



CGHR WORKING PAPER #12

# Framing Human Dignity: Visual Jurisprudence at the Constitutional Court

***Eliza Garnsey***

*Department of Politics and International Studies, University of Cambridge*

## **Centre of Governance and Human Rights Working Papers**

The **Centre of Governance and Human Rights (CGHR)**, launched in late 2009, draws together experts, practitioners and policymakers from the University of Cambridge and far beyond to think critically and innovatively about pressing governance and human rights issues throughout the world, with a special focus on Africa. The Centre aims to be a world-class interdisciplinary hub for fresh thinking, collaborative research and improving practice.

The CGHR Working Papers Series is a collection of papers, largely peer-reviewed, focussed on cross-disciplinary research on issues of governance and human rights. The series includes papers presented at the CGHR Research Group and occasional papers written by CGHR Associates related to the Centre's research projects. It also welcomes papers from further afield on topics related to the CGHR research agenda.

Series Editors: Sharath Srinivasan & Babak Mohammadzadeh

Publisher: Centre of Governance and Human Rights, University of Cambridge

Contact: [cghr@polis.cam.ac.uk](mailto:cghr@polis.cam.ac.uk), (+44) (0)1223 767 257

**Abstract:** *The South African Constitution affirms “the democratic values of human dignity, equality and freedom”. The Constitutional Court in Johannesburg was established as a key institution in South Africa’s new democracy. Built on the site of a former prison, the Court is not only distinctive architecturally including integrated artworks in the fabric of the building, it is a unique space by international comparison because it houses a large visual art collection developed by and for the Court—the core theme of which is respect for human dignity. Drawing on six months fieldwork at the Constitutional Court—which included fifty-four interviews with judges, staff, artists, advocates, and visitors to the Court—this paper examines the connections between human dignity and art at the Court. The aim is to investigate whether the realisation of human dignity by the Court, is disconnected from the aesthetics of the art collection. Is the performance of dignity in the art collection a utopian ideal, achievable objective, or unrealised potential? The art collection is a kind of visual jurisprudence which responds to, but also comprises, conceptions of human dignity as a right, a value and a touchstone of democracy—conceptions which are closely entwined with South Africa’s human rights governance, but that manifest in very different ways. The collection envisages the journey to human dignity as ongoing; it is promised but remains ungraspable. In this way, the Court is simultaneously a ‘good place’—a site constituting human dignity—and a ‘no place’, a prospect yet to be realised—a sight of human dignity. This tension is important in calibrating an idea of human dignity within a transitioning human rights discourse in South Africa. \**

## 1. Introduction

All human beings are born free and equal in dignity and rights.  
— Universal Declaration of Human Rights<sup>1</sup>

[R]ecognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world... these rights derive from the inherent dignity of the human person.  
— International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights<sup>2</sup>

Everyone has inherent dignity and the right to have their dignity respected and protected.  
— South African Bill of Rights<sup>3</sup>

Inside the Constitutional Court in Johannesburg hangs Humanity (fig. 1). In this tapestry by Joseph Ndlovu, eight figures are woven together; huddled, with closed eyes, their faces merge, their arms embrace in waves of thread. In 1994 Constitutional Court Judges, Albie Sachs and Yvonne Mokgoro, commissioned the tapestry with the intention that it would reflect “the humanity and

---

\* I would like to thank my supervisor, Dr Duncan Bell, and Dr Sharath Srinivasan, Dr David Blunt and the editorial team of this working paper series, for their invaluable reviews, comments and guidance on this paper. Thank you also to Dr Benjamin Authers and participants in the ‘Utopias of Human Rights’ workshop at the Australian National University for their engagement with this paper. This work was kindly supported by the Cambridge Political Economy Society Trust; the Centre of Governance and Human Rights at the University of Cambridge and the Centre for Human Rights and the Institute for International and Comparative Law in Africa at the University of Pretoria, through a grant from the David and Elaine Potter Foundation; the Department of Politics and International Studies at the University of Cambridge; Queens’ College Cambridge; and the Smuts Memorial Fund, managed by the University of Cambridge in memory of Jan Christiaan Smuts.

<sup>1</sup> Article 1 of United Nations, ‘The Universal Declaration of Human Rights’, <<http://www.un.org/en/documents/udhr/index.shtml#a1>>, accessed May 2015.

<sup>2</sup> United Nations, ‘International Covenant on Civil and Political Rights’, <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>, accessed May 2015, United Nations, ‘International Covenant on Economic, Social and Cultural Rights’, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>>, accessed May 2015.

<sup>3</sup> Article 10 of Constitutional Assembly, ‘Bill of Rights’, <<http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng-02.pdf>>, accessed May 2015.

social interdependence that underlay the [South African] Bill of Rights.”<sup>4</sup> Twenty years later—a little faded by exposure to time and light—Humanity still hangs at the Court, capturing a moment in South Africa’s transition from apartheid to constitutional democracy, where the recognition of humanity bore the promise of a future shaped by rights and dignity.

The Constitutional Court is not only distinctive architecturally including integrated artworks in the fabric of the building, it is a unique space by international comparison because it houses a large visual art collection developed by and for the Court—the core theme of which is respect for human dignity: “At the core of the Bill of Rights and of the artistic endeavour represented in the Court is respect for human dignity. It is this that unites art and justice.”<sup>5</sup> The purpose of this paper is to look at the connections between human dignity and art at the Constitutional Court. The aim is to investigate whether the intentional space of human dignity at the Court, is disconnected from the aesthetics of the art collection. Is the performance of dignity in the art collection a utopian ideal, achievable objective, or unrealised potential?

