reconciling of science and conscience or history and conscience.

Lipstadt[51] reinforces this argument in acknowledging the importance of Nora, drawing attention to the role of place and space in memory, a subject that she maintains "has been and should again be, central to architectural history, and one heretofore addressed by John Ruskin, Alois Riegl, Aby Warburg and Aldo Rossi".[52] Lipstadt links Halbwachs, Nora

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48 Nora, P. 1996. *Realms of Memory*. Introduction "Between Memory and History." Colombia University Trans. p. 1.

49 *Milieux de mémoire* are settings in which memory is a real part of everyday experience. Nora believes society has lost these settings. Since "society has banished ritual", and thereby "renounced memory", "The trace negates the sacred but retains its aura". Nora, Pierre ed. 1996. *Realms of Memory: Rethinking the French Past*, Vol. 1, Conflicts and Divisions. Colombia University Press. p. 6, 9.

50 Nora, P. 1989. "Between Memory and History: Les Lieux de Memoire," *Representations*, No. 26, Special Issue: Memory and Counter-Memory. p. 12.

51 Lipstadt, Helene, rev.1999. "Realms of Memory: Rethinking the French Past," *Journal of the Society of Architectural Historians*, Vol 58, No. 2. p. 243-245.

52 Ibid, 243.

and Yates – she writes about collective memory as being spatial, space being stable and how this stability and a group's attachment to space make space a transmitter for memory. She reinforces her argument with reference to Winter and Sivan[53] and their essays on collective memory and space where they argue that spatial constructs act to trigger memory. She highlights how, for Nora, a *lieu* was never only a site, and a *lieu* that was a site was never only a physical place and that one of Nora's great contributions was to enlarge the notion of space.

CULTURAL HERITAGE AND AUTHENTICITY

From Nora we take it that *lieux de mémoire* are both material and conceptual (an event, a symbol or even an important figure). *Lieux* can be war memorials, cook-books, novels and the geography of Paris. Most important though is that *lieux* are social creations. A greater respect for society's participation in the identification and preservation of cultural heritage has led to conservationists challenging conventional thinking and this has brought about the need to both integrate and assay socio-political action in heritage interventions. The ways in which cultural heritage is given meaning in a more contemporary and diverse world are difficult to measure – and therefore clearer understanding is essential.

A SHORT HISTORY IN CONSERVATION PRINCIPLES

To understand how architectural conservation came to the critical analytical assessment of material and intangible culture requires a brief summary of the most important international and local milestones. The Post-World War Two origins of critical conservation, or '*Ristauro Critico'*,[54] developed as a result of large scale destruction of the built environment and a changed focus on urban environments which forced professionals to adopt a hierarchical decision-making system in the physical rebuilding of structure.[55]

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53 Winter, Jay and Emmanuel, Sivan. 2000. *War and Remembrance in the Twentieth Century*, Cambridge University Press.

54 Argan, Pane, Bonelli and Brandi were instrumental in developing the principles of 'Restauro Critico'. Origons of Restauro Critico developed from: Argan's philological approach and historical critical analysis, Brandi's theories regarding reversibility (not often achieved), Pane's belief that each monument should be seen as a unique case and acceptance of Anastylosis (rebuild from existing original elements and Bonelli's principle of "a critical method and then a creative act, the one as an intrinsic premise of the other". Source: Townsend, Stephen. 2003. "Development Rights and Conservation Constraints: Urban Conservation-Oriented Controls in the City Centre of Cape Town." PhD diss., University of Cape Town. p. 32

55 Rural depopulation and resultant increased city housing, traffic and transportation needs and challenges coupled with the introduction of modern architectural ideals and building technologies.

Critical Conservation has extended to the utilization of theory and research tools encompassing social, political and cultural meaning as a framework for assessment of significance which extends beyond issues of age, history and aesthetic.

It has been useful in this discussion on cultural heritage and authenticity to read Wells who discusses the plurality of truth or perspective-driven truths in an evaluation of a number of manifesto's and international heritage conservation charters (SPAB Manifesto, Athens Charter, Venice Charter, Burra Charter and Nara Document on Authenticity) through a framework of what he refers to as discursive theories established by Foucault, Derrida, Habermas, Gilles and Deleuse and in regard to cultural meanings and absolute and relative truths. His analysis brings to the fore the defining of authenticity in the conservation context. The Venice charter frames authenticity "as a transcendental connection from the past to the present"[56] where an object can only bear witness to the true nature of the past if its physical fabric remains unchanged. We must therefore engage in a relative degree of supposition says Wells, to establish the existence of the authenticity. He goes on to discuss the introduction of the concept of cultural significance in the Burra Charter (where the focus is on place), where values of non-dominant groups are considered and the recognition of historical significance as a cultural construction is discussed. He moves onto the Nara Document (where focus is on values) and specifically its reference to cultural heritage diversity, respect for other cultures (and all aspects of their belief systems) to the extent where cultural values appear to be in conflict and the "respect for cultural diversity demands acknowledgement of the legitimacy of the cultural values of all parties."[57] The Nara document is important as the first doctrine where "an upsetting of previous conservation doctrine is sanctified as an acceptable practice".[58] Wells highlights the male bias of knowledge defining objectivity and rationalism (and the subsequent exclusion of a female and the 'other' perspective) in the manifestos and charters. He draws on the work of the Getty Institute and examinations of cultural value assessments and associated relativism in defining significance. He also refers to Vinas and his work on conservation theory. Vinas contends that interventions should focus on what we want the historic object to commemorate to us, as based on our 'culturally-embedded' definitions of significance and meaning. Therefore, as cultural significance is the term used to

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56 Wells, Jeremy C. 2007. "The Plurality of Truth in Culture, Context and Heritage: A (Mostly) Post-Structuralist Analysis of Urban Conservation Charters," School of Architecture, Art and Historic Preservation Faculty Papers. p. 9.

57 The Nara Document on Authenticity.1993. Preamble p.2.

58 Ibid,.

encompass all the meanings (values) that a place may have to people, beyond just a utilitarian value, it collectively refers to aesthetic, historical, scientific or social value for past, present and most importantly in this case under scrutiny (the Constitutional Court), for future generations.

In summary, contemporary conservation practices in this century rely on critical analytical assessments of the concepts of significance, authenticity, tangible and intangible assets, and the formulation of new broader universal concepts and approaches internationally brought about changes in Heritage Legislation in South Africa.

Pre 1994 recognition of multiple and conflicting sets of values and significances were presented by the ANC Arts and Culture Task Group (ACTAG) and were subsequently incorporated into the new or current National Heritage Resources Act (NHRA) and the National Heritage Council Act, both of 1999. Recognition of new values was a '*sine qua non'* and Shepherd explains how heritage in post-apartheid was "reconceptualised around notions of redress" and "the explicit recognition of previously marginalised narratives and categories of heritage (intangible and living heritage)"[59] to present new South African Histories. The progressive new South African Heritage law importantly gives socio-political recognition and a voice to communities and most importantly it requires communities' voices to be sought out and heard. It is important to note that several papers had been published by architects (notably Townsend, the Japhas and Todeschini) in the late 1980's which discussed new directives in architectural conservation principles. Reference must be made specifically to an architectural conservation-focused issue of Architecture SA which was "masterminded by guest editor Vivienne Japha".[60] The publication focuses on theory, practice and research in conservation in the Western Cape. In this publication, Townsend highlights issues of maintenance and protection versus development and refers to Critical Conservation[61] as a conservation orthodoxy with a "framework for analysing and evaluating the cultural and the aesthetic or creative significance of the object of our attention: the crucial tool is the critical sense".[62] Townsend explains how "Critical Conservation endeavours to analyse and understand the

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59 Shepherd, Nick. 2008. "Heritage." In *New South African Keywords*, Jacana. p. 121.

60 Architecture SA Conservation 9 Oct 1988. p 17.

61 From Bonelli's principle of "a critical method and then a creative act, the one as an intrinsic premise of the other".

62 Townsend. 1988. " *Polemic on Conservation Theory and the Place and Form of Aesthetic Control,"* Architecture SA Conservation, 9 Oct. p 27.

value, the cultural significance of the work as it is and then to act responsively and creatively, fusing past, current and future values, recovering, revitalising and enhancing the cultural image and value of the building or townscape...."[63] In addition, I refer to an earlier contribution towards developing conceptions of conservation by Townsend. He writes in Rome in the early 1980's about notions of conservation which he refers to as being buried deep within the "cultural onion" and a new recognition of the interpretation and reformation of cultural values. It is important to note that this paper precedes the 1988 Architecture SA Restoration edition and sets the stage for the ideas presented therein.[64]

From the above, I draw attention to the crux of heritage value assessments and how critical thinking around the defining and assessing of significance and in turn why the 'construction' of significance in conservation interventions is so vitally important. In the post-apartheid South African context, if we articulate an optimum desired 'culturally-embedded' definition of significance for this case study, it would have to be that of the founding principles of the constitution: namely human dignity, equality and freedom.

REPRESENTING HERITAGE

Coombes has examined how visual and material culture in post-apartheid South Africa contributes to a process of transformation. She argues that new public histories are produced by visual and material association which inform changing definitions of 'community' and 'nation' during periods of political transition.[65] These concepts become crucial stakes in social conflict management and/or renewal and as touched on earlier, a continuous re-examination, critical assessment and reshaping of discourse across disciplines is essential to building knowledge in areas of cultural conservation and the built environment.

Eggert draws interesting analogies between editing and 'restoration', and he tackles this by illustrating how both professional fields present (not just represent) crucial moments of

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63 Ibid,.

64 Townsend. 1987. "A contribution towards a developing conception of conservation and restoration". *Restorica*. p. 34.

65 Coombes, Annie E. 2003. *History after Apartheid: Visual Culture and Public Memory in Democratic South Africa*, Duke University Press.

high achievement from the past.[66] He points out developments in both professions in the 20th Century in terms of methodology – "If curators and conservators are archaeologists of the image – if they can make the surface articulate the painting's history – then editors are archaeologists of the printed or written word, of its history of writing and production."[67] Eggert emphasises two important issues - a cross pollination of thought in disciplines and the critical importance of being critical – two closely related themes observed from his analysis of conservation projects in two professions, both under pressure and at points of crisis in their history.

The work of Wagner-Pacifi and Schwartz,[68] on the Vietnam Veterans Memorial (VVM), illustrates the ways in which society assimilates past events that are "less than glorious". A detailed analysis of the case outlines social, political and cultural problems encountered, concluding that the key to the Memorial's multiple meaning lies in the interactive procedural web of actions which took place during the process of memorialization. They argue, with reference to Lowenthal's writing, that a succession of events over time resulted in a "culture producing process" and that commemoration in a group renews the sentiment which it has of itself and its unity.[69]

Lowenthal's work, *The Past is a Foreign Country,* examines ways in which people's thoughts about the past are used in the present by means of three categories which he itemizes as the "wanting", "knowing" and "changing". The changing of the past in the present focuses on altered pasts and how means of display affect perception and interpretation and how pasts are celebrated, censored or purged as generations reshape legacies. One idea can mean one thing to a certain era and the opposite to another. In an examination of themes of "Past as potent force" and "Pasts of disproportionate focus" in times of great political and social change, he explores causes and consequences of the manipulation of *truth.*

From the above we see the potential advantage and the importance of cross pollination in thought through disciplines, we understand the effects of visual and material association in the curation of cultural heritage and we can begin to understand the

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66 Eggert, Paul. 2009. *Securing the Past: Conservation in Art, Architecture and Literature*, Cambridge University Press. p. 15.

67 Ibid, 16.

68 Robin Wagner-Pacifici and Barry Schwartz. 1991. "The Vietnam Veterans Memorial: Commemorating a Difficult Past," *American Journal of Sociology*. 97(2): 376-420

69 Lowenthal, David. 1985.

necessity for critical assessment and the focus on values and respect for other cultures. We understand how interventions should focus on what we want the historic place, space or object to commemorate and in order to do so we must analyse and understand values, act responsibly and creatively and endeavour to enhance value for future generations in the construction or creation of significances by means of the fusing of past, current and future values, the recovering, revitalising and enhancing the value.

From this position we move into lessons learnt in the South African context.

HERITAGE DISCOURSE LESSONS IN SOUTH AFRICA

Two of the most concerning dangers of what Smith calls Authorised Heritage Discourses (AHD's)[70] are the marginalising or supressing of cultures of minorities or majority groups, and aggressive nationalism. South Africa has had experience of both. Both Herwitz and the King and Flynn team have identified human rights as a concept closely linked to post-apartheid heritage discourse and in particular reference to the Constitutional Court project. King and Flynn refer to the 'intangible concept of human rights'.[71]

Herwitz writes with reference to the 'apartheid heritage game' and the official heritage culture of the apartheid state that was directed against both the English and the 'African races'. He embellishes this concept with reference to 'apartheid live action heritage', with the Voortrekker Monument as an example of 'live action' in its ability to speak of a settler culture that endured ruination in the hands of another stronger settler culture (Rhodes and his control project of Cape to Cairo) and its capacity to position its settler sovereignty as rightful historical redress. "Our suffering purifies us, proves our worth, and entitles us, the message goes."[72] Victimhood is converted into sovereignty – our suffering proves our worth and entitles us.

An authorised discourse in heritage, according to Smith, is established by a particular set of practises, cultural and social, that have certain legacies in the context of late modernity and she examines the consequences by highlighting ways in which social

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70 Smith, Laurajane. 2006. *Uses of Heritage,* Routledge.

71 Herwitz. 2011. King, Tony and M K Flynn. 2001. "Heritage in the post-apartheid city: Constitutional Hill, Johannesburg," *International Journal of Heritage Studies*, 18:1. p. 65-82.

72 Ibid, 236.

relations are constricted and reflected. She begins her work on authorised discourse dramatically with the pronouncement that "there is no such thing as heritage."[73] She explains how 'heritage' is a hegemonic discourse which validates sets of practices and performances. She argues that the development of an AHD in heritage spheres are linked to power relations and are simply due to the fact that powerful groups are active in defining what qualifies as heritage. This is achieved by creating a concept, or concepts, of common national heritage and by marginalising alternative conceptions.

We revert back to Herwitz, to see how linkages between the definition of heritage and power played out in South Africa. He explains how sovereignty in Foucault's thinking is distinguished from *bio-power* by its capacity as rule of law and power to judge. Bio-power is the power to control life, to produce and shape it in a particular way within a particular domain of disciplinary constraints. Official apartheid heritage followed from a structure of indirect rule that was authorised in colonialism. African chiefs were given domains of authority within presubscribed limits, when chiefdoms were negotiated between chiefs and colonial authorities, simply because the negotiations were unequal (even if flexible). Hurwitz explains how this control of the power to live within specific identifiable constraints was codified into a more inflexible system of legal and police controls. The colonial system becomes a modern penal- panotopic formula. "It becomes Foucault's bio-power: offering the power to live within a specific identifiable future."[74] This offer, however, was extended to certain groups of people who are subject to the constraints of racist/legal inequality.

> "The political architecture of apartheid is a system actively dedicated to generating, shaping, and sustaining these differential/unequal futures. Separate and unequal domains of heritage production were the symbolic/cultural aspect of the apartheid state's exercise of bio-power, along with separate and unequal education, law, living conditions, civil and political rights, places of dwelling, or 'nations'."[75]

Smith suggests ways to challenge and subvert authorised discourses by the understanding of heritage as a social experience. She refers to the work of Graham, Ashworth and Tunbridge with respect to their discussions on 'heritage dissonance'. They examine

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73 Smith, Laurajane. 2006:11

74 Herwitz. 2011: 237

75 Ibid,.

heritage as a resource and a product and discuss the functions and uses of heritage as commodity – these can be divided into cultural (socio-political) and economic. "Whose heritage?", they say, is the question to consider in reasoning the contested nature of heritage. Dissonant heritage, according to Graham et al, is the result of discordance or lack of agreement and consistency as to the meaning of heritage. There are two sets of reasons for this. Firstly – dissonance is implicit in the market segment of heritage. This is especially so when the commodity is 'multi-sold' or 'multi-interpreted' by tourist and domestic consumers alike. This is a global issue – people's sacred spaces are also landscapes for tourist consumption. Secondly, and more importantly here, dissonance arises from the 'zero-sum' characteristics of heritage where all belongs to someone and therefore not to someone else.

> "The creation of any heritage actively or potentially disinherits or excludes those who do not subscribe to, or are embraced within, in terms of meaning defining that heritage."[76]

This dissonance can be destructive and yet paradoxically, it is also a condition of "the construction of pluralist, multicultural societies – "dissonance can be turned around in constructive imagining of identity that depends on the very lack of consistency embodied in the term."[77] The ubiquitous nature of heritage implies that it cannot be owned – the past cannot be owned simply because 'owning the past' has no meaning and who could possibly reconcile ownership of the past? This examination of heritage dissonance, according to Graham et al, leads to further review and debate on another theme, framed generally as 'the myriad axes of differentiation' that characterise contemporary society – notably ideology, class, gender and ethnicity.

Smith places action, power and agency as the fundamentals of the process that creates heritage and concludes that heritage is range of social and cultural activities that are able to mediate a sense of cultural, social and political change.

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[76] Graham, Brian, Gregory J Ashworth and John Tunbridge. 2005. "The Uses and Abuses of Heritage" Chp. 3, Gerard Corsane, ed. *Heritage, Museums and Galleries: An introductory Reader*, Routledge. p. 34.

[77] Ibid,.

DISCURSIVE FORMATIONS OF NATIONAL IDENTITIES AND THE ROLE OF MEMORY

"National identity reflects the sentiment of belonging to the nation …….national identity has five dimensions: psychological, cultural, territorial, historical, and political."[78]

Nora has explained how his work was aimed at thinking about the nation without nationalism: where inspiration is ethnographic and his goal for each work in the compilation of works was to show how elements reflect a national identity.

The construction of a nation's identity is founded in an emphasis of common history - and history has much to do with remembrance and memory. As social identities, national identities are discursively created in that they are figuratively and continuously moulded and formed, creatively and destructively as a sense of belonging, represented by distinct traditions, culture and language.

Anderson wrote about nationalism in the early 1980's as a modern phenomenon. He discussed the creation and global spread of 'imagined communities' and the processes by which communities are created. He argued for nationalism as a universal concept inherent in everybody, as a cultural artefact and as something fundamentally created. His work begins - "Nation, nationality, nationalism – all have proved notoriously difficult to define, let alone to analyse."[79] Communities, he maintained are imagined "because the members of even the smallest nation will never know most of their fellow-members, meet them, or hear of them, yet in the minds of each lives the image of their communion".[80]

Graham and Howard refer to Guibernau in contemplating conceptual complexities of heritage and identity as multifaceted phenomena that embrace a range of human attributes (language, religion, ethnicity, nationalism, shared interpretations) of the past. Identity, they say, is constructed into discourses of inclusion and exclusion, it is about sameness and group membership and central to that is the "Saidian discourse of the '*other*', groups – both internal and external to a state – with competing, often conflicting, beliefs, values and aspirations."[81] They quote Douglas – "Recognition of *Other-ness* will

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78 Guibernau, Montserrat. 2004. "Anthony D. Smith on nations and national identity: a critical assessment" *Nations and Nationalism,* 10 (1/2). p. 125–141.

79 Anderson, Benedict. 1991. *Imagined communities: Reflections on the origin and spread of Nationalism,* Verso. p. 6.

80 Ibid, 3.

81 Graham, Brian and Peter Howard eds. 2008. *The Ashgate Research Companion to Heritage and Identity*, Ashgate. p. 5.

help to reinforce self-identity, but may also lead to distrust, avoidance, exclusion and distancing from groups so-defined"[82] Identity is not fixed and stable. Rather, it is a state that is linked to a 'sense of time' and atavistic fears in that it is not 'secured by a lifelong guarantee' and is 'eminently negotiable and revocable'[83]. They maintain that not all heritage is about identity (referring to cultural tourism) and they have questioned the interconnection between, heritage, place and territoriality with interactions between the markers and levels of heritage often competing and most certainly spatially and temporally variable and therefore producing differentiated heritages. In this series of work, they look 'beyond nationalism' in the sense not of the disappearance of that level of identity – but in its complications in this century. They maintain a 1990's fashion of theory to argue for unbounded localities, ruptured boundaries and the creation of hybrid and in-between spaces which encapsulated notions of national heritage, as world heritage, where certain sites and practices have universal significance. They claim this to have been a possible exaggeration, as a national framing of heritage and identity is "seen once again as a defensible agenda."[84] Here they refer to the influence of Halbwachs and Nora and the varying accounts of memory which do not tend to focus on fixed and bounded places. An excessive focus on bounded sites of memory can risk 'fetishiz-ing place and space too much' and can thereby obscure the wider production of social memory throughout society.

> "The city, for example, is typography of memories with multiple pasts and a continual remaking of memorial sites."[85]

The Assmanns have researched and written regarding memory and identity with their special interest area being the role that the dynamic character of memory takes in the construction of identities.[86] Jan Assmann identifies cultural heritage as being the identity enabler which allows individuals to build a picture of the past and through this process, develop an image for themselves. Cultural memory is considered to be a hazard by totalitarian regimes – he cites examples from the Bosnian War when Serbian artillery

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82 Ibid,.

83 Ibid,.

84 Ibid, 7.

85 Ibid, 8. Attributed to Landzelius. 2003. Source: "Commemorative Dis(re)membering: Erasing Heritage, Spatializing Disinheritance." *Environment and Planning D: Society and Space* 21:2. p. 195–221.

86 Assmann, Aleida and Jan Assmann, a husband and wife team, previously not well-known and influential in German-speaking countries, in the past few years the Assmanns' concept of cultural memory has been receiving greater interest elsewhere.

destroyed the Library in Sarajevo as an attempt to undermine the memory of Bosnians and other minorities.[87] The goal was to make culture a blank slate so that it would be possible to start a new Serbian identity from scratch. Aleida Assmann refers to a characteristic she claims is new to recent decades and which is brought about by a disbelief in the future as a promise of better days - but this is not 'nostalgia'. She bases her concept on Nora's *lieux* and examines changes that have taken place in the construction of national memory during the post-WWII and post-Berlin eras. This type of memory, built on traumatic episodes, intensifies in the 1990's (the case of Israel is cited) and occurs when testimonies of the victims gain ground and several museums and memorials are dedicated to symbolically perpetuate past human rights violations. This is considered to be a worldwide trend.

Rothberg writes more recently and expands on Nora's work. He takes inspiration from Nora's 'magisterial project' of turning critical attention to processes of remembrance in modernity and yet shares many of the concerns critics have raised about the limits of Nora's projects.[88] These limits of *Les lieux de mémoire* suggest the necessity of new models of remembrance and Rothberg calls for such new approach under the sign of '*noeuds de mémoire*' - knots of memory – "to stimulate further conceptualization of collective or cultural memory beyond the framework of the imagined community of the nation-state".[89] He maintains that acts of memory are rhizomatic networks of temporality and cultural reference, "knotted" in all places, that exceed attempts at territorialisation (whether at the local or national level) and 'identitarian reduction'. He maintains that, despite Nora declaring the death of collective memory as it had been conceived up until then, he energized the study of cultural memory. However, despite Nora's 'avowed interest in a polyphonic approach' in *Realms LXXIII*, he ultimately puts forward a limited approach with surprising absences where "the entire imperial history of the country …becomes a non –lieu".[90]

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87 Assmann, Aleida and Jan Assmann. 2013. Richard Mecklen reporting on the conference "Spaces of Remembrance," The Institute of Advanced Studies of the University of São Paulo.

88 Rothberg, Michael. 2010. "Between Memory and Memory: From Lieux de mémoire to Noeuds de mémoire" *Yale French Studies,* No. 118/119 and *Noeuds de mémoire: Multidirectional Memory in Postwar French and Francophone Culture*, Yale University. p. 3-12.

89 Rothberg, Michael. 2013. "Remembering back" Chp. 1, Edt. Graham Huggan, *Oxford Handbook of Post-Colonial Studies*, Oxford Press. Rothberg refers to Anderson, Perry in "The New Old World" (Verso, 2009) 161 – 162. Anderson points out the omission in Nora's work of any mention of Napoleonic conquests, the plunder of Algeria, the seizure of Indochina and so forth.

90 Ibid, 363.

Rothberg, in "Remembering Back" draws on Ashcroft, Said, the Assmanns, Spivak and Fanon in his work. He draws attention to Spivak's considerations of colonialism's 'epistemic violence' and, echoing Fanon, her cautioning against the assumption of a too-easy counter-memory of the lives of colonialized subjects. Rothberg comments on Spivak's demonstrating, at length, on how "the palimpsest narrative of imperialism" overwrites subaltern histories. He refers to two astute commentators on Spivak's work (Shetty and Bellamy) who have suggested that the silence of the subaltern have to do with it being so deeply buried - "…her archive as a "diachronic palimpsest whose textured layers enfold not only the synchronic court documents of British legal power and knowledge, but also the texts of Hindu antiquity, themselves palimpsest layers of mistranslation and errant commentary."[91]

Nora's work has not remained uncontested and has been adjusted and is qualified, most notably, in its application to the African and other non-European contexts.[92] Marschall refers to Nora and Ben-Amos in the South African context and this is relevant for the work carried out by Ben-Amos and Weissberg which clearly shows how cultural memory has become the creative invention of the past. They refer to cultural memory as collective memory moving from being monumental to reflecting everyday life and more importantly, how memory acts as a secondary agent of transformation by its ability to transform objects into symbols, infusing them with meanings they did not have on their own before they became possessed with memory. [93] Nora himself refers to the explosion of minority memories which has altered the respective status and reciprocal nature of history and memory. He explains that history, founded on memory was the sphere of the collective and memory of the individual. "Individuals had memories, collectivities had histories".[94] He goes on to say that 'collectivities' with a memory implies a far-reaching transformation of the status of individuals within society and their relationships to the community and this has led to another shift, that being the understanding of identity. Nora argues that the concept of identity has undergone a reversal in meaning (at the same time as that of memory). It has gone from being an individual and subjective notion to a

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91 Ibid, 369.

92 Marschall, S. 2006. Marschall refers to Ben-Amos and Weissberg. 1999.

93 Ben Amos, Dan and Liliane Weissberg. 1999. *Cultural memory and the Construction of Identity*, Wayne State University Press. p. 298.

94 Nora 2002:6

collective notion (quasi formal and objective). "The expression (of identity) has become a group category, a way of defining us *from without*". Identity, says Nora, is a form of duty. [95]

Harvey has written about the "complex and ambiguous development of a concept of nationhood." He examines two sites (one in the UK and one in Ireland) which he identifies as being 'untypical' and yet emblematic and discusses their 'routes of interpretation' over the eighteenth and early nineteenth centuries as a wider course of "emerging identity politics…with the construction of the nation in particular."[96] Harvey concludes his study acknowledging how "heroic and mythologized pasts"[97] underplay a complexity of national expression at the two sites. My study adopts a similar approach.

BUILT FORM: POWER VERSUS GRAVITAS

Nora's work establishes important aspects relating to memory and history and notes that pitfalls in the study of memory are vast and complex as memory and power are linked – which memory do we refer to? If memory is a thing to be shared, collected, suppressed it is malleable and it therefore wields power in its inclusionary and exclusionary capacities. As stated earlier, Nora's emphasis on the role of place and space in memory necessitates an elaboration on the ways in which built form, power and national identity interlink. Gravitas can be argued to be the antithesis of power as one of the Roman virtues – its meaning being given as gravity, dignity, seriousness, importance, weightiness, substance or depth.

The importance of the discussion around notions of power versus gravitas is highlighted by an extract from the Constitutional Court Competition document as an introduction to the character of the proposed new building – "...it should have a distinctive presence, as befits its unique role, and should convey an atmosphere of balance, rationality, security, tranquillity and humanity. It should be dignified and serious, but should have a welcoming, open and attractive character and make everyone feel free to entre and feel safe and protected once inside". [98] Neither of the words power, powerful or gravitas were used in

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95 Ibid,.

96 Harvey, David C. 2003. "'National' identities and the politics of ancient heritage: continuity and change at ancient monuments in Britain and Ireland, c1675-1850," University of Exeter. p. 474

97 Ibid, 483.

98 Brief and conditions of the competition for the new Constitutional Court building of South Africa, 1997. South African DPW. p. 17.

the competition brief yet the word gravitas was used in the competition adjudication report – the winning scheme, one of five selected in the first round, was considered to be lacking in gravitas. The following discussion links notions of power and monumentality and examines these against the notion of 'gravitas' and the ways in which built form communicate these notions. Reference is made to studies of the work of the two 'non-first world' architect adjudicators in the competition – Bawa and Correa and to a study of the Constitutional Court building.

Foucault has argued the interrelationship between knowledge and power by examination of power relations in society. Hays describes a particularly relevant interview of Foucault by Rabinow[99] as both clarification and commemoration of Foucault's thoughts on the spatialization of knowledge and power. He explains: for Foucault it is a misunderstanding to hold that architecture simply represents power, or that architecture can have inherent political significance or function. Rabinow questions Foucault - "You have singled out doctors, prison wardens, priests, judges and psychiatrists as key figures in the political configurations that involve domination. Would you put architects on this list?" Foucault's translated response explains how he is describing people through which power passes or who are important in the fields of power relations – and no, the architect should not be placed in this category – "…which is not to say that he is totally foreign to the organization, implementation and all the techniques of power that are exercised in a society. I would say that one must take his mentality, his attitude- into account as well as his projects, in order to understand a certain number of techniques of power that we invested in architecture".[100]

The relationship between built form and power is a subject also tackled by Markus – he examines the meaning of buildings as social objects through a concept of build form as narrative. Buildings have a story from conception through the design process, into production, continuing into reconstruction until final demolition. Language, according to Markus, is at the core of making, using and understanding buildings. Through a building, a community is able to articulate its feelings and thoughts. Buildings are experienced as concrete reality, they classify something, and Markus explores a concern with "buildings about which there are texts; that is, things and words."[101] Markus and Cameron work

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[99] Hays, Michael K. 1998. *Architectural Theory since 1968*, A Colombia Book of Architecture, MIT Press. Foucault interview by Rabinow of Skyline. 1982. Titled "Space, Knowledge and Power".