The art collection—as I argue throughout the paper—is a kind of visual jurisprudence which responds to, but also comprises, conceptions of human dignity as a right, a value, and a touchstone of democracy—conceptions which are closely entwined with South Africa’s human rights governance, but that manifest in very different ways. At the same time that human dignity becomes realised by the spatial transformation of the site of the Court, it paradoxically remains in the art collection something that must ever be worked towards, beyond the limits of the Court. In the artworks and the art collection, the journey to human dignity is envisaged as ongoing; it remains ungraspable. In this way, the Court is simultaneously a utopian ‘good place’—a site constituting human dignity—and a utopian ‘no place’, a prospect yet to be realised—a sight of human dignity. This tension is important in calibrating an idea of human dignity within a transitioning human rights discourse in South Africa.

The paper arises out of six months fieldwork at the Constitutional Court spent researching the art collection and its archive, conducting semi-structured interviews with people involved in the collection—including former and current judges, members of the art committee, the collection’s curators, law clerks, artists, Court staff, and, visitors to the Court—and, being a participant-observer in the life of the Court. Nearly all of the fifty-four people interviewed spoke about the art collection as being connected to human dignity, humanity, *ubuntu* (humanness), and human understanding.<sup>6</sup> These terms were often used interchangeably.

Section one briefly explores the concept of human dignity as it manifests as a value, a right, and a touchstone of democracy; focusing on the political trajectory that underlies the promise of human dignity in South Africa. I suggest that the idea of human dignity in human rights discourse is connected in some ways to the indigenous African concept of *ubuntu*—a concept that is fundamental to the way in which the Constitutional Court was founded and realised. Section two introduces the Constitutional Court as a key institution in the ‘new’ South Africa. Built on the site of former notorious prisons, the Court is both physically and symbolically significant, being tangibly connected to the past from which it steers the country’s constitutional future. This spatial transformation, combined with the dignity jurisprudence emerging from the Court, makes it a site of human dignity, where human dignity is intentionally realised and actively shaped.

---

<sup>4</sup> Bronwyn Law-Viljoen and Ben Law-Viljoen, *Art and Justice: The Art of the Constitutional Court of South Africa* (D. Krut, 2008) at 19.

<sup>5</sup> *Ibid.*, at 30.

<sup>6</sup> Interviews were conducted between June to November 2014 in South Africa.

Section three introduces the Court’s art collection as a new kind of visual jurisprudence through which it is possible to understand how the art collection shapes, and has the potential to intervene in, the conception of human dignity emanating from the Court. The artworks play a role in framing human dignity as still to be realised; an ongoing utopia ‘out there’. This unfurling human dignity sits in tension with the site of the Court as an extant place of human dignity. In section four I analyse three individual artworks—*History* by Dumile Feni, Judith Mason’s *The man who sang and the woman who kept silent*, and *Twenty six punishment cells and lavatory, Number Four, Hillbrow, Johannesburg, 32 December 1999* by David Goldblatt—in order to examine how these works conceptualise human dignity.<sup>7</sup> As sights of human dignity the artworks respond to, but also comprise, ideas of human dignity which are closely entwined with South Africa’s human rights governance.

## 2. Human dignity in South Africa’s human rights discourse

The United Nations General Assembly adopted the Universal Declaration of Human Rights (UNDHR) in 1948; South Africa abstained from this adoption.<sup>8</sup> That same year, the South African National Party—the architects of apartheid—came into power. Between 1948 and 1994 the segregation of ‘races’ was institutionalised in South Africa, resulting in violent oppression and the systematic violations of human rights. Speaking from the dock during the Rivonia Trial in 1964 Nelson Mandela emphasised the fight against the lack of human dignity in South Africa:

...we fight against two features which are the hallmarks of African life in South Africa and which are entrenched by legislation, which we seek to have repealed. These features are poverty and lack of human dignity.<sup>9</sup>

Thirty years later—in 1994—human dignity became a hallmark of South Africa for a different reason when the interim constitution—containing the first iteration of the country’s Bill of Rights—stated that “[e]very person shall have the right to respect for and protection of his or her dignity.”<sup>10</sup> In the same year, Mandela re-affirmed this right:

---

<sup>7</sup> It is important note at this point that the Court’s art collection inhabits a paradox between inviting different voices to be expressed and selecting which voices are heard, or in practice seen. On the one hand the collection was formed primarily by donations—donations from artists, collectors, and patrons. The idea that the ‘collection collected itself’ was often stated in interviews as a way in which the art collection inhabits a democratic energy of the immediate post-apartheid period. Those with the ability—financial, artistic—to donate gave artworks to the Court, the majority of which were accepted in the early stages of the collection’s development. This open practice of collecting means the Court’s art collection is diverse and eclectic. On the other hand, the evolving curatorial policy of the collection focuses on the artworks being connected to human dignity—in later years this policy has been more closely followed than at other times. In practice this means that some donations are not accepted on the basis that the artwork does not fit with ideas of human dignity or the funding is not available to care for the artwork; participation is thus limited. While this paradox is not unusual in art collections and adheres to the curatorial rigour and business case required to sustain and responsibly manage large art collections—particularly ones as unique as the Court which have to maintain impartiality—it is worth noting upfront in the context of a discussion of human dignity where equal access to opportunity and participation, as well as the shielding against visual/vocal dominance, is at stake.