[100] Ibid, 435.

[101] Markus, Thomas A. 1993. *Buildings and Power*, Routledge. p. 5.

together as linguist and architect on "The Words Between the Spaces".[102] They write about architecture, heritage and national identity with the observation that the words *nation* and *national identity* are most frequently collated in discourse with *heritage* and this is especially marked in relation to architecture. They observe how historic buildings are treated as important symbols in the aftermath of revolutions and other major upheavals in the life of a nation. Re-appropriating an old building for new uses, they observe, is not just a practical solution to the problem of what to do with obsolete or redundant structures, but a clear and powerful ideological statement about the a new regime - they cite the example of the post revolution Louvre - transformed from palace into museum. They examine some discourses in debates on national identity and history in discussions about the built environment, referring to examples from Germany - where a democratic national identity was to be constructed after a period of totalitarianism, and Indonesia - where national identity was constricted following a period of colonial and neo-colonial domination by Western powers.

Vale examines how architecture and urban design are manipulated in the service of politics.[103] With reference to the philosophy of Goodman, Vale covers the question of how a work of architecture conveys meaning and how understanding this enables an understanding of what the meaning is. In his study of the design of 'capitol complex', he tackles the issue of national identity by linking it with the concepts of nation and nationalism and professes that national identity is not a natural attribute that precedes statehood but rather a process that is actively cultivated for a long time after a regime has gained political power. He analyses architecture and urban design as national symbols within three frames of reference: first - the subnational group allegiances and preferences of the sponsoring regime, second - the priorities of the architect's long-term design agenda, and third - the governments interest in pursuing international identity through modern architecture and planning (which may be tied to issues of economic development). Vale's analysis of Bawa's Sinhalese parliament complex,[104] as a 'master

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102 Markus, Thomas A and Deborah Cameron. 2000. *The Words Between the Spaces*. Routledge.

103 Vale, Lawrence. 2008. Architecture, *Power and National Identity*. Routledge.

104 Bawa's work was both prolific and influential. He was born in 1919 in the then colony of Ceylon (his father a lawyer of mixed Muslim and English parentage and his mother of mixed German, Scottish and Sinhalese descent). He read English at Cambridge and studied Law in London. He worked for a short period, travelled and settled in Italy for a while and then returned to Ceylon in 1948 where he bought an abandoned rubber estate at (the now well-known) Lunuganga. He worked for a while as an apprentice in the office of H.H. Reid (the ex-Colombo architectural practice Edwards, Reid and Begg), then went back to Cambridge after Reid's sudden death and thereafter enrolled as a student at the Architectural Association in London (he was remembered as the oldest, the tallest and most outspoken student). He qualified as an architect in 1957 at the age of 38 and returned to Ceylon. He took over the Reid practice and worked together with a group of talented young designers which he had assembled as group who shared an interest in Ceylon's forgotten

plan of architectural pluralism' shows Bawa's combination of indigenous formal traditions without trivialising them. He mitigates the monumentality of the scale of the project by the use of recognisable iconography. His design is inclusive and yet not a caricature, it avoids the pitfalls of reductionism (largely because there is one dominant architectural form element) and it avoids pastiche. Vale maintains "its strength is the multivalence of its references, the ability of its architect to draw upon many parts of Sri Lanka's eclectic architectural history" He refers to an extremely rare public statement by Bawa – "I like to regard all past and present good Sri Lankan architecture as just that – good Sri Lankan architecture, for this is what it is, not narrowly classified as Indian, Portuguese, Dutch, early Sinhalese or Kandyan or British Colonial, for all good examples of these periods have taken the country itself into first account".

Herz writes on Africa and the architecture of new nations, drawing primarily on material from the late 1950's to the early 1960's, his interest being an examination of built form as one of the principle means to express 'new nation' national identity. He describes a 'modern and futuristic architecture', most often featuring heroic and daring designs and reflecting the aspirations and forward looking spirit of that time, often coinciding with periods of economic boom. The resultant architecture is unique to the region – it combines elaborate construction methods and modernist design thought adapted to a tropical climate which allowed for a blend of inside and outside and focused on form and the expression of materiality. The architects, he notes, were not local and he questions this:

> "In most cases, the architects were not local, but came from countries such as Poland, Yugoslavia, the Scandinavian nations, Israel, or even from the former colonial powers. Could the formation of a new national identity through architecture therefore be described as a projection from the outside? Or does the international dimension rather represent the aspirations of the countries aiming for a cosmopolitan culture?"[105]

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architectural heritage. Plesner, a Danish architect, joined the practice for eight years and introduced an appreciation for Scandinavian Design. In 1979 Bawa was invited by the President to design Sri Lanka's new Parliament Complex at Kotte. This project and the Ruhuna University near Matara brought Bawa international recognition. Source: "*A Tribute to Geoffrey Bawa*", Robson. 2001. Bawa was selected as one of the jurors in the Constitutional Court Competition project in 1998. Later that year, he suffered a massive stroke which left him paralysed and unable to speak. He passed away in 2003 at the age of 84.

105 Herz, Manuel Ed. 2015. *African Modernism, The Architecture of Independence*, University of Chicago Press.

Herz questions the extent to which these projects and their non-local architects are envisioned as 'modernistic grand projects' that propel a country forward, or 'vanity projects initiated by authoritarian policies'?[106] Lu[107] highlights a similar concern with architecture produced for and in Africa by non-African architects and Noble[108] notes a concern where most recent South African architecture has been designed by white architects (due to the legacy of apartheid and a scarcity of practising black South African architects). Noble believes, in most cases, these designers who have had to adopt an "African persona in design" have "initiated gestures that move architectural discourse in an appropriate direction"[109]. Noble introduces his work as an examination of what constitutes authentic or inauthentic African identity or expression in design. Lu's work covers modernist architecture in the Third World through a discourse focused on national building projects, and their assimilation of modernism, in order to understand if the history of modernist architecture can be more responsive to the realities of other histories. She deliberately steers away from 'earlier hegemonic assumption which identified the west as the sole yardstick' to measure the success or failure of modernism. She introduces modernism as globalism and developmentalism and, most importantly for this study, modernism becoming nationalism in a Third World context. Lu draws from Vale's work in defining nationalism as the need to cultivate and consolidate national identity in the face of multiple contending groups from within. She discusses how carefully manipulated built forms play a "significant role in promoting a corresponding identity in terms of national culture".[110] Her interest is in the irony of modernist architecture representing nationhood in the Third World where it is labelled as 'international' and yet where it has so often been "generally conceptualised as being rooted in remote antiquity and grounded in cultural uniqueness".

In summing up the interlinks between built-form, power and national identity, we observe trends in new nations towards built form as expressions of power/gravitas and national identity, we apply Foucault's logic to understanding the architects role in respect of power manifestations in the built-form and we ascertain the Court's position as built form expression in post-apartheid South Africa.

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106 Ibid,.

107 Lu, Duanfang. 2011. *Third World Modernism*, Routledge.

108 Noble, Jonathan. 2011. *African Identity in Post-Apartheid Architecture: White skin, Black Masks*, Ashgate.

109 Ibid,1.

110 Ibid, 13.

Two trends have been exposed herein; the first involves the appropriation of historic buildings as important symbols in the aftermath of revolutions which are self-consciously re-appropriated for new uses to reinforce clear and ideological statements about a new regime (The Louvre is one example). The second trend tends towards modern architecture as a built-form expression of new nations and national identity. In the 1950's and 60's this trend manifested with heroic, daring designs of elaborate construction methods designed by non-local (perceived to be neutral/better suited/more experienced) architects as symbolic grand projects or vanity projects initiated by authoritarian policies. The trend softens with time and modernism, as a means of projecting identity and bringing international recognition to new nations in the 70's, 80's and 90's, begins to find its feet. It establishes distance between a colonial representing architecture versus a classical authoritative or culturally specific architecture. Modernism becomes a welcome, technologically free and easily adaptive solution to post-colonial situations with divergent cultural claims. Modernist architecture, in the so-called Third world, is unique as a non-ethnic specific, socially and culturally appropriate, politically and religiously neutral solution. It is developed as such, into an art form by the likes of Bawa, Correa and Fathy (amongst others).

Foucault recommends that one takes into account the architects mentality and his attitude - as well as his projects (his work as example), in order to understand how the process of making architecture and built form expression might emanate power (where power Gravitas is argued to be the antithesis of power). With this in mind, Noble's recent post-apartheid South African study which examines specific public buildings (the Constitutional Court being one of these) is relevant with respect to attitude and for its examination of the methodology and practices and the ways in which the buildings in question have been produced (specifically with reference to debate, discussion and participation). Noble positions the resultant architecture as inclusionary and appropriate – as "authentic".[111]

[111] Noble's reference to authentic must not be confused with the conservationist's use of the same word. Refer to the earlier section entitled '*A short history in Conservation Principles*'.

ARCHITECTURAL METAPHORICAL CRITIQUE

In this section, I examine two main critiques of the Court building; Le Roux (from the legal fraternity) and Noble (an architect). Mention is made of others and their critique in comparison and to substantiate and illustrate certain points.

Both De Vos and le Roux critique post-apartheid constitutionalism metaphorically by means of a well-used trope – the bridge.[112] Le Roux critiques both the Constitution and the Court building by means of a series of progressive metaphors – bridges, clearings and labyrinths. He discusses 'bridges' and moves into 'clearings' and finally 'labyrinths. The bridge metaphor by his observation is outdated, in so far as it pertains to the Constitution, as the Court building has symbolically replaced the bridge. He analyses 'clearings' with a description of the first deliberate decision taken by the Court to distance itself from a long conventional history of judicial imagery as highlighted by Resnik and Curtis.[113] Le Roux notes that the decision to opt for the alternate organic imagery of an indigenous tree, as opposed to the mechanical image of balancing scales, has allowed the depiction of the Court through a symbol of communicative rationality and, by means of an organic and dialogical process with the design of the new building, provides an opportunity for the Court to entrench this shift. Quite correctly - the cover of the competition document is emblazoned with the logo imagery; however the term 'justice under the tree' is never mentioned. Le Roux embarks on an explanation involving the "iconic tree of constitutionalism"[114] and the means by which it is translated into the physical features in the building through detail via the roof, the columns and the leaf patterned chandeliers. He draws this imagery into the Court Chamber where he describes how the judges and the public are seated on the same level whereas other officers of the court are seated in a lower position so as to enable any person standing up to argue their case to be on the same eye level as the seated judges - as would be the case with an openness and horizontality characterising the clearing under a tree.[115]

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112 de Vos, Pierre. 2001. "A bridge too far? History as context in the interpretation of the South African Constitution," *African Journal on Human Rights*. 17 S.p. 1 and Le Roux, Wessel. 2004. "Bridges, clearings and labyrinths: the architectural framing of post-apartheid constitutionalism", *Academia* 19 SAPR/PL. p. 651 - 652

113 Le Roux refers to the publication by Resnik, Judith and Dennis Curtis. 1987. "Images of Justice," *Yale Journal of Law & the Humanities* 97: 1727-1772. Source: Resnik, Judith. 2012. "Re-presenting Justice: Visual Narratives of Judgment and the Invention of Democratic Courts," *Yale Journal of Law & the Humanities*, http://digitalcommons.law.yale.edu/yjlh/vol24/iss1/2.

114 Le Roux, Wessel. 2004. "Bridges, clearings and labyrinths: the architectural framing of post-apartheid constitutionalism", Academia 19 SAPR/PL. p. 652.

115 Ibid,.

Le Roux explains how the Court has been presented as the foremost, example of 'a clearing' or public space in the post-apartheid political landscape. It was billed by Radebe as "the first major public building of the new democracy"[116] and subsequent to that, has been ascribed as being tasked to "physically dramatize the transformation of South Africa from racist, authoritarian society to constitutional democracy".[117] Le Roux makes an important point regarding the significance of the Court building – it has been hailed as the most important post-apartheid symbol of democracy and is heavily invested with high symbolic capital by South Africans. This high significance attributed to the Court has avoided a typical new nation syndrome which ordinarily might have resulted in the creation of a new or at least altered Parliament building.[118]

The critique involves a complex legal argument which intends to add significance in the analogy of the court as 'paradigmatic clearing' or public space. This argument draws on constitutional theory and counter-majoritarian difficulty[119] by which the authority of the Court rests on the active self-government or practical reason of the judges of the Court. The Court judges represent, by their own self-government, the community's missing self-government and by their practical reason, the community's missing dialogical self-modification.

The Foyer space, which he identifies as "not simply a clearing in a forest prepared for the post-apartheid community" is a space that distresses him.[120] He explains - one cannot but notice, on entering the Foyer, the prominent and juxtaposed positioning of an historic ruin remnant immediately in ones line of sight. For le Roux, the graffiti-ed Afrikaans word of "Welkom" (welcome), scratched into the plaster by a prisoner in the once prison and now stair ruin, cuts across all temporal and spatial boundaries and immediately raises doubt in the mind of the observer –

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116 Brief and conditions of the competition for the new Constitutional Court building of South Africa, 1997. South African DPW, Preface 7.

117 Sachs as quoted in Le Roux. 2004. "Bridges, clearings and labyrinths: the architectural framing of post-apartheid constitutionalism", *Academia* 19 SAPR/PL. p. 653.

118 Le Roux. 2004:654

119 The counter-majoritarian difficulty or dilemma is a term attributed to Bickel (Yale Law School Professor) in his work *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*. The phrase is used to identify a problem with the legitimacy of the institution of judicial review of legislative (or popularly created) laws. This is a situation where some (unelected judges) use the power of judicial review to nullify actions of the elected executives or legislators. The dilemma or difficulty occurs when some oppose or foresee a problem with the judicial branch's ability to invalidate, overrule or countermand laws that reflect the will of the majority.

120 Le Roux. 2004:663

> "The inscription is in Afrikaans and means welcome. Having just arrived at the clearing which has been created in the Foyer, one reads and acknowledges the greeting. Then one is suddenly beset with doubt. Was the inscription addressed to you? It is after all an inscription that once greeted those who were about to be cast into isolation, exclusion and silence."[121]

He asks - how can it be intended to direct those who now arrive at this place on the basis of an altogether different invitation to participate in public debate? A single word - in this position in the foyer - imbues an enormous sense of ambivalence and doubt for le Roux. The word marks a point of two different paths - it is situated at a point which leads one up into the prison staircase or down into the Court Chamber. This split causes the interior to assume a disorientating and 'heterotopian' character similar to Escher's 'labyrinthian' staircases in Relativity or Piranesi's interior prison scene in Carceri.

Le Roux maintains this sense of ambivalence and doubt not simply to be an association with the word, but rather a lack of hierarchical organising of interior space which offers one various stairs and passages to lead away from the Foyer and yet no clear direction or destination. "What first appeared to be a clearing and a fixed destination has turned into a network of further paths…"[122] and for him, this emulates the Constitution – it is a labyrinth without a centre. For le Roux, entering the Chamber in this traumatised state finds one no longer able to find the democratic community embodied or personified by the robed judges. The judges become figureheads, mere guardians or gatekeepers; not the embodiment of the law.

Finally, drawing on Kafka, le Roux reminds us that we should be wary of the gatekeepers of the law.[123]

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121 Ibid,.

122 Ibid,.

123 This proposal is one Le Roux derives from Derrida's reading of Kafka's well known fable 'Before the law' in Attridge's Derrida: Acts of literature (1992). Attridge's book is the first collection of Derrida's essays edited by Attridge in close association with Derrida. Le Roux describes the fable - "…a man from the country arrives at a building in the city where the court is located. It is a very special building, one apparently designed with openness and accessibility in mind because it contains a large number of gates. In fact, every visitor to the court has her own special gate set aside and kept ready for his or her arrival. Having found his gate, the man from the country wants to enter the building. He asks the security guard on duty whether he can enter. The guard replies that it is possible to enter but not just yet. The man peers through the open gate to the inside and is told that he is merely at the outside gate of the building. The interior is made up of a labyrinthian network of further gates and hallways, each opening onto another and guarded by doorkeeper after doorkeeper, each more powerful than the other. The man waits his whole life for permission to enter the gate and thus the labyrinth of law, but is constantly told that he cannot be let in just yet. When his immanent death makes further use of the gate obsolete (it was meant for him alone) it is shut by the guard. Derrida reads Kafka's fable as a commentary on the quasi-transcendental conditions of law (justice): the condition of the possibility of law is the impossibility of ever gaining access to the law."

Herwitz alludes to similar concerns of a legal nature in his critique as discussed earlier where he points to the flexibility of the constitution and its potential to unravel under a bad set of judges. [124]

Noble reads the Court building as part of a study of five architectural projects, all resulting from architectural design competitions. He sets his study against the writing of Fanon, particularly his ideas from *Black Skin, White Masks*. Referring to Fanon's study as 'BS', he discusses notions of skin, mask, authenticity, subjectivity and post-colonial identity as interrogative tools by which to question new South African architecture. He explains that the metaphors of mask and skin from Fanon's title are suggestive for architectural criticism in the context of post-apartheid public design. He uses Fanon's theories of race, culture and identity to provide a framework for dealing with 'visionary quality' of the new architecture and its relation to dominant versus repressed forms of architectural expression. He draws the distinction of most new architecture in the country being designed by mostly white architects who have had to adopt an African persona in design (due to the legacy of apartheid and the low numbers of black practising architects). Noble examines political/aesthetic questions as a means to establishing and identifying an authentic African identity and expression in design. He maintains recent public designs have experimented with new forms of political imagination and the projects he scrutinises represent a unique moment in the history of a nation. He looks to Balibar for answers to the question of subjective identity.[125] In this context, Balibar suggests that one refer to the fluid process of identification - identifications are performed in relation to others and 'we' participate in identification through various types of media (including Architecture).

Noble's study focuses on the politics of identity – motions of solidarity which enable 'us' to imaginatively construct the 'we' of political participation. The emphasis of a plural and participatory nature of the undertaking requires studies to possess contextual specificity.[126] Noble, through the work of Fanon, discusses 'subjectivity and colonial rule' and 'the weight of culture', consolidating three important points –

First - Fanon, through BS, highlights the 'demeaning silence imposed by colonial rule', the implications are such that there is now a call for a virtual history associated with this new

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[124] Herwitz. 2011.

[125] Balibar, Etienne is a French Marxist philosopher and celebrated student of Althusser. He has published widely and notably very recently (September 2015) with regard to Europe, the refugees and the challenges of migration.

[126] Noble, Jonathan A. 2011: 3

known subject – new perspectives and forms of artistic expression that deserve to be heard which position these new histories alongside the dominance of the know history.
Second - BS expresses a positioned perspective intended to stand in solidarity with the marginalised identity and Fanons approach to this is momentary, subjective and engaged – Noble writes of his aim to learn from that creative and open-ended character of thought.
Third - Noble refers to Fanons terms of mask and skin repeatedly, interpreting these as metaphors for architectural identity with the underlying skin being natural or dominant, and the mask being more playful or subverted.

Noble's critique on the Constitutional Court is paired with an examination of the Kliptown Commemorative precinct and he investigates formations of the 'we' where historic significances of these sites (resonating with both local memory and national liberation) are addressed in terms of participatory aspects of each project. It has been helpful for my study to assess Noble's conclusions with those of mine in terms of the participatory process of the people involved in the making of the Court project. Noble's is an architectural study incorporating Fanon's work whereas this study has focused on debate around creating a new national identity. Noble's findings and insights into the relationships between architecture, politics and culture and his critique of post-colonial, post-apartheid South African expression in the built environment are referenced in consolidation of my arguments in Chapter Four when discussing the artefact, the Court building.

Both the preceding legal based critiques and Noble's architectural critique are referred to later in Chapter Four: an analysis of the artefact and the Concluding chapter of this study.

CHAPTER THREE – THE MAKING OF THE COURT BUILDING

PART ONE: A THUMBNAIL HISTORY OF THE HILL PRECINCT

A single prison cell block was constructed in 1893 on the north ridge of the newly formed gold mining town of Johannesburg by Paul Kruger, president of the Zuid-Afrikaansche Republiek. A second block and protective earthworks ramparts where added and the new prison was turned into a military fort after the Jameson Raid of 1896 when a group of mainly English speaking immigrants colluded with the British in an unsuccessful attempt to overthrow the Boer government. Further structures were added to the Old Fort complex on Hospital Hill between 1904 and 1928 after the British took occupation of Johannesburg in May 1900. The Old Fort was captured without incident at that time and the British imprisoned the Boer soldiers inside their own fort.

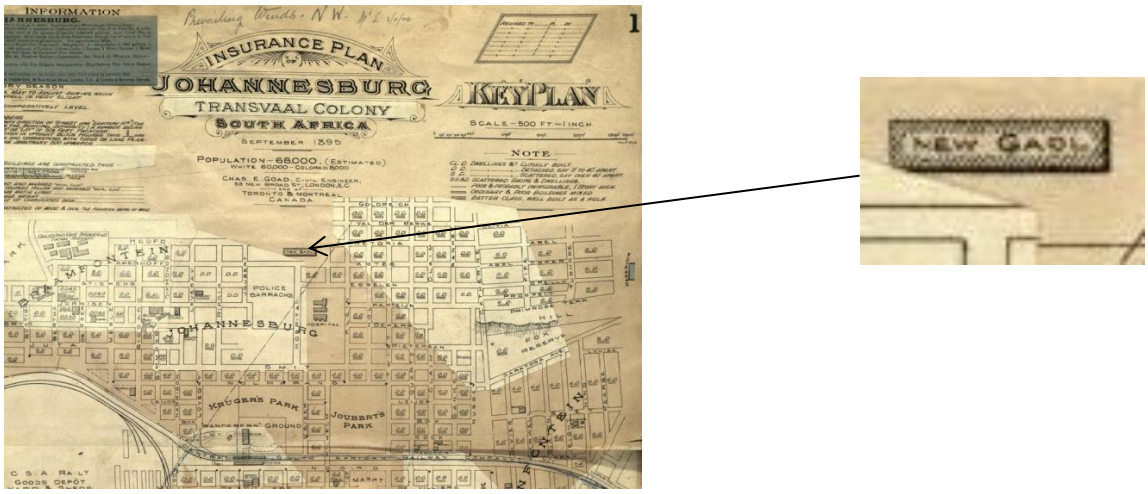

Figure 2: Extract from Goad Insurance Plan, 1895

Showing the newly constructed Gaol.

Source: Wits University archive. http://wiredspace.wits.ac.za/

Figure 3: Extract from Grocott and Sherry Plan of Johannesburg and Suburbs, 1897

Showing the Gaol positioned on the ridge.

Source: Wits University archive. http://wiredspace.wits.ac.za/

The Old Fort and three additional buildings constructed outside of the Old Fort ramparts served as the main place of incarceration in the city of Johannesburg. Sections Four and Five (circa 1900), The Woman's Gaol (1907) and the Awaiting Trial Block (circa 1920) served as racially and gender segregated penal complexes of significant presence in everyday South African citizen's lives for over eight decades.

> " The jail always had a brooding presence in the city…The old stone walls tell a century's worth of stories about an iniquitous political system, a brutal penal institution, and the resilience of generations of prisoners".[127]

Figure 4: The Gaol (above) becomes the Fort (below) with newly constructed ramparts 1897/8
Source: Gutsche, Thelma. 1970. *A very smart medal: The story of the Witwatersrand Agricultural Society.* Howard Timmins. From Marc Latilla. https://johannesburg1912.wordpress.com

[127] Madikida, Churchill, Lauren Segal and Clive van den Berg. 2008. "The Reconstruction of Memory at Constitution Hill" *The Public Historian,* Vol 30, No 1. p. 18.

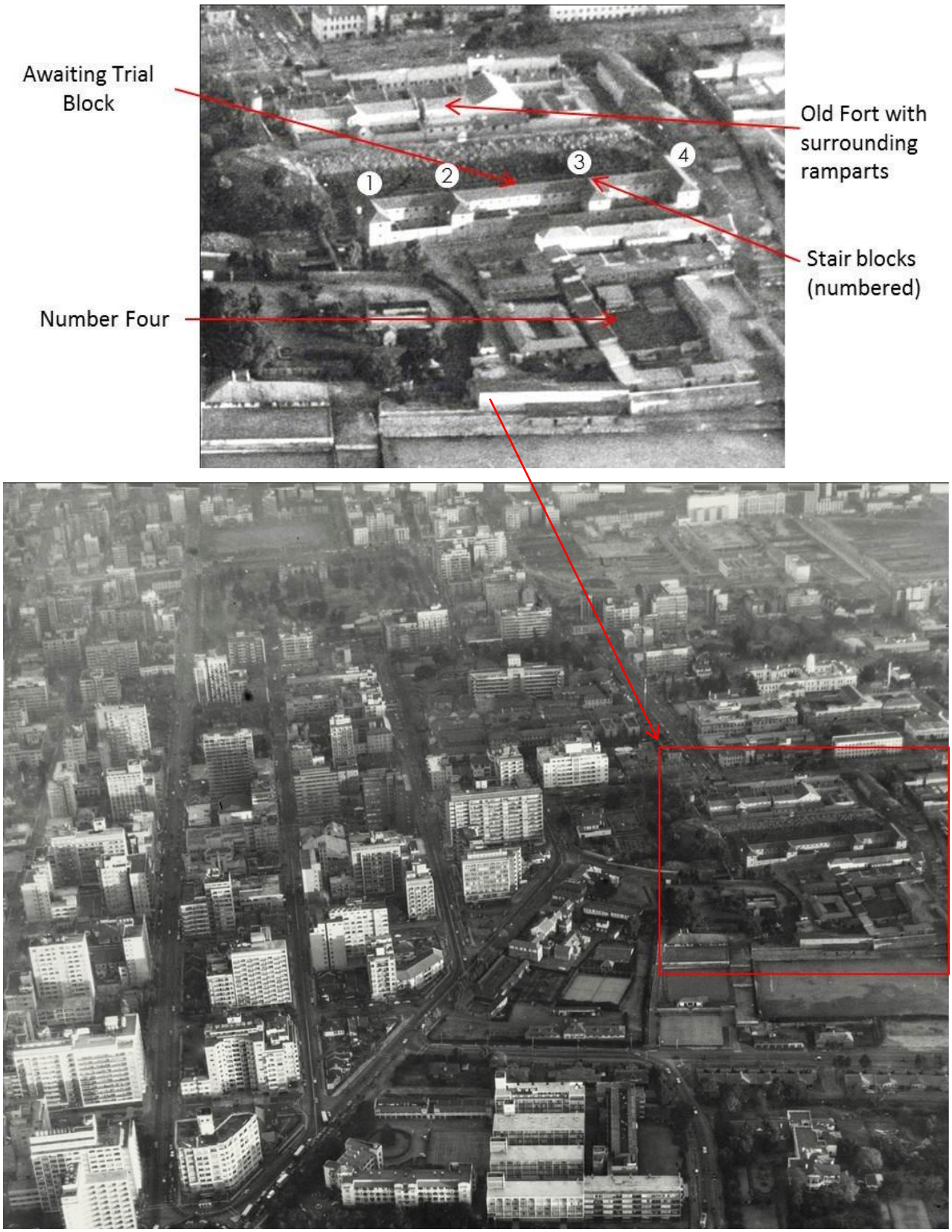

Figure 5: Aerial photograph:Hillbrow looking south from Claredon Circle towards 'Number Four'. Circa 1950.

Source: Museum Africa, Johannesburg.

The prisons were closed in 1983. The site, already publically owned, lay abandoned or partially occupied for the next thirteen years during which time parts of the built form deteriorated to the point of dereliction. The prison yards and open spaces were filled with long grass, blackjacks and rubble, buildings had deteriorated and objects (brass fittings and ironmongery) where removed by vandals.[128] The place looked "a bit like a rubbish dump..".[129] Despite the Old Fort's status as a National Monument [130] and the Prison Department's plans for the creation of a museum, no maintenance was carried out after the doors were closed and the properties on the Hill within the Old Fort precinct were consequently severely neglected. During this period, the Johannesburg City Council formally called for submissions for the building's use, believing it could be turned into a tourist venue similar to that of the Castle in Cape Town. Herbert Prins, member of the then National Monuments Council (NMC) recalls applications for the Old Fort's conversion to a hotel, a complex of theatres with restaurants and community facilities and adaption to headquarters for the Transvaal Scottish Regiment.[131] The NMC contributed to the discussions in their capacity as statutory heritage administrators of the National Monuments Act of 1969 prior to its succession in 2000 by the newly legislated South African Heritage Resource Agency (SAHRA). The new Act, discussed earlier, makes provision for the identification, conservation, protection and promotion of heritage – both tangible and intangible, for present and future generations. The Scottish Regiment occupied the Fort premises in the 1980's and some restoration work was completed prior to the unit's move following a collapsed lease agreement with the City. The Rand Light Infantry Unit[132] was moved to the Fort for a short period between 1993 and 2004 and the Security Department of the City Council took occupation of the Women's Jail, part of the Awaiting Trial Block and Number Four. [133]

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128 Segal et al. 2006:35, 53

129 O'Regan quoted in Segal 2006:53

130 The Old Fort was proclaimed a National Monument on 27 November 1964 amid controversy regarding its significance and the effects of such a deception. The Johannesburg City Council opposed the notion, preferring the land to be made available for a development and a park yet others felt the building to be an important remaining Zuid-Afrikaansche Republiek (ZAR) structure. No other prisons within the Hill precinct were part of the 1964 proclamation.

131 The Transvaal Scottish Regiment of 1902 were volunteers in the Scottish unit during the South African War. The Regiment operates as a reserve infantry unit as part of the National Defence Force today. Its members generally have civil occupations yet operate as part of the country's army.

132 The Rand Light Infantry (RLI) is a regiment of the South African Army. It is a reserve Regiment unit, with a status roughly equivalent to that of a British Army Reserve unit or United States Army National Guard unit. The RLI was formed in Johannesburg in 1905 and originally named the Transvaal Cycle Corps (from the Bicycle Section of the Transvaal Scottish Regiment).

133 Segal et al. 2006:39 - 43

The course of events that ended apartheid began shortly after it was introduced as official National Party (NP) government policy in 1948 – resistance was inevitable. During the Defiance Campaign[134] which began in 1952, more than eight thousand people were arrested. On 26 June 1955, over three thousand people gathered together in an open field in Kliptown,[135] which is often referred to as one of the oldest urban multiracial areas in Johannesburg. The main objective of the meeting, known as the "Congress of the People", was to agree to a Freedom Charter which would represent the just aspirations of all the people of South Africa.[136] The human rights articulated in the Freedom Charter eventually became protected by the Bill of Rights contained in the Constitution. In 1960, twelve years after the birth of apartheid, shortly after the Sharpeville massacre,[137] the ANC was banned by the apartheid government. In 1962, Mandela was arrested and subsequently convicted of treason at the 'trail that changed South Africa' the Rivonia Trial.[138] This was followed by more than two decades of oppression, brutal suppression of all forms of resistance to apartheid and various failed attempts to exclude black people from S.A. citizenship including independent homelands and a tri-cameral parliament. In 1974, a glimmer of light appeared in the form of the Mahlabatini Declaration of Faith[139], signed between Harry Schwartz, leader of the opposition party (the United Party), and Mangosuthu Buthelezi, leader of the largest ethnic group (the Zulus). This was the first official agreement between black and white people affirming the principle of equal rights

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134 The start of the Defiance Campaign, 26 June 1952 was preceded by a "Day for Volunteers" on the 22nd June. Volunteers, including Nelson Mandela, Yusuf Dadoo, Moses Kotane, JB Marks, David Bopape and Walter Sisulu, signed a pledge to defy apartheid laws in Johannesburg and other major centre. The defiers who began the campaign did so with the sense that history was being made. Africans, Indians, a few whites and coloureds were engaging in joint political action under a common leadership.

135 Kliptown is the oldest residential district of Soweto, and was first laid out in 1891 on land which formed part of Klipspruit farm. The farm was named after the klipspruit (rocky stream) that runs nearby.

136 The human rights issues articulated in the Freedom Charter were to be incorporated into the Bill of Rights contained in the 1996 Constitution.

137 21st March 1960. Approximately 5 000 residents gathered at a police station in Sharpeville, outside of Johannesburg. Three hundred heavily armed police, some with automatic weapons, confronted the gathering. A small scuffle broke out, a police officer was accidently pushed over and a crowd surged forward. According to police, protestors began to stone them. A police officer, on top of an armoured car, panicked and without warning to disperse, opened fire on the unarmed crowd. His colleagues followed suit. The official inquest stated sixty nine dead and one hundred and eighty seriously wounded. The shooting at Sharpeville sent shock waves around the country and the world. Source: www.sahistory.co.za.

138 In October 1963, ten leading opponents of apartheid went on trial for their lives on charges of sabotage. Nelson Mandela made a speech in the dock in which he condemned the court in which they were appearing as 'illegitimate' and proceeded to argue that the laws in place were draconian and defiance of these laws was justified.

139 Signed on the 4th January 1974. Referred to in a M&G article, 31st January 2014, written by Adam Schwarz, grandson of Harry, politics graduate from the University of Nottingham and a student at the university's law school, entitled "Mathlahini Declaration- forty years on" - The ideals of the Mahlabatini Declaration of Faith were integrated into the Constitution, but many are still waiting for their practical fulfilment.

for all people. The agreement called for negotiations with the purpose of drawing up constitutional proposals and a Bill of Rights. In January 1985 PW Botha, as leader of the government, announced in parliament that he had offered Mandela conditional release from prison. On the 10th February, at a rally in Soweto, celebrating Archbishop Desmond Tutu's awarding of the Nobel Peace Prize, Zinzi Mandela delivered her father's now famous "Free men" speech.[140] Between 1985 and 1989, informal secret talks took place between Mandela and several representatives of the NP government, notably Niel Barnard and Mike Louw – representing the National Intelligence Service. These were exploratory talks on the instruction of PW Botha, without the knowledge of the cabinet, to determine whether a negotiated solution was actually possible. PW Botha, in his well-known 1985 Rubicon Speech[141] implied that Mandela could, in principle, be released under certain conditions. This however disappointed the world that was expecting significant policy shifts and the release of Mandela from prison. In 1990, FW de Klerk, as Prime Minister, announced that the ANC and several other organisations would be unbanned and that Mandela was to be released from prison. The following four years saw intense negotiations taking place. Notable milestones were the Groote Schuur and Pretoria Minutes in which the ANC and the government established common ground, commitment to resolving the escalating violent conflict and removing obstacles to negotiation. In September 1991, the National Peace Accord was signed by twenty seven political organisations, paving the way for the Convention for a Democratic South Africa (CODESA). CODESA I led to the holding of a referendum in March 1972 which resulted in clear support from white people for continuing on the path towards democracy. CODESA II talks, which started in May 1992, broke down completely with Mandela withdrawing the ANC from negotiations after accusing the NP government of being complicit in the Boipatong massacre[142]. This was followed by a period of mass action and the Bisho

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140 10th February 1985,

141 15th August 1985, PW Botha disappointed Western Allies when he delivered his speech after Pik Botha, then minister of Foreign Affairs had alluded to expectations of a radical policy shift. Among the expected policy shifts was the release of Nelson Mandela which did not happen at time.

142 17th June 1992, the Joe Slovo informal settlement in Boipatong near to Vereeniging was attacked by a group of approximately three hundred Inkatha Freedom Party (IFP) armed men from the Kwa Madala Hostel in Sebokeng Township. It was suspected that the attacks were aimed at undermining negotiations between the Nationalist Party (NP) and the African National Congress (ANC).

Massacre[143] on 7 September 1992. With intensified urgency for a settlement to be reached, bilateral talks had resumed between the ANC (Cyril Ramaphosa) and the government (Roelf Meyer). These talks led to the signing, on 26 September 1992, of a Record of Understanding which dealt with some fundamentals such as the constitutional assembly and an interim government. The interim government was termed the Government of National Unity (GNU) – the brainchild of Joe Slovo whose suggestion was a major breakthrough in the negotiation process.

The ANC and the NP government agreed to proceed with multi-party negotiations and the Multi Party Negotiation Forum (MPNF) resumed negotiations on 1 April 1993. On November 18, 1993 the MPNF announced the Interim Constitution which provided for an eleven person court as the highest legal authority in all constitutional matters – the Constitutional Court. The judge selection process contained in the interim constitution stipulates that the President of South Africa appoints the President of the Constitutional Court after consultation with the Chief Justice and the leaders of political parties represented in the National Assembly.

In June 1994, shortly after the April 1994 election, in accordance with this process, Nelson Mandela appointed Chief Justice Arthur Chaskalson as the President of the Constitutional Court. Chaskalson had acted as defence counsel in the Rivonia Trial along with Sydney Kentridge, George Bizos and Bram Fischer. Four judges had to be judges of the Supreme Court. These were Laurie Ackermann, Richard Goldstone, Tholie Madala and Ismail Mohamed. The remaining six judges had to be selected from a shortlist, which had to contain a minimum of nine names, presented by the Judicial Services Commission. From a list of ten candidates, Johan Kriegler, John Didcott, Pius Langa, Kate O'Regan, Yvonne Mokgoro and Albie Sachs were appointed. Prof CJR Dugard, Prof Charles Dlamini SC, Advocate Bernard Ngoepe and Advocate Thembile Skweyiya SC were on the shortlist but were not appointed.

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[143] 7th September 1992 approximately eighty thousand protesters gathered outside of Bisho, the capital of the then independent homeland Ciskei. The protest was led by several senior ANC leaders including SA Communist Party Secretary Chris Hani, Cyril Ramaphosa, Steve Tshwete and Ronnie Kasrils. The protest was organised in demand to an end to the military government of Brigadier Joshua Gqozo and the re-absorption of the so-called homeland into South Africa. The massacre occurred when demonstrators tried to cross the Ciskei Defence Force lines and enter Bisho. Soldiers opened fire using machine guns and rifle grenades. Several men were shot in the back as they fled. According to ANC officials, no warning was issued and no attempts were made to use non-lethal means to dispose demonstrators. Source: www.anc.org.za.

A NEW LOGO FOR THE COURT

One of the first tasks undertaken by the new Court was the design of a logo. There was a determined focus once again (as with the Constitution) on the opposite and the antithesis of everything that had come before. The traditional judicial imagery (the scales of justice, blindfolded women and roman columns)[144] and the ostensibly virtuous acts these images are intended to illustrate where deliberately shunned by the Court judges. This imagery, it was felt, represented power and the exertion of force and not what the law intends: the protection of the vulnerable.[145] The Constitution required an alternate imagery. Carolyn Parton designed the unbounded circular logo.

Figure 6: Logo unveiled by Mandela at the inauguration of the Court (14 February 1995).
Source: Carolyn Parton.

The eleven branches of the tree (representing eleven languages and eleven judges) and the tree trunk emulate the 'Y' shape found in the flag. The top four branch silhouettes are suggestive of the shape of the country's coast line. Eleven people in positive and

144 Sachs referring to Resnik and Curtis. Sachs interview, 29th May 2015

145 Resnik and Curtis' study "Images of Justice" challenges traditional judicial imagery along similar lines. This study examines iconography (Lady Justice and the scales, as the emblem onto which Western societies project reassurances about power and legitimacy. Source: Resnik, Judith and Dennis E. Curtis. 1987. "Images of Justice" Yale Journal of Journal, Vol. 96, No. 8.

negative, black and white interrelated silhouette form beneath the tree are representative of the populace. The faceted foliage extends, in some case, slightly beyond the edge of the unbounded circle and this, according to Parton, releases a dynamic energy to show the courts progressiveness and the judges' passion.[146]

The Constitutional Court, the key institution of our constitutional democracy, continues to function under the final Constitution adopted on May 8th 1996 by the National Assembly in parliament. A founding principle aspect of the Constitution that it is the supreme law of the Republic: law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled by citizens and the State. It is the benchmark against which other laws are judged and it applies to all of government – parliament, the presidency, the police force, the army and the public service. The Constitution's supremacy and status is set out in the text in Section two of Chapter One which deals with the issue of founding provisions. A second crucial aspect of the Constitution is Chapter Two – South Africa's Bill of Rights.

> "It is this part of the Constitution that has attracted the greatest interest - and has had the greatest impact on South Africans - in the past few years. These provisions deal with the rights to equality, human dignity, life and privacy, among others, as well as the freedoms of religion and expression. They also touch on labour relations, children, education and the legal process". [147]

A NEW NATION AND THE ARTICULATION OF NEW HERITAGE

Governmental efforts in Nation building in the new democracy resulted in the implementation of two important state programmes. First, a Reconstruction and Development Programme (RDP), launched by the ANC government in 1994 and second, the Promotion of National Unity and Reconciliation Act of 1995 and the establishment of the Truth and Reconciliation Programme and its Commission (TRC).

The RDP was aimed at addressing enormous socio-economic problems facing South Africa in 1994 as Apartheid ended.[148] The six basic principles of this integrated socio-

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146 Payton's explanation of the logo design. Segal. 2006. p. 50.

147 http://www.constitutionalcourt.org.za/site/theconstitution/whatisaconstitution.htm#DEFINITION

148 The RDP was linked reconstruction and development in problem area such as lack of housing, a failing education, a jobs shortage, system and health care, a failing economy elements all ultimately connected in the economy of the new nation.

economic policy framework were philosophically based on simple yet powerful ideas: First, to embark on strategies to harness resources in an integrated and sustainable programme (not piecemeal and uncoordinated). Second, to achieve this as *a people-driven process* with the Third principle being the aim *of peace and security for all*. Fourth, to embark on a process of *Nation-building* to address the massive divisions and inequalities left behind by apartheid.

> "We must not perpetuate the separation of our society into a 'first world' and a 'third world' - another disguised way of preserving apartheid. We must not confine growth strategies to the former, while doing patchwork and piecemeal development in the latter, waiting for trickle-down development. Nation-building is the basis on which to build a South Africa that can support the development of our Southern African region. Nation-building is also the basis on which to ensure that our country takes up an effective role within the world community. Only a programme that develops economic, political and social viability can ensure our national sovereignty".[149]

Nation-building required a fifth linking principle of reconstruction and development, in order to enable the sixth and final principle of democratisation of South Africa. The RDP was envisioned as an integrated programme, based on the people, that provides peace and security for all, builds the nation, links reconstruction and development and deepens democracy.

The TRC held public hearings in a court-like process of restorative justice. Witnesses identified as victims of gross human rights violations were invited to give statements regarding their experiences. Perpetrators of violence gave testimony and were able to request amnesty from both civil and criminal prosecution. The TRC report of 1998 included testimony from over twenty two thousand victims and witnesses and over two thousand individuals testified at public hearings. However, the International Center for Transitional Justice (ICTJ) maintain that South Africa's experience, whilst playing a significant role in

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[149] Extracted from the official Policy document, preface by Mandela 1994. The policy document outlines "The Six basic principles of the RDP" accessed via Polity.org, http://www.polity.org.za/article/history-of-polity-2010-09-10. The Polity website offers free access to South African legislation, policy documents and daily political and economic news, and is published by independent publisher Creamer Media. Kenneth Creamer, CEO of Creamer Media, publisher of Polity.org.za, reports that the website is one of the oldest in South Africa, having been developed in the mid-1990s by Tim Jenkin, a political activist who was in exile in London during the anti-apartheid struggle. The activists set up a basic communication system, which was a precursor to email, in order to facilitate communication between underground structures in London, South Africa and Zambia.

the development of the transitional justice field, has lacked and accountability as many issues have not yet been dealt with. [150]

The Department of Arts and Culture launched its Legacy Projects Programme in 1996 as a conscious effort to move away from pre-1994 norms of practice by the creation of new "cultural interventions"[151] which are intended to be the public face of the post-apartheid dispensation rebalancing the biases of the past and contributing to a democratic public discourse.[152] Constitution Hill was selected as one of the Department's Legacy Projects, approved by Cabinet in 1998 .[153]

A HOME FOR THE COURT

The site of the Old Fort and Number Four was one of several sites suggested to the judges of the Constitutional Court for consideration as home to the proposed new Court. Sites at Pieter Roos Park, Midrand and the Wolmarans Street Shul were other options presented. The location of Number Four, adjacent to the Old Fort appealed to Sachs and Kriegler particularly. "Albie and I were always for this site. We had very little difficulty persuading our colleagues".[154]

For Kriegler, the location of the site was its draw card, situated between Hillbrow and Braamfontein and easily accessible to the ordinary citizens. O'Regan was appreciative of the site being "both looked upon and commanding a view, which seemed appropriate for a court like this".[155] Mokgoro and Langa are quoted as being excited about the concept of converting the physical space as a "reminder that this is a route that we never, never want to take again".[156] "We felt excited by the symbolism of the old prisons,

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150 The International Center for Transitional Justice is a non-profit organization specializing in the field of transitional justice. The following is an extract from their website home page "ICTJ works to help societies in transition address legacies of massive human rights violations and build civic trust in state institutions as protectors of human rights. In the aftermath of mass atrocity and repression, we assist institutions and civil society groups—the people who are driving and shaping change in their societies—in considering measures to provide truth, accountability, and redress for past abuses". ICTJ's Cape Town office was opened in 2004 and closed in 2011. Website https://www.ictj.org/.

151 Corsane, G., Mpumlwana, K., Rassool, C. and Pastor-Makhurana, J. as quoted, in King and Flynn. 2002. "Heritage and the post-apartheid city: Constitutional Hill, Johannesburg," *International Journal for Heritage Studies*, 2001, 72. Source: "Inclusion and the Power of Representation: South African Museums and the Cultural Politics of Social Transformation" from Sandell's *Museum, Society, Inequality.* Routledge.

152 King and Flynn. 2001. "Heritage and the post-apartheid city: Constitutional Hill, Johannesburg" *International Journal for Heritage Studies*: 72.

153 Minutes Education Select Committee, 22 February 2000. Briefing by the Department of Arts, Culture, Science and Technology. https://pmg.org.za/committee-meeting/4346/

154 Kriegler, quoted in Segal et al. 2006: 55.

155 O'Regan, quoted in Segal et al. 2006: 55.

156 Mokgoro, quoted in Segal et al. 2006: 55.

whose functions had once been so oppressive, becoming, under the Constitution, a place representing freedom and human rights".[157]

THE COMPETITION BRIEF

General philosophical aspects of the brief are outlined here in order to highlight how the design concept was developed in conjunction with consideration for heritage commemoration.

Masojada describes the brief as having two distinct components: one component outlines hierarchical spatial requirements and the other, a far more significant and inspirational component, provided direction regarding the purpose of the Court as a nation-serving building. Here the brief described the building's pragmatics in terms of its meaning at that place in time and into the future and relative to our history.

> "The new building for the Constitutional Court will be the first major public building of the new era of constitutionalism and democracy ushered in by the elections in April 1994. It should have a distinctive presence, as benefits its unique role, and should convey an atmosphere of balance, rationality, security, tranquillity and humanity. It should be dignified and serious, but should have a welcoming, open and attractive character and make everyone feel free to enter and feel safe and protected once inside."[158]

The DPW, as promoters of the competition, set up a Competition Steering Committee (CSC) who met for the first time in January 1997.[159] The competition brief refers to CSC members and lists them.[160] The final date for the registration and payment of the competition fee was the 25th August 1997. Mokgoro described the process of imagining

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157 Langa, quoted in Segal et al, 2006: 55.

158 South African Constitutional Court Archive of Oral History. Janina Masojada interviewed by Roxsana Patel, 20th January 2012. Official Archive Transcript Pg 9.

159 The New Constitutional Court Forum comprised of representatives of the Constitutional Court, Department of Justice, Department of Arts, Culture, Science and Technology, the Greater Johannesburg Metropolitan Council (GJMC) and other independent professions members from the NMC and so forth. They later called themselves the Competition Steering Committee (CSC) and first met on the 22nd January 1997. Minutes of these meeting are kept in the court files and in the SAHA archive.

160 The following persons where listed in the Competition brief as members of the Competition Steering Committee (CSC) and as having contributed to the work of the committee: Justice L. Ackermann, Councillor L. Bremner, Dr J. Bruwer, Ms L. Callinicos, Mr G. Damstra, Mr D. du Plessis, Mr D Haveman, Prof D. Japha, Ms V. Japha, Justice J. Kriegler, Mr F. Laubuschagne, Councillor C. Matjila, Justice Y. Mokgoro, Mr O. Nkabinde, Mr J. Ngobeni, Councillor Z. Nxumalo, Mr H Prins, Justice A. Sachs, Ms M. Whitehead.

the Court with reference to the Tswana expression 'Kago ee bontshang botho' which she explains as "meaning a building with humanity, a place where you want to be because you feel that you are valued as a human being. Your dignity is recognised and treasured."[161] Sachs said writing the brief was one of the most difficult pieces of writing he had ever done. [162]

The brief sets the context and locates the site in two concise pages of diagrams and description with reference to additional background information on the City of Johannesburg and its architecture. The historical and cultural significances of the site are noted and the surroundings are described. The site concept referred to as "Constitutional Hill" is presented as one agreed to by the DPW, the Greater Johannesburg Metropolitan Council (GJMC) and the NMC as "a major public space for Johannesburg and a symbolic place for the Nation".[163]

The brief stated quite clearly that the buildings on the site "are all historically and culturally significant" and that the DPW did not consider it to be economically feasible to rehabilitate them all, and it stressed the important intention of the new Court building to represent the "open and democratic society based on dignity, freedom and equality which is being built in South Africa" and hence the reason for it to be given prominence. The existing buildings had been evaluated in terms of relative importance and the NMC had agreed to the demolition of some of the structures on the site – namely the Awaiting Trial Prison and some additions on the east side of the original stone boundary wall of the "Native Gaol". The Fort and the "Native Gaol" were to be restored for use as museums and the Women's Prison may become a museum or be converted for re-use. The brief referred participants to a Map 2. (Figure 9, page 81) and described three heritage related requirements pertaining to existing buildings as being:-
First - any proposal for the removing of, or alteration or addition to any part of any building other than those marked for approved demolition would require approval by the NMC. Approval of further demolition was extremely unlikely and additions and alterations to existing buildings would only be given if deemed by the NMC "to be in accordance with accepted principles for heritage conservation….".

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161 Mokgoro, quoted in Segal et al, 2006: 55.61.

162 Sachs interview, 29 May 2015.

163 Brief and conditions of the competition for the new Constitutional Court building of South Africa, 1997. South African DPW. p. 14.

Second - competitors were to pay careful attention to relationships between the new Court building and historic buildings that would be retained.
Third - the Awaiting Trial Block was to be fully recorded and the oral history associated with the building would also be recorded and was probably to be reflected in museum exhibits. The brief went on to say that "Competitors are therefore required to include a design proposal for some physical way of commemorating the demolished Awaiting Trial Block…."

Importantly, Radebe's words in the preface in the brief document reinforce the overriding themes of a democratising and reconciliatory approach to the new endeavour.

> "One of the most important challenges facing South Africans today is to understand our collective past honestly and to identify the network of threads that speak of our pain and triumph. With these threads we need to weave a common consciousness that harmonises conflicts and hurt of the past with the justice and reconciliation so necessary for the construction of a new society"[164]

The brief describes how the building should be "rooted in the South African landscape, both physically and culturally"[165] and asks for the buildings arrangement "to permit easy and pleasurable use by the public, the judges and the Court staff".[166] Its use of words such as "distinctive presence", "dignified and serious", "…should have a welcoming, open and attractive character" and that everyone should be made to "feel free to enter and feel safe and protected once inside".[167]

It must be emphasised that the competition brief was unique for two reasons:

First in its presentation of both technical and philosophical inspirations, and second in its recognition and emphasis of issues such as social inclusion and equality, freedom and dignity – all of which are founding principles of the new constitution.

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164 Radebe, J. Minister of Public Works in the preface to the competition brief. August 1997.

165 Brief and conditions of the competition for the new Constitutional Court building of South Africa, 1997. South African DPW. p. 17.

166 Ibid,.

167 Ibid,.

THREE DEFINING DECISIONS IN THE MAKING OF THE CONSTITUTIONAL COURT

As discussed earlier, there were three defining decisions which generated the design:

THE DECISION TO LAUNCH AN INTERNATIONAL COMPETITION

The site had been selected in 1996. Judges Kriegler and Sachs were intuitively convinced of the selection of this site out of all of those seen. In an interview with Sachs, he discussed the influences on him by his old friend Jack Barnett. Barnett[168] is accredited by both Sachs and Prins (in separate interviews) as being the person who initially influenced Sachs in the endeavor that resulted in the launch of the Constitutional Court's international competition.[169]

Sachs and Barnett shared the bond of having both been detained by the apartheid state – not at the same time, but for the same defiant cause. Barnett, architect and winner of many competitions and awards, identified the benefits of the open competition system and actively promoted the concept in his professional capacity. He had arranged to meet with concerned individuals and colleagues at a politically opportune time in December 1995 and proposed action against toleration of "…a policy in which considerations of entitlement alone determine who is given jobs….". He proposed various policies "in the interest of the country", including one of architectural competitions based on "accepted principles of openness, anonymity of entries and the appointment of first class judges".[170] In addition, he lobbied support for the open competition concept within the Governmental Department of Public Works. In a letter to Jakes Gerwel[171] in May 1994 regarding Gerwel's "possible appointment to head the office of our glorious new President…," Barnett writes:

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168 Barnett was born in Cape Town, 1924. Studied Architecture (1941 – 1946) graduated with distinction. He was awarded the Helen Gardener Travel Scholarship (1946) and Herbert Baker Scholarship (1949) which took him to the British School in Rome. He travelled extensively and on his return to Cape Town opened up an architectural practice (1954). He was arrested (with his wife Naomi) in 1960 and detained (his two children were aged three years and a few months old at the time). He spent nine weeks in prison with two colleagues from his practice (Grosschalk and Goldman). He was winner of several competitions, including the national competitions for the Klerksdorp Civic Centre (1957) in association with Sturrock, and for the Welkom Civic Centre In 1967, in association with Kantorowich and Skacel. He served on the Cape Provincial Institute of Architects for eight years, for two of these as President (1975 – 1977). He died in July 1996. He was recipient of two SA Architects Institute awards: Award of Merit for the Baxter Theatre (1997) and Gold Medal Award for outstanding academic career and success in many architectural competitions (1982).

169 Sachs interview, 29 May 2015 and Prins interview, 7 Dec 2015

170 Barnett arranged an informal meeting amongst "concerned individuals" and colleagues and in a letter dated 12 December 1995, he writes with regard to the Public Works Department (PWD), UCT Archive, Barnett papers BC1217.

171 Gerwel, Jakes served as the Chancellor of Rhodes University until 2012 and prior to that as Distinguished Professor of Humanities at the University of the Western Cape, Honorary Professor of Humanities at the University of Pretoria, and Chairman of the Human Sciences Research Council. He served as Director-General of the Presidency when Nelson Mandela was in office. Following Mandela's presidency, Gerwel chaired the Nelson Mandela Foundation and the Mandela Rhodes Foundation, and also took up a number of academic and business positions until his death in November 2012.

> "I would be particularly keen to see a quick end brought to the antiquated, corrupt and incompetent PWD set up for the selection and commissioning of architects and other professionals and for it to be replaced with a system committed to searching out and appointing people on the sole basis of excellence and ability".[172]

Barnett died in July 1996 and did not witness the launch of the Constitutional Court competition in mid-1997, but he was, no doubt, aware of the process underway. Sachs recalls approaching Derek Japha, then Dean of the University of Cape Town faculty of Fine Arts and Architecture, when Barnet fell ill and engaged with the Japhas on the project of the Court thereafter. It must be mentioned that Vivienne Japha and Sachs were both attendees at Barnett's 1995 competition meeting.[173]

The Japha Professors, Vivienne and Derek, were both teaching at the architectural school and actively engaged in matters of conservation, education, research, management and leadership both in South African and international architectural circles. Professor Vivienne Japha died suddenly in June 1999.[174] In 1996 correspondence from the Court archive, one finds letters and Memoranda sent to Sachs from the Japhas which refer to the Court Competition. A letter to Sachs from the Japhas refers to having "revised the notes we gave you". This letter confirms an offer of further assistance from them "…either jointly or individually as may suit you" and outlines a proposed reimbursement strategy covering costs only, not payment for advice and written comment "of the kind attached". This letter, dated the 21st August 1996 also states "no objection to them being

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172 UCT Archive, Barnett papers. BC1217.

173 The 1995 letter lists "Persons who have agreed to attend the meeting" and records architects Gita Goven, Karen Smuts, Robert de Jager, Jo Nero, Jack Barnett, V Japha and potentially L van Wyk and Prof R Utenbogaardt as well as Sachs, Ruben Reddy and Terence Smith.

174 The South African Institute of Architects (SAIA) Executive Officer, Su Linning, in a notification on her untimely death described her as an advisor to the Judges of the Constitutional Court and a member of the Steering Committee for the International Competition for the New Constitutional Court Building for South Africa. Linning notes Japha as having served on the main council of the NMC as chair for the Western Cape Regional Monuments Council. At the time of her death she was attending the Union of International Architects conference in Beijing as the President of SAIA. In addition, she was the Vice President of the Commonwealth Association of Architects for the Africa Region (South) and the chair of the Board of Education, Research and Training for the Africa Union of Architects. She served on numerous Institute committees as a member of the Editorial Advisory Board of the Institutes official journal, SA Architect and co-edited the SA Architectural Digest. Vivienne Japha was an associate professor at the School of Architecture and Planning, University of Cape Town and a principal in the practice Japha Architects and Todeschini and Japha Associated Architects and Planners. She participated in and presented many papers at national and international conferences and workshops and had authored and co-authored numerous papers and publications.

circulated, provided that it is recognised that a number of the cost figures are rough estimates only and must be checked". [175]

A set of notes, presumed to be the third revision of the notes referred to in the letter of the 21st August is headed as a *Memorandum from Derek Japha and Vivienne Japha to Prof. Albie Sachs* and is dated 28th August 1996. The *Memorandum* responds to points under a previous discussion and presents comment on a range of competition related points as professional opinion.[176]

The Japha competition notes discuss considerations for an open approach to the competition conditions which is reflected in commentary on the subject of "Who should enter – open or not". The merits and demerits of a completely open competition, in which anyone can enter, are discussed in these notes. The possibility of a consequential undermining of the seriousness of the competition as well as possible objections from "at least some of the members of the Institute of Architects, and perhaps the Institute itself" are put forward and alternatives are suggested - such as opening the competition to everyone in the building profession, as well as to students, as a way of not restricting entry to "mainly white professional firms". Comment is also made with respect to "levelling the playing field" and a proposal is put forward to restrict the number of drawings and the use of expensive presentation techniques (wooden models) in order to avoid resource advantages by "big firms", thereby giving young enterprising designers a chance. The Japhas pointed out that those entrants with no background in the building professions would have very little chance of winning and the gesture of complete openness would largely be symbolic. It is evident that the question of opening up the competition internationally is a matter that had been discussed between the Japhas and Sachs and they respond by pointing out the pragmatics of adding extra time to a proposed programme. More problematic, as they saw it, were the matters of prize money and the complications associated with the possibility of differential awards for local and international entrants. A two part competition was recommended and the matter of "winning entrant getting the job" is discussed in detail. Prize monies and the selection of a jury are discussed in these preliminary notes and the selection of the jury is noted as being

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175 Letter from UCT The School of Architecture and Planning, addressed to Professor Albie Sachs at Forum II, Braam Park, Hoofd Street, Braamfontein, from Prof Derek Japha and Ms Vivienne Japha, signed by Vivienne Japha, dated 21st August 1996. Constitutional Court Archives, Judge Sachs, Box 1, Folder A 1996.

176 Memorandum, addressed to Prof. Albie from Derek Japha and Vivienne Japha, Headed as "Preliminary Notes on the Proposed Competition for the Constitutional Court", dated 28th August 1996. Constitutional Court Archives, Judge Sachs, Box 1, Folder A 1996.