<sup>8</sup> United Nations, ‘History of the Document’, <<http://www.un.org/en/documents/udhr/history.shtml>>, accessed May 2015. South African History Archive, ‘The Birth of the Bill of Rights’, <[http://www.saha.org.za/billofrights/the\\_birth\\_of\\_the\\_bill\\_of\\_rights.htm](http://www.saha.org.za/billofrights/the_birth_of_the_bill_of_rights.htm)>, accessed June 2015.

<sup>9</sup> Nelson Mandela, ‘Nelson Mandela’s Statement from the Dock at the Opening of the Defence Case in the Rivonia Trial’, <<http://www.anc.org.za/show.php?id=3430>>, accessed June 2015.

<sup>10</sup> Constitutional Assembly, ‘Interim Constitution’, <<http://www.constitutionalcourt.org.za/site/constitution/english-web/interim/ch3.html>>, accessed June 2015.

...we shall build the society in which all South Africans, both black and white, will be able to walk tall, without any fear in their hearts, assured of their inalienable right to human dignity...<sup>11</sup>

The right to human dignity became entrenched in a vision of the nation reinvented.

The first line of the final 1996 Constitution emphasises human dignity as a founding value of the country: “The Republic of South Africa is one, sovereign, democratic state founded on the following values: (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms...”<sup>12</sup> Human dignity takes prime position in this trinity of values. The Constitution also mandates that human dignity is respected, protected, and promoted in the detention of prisoners, in the interpretation and deliverance of the law, in the development and support of state institutions, and in the commitment sworn by Ministers and their Deputies.<sup>13</sup> The final Bill of Rights (chapter two of the 1996 Constitution) enshrines human dignity further, implanting it as a value that belongs to all people in South Africa, regardless of citizenship: “This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.”<sup>14</sup> The new constitution broke with the past conception of human dignity (or lack thereof) under apartheid as something which the state could violate and deny. Instead it affirms human dignity as what former Constitutional Court Judge, Kate O’Regan, describes as “the touchstone of the new political order”:

Apartheid was a denial of a common humanity. Black people were refused respect and dignity and thereby the dignity of all South Africans was diminished. The new Constitution rejects this past and affirms the equal worth of all South Africans. Thus recognition and protection of human dignity is the touchstone of the new political order and is fundamental to the new Constitution.<sup>15</sup>

In short, the South African Constitution is founded on the value of human dignity, but it also promotes the governance of human dignity.

Human dignity has gained social and political recognition and meaning through its journey in South Africa. It is seen as an individual right, as a collective value of democracy, and as a touchstone of political order. This begs the question, what exactly is meant by human dignity as a right, value, and touchstone? The concept of human dignity encapsulates big ideas “that gain definition through specific historical and cultural narratives.”<sup>16</sup> It is a concept that lacks one meaning but evokes a plethora of feeling and remains a significant idea that cuts across human rights regimes and international norm calibration. Mark Lagon and Anthony Arend trace the essence of human dignity from the ancients through various schools of thought—including Judeo-Christian, Kantian, and secular universalism—to arrive at a working definition of human dignity based on agency and recognition:

---

<sup>11</sup> Nelson Mandela, 'Statement of Nelson Mandela at His Inauguration as President', <<http://www.anc.org.za/show.php?id=3132>>, accessed June 2015.

<sup>12</sup> Constitutional Assembly, *The Constitution (1996)* at 9.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, at 11.

<sup>15</sup> Spencer Wolff, 'Human Dignity and Freedom of Speech in the Post Apartheid State', *Macquarie Law Journal*, 13 (2014), 99-127 at 105.

<sup>16</sup> *Ibid.*, at 107.

Human dignity is the fundamental agency of human beings to apply their gifts to thrive. As such, it requires social recognition of each person's inherent value and claim to equal access to opportunity. To be meaningful, human dignity must be institutionalized in practice and governance.<sup>17</sup>

That is—as in its trajectory in South Africa—human dignity encompasses three things: it is right to agency; it is a recognition of value; and, it is a benchmark of governance and institutional order. While human rights discourse has managed to penetrate state sovereignty in order to foster recognition of the rights of individuals and provide support to this end, Lagon and Arend argue that human dignity is in fact both the premise behind human rights—all human beings are worth something and therefore they all have rights to be possessed and protected—and the product of human rights—“if human rights are to have meaning beyond norm elaboration... and are to be enjoyed in practice, the test of impact is whether they actually yield the agency and social recognition that constitute human dignity.”<sup>18</sup> This conception of human dignity as both the premise and practice of human rights is doubly important in thinking about the aim of this paper, at the heart of which is concerned whether the connections between human dignity and art at the Court go beyond aspirational promises.

Human dignity has come to occupy an important discursive space in the law of South Africa—a space which it should be noted may be recognised in principle in the constitution, but does not automatically manifest in the everyday reality of the country's occupants. As Chief Justice Mogoeng Mogoeng points out:

It doesn't matter how progressive the Constitution is. It cannot, just because it is operative, touch me, in my house to the point where I automatically begin to understand how my white brothers and sisters think and what I need to do to relate to them better. Some practical steps must be taken and we, as a nation, must also be encouraged to take them so that... [t]he 'ubuntu' or that spirit of sharing of humanity, of oneness, that the 1993 constitution provided for... [can] permeate across society.<sup>19</sup>

The concept of human dignity shares some common ground (and some tension) with the indigenous Southern African concept of *ubuntu*.<sup>20</sup> The word *ubuntu* translates from the Nguni Bantu languages roughly as 'humanness'. As a philosophy, *ubuntu* is an ethic of communal existence, which means 'I realise my humanity only when I realise yours', or put another way 'a person is a person through other people'.<sup>21</sup> The idea of *ubuntu* draws on the understanding that people's individual agencies are inherently connected and realised through others. That is, personal humanity is affirmed and afforded by the humanity of others; it is reciprocal and mutually enjoyed, “it is a lived system of norms”.<sup>22</sup> *Ubuntu* draws a connection with human dignity, they are both predicated on the social recognition of human value. Conversely, if that

---

<sup>17</sup> Mark P Lagon and Anthony Clark Arend, *Human Dignity and the Future of Global Institutions* (Georgetown University Press, 2014) at 16.