"crucial". The Japhas reinforce the importance of jury selection by means of two important points. First - "…. if the job is the prize" the Court as client will be locked into the jury's decision and logically the decision must be made in collaboration with high order architectural jurors. Second, that potential entrants will be swayed in their decision to enter or not, depending on the jury. In addition, the Japhas advocated that at least one highly reputed international juror be appointed,[177] two if feasible and, in addition to that, a distinguished practicing architect and a distinguished scholar. Sachs explained how the Court Judges, as a result of input from Barnett and the Japhas, were motivated to appoint non-'first world' or Eurocentric jurors and specifically looked to Africa and east of Africa for potential jurors.

> "….we looked for potential jurors in Africa. It wasn't easy to find people who had the standing and experience who we knew about to do well … partly because of South African's isolation. We weren't having conferences and meeting people at the international conferences that were being organized there was very little representation from Africa. There were people from Asia, some from Latin America but very little from Africa. Two names that were put were Geoffrey Bawa of Sri Lanka and Charles Correa and it was very hard to choose between the two of them. I think the majority was for Charles who was better known - but for some reason the invitations went to both of them and they both accepted and now we couldn't say to Charles we're actually choosing Geoffrey and not you, sorry. But it was great that they were both on."[178]

In an archived oral interview, Masojada describes the exact scenario anticipated by the Japhas. Patel (the interviewer) invites Masojada to discuss some of the feedback they had received at the award ceremony:

> "I'm very curious about the fact that on that adjudication panel there were people of international stature, as I understand it, and I wondered whether you could talk about some of the feedback you'd received at that award ceremony, your memories of that award ceremony?"[179]

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177 They also offered suggestions (Herman Hertzberger, Alvarho Siza, Michael Wilford, Adele Naude Santos, Colin St John Wilson and Colin Rowe), none of whom were appointed.

178 Sachs interview, 29 May 2015.

179 University of the Witwatersrand Archive, Constitutional Court Oral History Project. Janina Masojada interviewed by Patel 20th January 2012. Pg 13.

Masojada replies:

> "Yes… in a competition process, one of the first things one does when one decides to enter competitions, you look who the judges are, because, you know…first of all if you know them or you're going to look it up, because you'll know what they stand for, what they believe. The international judges were Charles Correa and Geoffrey Bawa. And if you look at our bookshelves here, we have their books. When we were at university, they were the architects that our universities put forward to us as precedent in their studies. Other universities wouldn't have looked at their work. So that was like the first, okay, let's tick the boxes, because these are architects who support the same point of references and frameworks that we are striving for. So, that was a great honour to be able to think that these were people that were looking at our work. Geoffrey Bawa, from Sri Lanka…and they are highly respected international architects at the top of the global profession…"[180]

Sachs recalls that his colleagues were nervous about the quality of South African architecture and they were consulting their architectural friends. They said 'make it an international competition. If our architects are good enough they'll win'. Sachs was not completely persuaded but went along with the idea.[181] However, critical comment was received regarding the decision to open the competition internationally. Not all of the architectural community members felt the decision was necessarily a wise one and concerns were raised - one by means of an undated personal letter addressed to Arthur Chaskalson from Anthony Lange, in Sachs' file, reads:

> "This is a personal letter on an aspect of international architectural competitions which, if you have not already given some thought to, you may care to consider. It related to the fate of a project after a design has been selected, and what follows derives from my knowledge of the outcome of various international competition schemes as well as from my personal experience of the one for the Johannesburg Civic Centre….."[182]

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180 Ibid,.

181 Sachs interview, 29 May 2015.

182 Anthony Lange worked with John Rushmere and Willie Meyer in Johannesburg in the 1980's and 1990's. All three architects had studied in America under either Rudolph or Kahn. Information. Source: Artefacts, South African Built Environment information website http://www.artefacts.co.za/main/Buildings/archframes.php?archid=2149.

Lange compliments Chaskalson on the competition document and proceeds to draw attention to the "extreme difficulty getting a winning scheme developed and built so that its full potential is realised". He continues, referring to competition schemes as being "easy political targets" that require nurturing "in intensive care wards". He writes, "Perhaps you and your colleagues will be able to establish a framework that will protect the court project – and also the quality of its immediate environs. One does recognise that rather like our new constitution, what is on paper does not guarantee the culture needed to fulfil the purpose in mind". A listing of what he refers to as the past half centuries worth of failures in a disappearing art of post WWII public buildings follows. He maintains 'a disappearing art' for many reasons, including the nature of government (both East and West) who "may be described as culture-free and unable to conceptualise beyond the short term". Lange refers to "The present day inability of sophisticated states to build successfully" and provides what he thinks are examples – the British Library , de Gaulle's grand project of La Villette in Paris and the new Bibliothèque nationale de France (BnF). Centre Pompidou is discussed as being successful for specific reasons, but the Johannesburg Civic Centre and the Sydney Opera House were not, he argues. Lange refers to Meyer, an old friend whose firm suffered from the unethical actions surrounding the Shah Pahawi Library competition in Iran.[183] This letter, addressed to Chaskalson is in the Sachs file. There is no formal response in the file but it reflects the kind of objections many South African architects have regarding competitions and are, obviously, the opposite views to those of Barnett and architects like him.

The Japha notes of 1996 that guided the brief were formalised and attached as "Architectural Consultants' Notes" to the "First Draft" of the Competition for the Design of a Building for the Constitutional Court later that year.[184] The recommendations made for the Court competition were subsequently incorporated into the DPW *Guidelines for Architectural Competitions.* [185] A public announcement in Minister Radebe's address at the competition awards ceremony in 1998 reads –

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183 Personal correspondence from Anthony Lange to Arthur (Chaskalson), undated. Constitutional Court Archives, Judge Sachs, Box 1, Folder A 1996. Anthony Lange worked with John Rushmere and Willie Meyer all of whom had studied in America under either Rudolph or Kahn.

184 First Draft of "Competition for the Design of a Building for the Constitutional Court", 5 September 1996. Constitutional Court Archives, Judge Sachs, Box 1, Folder A 1996.

185 Department of Public Works, Guidelines for Architectural Competitions, prepared by FJ Labuschagne, undated. Constitutional Court Archives, Judge Sachs, Box 1, Folder A 1996.

> "As a result of the very positive experience this architectural competition has produced, government recently agreed to adopt similar competitions as an alternative method for procuring designs for major government building projects".[186]

In my interview with Gerard Damstra, we discussed the PWD's pioneering decision of competition for public buildings. Damstra confirmed both the success of the Court project as an international competition and that more competitions have since been called for – four that he is aware of. However, in his time at the DPW (thirty years), it has not been the norm to call for competitions. There are a number of reasons for this: architects generally don't like to work at risk, although the majority of architects he has canvassed are amenable to the suggestion. The legislative environment for the procurement of a professional consultant is highly complex and the only method that can really be used is a tendering system. The competition, he notes, is a viable mechanism that could be put next to a tendering system for choosing a professional team.

Prins and O'Regan, in interviews, confirmed that all the Court Judges were involved in decisions regarding the choice of site and the idea of a competition. In addition, all Judges were involved with the writing of the brief.[187] Prins recalls Sachs referring to Barnett and the Japhas.

> " … Jack Barnett was still alive at that time and he was a friend of Albie Sachs and so Albie Sachs was talking to Jack Barnett and I think Jack Barnett was giving support to the notion of the site being used for the Constitutional Court." [188]
> Prins also mentioned that the Japhas "had the ear of the judges".[189]

The decision to hold an international competition has been identified as being defining because of the historic background which led up to it and because of the importance this decision gave to the exposure and credibility of the Court project. The decision was significant as input on the decision was actively sought from architectural professionals in the field by Sachs (initially) and the other court Judges. The judges and the architects

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186 Radebe, quoted in Segal et al 2006: 76

187 O'Regan interview, 3rd December 2015.

188 Prins interview, 7th December 2015.

189 Ibid,.

applied considered thought and influence to the process in the lead up to the decision by the Department of Public Works to launch the competition. Extensive discussion took place around issues of openness, transparency and inclusion of others in terms of who should be able to enter and how to not restrict the competition to "mainly white professional firms". Logical informed decisions were made to encourage inclusion of previously marginalised sectors of a creative community. Issues of bias and corruption in the awarding of Public Works projects were managed by means of anonymous entries. Issues of opening up to an international community of architects and designers raised the profile of the project to an unprecedented height in the eyes of the nation and elsewhere. The decision was supported by key members of the architectural and legal communities who bore influence on the decision by the Public Works Department to invite competitive design as a means to seeking out alternate, independent and varied responses to a uniquely envisioned Court building. In addition, the Public Works Department extended this approach to hold competitions for other public buildings thereafter. At least three Cape Town based architects and two Johannesburg based architects, all prominent members of a close knit, politically informed and professionally active community were directly and collectively responsible for directing the process of inviting international professionals to partake in an open and transparent process of seeking an inspirational and appropriate architectural concept for this new significant building. All of the eleven Constitutional Court Judges were involved in some way. What is important about the decision to open up the competition internationally is the way in which the 'internationalness' of the proceedings forced a broader perspective of opportunities and responses and a broader conception of possibilities from within the user body (the Court community), the client body (the DPW) as well as within a larger circle of all those involved in the process. The open process with adjudication by internationally respected architects from non-first world countries gave local and international credibility and acceptability. Despite there being opposition from some in the South African architectural sector, what transpired was a scenario so unlike the all too familiar route of public building design commissioning that had previously been the norm. Most importantly - this decision introduced a broader perspective of philosophical conservation approaches as will be described later.

THE DECISION TO SITE THE BUILDING WITHIN THE HILL PRECINCT

The Japhas' influence extended to decisions with respect to the siting of the new building and the consequential joint agreement by participating parties, primarily the NMC, to the potential and conditional demolition of the Awaiting Trial Block and the associated Visitor centre. In addition the Japhas had to have been aware of, and Vivienne would have been party to, discussions at the NMC which led to the NMC decision (at a meeting on the 2nd April 1997) to declare the entire Old Fort precinct (comprising three erven and twelve buildings) as a "national monument". A document, referred to as 'Annexure B' outlines the declaration and intentions therein and has been referred to later on herein.[190] The NMC declaration was never formalised.

In a series of layout sketches with accompanying commentary and notes, dated the 13th September 1996, the Japhas assess options for the siting of the proposed new building at the invitation of the Court judges prior to the launch of the competition. These notes have referred to as the Japha memorandum (includes notes and sketches).[191] A decision on precisely where to situate the new building had to be made in conjunction with a decision as to which of the historic built fabric could or should be retained. The decision was a critical and defining decision in the Court's programme as the argument presented by the Japhas, as consulting architects, formed the basis of the NMC declaration for the Hill precinct just prior to the competition.

The Old Fort and ramparts had been declared a National Monument in 1964 amidst controversy as to their worthiness of this status.[192] Lytle discusses the 1964 declaration – the historically significant dates mentioned in the declaration (1892, 1894 and 1899) refer to the pre-Union period of South African history when the fort was controlled by the ZAR. Lytle correctly observes that it is what was *not* stated that is significant: namely the capture of the Old Fort by the British and its use as a prison. The omission of these facts links the Old Fort's significance with an Afrikaner history as it simply ignores all issues of 'Englishness'. Segal writes with reference to the City Council's opposition to the 1964 declaration at that time, on the basis of a "slender and unimportant" attached history other than its real

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190 NMC Correspondence from F Erasmus addressed to Judge J Kriegler, President of the Constitutional Court, and requesting approval of the document referred to as "Annexure B" dated 3rd May 1997. Annexure B is dated as 2nd May 1997. Constitutional Court Archives, Con-court Building (1996-1997), Box 1, Folder A 1997

191 The Japha Memorandum comprising of notes and sketches is dated 13th September 1996. The sketches are presented in Appendix Two.

192 Lauren Segal et al 2006:73

history being "that of notorious criminals and jail-breakers"[193] similarly ignores significances related to the Old Fort. The City's motivation for contesting this declaration has been noted as being its interest in opening up options on the site for development and recreation.[194]

In the on-going process of consultation with the Japhas (from approximately July 1996 to approximately June 1999)[195] regarding the Court, Sachs and the Court judges had engaged with them on the matter of where on the Hill site the proposed new building could be situated. During this time the Court judges were defining and debating accommodation needs and spatial priorities as the DPW had agreed to waive their standard building brief requirements for this project. A process of intense discussion, debate and decision making in defining a brief for the new building followed. Overall areas of required built form were tabulated and fundamental matters concerning new built form visibility and site accessibility were assessed. The question of where a new building of given size could practically be located within the Hill precinct had to be considered carefully, given that the precinct was littered with an ad hoc collection of historically significant buildings in various states of disrepair.

Following a site visit in early September 1996, the Japhas prepared a set of schematic options for the site's development as a whole. Five optional schematic layout diagrams were presented with options arranged in pairs: one of the pair of diagrams illustrated historic built form to be retained or demolished and the other illustrated the resultant open space configuration with areas blocked out for future buildings.[196]

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193 Lauren Segal et al 2006:36

194 Segal et al 2006:36 and Melanie Lytle. 2011. "A fundamental Transformation" (MA diss., Welch Center for Graduate and Professional Studies. p. 87.

195 The Japhas appointment as consultants must have been discussed (with them as well as the Court judges) by Sachs as there is reference to terms of appointment in their letter to Sachs of August 1997. The matter was referred to again by Kriegler in a draft letter intended for the DPW and circulated amongst the court judges for comment (28th February 1997). Kriegler asks a question concerning the "status and remuneration of Prof Japha and/or Mrs Japha. Have they, or at least one of them, been officially appointed by your department to assist in any particular phase(s) of the project and is there provision for appropriate remuneration? They initially assisted our sub-committee informally out of a sense of civic duty but their obligations have become so onerous and time consuming that we would be embarrassed to continue using their services in the absence of a formal appointment". Sachs has hand written a note adjacent to this (as comment) – "Their contribution has been and continues to be invaluable". Their involvement in the court matters continued up until approximately the time of Vivienne's death. Her presence is formally recorded in the DPW Steering Committee minutes. Source: Constitutional Court Archive, Con-court Building (1996-1997), Box 1 Folders B and C, 1997.

196 Refer to Appendix B for the full set of options.

"Options one, two and three are minor variations on a similar theme: that the Fort, the Women's prison and the 'Native Gaol' would all be kept and that the Awaiting Trial Prison would be demolished. Option one assumes that all of the existing 'Native Gaol' would be kept. Option two assumes that the relatively new southern wing of the Gaol could be demolished to make space for a new building for one of the other institutions that will eventually move here. The site so gained would be about 60 metres long by about 20 at its narrowest and 30 at its widest. Option three assumes that some additional building may be possible on the site of the Women's Prison. Option four assumes that only the Fort and the Women's Prison would be kept. Option five assumes that the Fort, the Women's Prison, the Awaiting Trial Prison and the 'Native Gaol' would all be kept. "[197]

They continue - "We favour one of the first three options (probably option two) for two principal sets of reasons, reasons related to the historical value of the buildings and to the problem of making of an appropriate site for the court itself."[198]

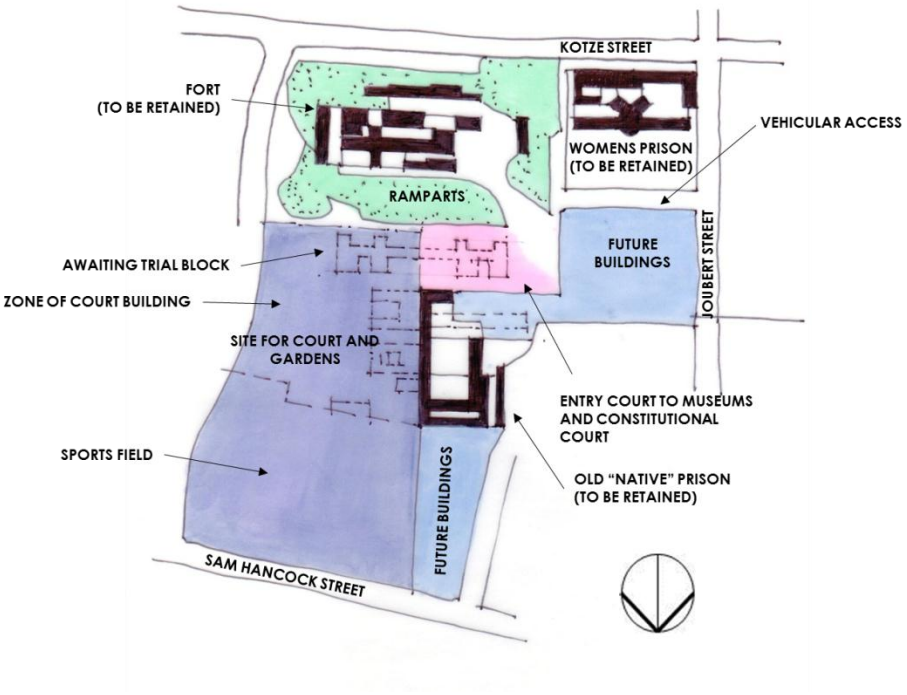

Figure 7: Layout drawing for 'Option Two' as favoured by the Japhas.

Source: Constitutional Court Archives, Con-court Building (1996-1997), Box 1. (Traced, merged and enhanced by the author)

197 Memorandum with layout drawings, addressed to Sachs from Japhas, dated 13th September 1996.P 1. Constitutional Court Archives, Con-court Building (1996-1997), Box 1, Folder A 1996.

198 Ibid,1.

A précis of the Japhas' argument follows as their assessment of historic built fabric - it must be read in conjunction with Figure 7.

The Fort (already a National Monument), and the Women's Prison (an interesting structure with potential to be converted for another use) are of exceptional historical interest and have considerable potential to communicate important aspects of the country's social history (as part of a museum complex). The NMC proposed at one time to declare the 'Native Gaol' provisionally as an important building both as an illustration of penal practice from the ZAR period onwards, and because of its association with leaders of the liberation struggle who were incarcerated there. The NMC's view was that the Gaol should form part of a museum complex. The Awaiting Trial Block is argued as being newer, internally altered, less evocative and less amenable than the other buildings to conversion for other uses and therefore, by implication, it is presented as being less valuable for preservation. Its major claim to preservation – because of the events that happened in it, could (it was argued) be commemorated in ways other than preserving the structure. The Visitor centre, an interesting part of the complex, could be created elsewhere on the site if a museum were to be developed.

The Japhas observe the unlikelihood of all four prison buildings being incorporated into a museum. Although considered by the NMC for preservation, a declaration had not at that time been made and therefore the Japhas believed the Awaiting Trial Block to have the lowest weighting on the 'to keep' list. The Awaiting Trial Block occupied "an absolutely pivotal position on the site", they believed it to be the most "negotiable"[199] or sacrificial for partial or complete demolition. For this reason they suggested that the Fort and the other two prison buildings be retained and the Awaiting Trial Block be demolished to make space for the new building for the Court.

> "If this were done it would permit a much more coherent treatment of the site as a whole than if the block were to be retained. The new Court building would be at the highest possible part of the site, looking north, with the possibility of opening also to the planted ramparts of the Fort at the back. The space in front of the new Court building would be substantial and would be kept open…"[200]

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199 Ibid,.

200 Ibid,1.

In conclusion, they suggest the remaining three buildings (Old Fort, Woman's Gaol and Number Four) all be retained as part of a museum complex as this is "probably the only use that would allow the character of the buildings to be retained and any other use would require radical alteration that would compromise their value as historical documents".[201] Again, pragmatically, they debate the possibility of funding and running such a complex of museums. They present an alternate scenario whereby preservation of the 'Native Gaol' as museum is an uncertain option with conclusion at an undetermined date. Therefore, they believed, should it be found to be impossible to preserve the 'Native Gaol', the placement of the Court as proposed in Options one, two or three would not be compromised. Their opinion with regard to Option five, where the Awaiting Trial Block is kept or part of it is possibly incorporated into the court would produce unsatisfactory results and the spatial advantages of removing the block are obvious from the drawing – "for instance, it would be much more difficult to achieve a decent entrance to the museums and the Court building …"[202]

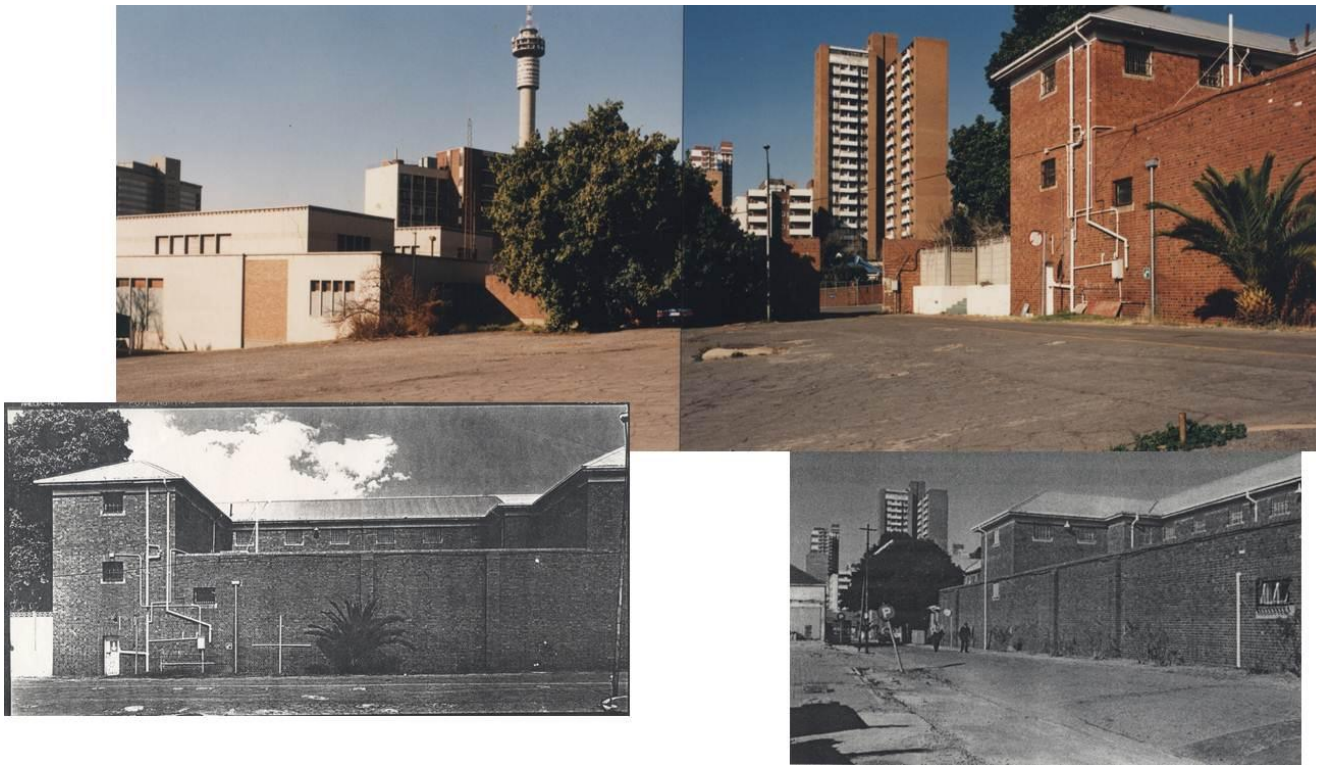

Figure 8: Photographs of the Awaiting Trial Block and the planned Court building position taken by the Japhas during the September 1996 site visit.

Source: UCT Archive, Japha Papers, Reference BC1295.

201 Ibid, 2.

202 Ibid,.

What is important about the suggestion to demolish the Awaiting Trial Block is that, once again, advice was actively sought, by the Court judges, from architectural professionals in the field. Both consulting architects and judges applied considered thought and influence to the process leading up to the inclusion in the competition brief: where the new Court building would be situated and the consequent demolition of the Awaiting Trial Block. The decision again involved critical thinking and rational assessment (by means of alternate sketch layout options and an analysis with accompanying text) of existing historic built form in respect of its architectural significance as well as the urban opportunities presented by opening up that part of the site. Pragmatic guidance was provided regarding the physical and historical demands of the site which were being assessed at the time. The guidance provided involved and drew on principles associated with Critical Conservation which were to analyse and understand cultural significance and values (beyond the utilitarian and including the aesthetic, historical or social value for past, present and most importantly for, future generations). This analysis and assessment of the site by the consulting architects (in discussion with the Court judges) was intended to give the competition architects the freedom to be responsive and creative (by means of architectural design) in the fusing of past, current and future values of historic place and space.[203]

THE DECISION TO DEMOLISH AND COMMEMORATE THE AWAITING TRIAL BLOCK

The decision to demolish and commemorate the Awaiting Trail building was argued and negotiated prior to the competition launch. Despite this, some misunderstanding, communication breakdown or deliberate intervention resulted in the wording in the competition brief being altered from what was agreed and negotiated by the Court judges. This led to heated correspondence between the Court judges and the DPW, and the latter issuing a formal correction to brief to competition entrants.

Kriegler wrote to the DPW regarding a number of issues in late February 1997. He referred to the judges' views on the siting of the building on the Old Fort property both because it was a suitable prominent and accessible location and because of the possibility for "preservation of and integration with the historic site and its structures…". He states that events at a recent meeting have led to doubts by the judges in their belief of an

[203] Refer to Townsend's writing on the principals of Critical Conservation in Chapter Two.

agreement between "all interested parties". He refers to the NMC being "equivocal in their attitude to possible encroachment on one or other buildings on the site" and then refers to the Greater Johannesburg Transitional Metropolitan Council (GJTMC) not only echoing the NMC but submitting documents "some of which locate the new building in the vicinity of Sam Hancock Street and then a DPW representative confirming that all existing historical buildings would be kept intact and that "indeed, funds would be made available by your Department for their restoration". The apparent confusion he maintains has led to the judges wishing to clarify their position (as they did in the previous meeting) and these are stated as "our prime concern is to ensure that the site selected for the building befits its significance, now and in the future". He refers to the "fascinating scope, aesthetic uniqueness" of the precinct and then grounds these comments with the following: "However, if the demands of the NMC, the GJTMC or anyone else consign us to unacceptable options we will have to look elsewhere, however keen we are to continue with the current project in the spirit of friendly cooperation that has prevailed up to now". He continues to outlines "associated concerns" which relate to the roles of and the relationships between the various parties in the project. This is a stern statement from the judges as to their understanding of the various players, their roles, responsibilities and their limitations.[204]

At this stage, the Old Fort, as mentioned, had been declared a National Monument (1964) and Kriegler refers to the NMC's role as "statutory custodian of the Fort proper, i.e. the structures bounded by the earthen battlements in the south-eastern corner of the site (the only formally proclaimed national monument on the site)". He refers to their legitimate concern to promote the preservation of the other historical buildings and then reminds the DPW that the judges of the Constitutional Court are "in a sense the 'client'…".[205]

The proposed NMC declaration of April 1997, as presented in 'Annexure B', was presented to the Court judges for their approval in May 1997. This was prior to the launch of the competition (in August 1997). The declaration acknowledges the Court competition process and states that the new Court building will not be subject to approval by the NMC. It also acknowledges the NMC's representation on the Court steering committee

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204 Kriegler's draft letter intended for the DPW and circulated amongst the court judges for comment (28th February 1997). Constitutional Court Archive, Con-court Building (1996-1997), Box 1 Folders B and C, 1997.

205 Ibid,.

(by Herbert Prins). It draws an important distinction between the Women's Jail, Section Three, Section Four and the Stables, as being strictly controlled, and the Awaiting Trial Block as being "deemed to be of cultural value". As such, the condition of any demolition permit granted will be "that the memory of the building be commemorated *by an object or volume or space or a retained fragment of the building which is identifiable as the memorial to the Awaiting Trial Building and this object or volume or space or fragment should have its own special and identifiable place in the complex of buildings which will comprise a Constitution Hill and of which the Constitutional Court will be a part*".[206] (My italic emphasis added).

I refer to this text later and specifically to the emphasized parts in italics.

The decision to demolish and commemorate was clearly controversial in some circles and Prins explained his involvement, acting as a mediator between the NMC and the judges -

> "It was during the days of the Monuments Council and I was on the regional committee, that's the Transvaal Region of the Monuments Council…."[207]

The Judges approached the Transvaal Region of the Monuments Council with the view to building the Court on the site now known as Constitutional Hill as it was believed it to be a National Monument. At that time, the Regional Council embraced what was then called the Transvaal and a subcommittee of that Regional Council that dealt with Johannesburg was chaired by Flo Bird. Prins was a member. The subcommittee considered demolition and alteration applications to buildings older than fifty years at that time.

Prins explains that he has not been able to establish, via the South African Heritage Resources Agency (SAHRA, if any protection other than the sixty year 'catch-net' clause currently stands at Constitutional Hill. He speaks of "a great deal of vagueness" about the proclamation of the site as a National Monument but notes that the Old Fort itself had been declared some time ago.

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206 Correspondence from F Erasmus of the NMC addressed to Judge J Kriegler, President of the Constitutional Court, and requesting approval of the document referred to as "Annexure B" dated 3rd May 1997. Annexure B is dated as 2nd May 1997. My emphasis has been added. Constitutional Court Archives, Con-court Building (1996-1997), Box 1, Folder A 1997.

207 Prins interview, 7th December 2015.

> "Sometime during 1994, I was delegated (by the Regional Committee) to negotiate with the judges to determine what they wanted do - or put in another way – to determine if there would be any objection to the building of a new Court on the Hill site. This proposition caused something of a dilemma for the NMC as the site was overgrown with weeds and in a most shocking condition. There had been no maintenance of the site for years and the structures were in near decay. The brief from the Regional Committee was to find out what building the Constitutional Court would entail in the way of the demolition of historically significant structures and it soon became evident that the Judges believed that the Awaiting Trial Building should be demolished to make a place on the site for the new building."[208]

Prins explained that the Judges had been advised by heritage experts in Cape Town that the Awaiting Trial Building did not have particular architectural significance but the Regional Committee were aware of the structure's historic importance. Some notable figures and many other political activists had been incarcerated there. It was a culturally significant building as it was where those accused of a criminal or political offence were incarcerated pending trial. Prins is not certain if all the names and demographic details of the prisoner population who passed through the Awaiting Trial Building have been recorded. He suggests that this might be an area for further investigation.