<sup>18</sup> *Ibid.*, at 322.

<sup>19</sup> As quoted in Drew F Cohen, 'A Constitution at a Crossroads: A Conversation with the Chief Justice of the Constitutional Court of South Africa', *Northwestern University Journal of International Human Rights*, 12/2 (2014) at 132. This idea that the spirit of the Constitution does not exist in everyday reality was a recurring theme in the interviews.

<sup>20</sup> The intention in this paper is not to assert that *ubuntu* and human dignity can simply be assimilated. They derive from very different traditions and are at times are in tension. Rather, the intention here is to point out some connections between the two, particularly as they manifest at the Court.

<sup>21</sup> Wolff, 'Human Dignity and Freedom of Speech in the Post Apartheid State', at 106. For an overview of *ubuntu* as a moral theory see Thaddeus Metz, 'Ubuntu as a Moral Theory and Human Rights in South Africa', *African Human Rights Law Journal*, 11/2 (2011), 532-59.

<sup>22</sup> Tw Bennett, 'Ubuntu: An African Equity', *PER: Potchefstroomse Elektroniese Regsblad*, 14/4 (2011), 29-61.

recognition is denied, lost, or taken away then ubuntu and human dignity are similarly undermined.<sup>23</sup> While the final 1996 Constitution made no express mention of ubuntu (even though the preceding interim Constitution did), the Constitutional Court “regularly emphasise[s] the overlap between ubuntu, rights articulated in the Constitution, and emerging international legal norms.”<sup>24</sup> During interviews with judges, law clerks and staff at the Court, ubuntu was often used interchangeably with human dignity—a slippage indicative of how ubuntu, like human dignity, is embedded in the human rights governance enacted by the Court.

### 3. A site of human dignity

South Africa’s Constitution is characterised by a spirit of transition and transformation.<sup>25</sup> The Constitutional Court has been foundational to the country’s ongoing transition in three ways. First, the Court has played a key role in the symbolic transition of a nation moving to constitutional democracy. Established at the point of transition in 1994, the Court became a symbol of a new justice system, one intended to safeguard human rights. In 2013, the symbolism of the Court was elevated when it became the highest court of appeal in South Africa, having previously been considered the highest court for matters relating only to the constitution.<sup>26</sup>

Second, the Court’s rulings have been central to the institutional transformation of human rights in South Africa. Between 1995 and 2013 the Court heard over 160 cases in which “the constitutionality of legislation was directly challenged as human rights violations... [and] declared legislation unconstitutional in 100 instances.”<sup>27</sup> In its first case in 1995, the Court ruled the death penalty to be unconstitutional.<sup>28</sup> In 2000 the Court ruled that the State must provide access to housing, stating that “[h]uman dignity, freedom and equality are denied to those without food, clothing or shelter”—a declaration which underscores the importance of human dignity as a right in the Court’s decisions.<sup>29</sup> In 2002, when deliberating on the right to health care—specifically the right to access HIV/Aids treatment—the Court stated that “[n]o one should be condemned to a life below the basic level of dignified human existence.”<sup>30</sup> In 2005, the Court ruled in favour of marriage equality, finding the narrow definition of marriage in common law to violate the rights of same-sex couples.<sup>31</sup> These rulings epitomise the dignity jurisprudence emerging from the Court; enabling human dignity underscores the constitutional project, at least in its initial phase.<sup>32</sup>

<sup>23</sup> “In failing to respect the humanity of others we actually undermine humanity in ourselves” in Michael Rosen, *Dignity: Its History and Meaning* (Harvard University Press, 2012) at 157.

<sup>24</sup> Chuma Himonga, Max Taylor, and Anne Pope, ‘Reflections on Judicial Views of Ubuntu’, *PER: Potchefstroomse Elektroniese Regsblad*, 16/5 (2013), 01-61 at 7. The interim constitution was the first official document to use the term ubuntu, see Tw Bennett, ‘Ubuntu: An African Equity’, *ibid.* 14/4 (2011), 29-61. See also Drucilla Cornell, *Ubuntu and the Law: African Ideals and Postapartheid Jurisprudence* (Fordham University Press, 2012).

<sup>25</sup> Pius Langa, ‘The Investigating Directorate: Serious Economic Offences and Others Versus Hyundai Motor Distributors (Pty) Ltd and Others’, Case No. CCT 1/00 (Constitutional Court of South Africa, 2000), 1-43 at 18.

<sup>26</sup> *Government Gazette*, <<http://www.justice.gov.za/legislation/acts/2013-010.pdf>>, accessed February 2015.

<sup>27</sup> Wessel Le Roux, ‘Descriptive Overview of the South African Constitution and Constitutional Court’, in Oscar Vilhena, Upendra Baxi, and Frans Viljoen (eds.), *Transformative Constitutionalism: Comparing the Apex Courts of Brazil, India and South Africa* (Pretoria University Law Press, 2013), 135-75 at 171.

<sup>28</sup> Arthur Chaskalson, ‘The State Versus T Makwanyane and M Mchunu’, Case No. CCT/3/94 (Constitutional Court of South Africa, 1995).

<sup>29</sup> Zac Yacoob, ‘Government of the Republic of South Africa and Others V Irene Grootboom and Others’, Case No. CCT 11/00 (Constitutional Court of South Africa, 2000) at 19.

<sup>30</sup> The Court, ‘Minister of Health and Others Versus Treatment Action Campaign and Other’, Case No. CCT 8/02 (Constitutional Court of South Africa, 2002) at 22.

<sup>31</sup> The Court, ‘Media Summary’, <<http://41.208.61.234/uhtbin/cgiisirs/20150611172358/SIRSI/0/520/S-CCT60-04>>, accessed June 2015.

<sup>32</sup> For an overview of the dignity jurisprudence emerging from the Court see Drucilla Cornell, Stu Woolman, and Sam Fuller (eds.), *The Dignity Jurisprudence of the Constitutional Court of South Africa: Cases and Materials*, (1 & 2: Fordham University Press, 2013).

Interestingly, the Court also chooses to visually define itself by these rulings through a billboard which hangs prominently in its art gallery. This visual announcement of the Court's rulings reinforces an appearance of jurisprudence grounded in dignity.

Third, the Court has physically transformed infamous prison sites. As South Africa's first major post-apartheid government building, the Court was built on the site of several former notorious prisons—Number Four, the Women's Gaol, and the Old Fort—where “[v]irtually every important political leader in South African history from Mahatma Gandhi to Nelson Mandela as well as scores of ordinary South Africans caught in the web of colonial and apartheid repression” were once imprisoned—“The old stonewalls tell a century's worth of stories of an iniquitous political system, a brutal penal institution, and the resilience of generations of prisoners.”<sup>33</sup> The Court now stands on the site that once was the awaiting trial block of Number Four prison—the former prison buildings and cells still surround it, and elements of the former buildings form part of it. For instance, the stairwell of the trial block confronts visitors as they enter the Court building. Still showing the original graffiti, it forms part of the wall of the main Court chamber. The Court complex also reused around 150,000 bricks from the former prison buildings. This is particularly evident in the main Court chamber where the exposed recycled bricks serve as a visual reminder—and metaphor that is regularly offered by people working at the Court—that South Africa's constitutional freedom is built with the bricks that once imprisoned the nation.

The building of the Court has physically transformed the site of human dignity—what was once a place that violated human rights is now a place that protects them:

...symbolic of the constitutional project of creating a bridge between a terrible past and a brighter future. It is not a bridge that can simply be crossed once, leaving the past behind. It is a bridge that must be crossed again and again in the constant search for justice in our young democracy. The Prison in the Court and the Court in the Prison is a constant reminder of this fact.<sup>34</sup>

The bricks in the new building force together what was—the prison—and what is—the Court—in order to capture what can be—the realisation of human dignity in this space.<sup>35</sup> This spatial transformation resonates with the Court being a utopia ‘somewhere’; a place in which human dignity becomes realised by the intentional transformation of the physical space from a prison site lacking in human dignity, to a site of justice realising—ruling on—and containing human dignity. It is not a conquering of space, but a meeting of two histories.<sup>36</sup>

There is an element of over determination to this site of human dignity. The transformation of the space—and the institution of the Court—was a deliberate move away from the past, at the same time it remains a considered contrast against that past.<sup>37</sup> It is a utopia of human dignity

<sup>33</sup> Lauren Segal, *Number Four: The Making of Constitution Hill* (Penguin Global, 2006) at i. Also see Sarah Longair, 'Unlocking the Doors of Number Four Prison' in Lizelle Bisschoff and Stefanie Van De Peer (eds.), *Art and Trauma in Africa: Representations of Reconciliation in Music, Visual Arts, Literature and Film* (IB Tauris, 2013) at 114.

<sup>34</sup> Melissa Perry, 'The Role of the Courts under the South African Constitution: An Australian Comparison', <<http://www.fedcourt.gov.au/publications/judges-speeches/justice-perry/perry-j-20140221>>, accessed January 2015.

<sup>35</sup> Cooper argues that utopias are about bringing together what is and what could be, in Davina Cooper, *Everyday Utopias: The Conceptual Life of Promising Spaces* (Duke University Press, 2013). To this I add, a third perspective, 'what was'. Utopias are not only about a contrast to the present, but they can also be a desire to move away from the past.

<sup>36</sup> Massey raises the idea that space can be conceived of as a meeting of histories rather than as a surface to be conquered, in Doreen Massey, *For Space* (Sage, 2005) at 4.