The NMC regional committee members (most prominently Prins and Flo Bird)[209] both felt very strongly that the Awaiting Trial Block was important. Bird is quoted as saying:

> "There was a hell of a fight. I was absolutely horrified, because we felt that the ATB was tremendously important. And of course, the City Council and the Central Johannesburg Partnership were leaning very heavily on the Monuments Council to give the Court permission to knock it down."[210]

In a memo from Judge Kriegler to Judge Chaskalson, dated 4th June 1997, Kriegler refers to a "tour of the Fort precinct" attended by the Minister of Arts and Culture, Sachs and

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208 Prins interview, 7th December 2015.

209 Bird was then chairman of the NMC Regional Council subcommittee in Johannesburg. The Regional Council consisted of Johannesburg, Pretoria and the Northern Transvaal. The Regional Council subcommittee considered applications for demolition and alteration of buildings older than fifty years at that time.

210 Bird, quoted in Segal et al 2006:59.

representatives of the NMC a few days earlier (29th May 1997).[211] In this memo, Kriegler expresses frustration with both Bird and the NMC and conveys his opinion to Chaskalson on the possibilities regarding conversion of existing structures.

> "The tour was led (a gross understatement) by Mrs Flo Bird on behalf of the NMC, which was represented by its chairperson, many of its members and its senior staff. The historical inaccuracies she purveyed are not our concern, save to the extent that it reflects on the next two paragraphs. Although we have been to the site many times before, this was the first time that AS and I could get to see the inside of each building."[212]

In the next two paragraphs Kriegler describes the "advanced state of dilapidation and neglect of the whole site" and refers to Bird (and her tacit support from the NMC) "maintaining that over and above the Old Fort itself, each and every building on the site (Women's Gaol, Sections 3 and 4, the stables and to some extent, the Awaiting Trial Prison) should be restored and preserved as museums."[213]

Kriegler discusses the reactions from the Minister (whom, he says, wisely gave no indication of his thinking) and a senior official of the GJTMC who privately observed to Kriegler that this idea "was a pipe dream". Kriegler notes that the judges of the court should do their best to persuade the municipality and the Government (Ministers of Justice, Public Works and Arts, Science and Culture) to adopt a "pragmatic approach to the future development of the area". He also refers to a letter received from the NMC (dated 3 May) with an annexure where the NMC seeks their (the judges) approval of a resolution they passed earlier in the year (April) "to declare the whole area as a national monument...". He concludes - "I don't know whether we should go along with that. I should imagine that you and your successors can be entrusted with the integrity of the building."[214]

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211 Court Memorandum to Chaskalson from Kriegler titled "New Building and dated 4 June 1997. Constitutional Court Archives, Con-court Building (1996-1997), Box 1, Folder C 1997.

212 Ibid,.

213 Ibid,.

214 Ibid,.

Prins, in an interview, recalls Jack Barnett advising Sachs (as a friend) and he believes that Barnett gave support to the notion of the site being used for the Constitutional Court. After Barnett's death, Sachs reverted to Vivienne Japha, council member of the NMC and Derek Japha for advice and it was then that Prins broached the subject of the fate of the Awaiting Trial Block.

Prins' personal opinion is that if the Japhas advised the Judges that the Awaiting Trial Building did not warrant conservation then this could be because of the different value placed on 19th Century buildings by conservationists in Johannesburg and Cape Town. He recalls the chairman of the NMC, Judge de Kock visiting Johannesburg and being surprised at a concern to retain 19th / early 20th Century warehouse and saying "In Cape Town it wouldn't warrant declaration". Prins questions this viewpoint and feels that it may have influenced the Judges' resistance to conservation of the Awaiting Trial Block. He concludes that as Vivienne was a member of the NMC Council her voice was influential.[215]

Prins recounts a very difficult situation when the Chief Justice "laid it on the line and said if the NMC do not agree to the elimination of the Awaiting Trial Block, *we'll go somewhere else*. He said many cities around the country were anxious to have the court and in addition to that we knew that there were other sites under consideration in Johannesburg."[216] Practically, the Regional Committee of the NMC knew that the jail precinct was in danger of being lost because if the court was not built there, there would be no motivation to conserve the Old Fort. The City of Johannesburg had long ago indicated that the ground was valuable and that they could use it to better advantage. That, and the threat to build the Court on another site, influenced the Regional Committee's decision - "we buckled under and agreed to the demolition of the Awaiting Trial Block".[217]

On the 20th August 1997, a draft of the competition document was officially presented by the DPW to the Court judges. A letter in the file reads – "Please find attached a copy of the competition document to be presented to Judge A Sacks. (sic) The Department is

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215 Prins interview, 7th December 2015.

216 Ibid,.

217 Ibid,.

proud to hand to you such a fine document of international standard".[218] This letter also confirmed two hundred and twenty two registrations from applicants in South Africa and elsewhere.

A detailed, strongly-worded and hand-edited response from Sachs to Labuschagne at the DPW, dated 28th August 1997, appears as a draft letter in the court archive. The letter is not signed, bears no letterhead and has been edited by Sachs' recognisable handwriting and is copied to Damstra.

In this letter, Sachs begins with one primary matter which gives rise to considerable concern which appears in paragraph four (i) on page fifteen of the competition brief. He takes issue with a potential breach of agreement, a "conflict with the position" that had "been unequivocally and clearly maintained throughout" – namely that "a relatively high level of inviolability might well be given to the Woman's Gaol and Old Fort, Section 4 and the Native Gaol would be treated in a much more flexible manner."[219]

Sachs says clearly that he fears that a misrepresentation of intent would put entrants off and stifle creativity by the resultant restriction to an overly narrow site, and that the wording presented in the document precluded the opportunity for "an architect of sufficient creativity to put up plans integrating the old and the new in a manner so striking – respectful of the past – that ~~those doggedly trying to protect each and every mouldering stone of the rapidly deteriorating historic building would see the error of their ways.~~"[220] (Emphasis is Sachs' editing).

This has been edited by hand and the struck through text has been replaced with the following wording (shown in italics) as a toned down version: "an architect of sufficient creativity to put up plans integrating the old and the new in a manner so striking – respectful of the past – that *even the most doughty defender of the buildings would see that their basic elements and significance could be better honoured by physical renewal (not by total demolition) than by simple preservation in their present decayed state*."[221]

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218 DPW letter from Labuschagne for the Director General addressed to du Plessis, 20th August 1997. Constitutional Court Archives, Con-court Building (1996-1997), Box 1, Folder C 1997.

219 Sachs letter to Labuschagne (DPW), 28 August 1997. p. 1. Constitutional Court Archives, Con-court Building (1996-1997), Box 1, Folder C 1997.

220 Ibid, 1.

221 Ibid,.

Sachs reinforces the Court judges' position – "The NMC can be under no illusion as to what our attitude has been throughout".[222] He continues to identify specific quotations and refers to Map Two (Figure 9) from the competition document which he maintains "only allows a parsimonious portion of Section 4 to be demolished and it would be a very bold, indeed a foolish entrant who, in the light of the phrases quoted from the competition document, would submit a design, even the most creative, which embodied the demolition, adaption or even use of anything else".[223] He maintains this to be contrary to the agreement reached with the Court judges.

Prins, in an interview, reiterated that the Chief Justice was adamant and completely opposed to the suggestion which Prins put as "…maybe we say to the competitors you can or can't, you may demolish but you may also incorporate the Awaiting Trial Block". As a result, that option was not presented in the competition brief.[224] In a draft letter to the DPW, Kriegler repeats this sentiment.

Clearly Sachs felt that the agreement that had been reached had not been clearly communicated at best, and simply altered at worst, and that the competition brief inferred a stifling of creativity from entrants. The crux of his issue was that wording from the NMC's Annexure B declaration document of April 1997, which was submitted to the Court for approval, had been altered and elaborated upon, embellished and expanded and the competition document subsequently read and implied that less of Section 4 could be demolished and more of the Awaiting Trial built form should be retained than what was agreed and envisaged. What had been written in Annexure B, and what appeared in the draft competition document, were different in so far as slight, yet significant, changes of wording and the addition of four sentences.

Here below is the original text from the NMC's Annexure B of April 1997:

> "The Women's Gaol, Section 3, Section 4 and the Stables shall be strictly controlled in terms of the NMC declaration but the Awaiting Trial Building and the buildings referred to on the site diagram (attached to Annexure "B") as A, B, C, D, E, F, G shall be exempted from control provided that, in the case of the Awaiting Trial

222 Ibid,.

223 Ibid, 2.

224 Prins interview, 7th December 2015.

Building, which (is) deemed to be of cultural value, it shall be a condition of any demolition permit granted that the memory of the building be *commemorated by an object or volume or space or a retained fragment of the building which is identifiable as the memorial to the Awaiting Trial Building and this object or volume or space or fragment should have its own special and identifiable place in the complex of buildings which will comprise a Constitution Hill and of which the Constitutional Court will be a part*."[225](Emphasis added for comparison below – italics indicate original intent and underlined wording indicates words omitted in competition brief extract below).

The competition brief discussed the Awaiting Trial Block (which is shown as being able to be demolished on Map Two) and here below is the wording:

"The Awaiting Trial Block will be fully recorded prior to its demolition, and the oral history associated with the building will also be recorded and will probably be reflected in museum exhibits. However, this is regarded as insufficient commemoration of the building and its history. Competitors are therefore required to include a design proposal for some physical way of *commemorating the demolished Awaiting Trial Block, by giving a special, identifiable place on the site to an object, a space or to a retained or reconstructed fragment of the existing building – such as the visitor's room. This room is particularly evocative of the brutality of the penal system. It is a single storey structure with a lean-to roof attached to the wall of one of the courts on the north side of the Awaiting Trial Block behind the tree shown in Figures 22 and 23. Its position is shown on Map No. 5."*[226](Emphasis added for comparison below – italics indicate original intent and underlined wording indicates words omitted in competition brief extract below).

Sachs wanted two sentences changed (in subparagraph 4 i) and four sentences removed (in subparagraph 4 iii) of the competition document. He maintained that the added text, when viewed in conjunction with Map Two, "where the visitor's room is excluded from the 'BUILDINGS TO BE DEMOLISHED'" and the addition of the four

225 NMC Subparagraph 3

226 Brief and conditions of the competition for the new Constitutional Court building of South Africa, 1997. South African DPW. Subparagraph 4 iii

sentences (subparagraph 4 iii) constituted a material departure from Annexure B and therefore their (the DPW, the NMC and the Court judges) agreement.

He is forthright in his request and insists that "We wish to know how it came about that our agreement was departed from. Even more importantly, we insist that the original content of the agreement be restored immediately and conveyed forthwith to all competitors by fax and the Internet (for which provision is made in Section 2 paragraph 2.13 of the brief)".

He continues to provide corrected wording and explicit instructions on what must be removed. He concludes with the following: "Unless we receive the immediate agreement from all parties that these amendments, or ones substantially similar, will be conveyed immediately to competitors in the manner indicated, we will have no option but to take the matter up at the highest government level.[227]

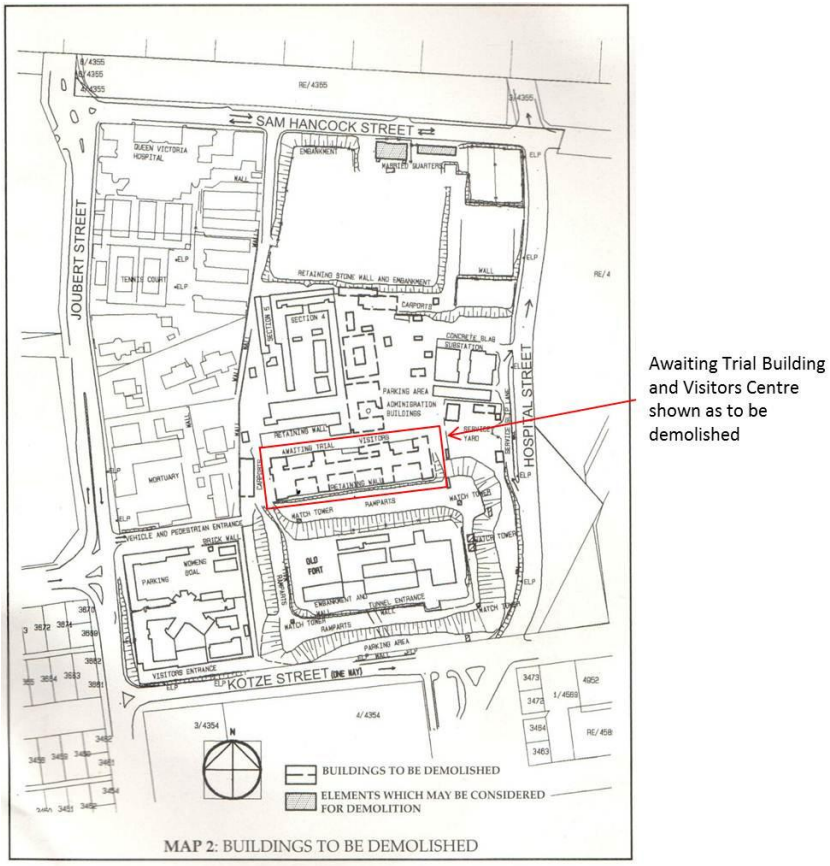

Figure 9: Map Two from the Competition brief

Source: Brief and conditions of the competition for the new Constitutional Court building of South Africa, 1997. South African DPW. p. 55.

227 Letter addressed to Labuschagne, DPW and copied to Damstra, DPW, 28th August 1997. This letter appears as a draft which has been amended by hand by Sachs in his recognisable handwriting. It is not signed and has no letterhead. Constitutional Court Archives, Judge Sachs, Box 1, Folder A 1997.

It is not completely clear exactly what happened at this stage as all those interviewed could not recall that far back to this level of detail. The wording in the published competition was not altered, however Map Two shows the Awaiting Trial Block with the adjoined Visitor centre in a dotted line indicating 'BUILDINGS TO BE DEMOLISHED'. It therefore appears that Map two may have been altered from what Sachs referred to in this letter where he observed that the Visitor centre was excluded from the 'BUILDINGS TO BE DEMOLISHED'. Either it had appeared as a solid line footprint on the draft drawing or it was not annotated on the draft drawing.

In addition, single loose and obviously second page in a file at the Court reads: "The Justices of the Constitutional Court consider it necessary that the following explanatory note be sent to all entrants who have duly registered for the competition and that it be conveyed to them as soon as possible in the manner described in section 2.13 of the Competition Brief and Conditions.

> "The promoter considers it necessary that the following clarifications be drawn to the attention of all registered entrants in relation to the heritage related requirements (i) and (iii) in section 1.1.3 paragraph 4, at page 15 of the Competition Brief and Conditions…."[228]

The clarifications referred directly to the issues in hand and read as follows:

> "1. *In relation to requirement (1),*
> The competition jury will consider on its merits any design, even though it proposes the removal of, or alteration or addition to any part of any building on the site other than those indicated on Map No. 2 as 'approved for demolition' provided any such proposal is in accordance with accepted principles of heritage conservation.
>
> 2. *In relation to requirement (iii),*
> The reference to the retention of the visitors' room is for illustrative purposes only. It is not a condition of the competition that the visitor's room be retained and competitors are free to make any other proposals for the commemoration of the Awaiting Trial Block."[229]

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228 Undated loose page two of a letter or memo in the Court files. Constitutional Court Archives, Con-court Building (1996-1997), Box 1.

229 Ibid,.

Nevertheless, the winning competition entry sketch layout indicates and annotates the Awaiting Trial Visitor centre in its existing position. The built form artefact presents a reconstructed Visitor centre at the western edge of the Hill precinct as already mentioned.

PART TWO: THE COMPETITION AND ENTRY NUMBER 120

The competition was launched in August 1997 by means of notices in the press, via architectural magazines and institutions both locally and internationally. The names and addresses of local and international institutions and architectural publications was compiled and submitted to the DPW by the CSC and a "flyer" was distributed to all. In addition, "The competition writer undertook to place the content of the flyer on the internet".[230] The closing date for entries was the 6th November 1997. Despite some last minute complications such as incorrect information leaked to the media and a press report containing errors (subsequently corrected in a further press statement) the launch was successful. Two hundred and twenty enquiries were registered by the 20th August 1997 (just five days before the final date for registration).[231] A date was set for the 19th September for the receipt of any questions and these were assessed and answered prior to the close of the first stage of the competition. A meeting was held on the 29th September 1997 to formalise draft answers to the competition questions which submitted. Answers had been prepared by Derek Japha, Labuschagne of the DPW, Prins and the Court judges. Answers to the questions were posted on the GJMTC website www.joburg.org.za.[232]

The competition jury for both stages of the competition comprised of the following individuals: The president of the Constitutional Court, Justice Arthur Chaskalson; the Major of Greater Johannesburg, Councillor Isaac Mogase; Geoffrey Bawa, architect; Charles Correa, architect; Gerard Damstra, architect representing the Promoter (DPW); Peter Davey, editor, *The Architectural Review;* Willie Meyer, architect nominated by SABTACO,

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230 CSC Minutes 16th July 1997. Constitutional Court Archive.

231 DPW letter from Labuschagne for the Director General addressed to du Plessis, 20th August 1997. Constitutional Court Archives, Con-court Building (1996-1997), Box 1, Folder B, 1997.

232 Letter from Japha Architects to Labuschagne at DPW (28 September 1997) with comment on and answers to competition questions and reminding the DPW of their undertaking to publish answers on the Joburg City website. Constitutional Court Archives, Con-court Building (1996-1997), Box 1, Folder C, undated.

SACA and SAIA;[233] Herbert Prins, architect nominated by the National Monuments Council; Thenjiwe Mtintso, Chair of SA Gender Commission.

THE ARCHITECTS' CONCEPTUAL DESIGN OBJECTIVES

In discussing the conceptual rationale behind the development of the design for the Court building, Wijgers in an interview with me refers to the urban development context that the team presumed for themselves at that time in Johannesburg. The basis for the concept was founded on the new South African dispensation and attempts to connect parts of the city that were spatially disconnected – Wijgers notes that this was also the thinking at that time in the City Council in their development frameworks. The walled site of the prison was completely disconnected from neighbouring Hillbrow and Braamfontein along both the East-west contour and on the North-south axis. The OMM and US design was based on urban concepts which would create connections across the precinct. Their concept involved breaking down connecting barriers and in so doing, making provision for public open space where the populace could linger and mingle – a prohibited concept under the old South African regime. "Those principle urban design decisions gave us a context in which we could design the Court building as a response to the public realm that we promoted – we put in place a public realm for ourselves and we responded to that public realm."[234]

Wijgers refers to the narrative motivating their submission to the competition - not only the drawings, but also the written document as having been enticing to the Judges from that urban design strategy view point. He discussed the inspiration the group derived from the knowledge that Bawa and Correa were to participate in the adjudication process - "They were our architectural heroes".[235] He describes the teams intrigue with the competition - they felt they had to be incredibly clear in their response - not only in terms of architectural expression but in the relationships of the function of the building to the public environment.

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233 SABTACO South African Black Technical Allied Careers , SACA South African Council for Architects and SAIA, South African Institute for Architects.

234 Wijgers interview, 13th December 2015.

235 Ibid,.

They created a space for public gathering and debate and called it Constitution Square. In that public space they placed the court chamber and the entrance foyer, which were part of the public realm. The court itself, its functions happen in the public space. That was their initial concept and that remained so, unwavering, from the early days of the competition. Their idea developed with the building's public functions living around the edge of and facing onto the public space, on the North side the library and on the West side the exhibition stairs, as a kind of reflection of the stairs on the outside going down further along the slope. The entrance Foyer was located on Constitution Square and the Court Chamber itself is immediately behind it. Those were ideas that were set in motion in terms of the context and those ideas never changed.

Makin reiterates what Wijgers says:

> "…it was very important to make a space for the free gathering of large numbers of people immediately adjacent to the Court building and that was because of the laws during the apartheid time, particularly towards the end that restricted free gathering of people."[236]

Makin discusses the intentions of the Court building being literally accessible and to acting as catalyst for the rejuvenation of the city. The strategy of converting "the Robben Island of the City",[237] enabling primary movement routes across the site was appealing to the judges and the competition jurors. It supported and gave flesh to their intentions of the Court being accessible to the people. The design report expresses and emphasizes accessibility at both the urban and at the building scale.

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236 Makin interview, 13th December 2015

237 Ibid,.

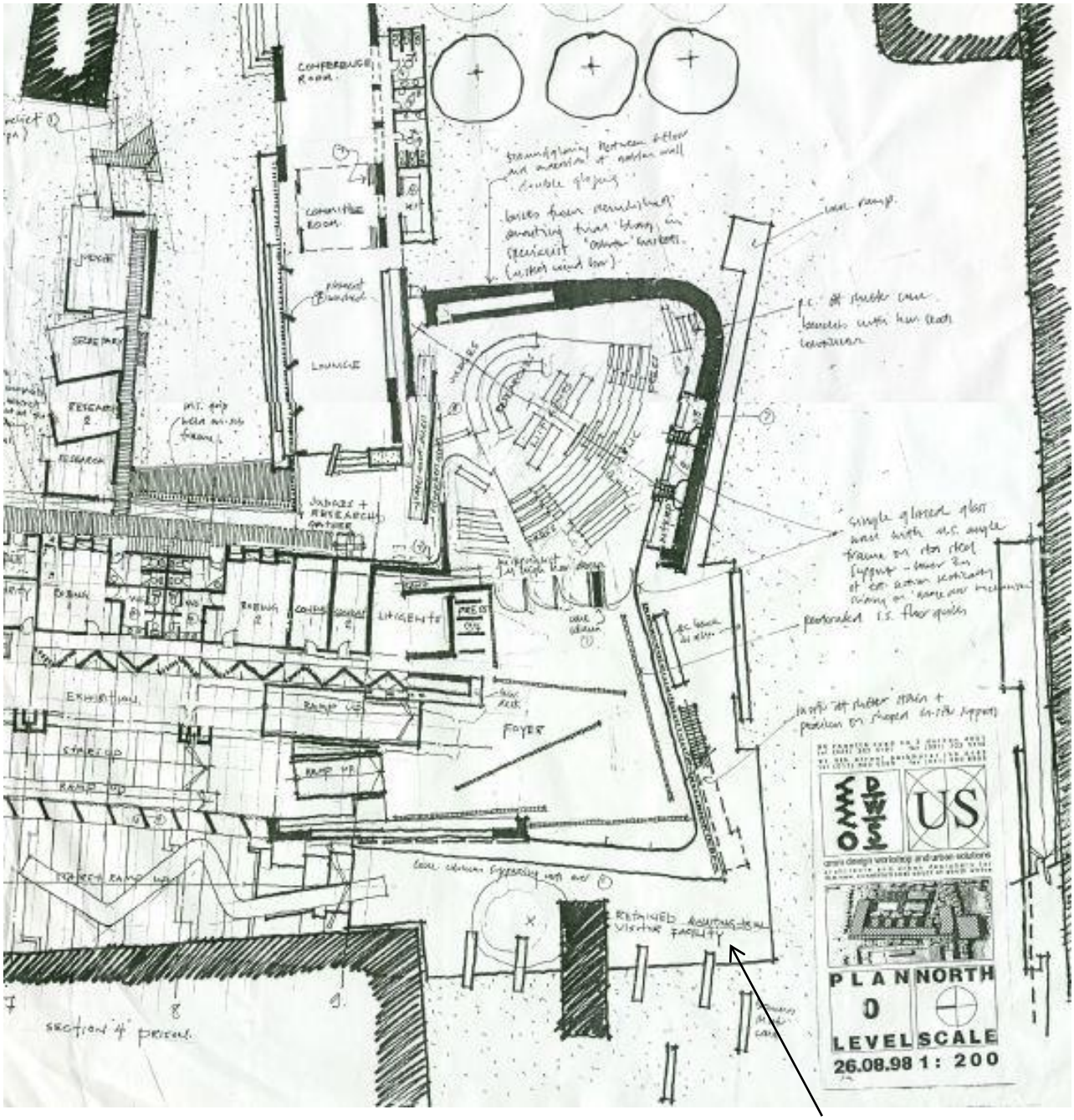

Figure 10: OMM and US Competition entry sketch drawing showing "Retained Awating Trial Visitor Facilty"

Source: David Krut Publishers.

THE ADJUDICATION PROCESS AND THE JURORS COMMENTS

The Jury selected five finalists "each of which has the potential to be a worthy winner of the competition."[238] It is significant that four of the finalists were South African architects and the fifth was Zimbabwean. The jurors met for a full week to discuss the entries. Correa acted as Chairman for the Jury and the official fifteen page report on the first stage of the competition records one hundred and sixty eight submission being received from registered competitors. Twenty of these "regrettably" did not comply with requirements laid down in the brief and could therefore not be considered by the jury.[239] 'Submission 120' was recognised for its "fine new series of public spaces" created by the Great African Steps combined with Constitution Square (which joins the east and west sides of the site) and the appropriate and symbolic location of the court chamber at this junction of public space. It continues – "The design respects the prison and brings it into formal conversation with the new building". The designs "robust vocabulary" is welcomed and yet comment is made with regard to the coloured image of the submission which "though powerful, does not imply appropriate gravitas". Concerns regarding the Court chamber were expressed: the deliberations of the court should not be allowed to be disturbed by onlookers, and the "north aspect of the building does not suggest the institutions importance and the profile of the building is not clear".

The adjudication report compiled by the competition jury on the first stage of the competition states that attention paid by competitors, including all five finalists, to the commemoration of the Awaiting Trial Block "was inadequately handled".[240] The winning entry presents an intention to retain the Awaiting Trial Visitor centre which is in direct alignment with the suggestions made in the brief. The small built form appears on the model[241] and on the sketch drawing where it is annotated.[242]

'Submission 120' – "The robust vocabulary of the design is welcome, though in development, it must be realised that the building is to be a symbol of one of the most

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238 Constitutional Court report by the Competition Jury on the First Stage of the Competition. Faxed to Sachs in Dec 1997. Box 1 Folder A 1996.

239 Constitutional Court report by the Competition Jury on the First Stage of the Competition. Faxed to Sachs in Dec 1997.

240 Constitutional Court, *Report by the Competition Jury in the First Stage of the Competition*, Dec 1997, 9.

241 Lauren Segal et al 2006:81

242 Law-Viljoen. 2006:18,19

important aspects of the state. The coloured image, though powerful, does not imply appropriate gravitas."[243]

> "…that threw us into an exploration of a whole range of things - just that word. When they said that it lacks gravitas our entire thing was about exploring that as an idea."[244]

Both Makin and Wijgers when interviewed spoke about the issue of gravitas and the ways in which they grappled with this on-going critique. Sachs is noted as questioning the issue of gravitas and Prins expressed an opinion of the Chamber as being the least successful space in the building. The word gravitas is not mentioned in the brief and perhaps that is one of the possible reasons that this has become one of the failings of the built form. Noble and Freschi critique the architecture of the court and a more detailed discussion follows in Chapter Four where the imagery of the built form is discussed along with the issue of heritage commemoration and conservation realisations are examined.

PART THREE: DEVELOPMENT AND REALISATION

A DELAYED START, DEVELOPMENT ISSUES AND CONSERVATION OBJECTIVES

The time lapse between the announcement of the competition in April 1997 and the announcement of the winner in April 1998 was one year. Construction work began on site in 1998; however the process of building the Court almost came to a standstill in late 1998 and 1999 at what Masojada describes as a "wobbly time".

> " …we had designed a building but we couldn't get to the front door; we had designed a parking lot but there was no road to get there. We had hired a team of people that we had to consider laying off".[245]

The Department of Justice (DOJ) paid for the Court building; however their budget was inadequate and did not extend to the development of infrastructural resources on the

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243 Ibid, 14,15.

244 Wijgers, interview, 3rd December 2015.

245 Segal. 2006:95

site. The Court and infrastructural development was ultimately the result of a financial collaboration between the Gauteng Province who, through Blue IQ,[246] provided over eighty percent of development costs and the Johannesburg Development Agency (JDA)[247] who acted as project manager. The negotiated financial intervention from Blue IQ proved crucial for the construction of the Court.[248] O'Regan recalls that there was a long hiatus where nothing much happened. The agreement between the JDA, the City, the Province (Blue IQ) and the National Department of Justice (DOJ) was secured under Judge Langa's Chairmanship of the Building Committee. O'Regan was at the meeting with Judge Langa and Jabu Maloketi (then Member of the Executive Council for Finance in Gauteng) when the deal was brokered.[249] There has been some comment and speculation regarding the underuse of the Hill precinct and an extensive study was carried out by King and Flynn in 2008 which concluded that the Hill project is "the only major South African heritage site that is based around intangible human rights values, rather than 'correcting' and existing apartheid site".[250] They explain how Blue IQ was an integral part of the policy process regarding the Hill, despite that the city, rather than the province, owns most of the site. Their analysis explains that there were two intended parts to the site's regeneration. They outline some of the tensions that have resulted in an incomplete development. The first, they argue, was the prioritising of the building of the Court over the development and interpretation of the Hill's heritage. The priority of building the Court and readying the site for further use as an urban development node was seen as a primary need. The development of the heritage issue was seen by some to be less significant and as a value-adding component in an urban development, rather than a primary end in itself.[251] Unlike other Legacy projects, neither the Department of Arts and Culture, nor the Department of Public Works were involved in its final planning, funding or management and Kind and Flynn claim that the lack of coherent planning for the site as a whole has exposed gaps in the managerial capacity of the country's public

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246 Blue IQ was founded June 2001 as an Investment Holding organization which partners with business and government to promote strategic private sector investment in key growth sector of the regional economy. It was founded in response to a number of projects needed in Gauteng which had been identified and defined by the Department of Finance and Economic Affairs' (DFEA). Between 1997 and 2003, eleven large projects were identified, amongst which was Constitutional Hill. Source: http://www.blueiq.co.za/index.php/about-us/our-history

247 The Johannesburg Development Agency (JDA) is an operational organization that manages and facilitates developments which promote an "equitable, sustainable and resilient city". The Constitutional Hill project was funded by Blue IQ and implemented and managed by the JDA. Source (http://www.jda.org.za/index.php/whatwedo/vision-and-mission).