<sup>37</sup> The Court building is a contrast to the past by being deeply embedded in memorialising that past. Wessel le Roux describes the Constitutional Court as an apartheid memorial, in Wessel Le Roux, 'War Memorials, the Architecture of the Constitutional Court Building and Countermonumental Constitutionalism', in Karin Van Marle and Wessel Le Roux (eds.),

underscored by an explicit intention to demonstrate how that dignity is enacted through the specific transformation of architecture—prisons into a court. The spatial transformation of human dignity is realised through the physical building of the Court, while the jurisprudential transformation of human dignity remains ongoing through the practices and judgements of the Court. In this way, the symbolic, institutional, and physical transformations *by* the Court, *in* the Court, and *of* the Court, position it as a site constituting human dignity; a utopia realised through an extant space.<sup>38</sup>

#### 4. The visual jurisprudence of human dignity

In such close proximity to the provision of justice enacted by the Court, the art collection inhabits a unique position in which the assumptions of human dignity and what it means to uphold human rights can be probed. Artworks—and the art collection as a whole—are complex sights of gathering which have the potential to intervene in the past, the present, and the future; they embody an inherent subjectivity which is part of their dynamic complexity and potential.<sup>39</sup> Unlike the physical site of the Court which positions human dignity as an intentional utopia somewhere—a place—the art collection captures discursive sights of human dignity in the process of becoming; forever an unfolding journey to a utopia ‘out there’, a direction. The art collection does not represent a utopia, or imagine a utopia, or dream a utopia—an alternative—as is so often theorised in the realm of art. Rather, the art collection is a kind of visual jurisprudence which frames and re-frames the conceptions of human dignity emanating from the Court; in doing so, the collection frames human dignity as a utopia still to be achieved, not an ideal image to be followed.

The idea of visual jurisprudence is a relatively recent one, most often conceived as the “array of visual evidence and visual argument” used inside the courtroom.<sup>40</sup> Richard Sherwin uses the term to examine the proliferation of visual media—particularly screen imagery—in the law, exploring what it means for visuals to be seen as credible and calling for visual literacy training for lawyers, judges and jurors.<sup>41</sup> Other areas of law examine the visual, but do not go as far as to use the term visual jurisprudence.<sup>42</sup> What these discussions about the visual in law have in common is the idea that visuality has the potential to engender belief, particularly when applied to, and probed by, systems of justice. This is perhaps more obvious in particular instances, such as when visuals—for example CCTV footage—are presented as evidence during a case.

The conception of visual jurisprudence I am proposing here is slightly different because it takes as its starting point the inherently subjective world of visual art. More than this, it is a specific conception of art as visual jurisprudence in the context of South Africa’s Constitutional Court where the presence of the art collection in the Court, and the integration of art into the fabric of

---

Law, Memory, and the Legacy of Apartheid: Ten Years after *Azapo V. President of South Africa* (PULP, 2007), 65-92. Also see this chapter for an in-depth description and consideration of the architecture of the Court.

<sup>38</sup> Utopias are characterised by transformation, see Lyman Tower Sargent, *Utopianism: A Very Short Introduction* (Oxford University Press, 2010). And Ruth Levitas, 'Introduction: The Elusive Idea of Utopia', *History of the Human Sciences*, 16/1 (2003), 1-10.

<sup>39</sup> The idea that artworks are complex sights of gathering which have the potential to intervene in the past, the present, and the future emerges from Walter Benjamin’s idea of the dialectical image as a temporal constellation, see Walter Benjamin, *The Arcades Project* (Harvard University Press, 1999) at 462.

<sup>40</sup> Richard K. Sherwin, 'Visual Jurisprudence', *New York Law School Law Review*, 57/11 (2012), 11-39 at 12.

<sup>41</sup> *Ibid*, Richard K Sherwin, *Visualizing Law in the Age of the Digital Baroque: Arabesques and Entanglements* (Routledge, 2011).

<sup>42</sup> For example see Neal Feigenson, 'The Visual in Law: Some Problems for Legal Theory', *Law, Culture and the Humanities*, 10/1 (2014), 13-23. And Desmond Manderson, 'The Law of the Image and the Image of the Law: Colonial Representations of the Rule of Law', *New York Law School Law Review*, 57 (2012 2012), 153-68.

the building, is a unique instance where art is closely connected to, and blended with, the deliverance of law and the site of human dignity. If jurisprudence is the theory or philosophy of law, then visual jurisprudence—as I see it—is the philosophy of the visual in law, which extends to visuals both inside and outside the courtroom. Put differently, visual jurisprudence revolves around how visibility effects and affects the thinking of law not only by engendering belief (inside the courtroom) but also by engaging the moral imagination (outside the courtroom).<sup>43</sup> Art as visual jurisprudence in the context of the Constitutional Court is central in forming the bodies of aesthetic knowledge that shape how law—specifically the enactment of this law in shaping human dignity—is understood, and even more so in forming the bodies of knowledge that shape the appearance of human dignity in South Africa. By looking at the artworks and the art collection as a kind of visual jurisprudence (different from the existing understanding of visual evidence used in the administration of the law) it is possible to excavate how ideas of human dignity are framed at the Court.

### 5. Sights of human dignity

Outside the main entrance to the Constitutional Court sits a large bronze sculpture made up of four figures. The largest of the figures rests on all fours in an animal-like position, bit between teeth, the man is strapped to a cart, pulling the other figures along. On the cart crouches another figure, on which two other figures—a woman indicated by her bare chest and a man implied by his bowler hat—sit. At first encounter this sculpture—entitled *History* by Dumile Feni (fig. 2)—resonates “with the history of servitude that marked the dehumanizing institution of apartheid.”<sup>44</sup> The sculpture appears as a visual metaphor for the subjugated majority whose labor supports the dominant minority; the man is yoked to the cart, dragging its occupants. *History* provokes questions about the relationships between the figures and the relationship of the sculpture to the Court—why would the Court have a sculpture that references oppression outside its main entrance?