248 Chaskalson as quoted in King and Flynn. 2012. "Heritage and the post-apartheid city: Constitutional Hill, Johannesburg," *International Journal of Heritage Studies* 18:1. p. 76.

249 O'Regan interview, 3rd December 2015.

250 King and Flynn. 2012:79

251 King and Flynn. 2012 and Segal. 2006.

sector. "Heritage" is unable to manage itself. Considerations about interpreting the site's heritage, according to Wijgers, had mistakenly not been part of the original brief. [252] There has been criticism of the Hill precinct as having a confused purpose of heritage value from more than one sector.

In order to fully comprehend and comment on this criticism, it is necessary to introduce other members of the art, built form and heritage communities that were involved in the overall Constitutional Hill project. This is specifically relevant to commentary that has been made with regard to the process of demolition of the Awaiting Trial Block.

Segal, who is author of a study which is a source used in my research, is also a member of the consulting consortium known as Ochre Communication. They outline their appointment as Heritage and Education consultants on Constitutional Hill in 2002, by which time construction on the Court and other parts of the precinct was under way.[253] In July 2002 the JDA sent out a proposal to appoint a team to embark on founding concepts of Heritage, Education and Tourism (HET) for Constitutional Hill. The tender to write the HET feasibility study and business plan for the site was won by the consortium known as 'Ochre Communication'.[254] The Ochre tender document reflects an approach for the Hill precinct with reference to the place as a palimpsest:

> "A palimpsest is a surface on which the original writing has been erased to make way for a new writing, but upon which traces of the old writing remain visible. The site is – and must remain – a place where the layers of history contained within it must remain visible."[255]

Segal, Essa (architect and urban designer) and van den Berg (artist) discuss some of the difficulties they faced from the outset of their appointment. OMM, US and the consulting Engineers had been working on the site for some time and it was a 'battle' and a 'challenge' to integrate the heritage team into the development of the site and to restore

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252 Wijgers quoted in King and Flynn, 2012:77

253 Segal et al. 2006:115 – 118

254 Ochre Communication', as part of the HET team, formed part of a multidisciplinary group of professionals who worked on the Hill precinct. Some of these professionals, from varied disciplines, are quoted in Lauren Segal et al, Number Four. For example: Stan Joseph(Executive Director), Dhianaraj Chetty (Author), Nina Cohen (Architect), Nabeel Essa (Artist, Architect and Urban Planner), Mark Gevisser(Author and Journalist), Thembi Malao, Lucy Kaplan and Lauren Segal. Some of these professionals have been involved on the Hill for a number of years and form part of the team who tendered for the call for a heritage, educational and tourism business plan and part of their bid involved a scoping aspect to the project.

255 Segal et al. 2006:116

spaces and make them accessible to visitors.[256] In the interviews that I conducted with van den Berg and Essa (both have had a long association with the Hill site as part of the HET team) they recount some of the challenges experienced in their work (echoing sentiments expressed by Madikida and Segal).[257] Van den Berg described to me their general policy in addressing heritage studies and that being to ordinarily assess cultural heritage first and then act. In the case of the Hill precinct, work had already begun in terms of construction on the site by the time they were appointed to do their assessments of the heritage fabric on the site. Van den Berg maintains that it had been agreed, early on, to develop the Old Fort and Number Four complex as a heritage site with a museum, but the question of how to weave that into the broader redevelopment of the site's intended multiple uses was not thought through early enough, and consequently, the Hill struggles to 'define exactly what it is'.[258]

Indeed, the Court is recognised as an anchor on the Hill site. There is a mutually symbiotic relationship which exists between the Court and the Hill. It may not be an ideally crafted or managed relationship, but the city, like so many in South Africa, is in a state of flux and there are signs of the intended developmental effects on the Hill site and in the environs where other historic built fabric has been earmarked for mixed use development (with tenders currently in place which call for proposals).[259] The tensions described on the Hill site such as: lack of coherent precinct planning, exposed gaps in the managerial capacity of the country's public sector, a confused purpose of heritage value, an under-usage of place as urban hub and underachievement (to date) of intended mixed use development do not compromise the Courts function and usage. Therefore, if one were to ask if recognition of the national significance of the Court place and space is undervalued or downplayed or compromised by these factors and tensions affecting the Hill at present, the answer would be no. The nationally important and significant project of the Constitutional Court and the role it plays in shaping South African society's new national democratic identity must certainly be considered to be more important than significances of other built form artefacts on the site.

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256 Segal et al. 2006:117

257 Madikida, et al. 2008.

258 Van den Berg interview, 2 December 2015 and Segal quoted in King and Flynn. 2008.

259 King and Flynn.2012:76 and Neil Fraser quoted in Segal 2006:97

THE DEMOLITION OF THE AWAITING TRIAL BLOCK: CONFLICTING VIEWS.

The demolition of the Awaiting Trial Block provided the greatest disappointment amongst those involved in the project and yet the decision to demolish facilitated and enabled the realisation of the new Court building. In this section, I describe some of the views in this regard and attempt to come to some conclusions of my own. This section has been divided into three parts and these discuss first; the physical demolition process, second; the 'rememoration' work and third; the remnants, the ruins and the rising phoenix.

THE PHYSICAL DEMOLITION PROCESS

The Awaiting Trial Block demolition and the retention or preservation of historic built form was a contentious issue which had substantial bearing on the built form outcome: the artefact of the Court building. This issue has been discussed further in interviews in the probing and uncovering of thought processes, discussions, debates and the rationale behind the decision to retain more of the Awaiting Trial Blocks than initially envisaged. The stair blocks were retained and enhanced and the origins of the conceptual rationale behind this development are of specific interest as there was much resistance to, and criticism of, demolishing the building. The decision was contested by the local regional office of the then responsible heritage authority, but was seen as a deal breaker by the judges. As such, emotions ran high in all camps.

> "There was really no alternative but to give permission to demolish the ATB. The Court presented us with an incredible opportunity to take care of the site. The decision has been very seriously criticised by many people, particularly ex-prisoners, who felt that particular building a very important place".[260]

Prins refers to the careful demolition process – almost brick by brick.

> "For me, who visited the site regularly during the demolition to monitor the process, the joy of seeing the project commenced was tinged with sadness."[261]

He believes this was a mistake because the first thing many ex- prisoners note when they come to Con Hill is that the Awaiting Trial Block is missing. The Awaiting Trial Block is where

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260 Prins, quoted in Law-Viljoen. 2006: 60

261 Prins quoted in Segal et al. 2006:109

they were incarcerated. It has gone and so has a part of their history. He explains that the architects who won the competition were very sensitive to the value of the Awaiting Trial Block and they proposed that certain elements of the Awaiting Trial Block should be conserved. It was agreed that the four towers and the Awaiting Trial Visitor centre should be commemorated and that materials from demolished structures be used in the new building. Prins is of the opinion that the Awaiting Trial footprint in the paving that is intended to remind one of the building doesn't achieve this - "anybody who goes there who is not informed what to look for, would not know that these patterns on the floor have a significant so the evidence is there but the connecting evidence is missing and that applies to other relics that were kept".[262]

Prins commented on the demolition in both our discussions on two separate occasions, and this prompted further enquiry into the physical action of the Awaiting Trial Block's demolition.

Interviews with O'Regan, and then van den Berg and Essa followed and their commentary brings new insights from different perspectives.

O'Regan served on the Steering/Building Committee with the JDA from 2001 onwards.[263] She was appointed as Chairperson of the Committee when Justice Ackermann left in December 2003 and continued in that position until leaving the Court in 2009. The Awaiting Trial Block was still standing when the JDA took over the management of the precinct. She recalls Prins' dedicated involvement as a representative of the NMC, as a competition juror and as a member of the Building Committee. O'Regan recalls site visits which were arranged to monitor progress during the demolition process where bricks were cleaned and carefully stored for re-use. The bricks were stored around the Old Fort within the ramparts and the process was carefully monitored.

> "The process was very conscientious. The bricks were all individually washed. It was under the eye of Herbert (Prins). The JDA were very, very well managed, very hands-on about the management. Brian Orland (project manager for the JDA)

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262 Prins interview, 7th December 2015.

263 The JDA were the project managers for the DPW. They hosted and minuted the steering/building committee meetings.

was very consciences about those sorts of things. Of course they knew they were going to have to use these bricks for construction of the new building so it was from that point of view as well, that they wanted the bricks to be properly looked after. The idea to keep the stair wells and then to put the beacons on top of them came from the architects. It wasn't at all suggested by SAHRA as far as I'm concerned or the National Monument's Council. I think basically once they had approved it (the demolition) I don't think they got involved with the building at all. Certainly they came to our meetings. We always had a very big meeting where all the various role players were invited which would have included the Department of Justice, SAHRA, and all the various people who had an interest. Generally there was a core of people who came every time; Herbert particularly – him being a very key person. There were more concerns when the whole Hill was being developed around exactly how that would be done but that wasn't related to the Court building itself."[264]

An interview with Essa, who as a member of the HET team, highlighted some of the concerns that people had and he describes his involvement:

"….. the Awaiting Trial Building was going to be demolished. We were around right at the beginning. We saw the site as the judges had found it. Buildings and entire gardens of weeds were growing inside the building."[265]

The competition had already been awarded and Essa did not meet the Japhas. He worked beside Prins. "The decisions that you're talking about in terms of the location of the court were already made when I started there. They had just started with the demolition of the Awaiting Trial Building."[266]

Van den Berg, also a member of the Het team and involved with the Hill project at the same time as Essa, when interviewed described the demolition process underway. This affected the work that the HET teams had begun with the ex-prisoners, specifically the

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264 O'Regan interview, 3rd December 2015.

265 Essa interview, 11th December 2015.

266 Essa interview, 11th December 2015.

workshops and *'lekgotlas'* (non-hierarchical dialogue conducted in the form of a public gathering to decide on matters of group and social importance).[267]

Madikida describes one man's eloquent reaction to seeing the prison building being demolished (once it had been explained to him that this was the Awaiting Trial Block he had been initially imprisoned inside of):

> "This is the place …given that the roof is gone, it no longer has the same impact it had on me when I was kept here. There is a little bit of freedom now that I can see the sky. But the anger is not gone."[268]

Two important points arise from the chain of events leading up to the demolition decision: The first was the determined commitment by the Court judges in their deliberate departure from a preservation thinking conservational approach to a critical conservation approach (discussed earlier) and their insistence, in the competition process, to opening up opportunities for the architects through a creative conservation intervention which could enhance significance.

The second important point was that no apparent consideration was given regarding the process of demolition at the time of the competition. The omission of the opportunity for prisoners to participate in the actual dismantling of the Awaiting Trial Block complicated the situation and this is discussed in more detail later in this study. This is important for the association between prisoners as both the '*other*' and the marginalised majority (not the minority in the case of apartheid South Africa). 'Identity', we have learnt, is constructed from discourses of inclusion and exclusion, conflicting beliefs and values, and a 'too-easy' counter memory of the '*other*' or of colonialized subjects can overwrite the subaltern histories.[269]

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267 Refer to Appendix C

268 Segal 2006:147

270 Madikida, Churchill, Lauren Segal and Clive van den Berg. 2008."The Reconstruction of Memory at Constitutional Hill," *The Public Historian,* Vol 30, No 1. p. 18, 19.

'REMEMORATION' WORK

One key *lekgotla* programme was 'Mapping Memories' and the intention for this programme was to include primary groups such as former prisoners, teachers, learners and heritage specialists in a programme of remembrance and oral history. The fundamental curatorial principle employed at Constitutional Hill, in turning the prisons into visitor attractions, had been the "facilitating public ownership of the spaces, especially by the ex-prisoner's themselves. Wherever possible, the process of the making of exhibitions is displayed, and visitors and ex-prisoners are invited to add another layer of interpretation to Constitution al Hill by leaving their responses to the exhibit."[270]

Van den Berg's interview brought to the fore an important point – that of how the prisoners needed to locate a memory physically on the site. This was important in so far as it would unearth important memories (which the team where looking for as they were vitally important in the memorialising process and in the creating of the exhibits and the museum spaces). Yet, the prisoners' memories of the site were often vague in terms of its internal geography. This is understood if one imagines that when they had been brought to this place as prisoners, it would have been through the main entrance to the Old Fort in the South. They would have been led to the Awaiting Trial Block down the ramp through the opening in the northern rampart and into the building. On their return to the place many years later, the building no longer existed in its original form, as it was being demolished or partly demolished. The building, in the process of being demolished and the remaining ruin remnants made no sense to many of them. Van den Berg described this as very emotionally unsettling for the ex-prisoners.[271] Prins recalled the ex-prisoners as being very angry at the decision to demolish the building.[272]

> "The ATB Visitor centre was kept for a while and then it was relocated (dismantled and reconstructed) – badly - in a funny position which made no sense to me. It was done badly. Although Herbert had supervised it, reconstruction is always problematic because the place loses its meaning. It loses its value. It loses its presence as a building."[273]

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270 Madikida, Churchill, Lauren Segal and Clive van den Berg. 2008."The Reconstruction of Memory at Constitutional Hill," *The Public Historian,* Vol 30, No 1. p. 18, 19.

271 Van den Berg interview, 2 December 2015.

272 Prins interview, 7th December 2015.

273 Essa interview, 11th December 2015.

Essa has the view that retaining the Visitor centre was a "nice sentimental idea" and it was "hoped that it would work" as a means of heritage commemoration. The Visitor centre was in the way of the planned public space – "the square, which has never really been a square, was compromised by having the Awaiting Trial Visitor centre in that space. It was in the way. I think an internal decision was made and Herbert was involved to get it moved. It's a complex thing to rebuild something and it just doesn't have that potency any longer. Reconstruction just doesn't seem to work - especially on a different site."[274]

Essa says Prins has always been quite pragmatic in that "you can't be too stuck on heritage in the smalls…you need to think about the bigger picture".

> "The bigger picture was to make the site work and for it to become a public space and if it had this building in the middle that was impeding meetings and gatherings and functions and all sorts of things then he was open enough to let that be removed."[275]

274 Ibid,.

275 Ibid,.

Figure 11: Demolition

Source: David Krut publishers (top and middle), SAHA (bottom)

It seemed to me that, had the prisoners been brought earlier into the programme and been given the opportunity to visit the site prior to demolition, the process of memory location might have been more fulfilling and complete for them. Questions arose from the interviews with Essa and van den Berg regarding the wisdom of implementing a cathartic-type participation by the ex-prisoners in the demolition programme (similar to the Berlin Wall). I discussed my thoughts with van den Berg and asked him what effect or impact he thought this may have had? In other words, ex-prisoners might have been given an opportunity or the option to participate, symbolically or physically, in the actual breaking down, cleansing and rebuilding act that O'Regan had described (in her interview)? Van den Berg described how a process similar to what I was suggesting had been used when work began on the conversion of the Woman's Goal.

In discussion with van den Berg, he makes two important points regarding the "rememoration";[276] one being that the work on the Hill was carried out in a very short period of time. This was confirmed by Appelbaum[277] who the HET team consulted with at that time.

> "This work, in South Africa in the early 2000's was all very new – we were learning en-route. And yet there was a fresh and genuine sincerity driven by honourable intensions in the work that was carried out…" [278]

The second point van den Berg makes is the imperative necessity for a constant reassessing of memory and memorialisation work and this should be carried out in light of present issues faced by all communities, and particularly those who are marginalised. In assessing cultural heritage, oral histories (which have a limited life span) and an onus on recognition of trauma to victims and their families are two vitally important aspects. Hence, in the wake of a socially traumatic history, the onus is on heritage practitioners to first and foremost capture as much information as possible in order to be as inclusive as possible while at the same time communicating with and involving victims and families.

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[276] The national history (as comprised in *Le Lieux de memoire*) is a "rememoration" or a "history in multiple voices". Source: *Lieux de memoire* xxiv.

[277] Applebaum introduced van den Berg to the work of Spivak and an approach to memory work which considers multiple palimpsests. Spivak and the Assmanns write with reference to the role of memory in post-colonial studies and the Assmanns' writing extends from Nora's work.

[278] Interview, van den Berg, 2 December 2015.

As discussed earlier, conflicting beliefs and values can overwrite a subaltern history with a palimpsest narrative of mistranslation and errant commentary.[279] The ex-prisoner workshops, *lekgotlas* and programmes implemented as part of the work that was carried out by the HET team went a long way to addressing the issues of trauma and loss; however a number of people were upset at the time about the demolition of the building as the building was a looming physical presence in their (and their families') very recent memory.

> "That is where everyone went - including Nelson Mandela and so there was a lot of recent memory attached with that building which has now gone. There were some comments and disappointment in terms of people because they felt, particularly in a South African context so many of those kinds of stories are already erased"[280]

The widely scoped work that the HET team was involved with, described in more detail in Appendix Three of this study, was well facilitated with oral history co-ordinators acting as translators, and went some way towards mitigating the trauma and loss felt by the demolition opponents.

THE RUIN REMNANTS AND THE REALISED CONSERVATION CONCEPTS OF A RISING PHOENIX

What transpires between the concept and the artefact is a more extensive and elaborate conception of commemoration of the Awaiting Trial Block both physically and conceptually. The four Awaiting Trial Block stair towers are retained as remnants and three of them have been enhanced by means of high light tower structures.[281] The footprint of the building, around the stair towers is imprinted in the paving pattern. The old bricks were reused to construct a wall in the entrance Foyer, on the curved Court Chamber wall, and as part of the Great African Steps. It was the architects' "intention that the four stairs would be surmounted by beacons of light and would provide the view of the Court from afar and that would mark a place that is now a free gathering space".[282] The Awaiting

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279 Rothberg, Michael. 2013.

280 Essa interview, 11th December 2015.

281 It was the Architect's intention that the four stairs would be surmounted with four light towers. At the time of publishing *Light on the Hill*, Buckland's images show only the second stair unit surmounted with a light tower. At the time of writing, three of the four stair units are capped with light towers. There are indications of budgetary constraints for light towers. The Archive files contain motivating proposals with drawings for the proposed light towers which indicate budgetary constraints.

282 Janina Masojada as quoted in Law-Viljoen, *Light on a Hill*, 39.

Trial Visitor centre was rebuilt at the main intended pedestrian point of entrance on the main east-west access of the site near to Hillbrow. Today it serves as a guard house for on-site security staff.

> "It was chosen for reconstruction because symbolically it embodied what the larger structure signified – a cruel penal system".[283]

Prison doors have been retained in the new building and prison bars have been repurposed as planter climbing bars attached to the substation.

In interviews with Makin and Wijgers (the architects) the differences between the concept and the built form were questioned to establish specifically how it transpired that the Court building retains a more of the Awaiting Trial built form than initially intended. As noted previously, the conceptual design for entry *Number 120* showed the small built form of the ATB Visitor centre in its original position on both the model[284] and the sketch drawing, where it is annotated.[285] There is no mention of the stair towers on these published design representations and therefore I was interested in the decision to retain more of the physical built form than initially envisaged and to relocate and reconstruct the Visitor centre in a new position. The origins of the conceptual rationale behind this development were of particular interest to me.

Wijgers described how thought progressions regarding the Awaiting Trial Block took place in the post competition development phase of the design. In their entry, they had considered an option of demolishing the Awaiting Trial Block and leaving only the Visitor centre in its original position (much as the brief had suggested). Once they had been appointed and during the process of measuring up the historic built form and in so doing, beginning to understand the historic fabric and the spatial relationships between the buildings, they developed and presented an idea which entailed the retaining of the four stair towers and enhancing their height. This came about as a concept when viewing the Hill site from the North. This view point presents the entire ridge as essentially a dominantly horizontal landscape element.

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283 Lauren Segal et al, *Number Four*, 109.

284 Lauren Segal et al, Number Four, 81.

285 Bronwen Law-Viljoen, Light on a Hill, 18 and 19.

> "There are no defining vertical elements, so in order to provide visibility to the building from the North side, we took the four stair towers – we thought to retain these stair towers and to add light beacons onto the top of them - almost as a landscape indicator or element - something visible - and that does work when you view the Court from the North side - especially at night."[286]

Sachs coined the phrase of 'light towers' as the four towers of the Constitution. [287]

> "We kept those small physical things and of course the idea that eventually we could incorporate some other physical things into the building itself and really what that did for us is it just added layer upon layer upon layer of patina and significance."[288]

Makin, in an interview, outlines three ways in which the design team intended commemoration of the Awaiting Trial Block. The first was to recognise its extent in its footprint and the paving pattern. The second was by means of the retention of the stair structures and integrating them into the new building.

> "In a way what we were doing was to turn ordinary staircases as vertical circulation into towers by removing the building all around them. These portions of the building that were originally encapsulated into the horizontal form of the building remained as vertical towers and their symbolism of constriction and constricted movement up and down the building is converted into beacons of light and hope."[289]

The third and probably most tangible commemoration, Makin explains, is the poetic use of the bricks from the Awaiting Trial Block which were physically dismantled, cleaned of cement and used to reconstruct the court chamber – the bricks were packed dry - like stones to enclose the court chamber.

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286 Wijgers interview, 13th December 2015.

287 Ibid,.

288 Ibid,.

289 Makin interview, 13th December 2015.

> "What we did was to take the materiality that previously incarcerated people and used exactly those things to protect the physical environment that represents democracy – the Constitutional Court Chamber itself. In so doing – with all three of these gestures - we demonstrate that transformation is possible; it is possible to convert one thing and another and to change the meaning of things."[290]

Gevisser maintains that the advice to the Court from the "original heritage consultants" to demolish in order to make space for the new court was both inexplicable and unforgiveable. He goes on to say that in terms of heritage significance this was "far and away the most important site in the complex because it was where most political prisoners were kept …"[291] He concludes by saying "What needs to be embedded into Constitutional Hill's surface is a process rather than an ideology: the belief that debate, reason, interaction, negotiation, and reconciliation will make the future happen."[292] In summing up, I draw attention to the real bigger picture: the process of debate, reason, interaction and negotiation that resulted in a partial demolition (a sacrifice in the local or provincial sense) and a re-creation of a nationally significant endeavour. The court project must be viewed as a Planning and Integrated Conservation development or endeavour and this, as a parallel to Critical Conservation, as referred to by Townsend as the seventh conservation orthodoxy. "This theory argues (rightly) that conservation must recognise its social function, economic reality, the law, property rights, changing functions of buildings and of parts of the city and even the development of the idea of the city itself."[293]

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290 Ibid,.

291 Gevisser. 2004. "From the Ruins" *Public Culture*. Duke University Press. p. 516.

292 Ibid, 518.

293 Townsend, 1988:28.

CHAPTER FOUR - THE ARTEFACT

CONSTITUTIONAL SQUARE

At the time of writing, Constitutional Square presents as a place of great unrealised potential. It houses an unattractive huddle of prefabricated ablution facilities situated on its northern edge where the view over Northern Johannesburg is its most dramatic. These facilities face onto the square in an entirely unconsidered location.[294] There is little shade from the midday heat and activities in the Square tend towards its edges. One cannot resist imagining the potential of this square. It has been utilised significantly on occasion[295] and should invite more of such significant through a redesign which has the potential to substantially uplift the precinct.

Gevisser refers to Boyer and the ways in which "modern cities create simulacra of democratic public space" where "their purpose is to represent the ethos out of which the city was developed". [296] He describes Constitutional Hill as striving to be "the place to which to you would come to experience the essence of Johannesburg and South Africa….Hopefully, in the future, you're going to come to Constitution Square, at the middle of Constitutional Hill, to see the South African democracy embedded in its stones and represented on its surfaces."[297] It must be noted that Gevisser is discussing (in 2004) a scenario he would like to see in the future. I argue that his picture of the future is beginning to emerge.

Relevant statistical information via the Constitutional Hill Trust reveals that 15% of the overall number of visitors to the site are foreign tourists.[298] For the eight month period between April and November 2015, the total number of visitors to the site was ninety five thousand and six hundred. No specific demographical details for the total number are available – work is now being done to assess more details in this regard. Workshop programmes that focus on Human Rights, Constitutionalism and Democracy are

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294 When questioning the permanence and positioning of the ablution facilities and the unfortunate status of the presently empty "ponds of water" that the Judges' Chambers stand in which are meant to form part of the evaporative cooling system of the building; (the largest of which is situated alongside the library), I was told by both Moloto and Vorster that tender processes for the implementation of new work and maintenance issues are notoriously arduous and laboriously long drawn out processes. Both the new ablution facilities and the new water filtration system for the water ponds are currently out to tender.

295 Lead SA and Radio 702 hosted a silent vigil on Constitutional Square on the evening of the 21st April 2015 which was organised in an effort to take a stand against the on-going xenophobic violence in South Africa. Source: http://www.702.co.za/articles/2562/lead-sa-takes-a-stand-against-xenophobia-in-silent-vigil-at-constitution-hill

296 Gevisser. 2004:328.

297 Ibid, 329.

298 Lebogang Marishane, interview and follow up emails, Constitutional Hill Trust, November 2015.

managed by the Trust. Their annual targets of sixty five public programmes and seventy five educational programmes promoting the Bill of Rights in Schools are met and may have been exceeded in 2015. A breakdown of the total number of visitors to the Hill reveals that public programmes and venue hire facilities draw the highest numbers. Exhibitions, educational programmes and the Court draw approximately six to eight thousand visitors for each category over the seven month period.

As a parallel reinforcement of the significance of the Court and the Square, Cameron referred to his personal anecdotal observation as to how these spaces contribute to (compel) society, the populace and national identity. "The Court has a program on Saturday mornings that brings learners from township schools here for civic and constitutional discussions, debate and training (plus a meal, for engagement is not possible with a hungry stomach). The Courtroom is an imposing place – it makes allowance for the necessary functionalities of hierarchy. Yet in shape and volume and tone and texture it is also an open and inviting place. It encourages frank discussion, urgent questioning and intense debate."[299]

[299] Cameron email addressed to the author: 5th January 2016.

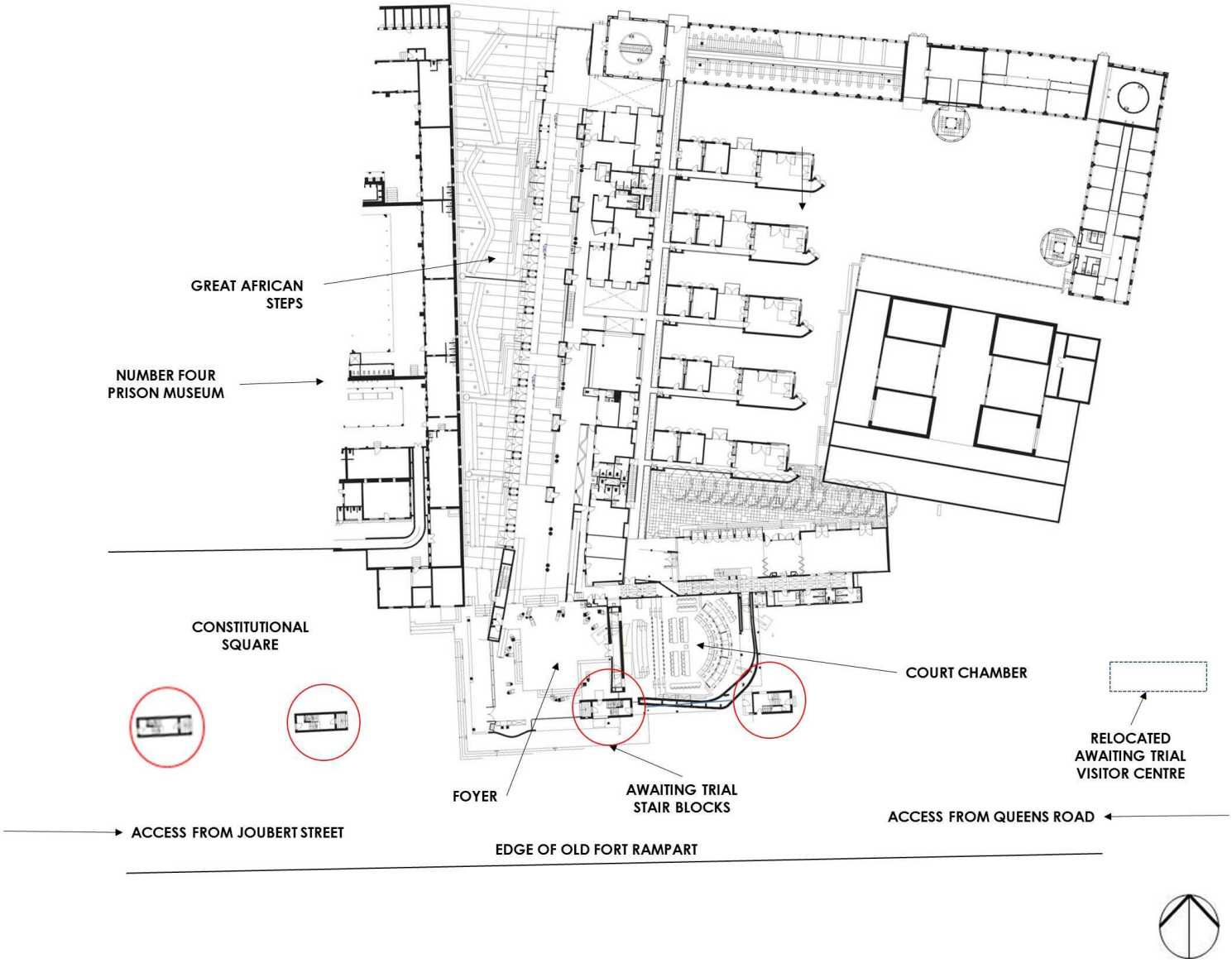

Figure 12: The Constitutional Court ground floor plan OMM and US

Source: Torsten Deckler and Anne Graupner (Annotated and enhanced by the author)

THE COURT BUILDING

The Court building occupies an "absolutely pivotal position on the site".[300] It is the only substantially new building and "anchors the Hill site".[301] The Court and Constitutional Square are the centre of day to day activity on the Hill site despite that the Old Fort is situated in a physically elevated position higher up on the site. School children meander along the east west access in the early morning and late afternoon, kicking a soccer ball, sliding along the granite figure images inlaid in the paving en route to school, chatting and laughing. Later in the morning large groups of school children (as part of the school tours) sit on the steps partaking in refreshments between a visit to Number Four and the following Court Foyer and Chamber tour.