All the figures share similar abstracted and exaggerated features. This complicates the initial reading of the artwork as a slave-master dynamic, especially in the context of South Africa where oppression has historically been divided along ‘racial’ lines. *History*—as it looms large in its current state outside the Court—was cast from a small marquette Feni made in 1987, shortly before he died in 1991. According to Sachs, the artist intended the sculpture to illustrate “how throughout history some people had given their bodies and souls to pull others along.”<sup>45</sup> On tours the curator extends this explanation to provide an interpretation of the artwork as a characterisation of universal human relationships, a sentiment echoed by the Court:

...the man drawing the cart is the only figure who is large and strong enough to accomplish this task... the four figures carry each other in a way that reflects the dependence, the interconnectedness, and the tension that have always characterized human relationships.<sup>46</sup>

<sup>43</sup> John Lederach uses the term ‘moral imagination’ to refer to “the capacity to imagine something rooted in the challenges of the real world” in John Paul Lederach, *The Moral Imagination: The Art and Soul of Building Peace* (Oxon: Oxford University Press, 2004).

<sup>44</sup> Edwin Cameron and Albie Sachs, ‘Celebrating Transition: Apartheid to Democracy’, *World Policy Blog* (World Policy Institute, 2014).

<sup>45</sup> Law-Viljoen and Law-Viljoen, *Art and Justice* at 193.

<sup>46</sup> Cameron and Sachs, ‘Celebrating Transition: Apartheid to Democracy’.

At first look *History* resembles the history of oppression in South Africa; at second look the sculpture can be interpreted as how throughout history humans have carried one another. A third look at *History* reveals how it communicates multiple ideas about human relationships. Human participation is a central concern of the artwork, but not one that can necessarily be pinned down. *History* captures a certain complexity of human relationships—each figure within the artwork plays a role through which their value is visually recognised. However, this value is complicated by the implications of power that underscore the image of subjugation and labor. The recognition of human value remains circumscribed by the inherent intricacies and dynamics of human relationships; individual and collective human agencies are in tension.

Although conceptually ambiguous, the sculpture is physically accessible. Being located outside the main entrance to the Court, means *History* inhabits a space that acts as a pedestrian thoroughfare between the inner city suburbs of Braamfontein and Hillbrow. *History* is a monumental reminder to the ongoing journey to achieve human dignity. At the same time that it provokes questions about the value of human dignity, it challenges the right to human dignity. While the interpretation of the artwork is not as straightforwardly optimistic as the official reading provided by the Court may suggest, the sculpture does probe what it means for humans to coexist.<sup>47</sup> *History* confronts the viewer to think more deeply about the balances of power and structures of dominance that have underscored, and continue to underscore, human relationships—especially in South Africa where the dominance of the ‘haves’ over the ‘have nots’ remains poignant. This challenge speaks to the very heart of the ability of the Court to uphold human dignity in the face of ongoing structural injustices that inhibit the equalising right to human dignity stipulated by the Constitution.

Inside the main art gallery section of the Court building, hangs Judith Mason’s *The Man Who Sang and the Woman Who Kept Silent* 1998 (fig. 3)—also known as *The Blue Dress*. The three-part installation commemorates the deaths of Phila Ndwandwe and Harold Sefola who were killed during the struggle against apartheid. Suspended from the double-height ceiling is a blue dress, sewn from segments of plastic bags, on which Mason has written:

Sister, a plastic bag may not be the whole armour of God, but you were wrestling with flesh and blood, and against powers, against the rulers of darkness, against spiritual wickedness in sordid places. Your weapons were your silence and a piece of rubbish. Finding that bag and wearing it until you were disinterred is such a frugal, commonsensical, house-wifely thing to do, an ordinary act... At some level you shamed your captors, and they did not compound their abuse of you by stripping you a second time. Yet they killed you. We only know your story because a sniggering man remembered how brave you were. Memorials to your courage are everywhere; they blow about in the streets and drift on the tide and cling to thorn-bushes. This dress is made from some of them. *Hambe kahle. Umkhonto.*

Mason wrote this epitaph to Ndwandwe after hearing the testimony of her killer at the Truth and Reconciliation Commission. She recalls weeping when hearing how Ndwandwe was shot by security police after being kept naked for weeks “in an attempt to make her inform on her

---

<sup>47</sup> While the Court is freely accessible, the curator or a tour guide often leads viewers through the art collection. The curatorial interpretation of artworks plays an important role in setting-up viewers for an experience at the Court. However, the subjective nature of artworks means that these official readings can be ‘flipped’. The utopian charge in fact lies in the critique of artworks; they are not straightforward visions of human dignity, they are interventions in conceptions of what human dignity means and entails.

comrades”.<sup>48</sup> Mason describes that Ndwandwe “preserved her dignity by making panties out of a blue plastic bag. This garment was found wrapped around her pelvis when she was exhumed.”<sup>49</sup>

In *The Blue Dress*, the blue plastic bag becomes a sign of dignity; a sign emphasising the value of individual human dignity in the face of collective indignity. This same idea is also reflected in the painting about Sefola, who before being electrocuted by the security police sang *Nkosi Sikelel' iAfrika* (God Bless Africa); now South Africa's national anthem. Sefola's act of resistance—singing in the face death—shares similar overtones to Ndwandwe's resistance in remaining silent. Sefola upheld his human dignity through voice; Ndwandwe upheld hers through silence. Mason imparts these stories through a visual memorial in which she emphasises the role of individual people against the collective regime of apartheid—symbolised in part in the paintings where the candles shine brightly against the hyenas lurking in the background. The value of individual human dignity is preserved through these acts of resistance and in the commemoration of these acts.