Figure 13: Children visiting the Court and Number Four

Source: The author, 2015.

300 Japha memorandum September 1996: 1

301 King and Flynn 2001:68

Figure 14: Granite figure images inlaid in the paving of Constitutional Square
Source: The author, 2015.

The Red Bus transports tourists into Constitutional Square. They usually visit Number Four prison museum and some enter the Court Foyer. Depending on how much time they want to spend at this stop on the red bus route, they may spend longer lingering in the foyer, and they may even enter the Court chamber. Anyone can enter the Foyer and the Court Chamber at any time and listen to what is being argued on the day.

The Foyer, the Court Chamber and the largely demolished Awaiting Trial Block are all positioned parallel to the now emphasized Old Fort rampart and the stone boundary wall of Number Four. The design reveals a "unique, fragmented character" which is "carefully tuned to the particularities of the site".[302] The bulk of new form is arranged resourcefully in a place of historic significance according to urban design principles of free access and human interaction and heritage-related design indicators established early on in the concept stage by the architects. The design report accompanying the winning submission opens with the following sentence;

> "The ways cities are designed either invites normal human interaction or restricts it. You can drink a coffee on a verandah on the street sidewalk or the edge of a public square and watch the human theatre as it passes in front of you, or you cannot".[303]

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302 Noble 2011:131

303 OMM and US 1998:1

The winning design report, under the heading of 'commemoration' and in referring to the Awaiting Trial Block, continues;

> "Over the years over one million people passed through its cells and corridors….These walls are witness to most of the abuses which our new South African community has roundly rejected through the adoption of our Bill of Rights. The public space of Constitution Square is made by the removal of, and therefore is a commemoration of, the Awaiting Trial Block. The place where people were restricted, held captive and isolated from society, now gives complete access to all persons. The site is a symbolic and physical result of the struggle undertaken for those persons held in these cells, for the rights now entrenched in the New Constitution". [304]

The geometry of the Awaiting Trial Block generates the geometry of the Court on the site. "An axis aligned to this building connects across the length of the Square…."[305]

The Court Foyer and Chamber are pinned on the axis of ruined built form remnants (the stair blocks) with which they coincide. The ruin remnants act as axial, spatial, physical and metaphorical memory presence both inside the Foyer and inside the space of the Constitution Square. Three of the four stair blocks are enhanced for further impact by means of light towers which stand as markers on top of the hill. The first stair block on the eastern edge of the site near to Queens Road has no light tower, and is encountered on arrival from that side. It stands alone, unattached, yet close to the new building. The second block is absorbed - cannibalised by the new built form,[306] sitting as a ruin in the midst of the new Foyer. The third, opposite the entrance to the new Court, houses the Flame of Democracy[307] and the last stair block stands as a marker on the west side of the Square, providing an edge to the steps leading up towards the northern opening in the Old Fort rampart wall. These steps lead one westward towards Braamfontein, a route traversed in the mornings and again in the afternoon by pedestrians (especially

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304 Ibid.

305 Ibid. The report refers to the Visitors room of the ATB which was what was represented in the winning design scheme, as mentioned previously, in its original position. The Visitors room and the ATB stair blocks form one and the same geometry.

306 Leibowitz 2008

307 On the 12th December 2011 Deputy President Kgalema Motlanthe lit the symbolic Flame of Democracy as a permanent fixture in one of the four remaining stair blocks to mark the fifteenth anniversary of the Constitution of South Africa. The Flame of Democracy was originally ignited by former President Nelson Mandela and brought form Qunu (Eastern Cape) to Constitutional Hill. Information obtained from http://www.gov.za/igniting-flame-democracy.

schoolchildren going to and from school) moving between Hillbrow and Braamfontein. The north-south pedestrian access route adjacent to Number Four's original stone wall, the Great African steps are splayed in footprint, wider in the north at the access road and narrowing at the top towards the south where one enters Constitution Square.

The intention to minimalize a projecting imagery of monumentality by means of reducing the monolithic mass of new built form was explored by the architects in the design development stages of the project. Power and gravitas have been examined through a literature review earlier in this study and I discussed these crucial concepts with the architects in the interviews held with them.

Makin recalls the Court Foyer and Chamber as the spaces and components of the building which were the most difficult to resolve. He explains: architects are educated through a system of historic reference by means of exposure to pre-eminent public buildings and spaces which offer one consistent model, that of authority, monumentality and symbolism of material or spiritual greatness and achievement. This model of authority was challenged by students (particularly in South Africa in the 1980's) who questioned the conception and construction of these icons of civilisation. Such icons would not have been achieved without the harnessing and centralisation of significant authority, power and wealth. In the South African context, deep destruction, pain and suffering were inevitable consequences of the centralisation of power and it was assumed this to be the case in other historical examples that were the tools of the students' education. "Assuming they are finite, how else would the resources to construct such magnificence have been accumulated at the top echelons of societal power without their having been denied elsewhere?" Yet, explains Makin, there was an understanding amongst these three young architects of the expectation expressed in the Court competition design brief, its precinct and in themselves that this new building should powerfully and convincingly represent the highest aspirations of society without overt grandeur, ostentation and monumentality.[308] These were the objectives the architects set for themselves. They believed that they were perfectly positioned to achieve these objectives.

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308 Makin quoted in Law-Viljoen: 46

Noble discusses the architects' 'commitment to an overthrowing of the conventional symbols of public power' and the 'dethroning of the monument (a colonial type) in favour of more transparent and welcoming spaces' and is of the view that the design achieves this ambitious goal through various spatial and tectonic strategies such as the positioning of the Court Chamber, direct access to the Square, choice of materials (such as the use of glass which allows visual and spatial dialogue between the double, parallel terraced north-south walkways) which provide a "double spatialisation as thematic for the interrelated public and private significance of the South African Constitution."[309]

Freschi refers to the building's decorative artworks which convey the image of a democratic South Africa. He believes the building's decorative programme rather than its architecture suggests "a shift in the discourse of public architecture" away from the staid and towards "open-endedness, inclusivity and a sense of deliberate playing with the elements and expectations…".[310] He refers to the Great African Steps (with no wheelchair access) as an invention of "a (re)-imagined past" and an unnecessary example of "official nationalist" imagining of identity and authenticity.[311] He refers to the built form as presenting "interesting alternatives to conventional civic architecture" where the imaging of a democratic South Africa is "conveyed entirely through its decorative program, which in turn is driven by the need to establish a visual rhetoric of '*community*', united in its diversity".[312]

A large number of the Court Artworks are integrated into the built form. The artworks programme was part of the detailing and construction of the Court building. Masojada reflects on this aspect of the process and she explains the architects' and the judges' resistance to 'pastiche ethnic applications' as an African statement. The architects felt there needed to be an integrated art work program. Masojada describes debates amongst themselves and the judges about 'art works', 'identity', 'South African Identity – African identity':

309 Noble 2011: 136

310 Freschi 2007: 30

311 Ibid,.

312 Ibid,.

> "….we've become so complex ….what's the answer to that question? Ten years on from democracy, what is our South African identity? And so those were the big discussions that were going on at the time…. we sort of avoided that as a topic because identity for us was something it takes decades to become. You don't just….you can't just make it."[313]

The integrated artworks programme grew out of a combined philosophy of thinking of hand grown, grassroots, community building ethic. Masojada describes this process as an extension of the building programme with detailed interrogation extending to integrated furniture and tables which involved the writing of briefs, budgeting, calling for creative tender, adjudication and assessment with a "continuity between City, site, urban site, building, architecture…"[314] and this became accepted as one of the project ideals.

Noble and Freschi's critique around the exemplary and mediocre aspects of the Court building are valid. Indeed, the Foyer and Chamber spaces in the Court building are provocative and the question of gravitas remains one frequently raised by commentators. The Court building has been criticised for its lack of presence in the city due to the efforts exerted to turn upside down traditional representations of power in built form. As such, the Court lacks a deserved architectural presence and formality. The Court Chamber, as the nucleus of Constitutional activity, does not have clear visibility from the exterior and hence it is not easy to identify the important-ness or the gravitas of place and space. The main façade, which faces onto the public square, relies on an informality in composition and is understated and slight in its presence. While this understatement is clearly deliberate, its lack of impact in effect contradicts its greatest endeavour.

313 Masojada archived Oral History Interview: 2012

314 Ibid,.

THE FOYER SPACE

Figure 15: The Entrance Foyer
Source: David Krut Publishers

Several pieces of great artistic, historic and social significance are present in the Foyer of the Court. Hand-created and crafted items; each portraying a message, a note from its author/s (if you care to seek out that message), and the old ruin remnants contain more messages (visual and symbolic).

The space represents a collection of distilled symbolism of a country's constructed cultural memory. There is a profound message incumbent on all members of society who enter this space to stop, think and learn and then think again. For some people there is too

much 'noise' in that space, for others, the messages are not what they want to hear.[315] Not now, maybe later, maybe never.

The messages are personal - they carry different meanings for different people.

Judith Mason's *Blue Dress* and Antjie Krog's writing,

> "Hamba Kahle Phila …
> may your spirit dance free
> in this blue blessed dress
>
> for you …
>
> and perhaps
> also
> for us"[316]

Thomas Mulcaire's *Ladder to Freedom*, Jane du Rand and Zama Dunywa's handmade ceramic shaped leaves, flowers, lucky beans, grass, Walter Oltmann wire 'canopy of leaves chandeliers'.
A neon sign, 'A Luta continua', affixed to a ruin carrying so many meanings for so many people.
The stair ruin remnants.
The Afrikaans word 'Welkom', graffiti scratched into the plaster on the wall of the stairs by a prisoner during this relic's previous life.

These are all a constant reminder to never forget where we have come from. Almost every South African alive today knew somebody who did time for their country during the dark years of apartheid. They figuratively and collectively walked up and down those stairs when they were at their most vulnerable, uncertain as to their future.

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315 I refer to my interview with Judge O'Regan who wisely states, with reference to the Foyer space "It is a questioning space. A civic space is a questioning space in a democracy so I agree with his take on it and that it doesn't make you feel immediately safe because it is making you ask questions. It wouldn't be that I disagree with his assessment of the foyer. I like questioning spaces - coming from an academic background that's what I think education is about. I think it's about what democracy is about. I do look sometimes for clear answers but you know you can't have them all the time." Source: O'Regan interview, 3rd December 2015.

316 Krog, Antjie. 2002. *Country of my Skull*, p. 280

"These portions of the building that were originally encapsulated into the horizontal form of the building remained as vertical towers and their symbolism of constriction and constricted movement up and down the building is converted into beacons of light and hope."[317]

As Harvey observes, monuments must be seen as open works ('Memory factories') allowing choice and inviting interpretation.[318]

317 Makin interview: 2015

318 Harvey 2003 refers to Dietler 1998 and 'Memory factories'. Harvey concludes with an emphasis on the importance of interpretation.

CHAPTER FIVE - CONCLUDING ARGUMENT

This chapter is presented in three parts.

First: referring to Nora's fundamental ideas and concepts which go into the making of a lieu, and reiterating findings from the AMdlT study which validate the "raison d'etre of conservation".

Second: briefly summarising the findings and explanations presented in this study around the defining decisions (to launch an international competition, where to site the new building, and the consequent decisions of what to demolish and the commemoration of the demolished built form) and by means of analyses, this chapter concludes the argument as to;

- How the new Constitutional Court building was integrated into the prison precinct (a question about architecture as heritage).
- How the building of the new South African Constitutional Court has contributed to the building of a new national identity (a question about cultural identity)?

Third: conclusions to the findings which will answer the question:
Is the Court a South African "*lieu de mémoire*", or "*lieu de identité*" central to the new national identity and psyche?

LIEU FUNDAMENTALS AND THE "RAISON D'ETRE OF CONSERVATION"

From Nora we have deduced that *lieux* are created conceptually and with respect to spatial and material content. A *lieu* occurs as a social dynamic, a social construct at a point in history when a fund of memory disappears but survives as a reconstituted object beneath the gaze of critical history.[319] A critical (secondary) history evolves and responds to the needs of the moment and manifests as a *lieu de mémoire*. It is fundamentally a material object/vessel/vestige that receives critical historical memory recognition and retention. Critical histories/stories are invested in *lieux* as embodiments of a commemorative consciousness and *lieux* with material content enable these 'transferential' and re-awaking actions, events or activities performed by society which reconcile science and conscience or history and conscience. Memory is spatial and

[319] Nora 1989: 12

space is stable. It is this spacial stability enhanced by a group's attachment to space that makes space a transmitter for memory and spatial constructs act to trigger memory.[320]

Critical Conservation as well as integrated conservation and planning identify, recognise and make reference to cultural heritage and cultural heritage diversity and respect for the '*other*' and other cultures. These are international conservationist philosophies with roots in post-World War Two environments which have been expounded upon and are continually being refined. Interventions should focus on what we want the historic object to commemorate to us,[321] as based on a collective, diverse and culturally embedded definition of significance and meaning. Cross pollination in thought through disciplines, the effects of visual and material association in curation and a focus on critical assessment of values and respect for other cultures are theoretical issues which have been commented on earlier.[322] We have seen how it is important to analyse and understand values, act responsibly and creatively and endeavour to enhance value for future generations. In addition, as seen with the Vietnam Veterans Memorial, multiple meaning lies in the interactive procedural actions which go into the process of memorialization. Furthermore, a succession of events over time results in a culture producing process (commemoration in a group renews sentiment and unity).[323]

From Avrami, Mason and de la Torre we recap on three important concepts for collaborative assessment or utilisation in the creative construction of cultural heritage; in other words in the making up of a *lieu de mémoire.* Although *lieux* are created over time by society, there is initially a creation of the material object/vessel/vestige which is then able to receive and retain historical memory. That material receiving vestige of place (as in the Court) is important because of the meanings, uses and values represented, and these must be understood as an inherent part of socio-cultural processes. Conservation must be framed as a social activity: critical both in the enabling and realisation processes, and in the role of supporting and educating civil society. The conservation implementation process should be carried out creatively, preferably motivated and underpinned by the values of individuals, institutions and communities. In addition,

320 Nora 1989 and 2002 , Lipstadt 1999, Winter and Sivan 2000.

321 Vinas 2011.

322 Eggert 2009, Coombes 2003.

323 Wagner-Pacifici and Schwartz. 1991, Lowenthal 1985.

conservation as a field and as a practice must integrate value assessments and facilitate negotiations in order for cultural heritage conservation to play a productive role in civil society.

Action, power and agency are considered as the fundamentals of the heritage creation process, and heritage is a range of social and cultural activities that are able to mediate a sense of cultural, social and political change.[324]

'DEFINING DECISION' FINDINGS AND EXPLANATIONS

THE DECISION TO HOLD A COMPETITION

The decision by the Department of Public Works to hold an international competition was a defining milestone, with all of the eleven Constitutional Court Judges being involved in some way. The judges and the architectural professionals held considerable sway over the DPW in the lead up to the decision. Internationalizing the project introduced a broader perspective of possibility in philosophical conservation approaches, significantly raised its profile in terms of credibility and acceptability, and was a substantial deviation from the process of public building design commissioning that had previously been the norm.

THE SELECTION OF THE SITE AND THE SITING OF THE NEW BUILDING

The decisions regarding both choice of site and the demolition of the Awaiting Trial Block was driven by the judges and their architectural advisers, all of whom acted as agents. Their decisions were consciously aligned with the principles of Critical Conservation as well as those of an integrated conservation and planning approach. Demolishing the Awaiting Trial Block flew in the face of traditional preservation-orientated conservation thinking, and the physical demands of the site necessitated pragmatic interventions in the creative fusing of past, current and future values beyond the local and utilitarian.

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[324] Smith 2006.

THE SITING AND THE CONSEQUENTIAL DEMOLITION DECISION

The decision to concede to the demolition of the Awaiting Trial Block entailed rational assessment and critical thinking by selected members of the architectural and legal community in the early 1990's. The decision was argued within a small group of people; it was not a public discussion. A small group debating the subject was crucial as this allowed the situation to be carefully managed because of the importance of the timing. The process and the decisions were pragmatically and vigorously driven towards conclusion. This demolition decision in the ordinary course of events (and more likely since the introduction of the 1999 NHR Act) would have required more discussion, debate and participation from interested and affected parties and this may have resulted in an alternate outcome.

THE DEMOLITION CONTROVERSY, 'REMEMORATION' WORK AND THE RUIN REMNANTS

Whether the Awaiting Trial Block should be demolished or preserved was a contentious issue, the outcome of which was to have substantial bearing on the built form of the Court building artefact. Not demolishing was seen as a deal breaker by the judges, and demolishing was severely criticised and opposed by the heritage authority, ex-prisoners and other stakeholders. In the end a compromise was reached. Despite that, tensions and infringements persisted through the initial stages of the competition (with the changed wording and issuing of a subsequent amendment notice to the competition entrants). The compromise reached in the built form artefact was to retain and showcase the stair blocks as a creative critical conservation departure from traditional preservation. Neither the decision to demolish, nor the means and method of the act of demolition were debated with a wider audience. For instance, if prisoners had been located earlier on in the process and if they had been more involved in these kinds of decisions, it may have resulted in an easier and more satisfactory processing of trauma. To a large extent, the trauma and loss effects of demolishing the Awaiting Trial Block were mitigated by the rememoration work, ex-prisoner workshops, *lekgotlas* and programmes carried out by the HET team. In assessing the ruin remnants in the artefact, the analogy between the Court building and a 'rising phoenix'[325] has been drawn by several commentators and is particularly pertinent in the context of the birth of the constitution and it's new home, and the nation's pride in its new-born identity. Given all of the above, the decisions were

[325] Autry, 2010, O'Regan. 2015 and others.

rational and persuasive. Gevisser describes the heritage consultants advising the Court to demolish to make space as inexplicable and unforgiveable. I question the basis of this statement, specifically as there is no reference by Gevisser to him being privy to the arguments presented for the demolition leading to both a physical and symbolic opening up of opportunities for reinterpretation of the space. I argue that selected remaining elements provided unique indicators for the design of a new space and place. While material value may have been compromised, the remaining elements provided potential for far greater conceptual heritage value. Here it is important to refer to the contribution Nora has made, according to Lipstadt, of that 'enlarged notion of space' and the ways in which a spatial construct can act as a trigger for memory.

CONSTITUTIONAL SQUARE, THE COURT BUILDING AND FOYER SPACE

There is substantial unlocked potential for Constitutional Square and one of the common criticisms of the Court building is that it does portray the presence that it deserves. Its intentional modest character and personality contradict its stature as the highest court in the land.

The immensely emotive messages inside of the Foyer space and the simple fact of easy access by all and anyone into this space at any time of the day or night where you are invited to stay, sit and contemplate are a significant contribution and a tribute to the creation of a new social identity. The ruin remnants in the Foyer space, used as a stage set-piece in the displaying of the contemporary artwork collection, have become the epitome of a palimpsest.

The building's understated presence in the city and its understated sense of purpose can, to some extent, be mitigated by the contribution the space and place make in the on-going day to day contributions to the building of a new national identity in its assessment of constitutional matters. The weight and stature of the Court's function is exemplified by the very recent hearings in February 2016[326] and the thirty cases submitted and awaiting directions between the dates of the 4th Jan and 4th Feb 2016.[327]

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326 On Tuesday 9 February 2016 at 10h00, the Constitutional Court will hear two applications for direct access in matters concerning whether the failure to comply with remedial action set out in a report of the Public Protector constituted a breach of constitutional duties by the National Assembly and the President (in each case, the first and second respondent respectively). Additional respondents include the Public Protector and the Minister of Police. The applicants are the Economic Freedom Fighters (EFF) and the Democratic Alliance (DA), each an opposition party in the National Assembly

CONCLUDING – A QUESTION ARCHITECTURAL HERITAGE AND CULTURAL IDENTITY?

During the early millennium years, six to eight years after independence, the country was consumed by a sense of post-liberation euphoria and urgency which was harnessed and harvested in an attempt to create projects of new national memory with new 'cultural capital' in the recount of South Africa's tragic history under apartheid.[328] The business of remembering and forgetting apartheid is on-going, as is the business of creating a national identity. Both social and national identities are discursively created and a nation's identity is founded in an emphasis of history, memory and remembrance. In the South African context, an appropriate optimum desired 'culturally-embedded' definition of significance would be that of the founding principles of the constitution: namely human dignity, equality and freedom. The competition brief, uniquely inspirational, both technically and philosophically emphasized particular attention to these principals.

This project could simply not be approached as an adaption of the existing Awaiting Trial built form structure, which was awkwardly positioned (in too close proximity to the Old Fort ramparts) as well as being newer, altered, less evocative and less amenable than the other buildings in the precinct to conversion for other uses.[329] O'Regan sums up the underlying conception of the ruin remnants and the message conveyed:

> "We are not '*tabula rasa*'. This is not some new project on some new planet with a whole history-less society. This is a society that is embedded in this really difficult history and we are not going to surmount it and overcome it if we deny that."[330]

The judges' intention was to create a physical presence of the Constitution itself and the Court building today stands as a tribute to this vision. It is clear that the result of the judges' decision, which challenged the preservationist approach by the heritage-lobby and their resistance (to demolition), is an invention which reinterprets the past and gives meaning to the present, promising "never again". The concepts of symbolic commemoration of

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(NA). Corruption Watch, a civil society organisation, has been admitted as amicus curiae. Source: Constitutional Court Media summary for CCT 143/15 and CCT 171/15 as posted on the Court website. http://www.constitutionalcourt.org.za/site/CCT-143-15-Economic-Freedom-FightersvTheSpeakeroftheNationalAssem.pdf

327 Source: Court website. http://www.constitutionalcourt.org.za/site/home.htm

328 Autry (2010 and 2013), Baines (2007), Coombes (2003), Leibowitz (2008), Lytle (2011), Meskell (2011), Murray, Shepherd and Hall (2007), Nuttall and Coetzee (1998) Rankin (2013).

329 Japha notes. 1996.

330 O'Regan interview, 015.

historic built form (as opposed to preservation of historic built form) were ideas which stem from new Critical Conservational thinking and in the mid 1990's these sorts of ideas in South Africa were new and quite visionary.

Is the Court icon a new or old kind of monument? How are heritage and monument aligned? These are questions Herwitz asks. He suggests the possibility of the flexibility of the constitution being its undoing (under a bad set of judges) and the building becoming a monument to the subversion of power (because of the lack of gravitas?). He concludes that the law cannot be human rights instrument of first and last resort and in the absence of sound state policy and practice and wide scale social change. He maintains the Constitution is utopian in celebrating an excessive possibility for law, yet it is also a fable.[331]

Contra this is the view of Cameron introducing *The Bill of Rights* (a photographic essay) 2014[332]

> "Through legal agency, even if applied imperfectly, material benefits can accrue to human lives. Legal rights can change social practice, by altering discourse. And most deeply, when applied with a seemly blend of ambition and caution, of hope and humility, the law can lay the foundation for moral agency and civic dignity. To deny these possibilities in the law is to take a too miserly, too cautious, and too crabbed a view of its potential – and of what we, as lawyers and judges can do. The law cannot offer transcendence from human toil and limitation. But it can offer us the chance to be better than ourselves. And that is surely something worth celebrating…….But, what the law and legal rights can do, when invoked with creativity and integrity, is to play a humanising, expansive, and inspiring role in human society. The law can create the conditions for humans flourishing."

Considering again the founding principles of the Constitution: dignity, justice and equality, if we ask whether the Court project represents the values of individuals, institutions and communities, and if the process of making the court integrated these values successfully in order for it to play a productive role in civil society, the answer would be yes. That would apply to both in its making and in its day to day functioning, both in South Africa and as

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331 Herwitz. 2011:248.

332 In Southwood, David. 2014. *The Bill of Rights*, p. 1. Source: www.davesouthwood.com.

an example to the world. It is this, I argue, that is the outstanding prevalent cultural significance of the Court project. The future value of its significance is undeniable, enduring and aspirational.

> "The law does not seek only to create order, or to impose control, or to sustain privilege. A progressive legal system should create opportunities for those subject to it to lead fuller, richer, safer, more challenged lives……..In all these respects, our Constitution is intensely aspirational."[333]

As Nora observes, identity is a form of duty and hence every member of South African society should do as Gevisser points out the American people do for Washington: "…it's a journey you have to take, your pilgrimage to the shrine of democracy." I argue that if every South African visited the Constitutional Court, we may all realise how far we have come collectively as a nation, and how far we can still go.

The Court is a place central to the new national identity and psyche of South Africa as a "*lieu de mémoire*" or more importantly a "*lieu de identité*".

[333] Cameron email addressed to the author: 5th January 2016

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APPENDIX ONE

THE ARCHITECTS – OMM AND US

Makin, Masojada and Wijgers registered to enter the competition in August 1997, encouraged and inspired by the composition of the Jury and the brief. Makin relates how the team felt the brief was asking a question close to their hearts as young South Africans, who had experienced the extent to which the previous regime had "fractured" and "injured" individuals, family units, communities and society. Their generation had been born into and educated in "a fundamentally dysfunctional society".[334] The means to achieve the objectives, as set out by Makin, of powerfully and convincingly representing the highest aspirations of society without grandeur, ostentation and monumentalism was something the architects completely believed to be within their control.

Makin (1964) and Masojada (1963) are principal partners at OMM Design Workshop which was established in 1998. Both are architects who began their studies at the then University of Natal (now University of Kwa Zulu Natal. Masojada completed a Master of Architecture at MIT in Boston. Wijgers (1966) is a principal partner at Urban Solutions (US), established in 1994. He studied architecture at the same University, completing a Bachelor of Architecture in 1990. He completed a diploma in Urban Design (with distinction) and a Masters in Urban Design in 1996 (also with distinction) both at Oxford Brookes University in the UK.

Makin was born in Johannesburg and lived in Durban from the age of two. He was exposed to nature and its systems from young age through sailing, hiking, camping in the wild. Together with his cabinet-maker father, he constructed a *Paper Tiger* catamaran when he was 'about 12'. He was exposed to a non-racial, non-sexist world through his parents' range of voluntary community work. He 'recalls the radio announcement of the 1978 Soweto Student Uprising on his twelfth birthday as the day he realised he was living in a deliberately broken society."[335] History of Architecture and a related arts course are cited as the most important influences at university. He worked in various practices in

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334 Andrew Makin as quoted in Law-Viljoen, *Light on a Hill*, 10.

335 Makin CV, source: http://www.uia2014durban.org/inside_the_event/scientific_committee.htm. Designworkshop is quoted as working "across all sectors and is focussed on what urbanism, ruralism and architecture can do, rather than what it can be". Makin was awarded the Sonny Tomkin Award for Best Final Year Student in the School of Architecture [1989] and delivered the Mills Mc Bride Memorial Lecture (NMMB) called 'The City Is The Only Solution' and the Sophia Grey Memorial Lecture (UFS 2006) called 'Borrowing Space &Time'. OMM Designworkshop has been awarded seven Regional Awards of Merit, and four South African Institute of Architecture (SAIA) National Awards of Excellence.

London while studying and returned to South Africa where he established Design Workshop in 1995.

Masojada in her Oral history interview provides some relevant background information on her life and her education and her association with Makin and Wijgers. She completed undergraduate architecture studies at Durban University in the 1980's when all universities were extremely politically conscious and active despite being quite segregated. She refers to an influence from new friends who were highly politicised and engaged in the broader South African politics which brought with it an exposure to the ideas and activities of a more conscious population that one might not otherwise have been aware of. Her post undergrad working experience, known as the architectural 'prac year' was spent abroad where she visited her siblings in the UK and New York where she worked for a period. Her parents encouraged her to look for opportunities to study further, and she was awarded financial aid to complete her Masters Degree at the Massachusetts Institute of Technology (MIT) in Boston in 1988 (Class of 1989). She describes this two and a half years of study time as a 'coming of age' – in an exciting and stimulating environment with students from all over the world exploring ideas in architecture. The MIT thinking at that time evolved from a philosophy of social positioning which was very different to that of Harvard (just up the road in Boston). The school was 'almost stuck in the sixties'. Social movement, social awareness and architecture to support conscience - or architecture as an extension of the way that communities live was the basis of all of their theoretical teaching. It was the opposite of Harvard which was much more stylistic. Masojada explains that it was almost by default that she came to study at MIT, but it was a base of education that she believes had a huge influence in the thinking of the Constitutional Court.

On her return to South Africa she and Makin began working together as individuals on a project by project basis. Their clients were groups and individuals seeking an alternate kind of architectural practice as opposed to the corporate practices. Their work was mainly NGO funded.

> "You were either a corporate architect doing mainstream work or else you were a grassroots architect. And there were very defined communities of practitioners. And the grassroots architects, as they kind of were called at that time, were all people

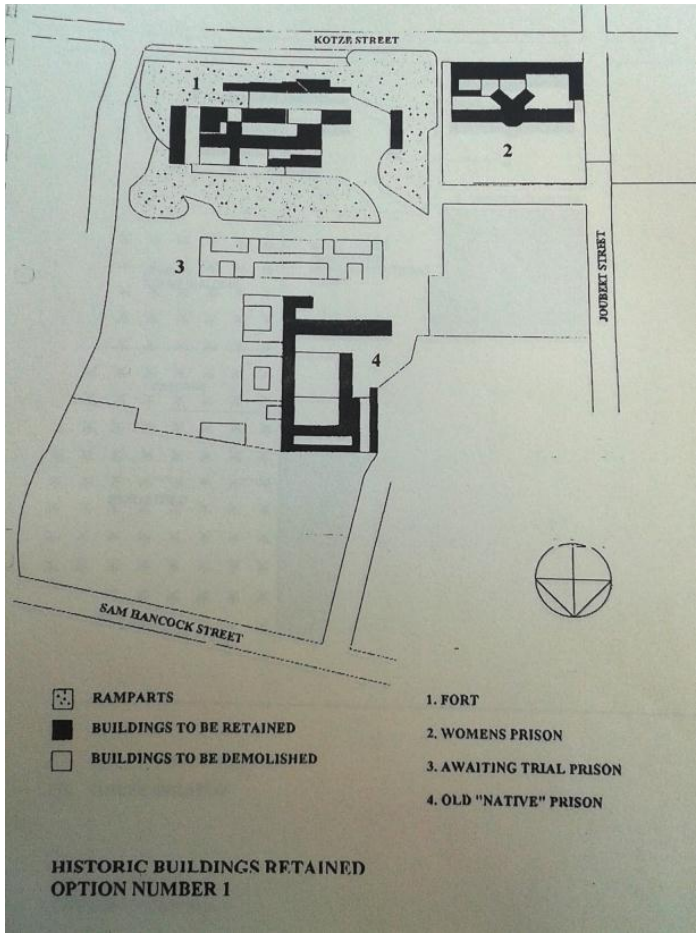
> who came out of a completely different heritage, they were all involved in building in what we call the other side of the hill. Completely different kind of practice, completely different kind of design opportunity, and in a way one had a much greater amount of flexibility in exercising one's design flexibility than one did within a corporate market where you were representing corporate ideals and ambition, within a very market driven idea of what architecture should be about within a sort of postmodern stylistic environment"

Makin and Masojada and a few other architects shared an office and overheads, working as individuals collaborating on a project-by-project basis during a period of transition in the country. She describes the period as a settling period and commitment to 'finally giving up being a part of an international, global, kind of architectural move(ment)'. Masojada speaks of this period in South Africa as a politically and socially dynamic time when people had to face radical choices – white South Africans were rushing out of the country – it was a 'defining time and quite an affirming time'.

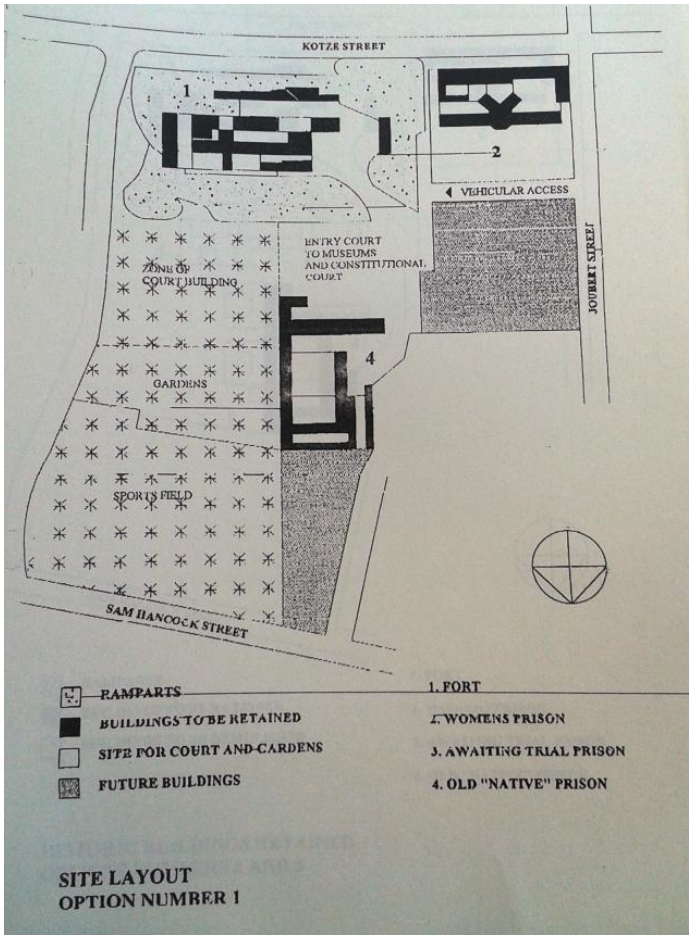
APPENDIX TWO

LAYOUT DRAWINGS ACCOMPANYING THE JAPHA MEMORANDUM (SEPTEMBER 1996)

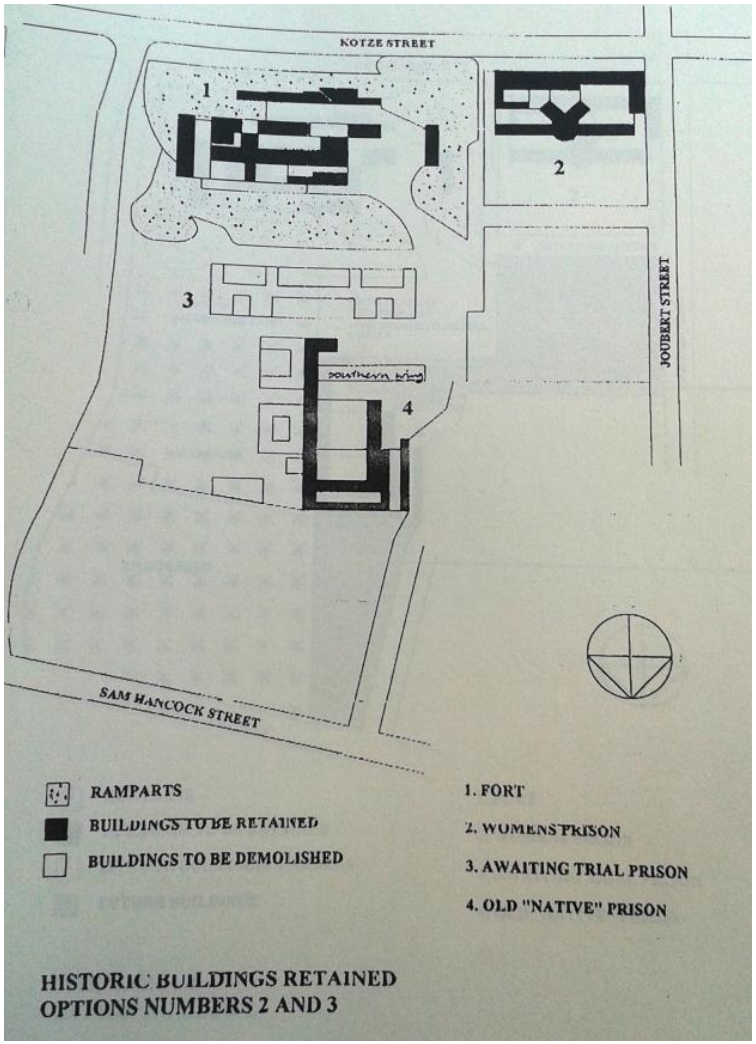
Source: Constitutional Court Archives, Con-court Building (1996-1997), Box 1.



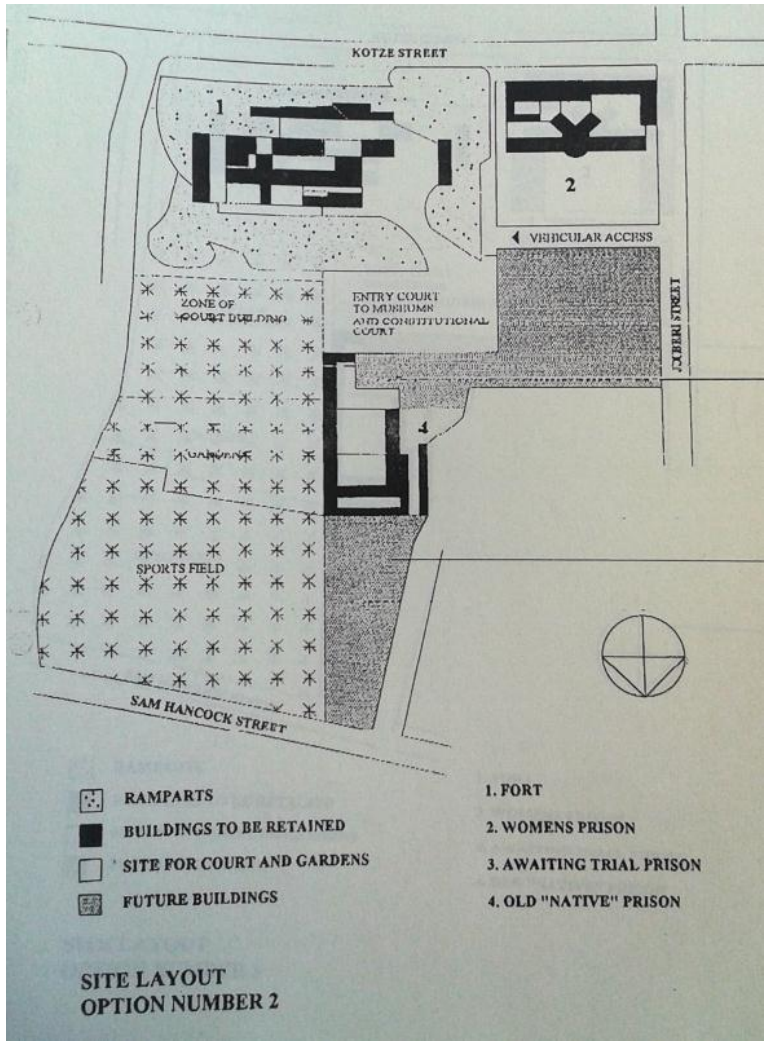
Option One: Historic buildings retained.



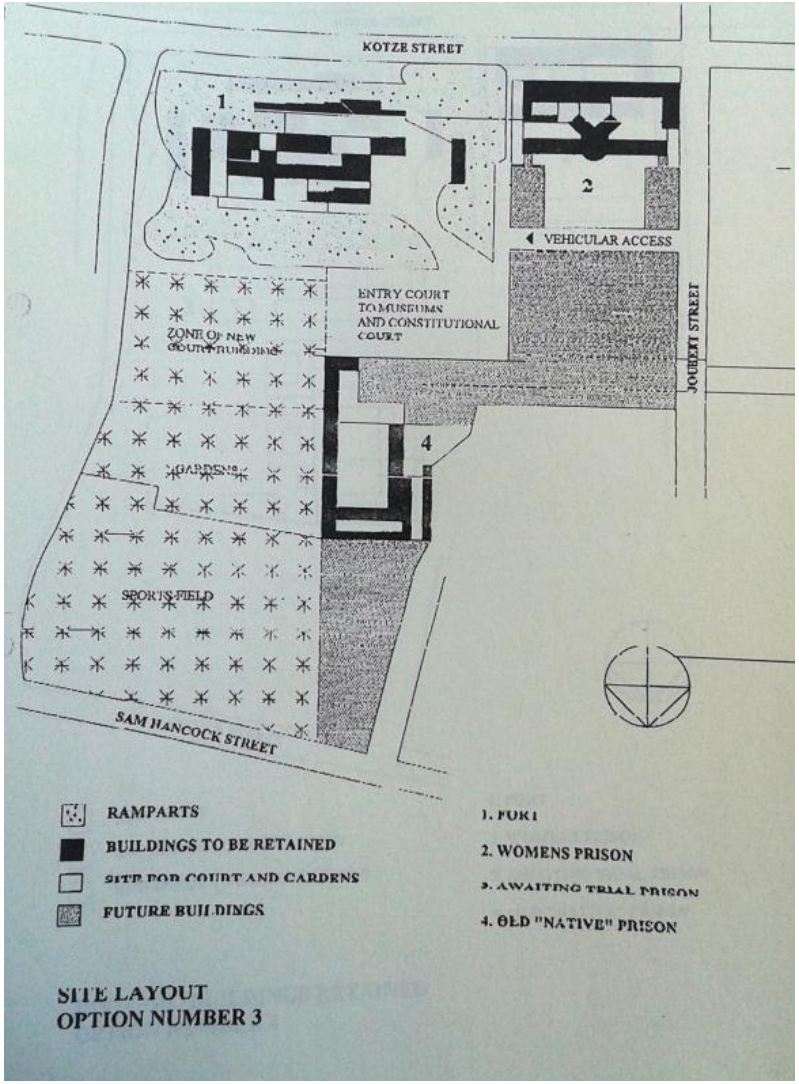
Option One: Site layout.



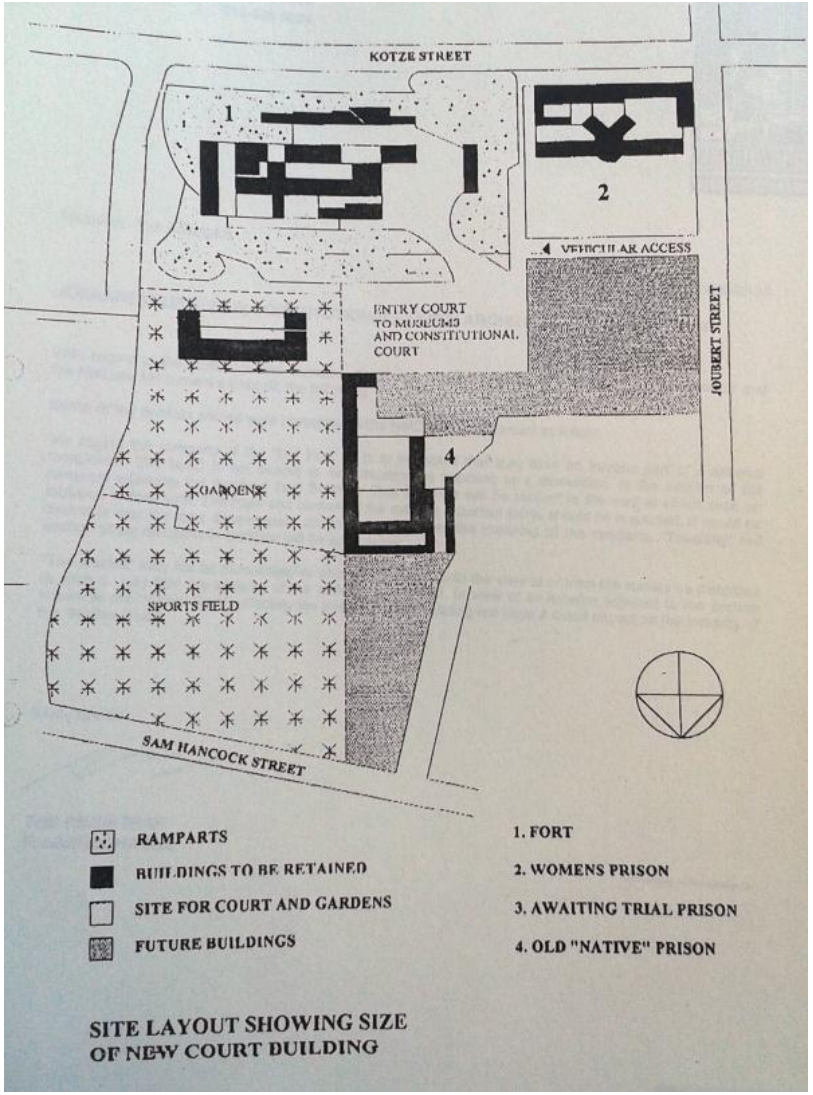
Option Two: (preferred) Historic buildings retained.



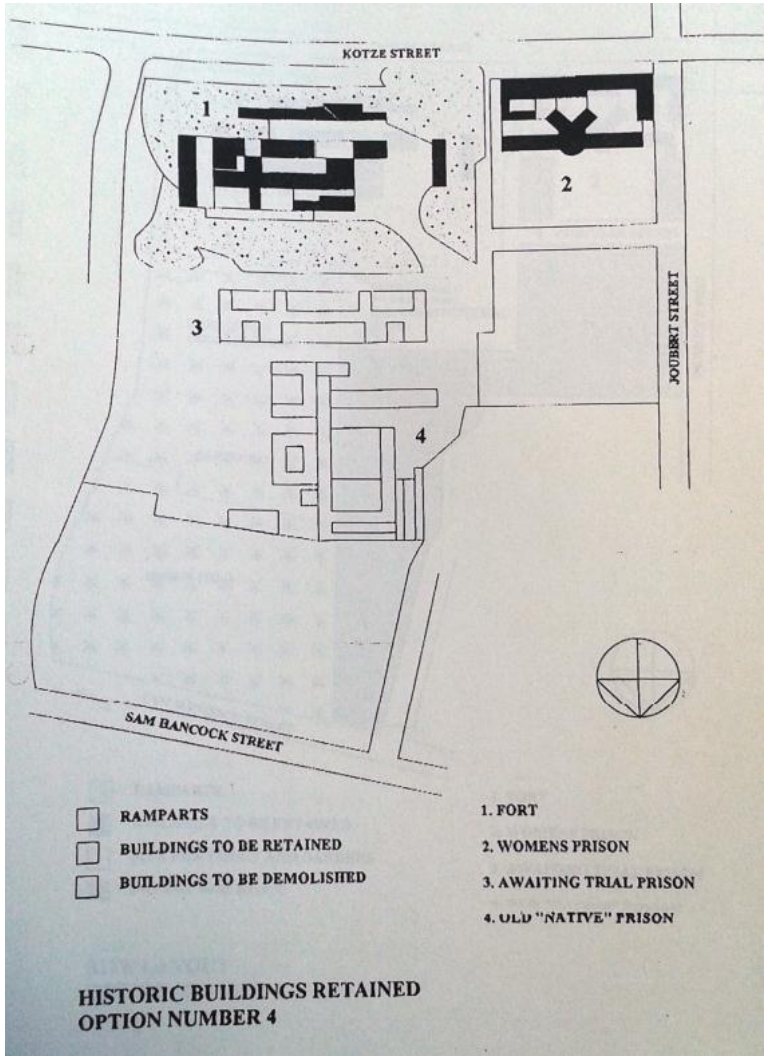
Option Two: Site layout.



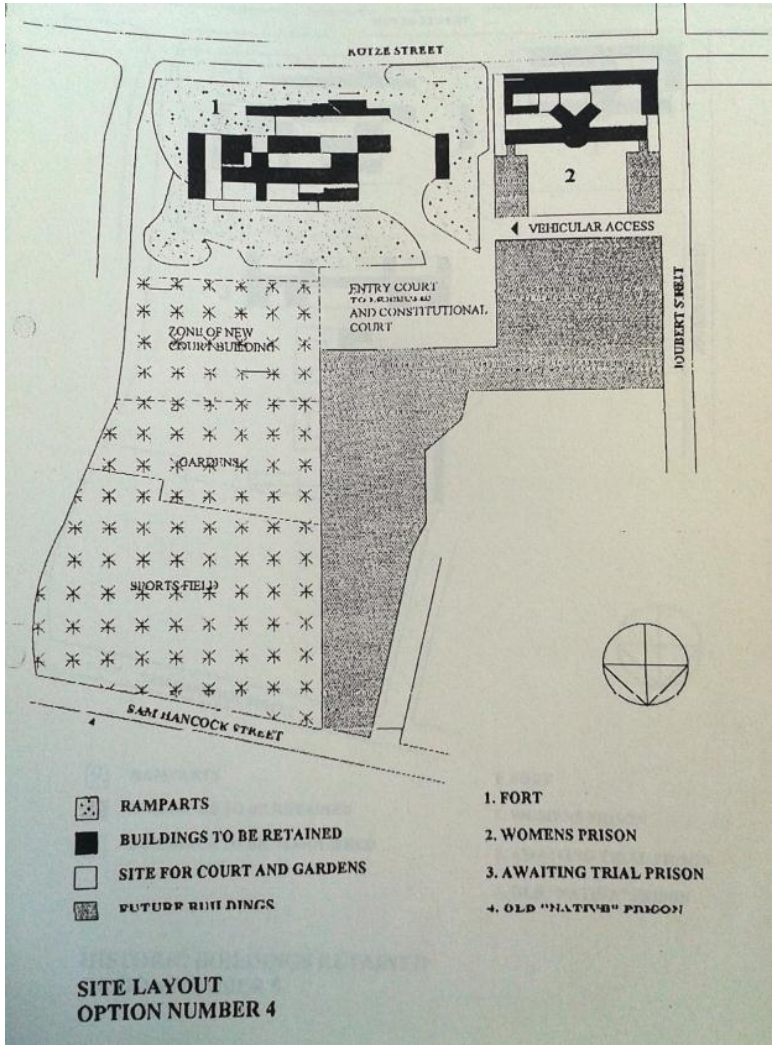
Option Three: Historic buildings retained.



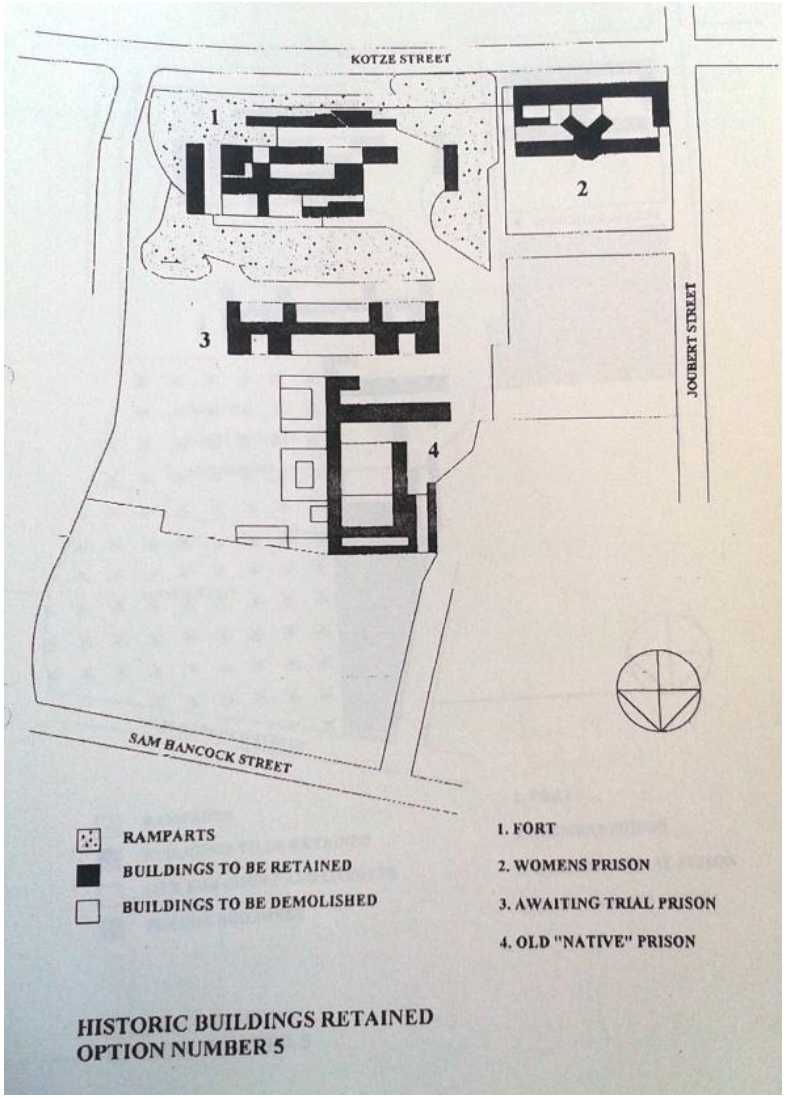
Japhas envisigned poistioning of the Court building



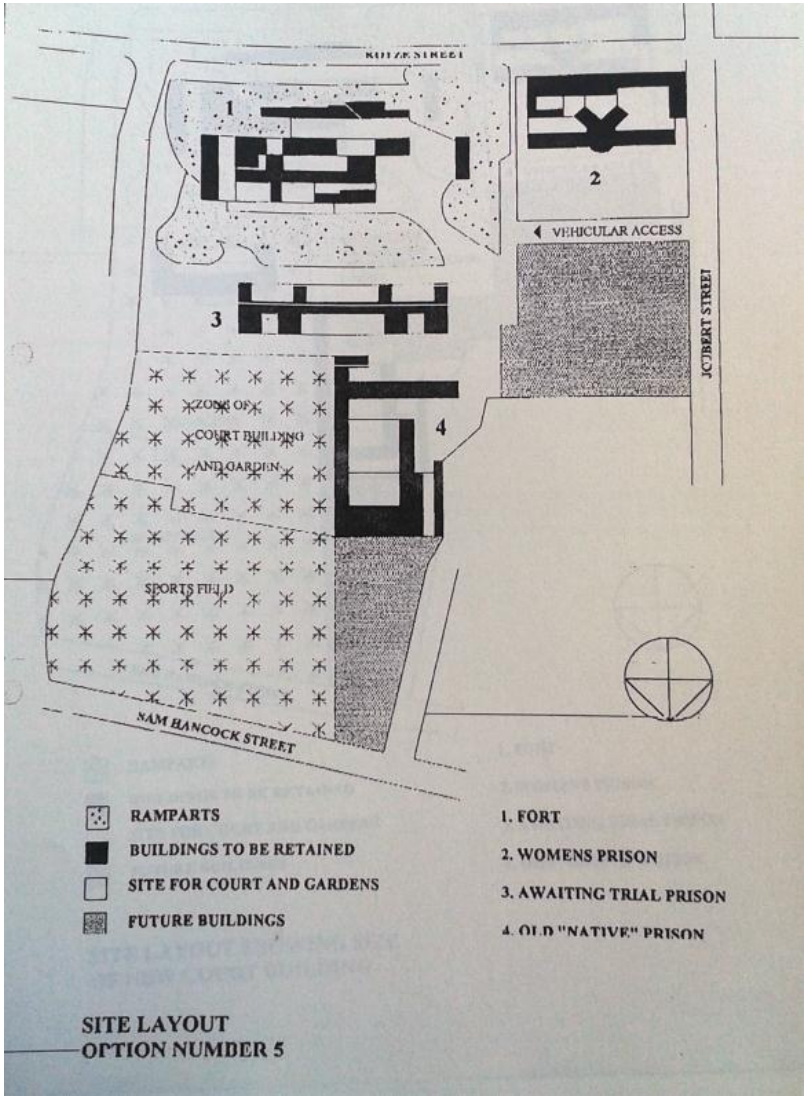
Option Four: Historic buildings retained.



Option Four: Site layout.



Option Five: Historic buildings retained.



Option Five: Site layout.

APPENDIX THREE

IF YOU DON'T SEE ME, CHECK FOR ME AT NUMBER FOUR

The Constitutional Hill prison complex was commonly known as 'Number Four'. Nolundi Ntamo (pass offender) is quoted as saying:

> "My grandmother had taught us to say goodbye when we went to the shops in town, because we never knew if we would come back or not. We used to say, 'If you don't see me, check for me at Number Four,'"[336]

Important political leaders jailed at Number Four included Mahatma Gandhi, Nelson Mandela, Winnie Mandela, Fatima Meer and many more during the colonial and apartheid repressions. The vast majority of prisoners had simply transgressed a discriminatory law. Others were jailed for directly (or even indirectly under detention-without-trial law) participating in political activities against apartheid, and there were those that had committed crimes. Churchill Madikida was a member of the HET team appointed by the JDA in 2002. Madikida et al point out the thin line between political prisoners and so called "criminals", given the nature of the criminal system under apartheid.[337]

The jails were all closed in 1983.

Prisoner workshop - Mapping memories, 2002:

This was the first of a series of workshops held with former prisoners. The project was introduced as multilingual workshop with oral history co-ordinators acting as translators, if required. Assurances were given to participating prisoners that no prior experience was required in the process of mapping their memories. Various means of recording memories were introduced to participants. Once this had been explained, prisoners walked through the jail complex where they were asked to place red flags at places of best and worst memory sites as a means of reacquainting themselves with the site and in order to recall their happiest and saddest moments in jail. The markers were mapped and

336 Madikida et al. 2008: 18.

337 Ibid, 20.

photographed. Cell drawings and family drawings (as part of this exercise) offered a means for former prisoners to map memory. Family drawings gave participants another means of mapping memories.

Prisoner Programmes:

- Pan African Congress (PAC) Prisoners (1960's)
  One of the first workshops held was with the political veterans of the Sharpeville era.
- African National Congress (ANC) Political Prisoners (1980's)
- Black Women Political Prisoners (1976) and (1980)
- White Women Political Prisoners (1960 to 1980)
- Nelson Mandela Visit
  Mandela was imprisoned at Number Four three times (1956, 1958 and 1962)
- Open Day – 22 November 2003
  Calls went out to the public through newspapers and community radio stations to invite ex-prisoners to return to Number Four for open day.
- The warders
  Separate programmes for black and white warders had to be run as discrimination amongst this group lay too close to the surface and many still worked in the prison system at that time.

Lekgotlas:

Lekgotla is a Sotho/Tswana word meaning non-hierarchical dialogue conducted as a public gathering to decide on matters of social importance.

Several on-going *lekgotla* programmes are run at Constitutional Hill as public debates, lectures, seminars and workshop series. Their aim is to provide participants with resources and a space to define their place in a changing South Africa. Topics have dealt with the injustices of the past, people's understanding of their constitutional needs and rights and their experiences of the young constitutional democracy. Series fashioned along these themes have included:

- Our Constitution
- Ten Years On

Present and past campaigns and exhibitions at the Hill have included:

- Who is a Criminal?

  By profiling the range of people incarcerated at Number Four, visitors are asked to reflect on which of these people they believed to be rightly convicted. Questions such as *Are citizens obliged to obey or transgress unjust law?* open debate about visions of justice in the New South Africa.

- We the People

  Communicating with people who lived in Hillbrow and Braamfontein.

- The History of the Future

  A rampart wall exhibition exposing historical and social issues embodied in the site and the new constitution.

- Three Women

  A story of three women who were jailed at different times for very different reasons (Daisy de Melker a murderer, Nomathemba Constance Funani a pass resistor and Jeanni Noel a political activist).