Ndwandwe's and Sefola's stories are discursive memories for the people who work at the Court. Several judges spoke about *The Blue Dress* epitomising human dignity and the type of injustices the Court is trying to protect against; an artwork living in the 'judicial consciousness' of the Court.<sup>50</sup> This idea is particularly pertinent in considering *The Blue Dress* as a kind of visual jurisprudence. While the value of human dignity is preserved in the artwork, *The Blue Dress* lives on in judicial consciousness as something which must be prevented—Ndwandwe's and Sefola's murders should never be repeated—it also remains a vision of human dignity—resistance against tyranny—which should be strived towards. The artwork inhabits a tension of human dignity being achieved and needing to be achieved again; inspiring the moral imagination toward human dignity, in a process that warns against its lack and encourages its presence.

At the entrance to the Number four museum—less than 50 metres from the Court—is a quote from Mandela, writ large, which says:

It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones — and South Africa treated its African citizens like animals.

Inside the museum, 26 isolation cells still exist in their original state; their stiflingly small walls bear the marks and graffiti of former inmates. These cells are physical reminders of the brutality of the apartheid regime. Standing outside the cells, the Court's library tower and logo are visually prominent; looming large, a tree of justice casting its shadow on the prison. The site of the Court is a constant reminder of the violations of human rights it now protects; a site of utopia in which what was—the apartheid past—collides with what is—constitutional democracy—to imagine what could be—a future shaped by human dignity. While this collision intentionally happens on site, it remains unsettling in the sights of the art collection.

The isolation cells have a prominent presence inside the Court. Hanging in the corridor the judges and their clerks use to enter the court chamber, is David Goldblatt's photographic work, entitled *Twenty-six punishment cells and lavatory. Number Four, Hillbrow, Johannesburg. 31 December 1999* (fig. 4). In this work a photograph of each isolation cell is sandwiched together, so that the work forms one long, horizontal image, over three metres in length—the artwork is longer than

<sup>48</sup> Judith Mason in Albie Sachs, *The Strange Alchemy of Life and Law* (Oxford University Press, 2009) at vii. 'Comrades' refers to Umkhonto we Sizwe (Spear of the Nation) of which Ndwandwe was a member.

<sup>49</sup> Mason in *ibid*.

<sup>50</sup> Four out of the six judges interviewed referred to *The Blue Dress*. 'Judicial consciousness' was a recurring phrase used by the judges during interviews.

the longest wall of an individual isolation cell. Every time a person walks down this corridor they are confronted with the grid-like repetition of these bleak cells. This is even more poignant considering that several of the judges who currently serve or have served on the bench of the Constitutional Court have at one time been incarcerated in isolation cells.<sup>51</sup>

The scale of past abuse under the apartheid regime is emphasised by the repetitive images of the cells in Goldblatt's work, which functions as both a reminder of this past and a warning not to repeat it. As a touchstone of South Africa's new constitutional democracy human dignity is emphasised in Goldblatt's work by its antithesis, what it is not. Human dignity is not the inhuman treatment of a nation's 'lowest citizens', and in practice it cannot be a touchstone if it is not institutionalised in governance. By documenting the desolate inhumanity of the isolation cells, Goldblatt's photographs implicitly urge the viewer not to lose sight of the touchstone of human dignity. That this image is located at the private judicial entrance to the Court chamber serves as a well-crafted reminder of this touchstone (as negative liberty) for the people who protect it the most. The art collection shifts from judicial consciousness to judicial confrontation.

Each of artworks discussed, offer a different perspective on the idea of human dignity and probe the notion of what human dignity as the promise of human rights means and entails in the context of the Constitutional Court. The artworks and the art collection—like the Constitution itself—are signs that the promise of human dignity is underway in South Africa, but these signs alone do not represent the fulfillment of this right, value, and touchstone. Rather, the artworks point to the past so that the future may be shaped along more dignified lines. While the artworks are curated in a such a way as to elicit reflections on human dignity—the sculpture outside the entrance, the ghostly dress hanging in the gallery, the images of cells confronting the judges—their subjective and complex nature make it more difficult for a human dignity narrative to be over determined. This is in contrast to the site of the Court, where the space is actively transformed to constitute human dignity. The sights of human dignity in the art collection position it as ongoing and relational; a utopia 'out there' in the process of being grasped.

## 6. Conclusion

The paper began by looking at the conception of human dignity offered in South Africa's Constitution, briefly outlining how it is conceived in three ways: as a right; as a value; and, as a touchstone of political order. Section two introduced the Constitutional Court as a site of human dignity, which has undergone symbolic, institutional, as well as physical transformations. These transformations position the Court as a place of intentional human dignity; a utopia somewhere, realised by the containment and enactment of human dignity. In section three I proposed the art collection as a kind of visual jurisprudence in order to understand how the idea of human dignity is framed by the artworks and intervene in the site of the Court. The artworks discussed in section four respond to the three notions of human dignity as a right, a value, and a cornerstone of political order expressed in South African human rights discourse. More than being simply a mirror however, they are a new kind of visual jurisprudence which bring together stories, ideas, and complexities to probe the notion of what human dignity means and how it can be achieved in contemporary South Africa.

South Africa's Constitution is a forward-looking document that enshrines the promise of human rights, particularly human dignity as its founding value. The Constitutional Court seeks to uphold and protect these rights in present-day South Africa. By contrast, the art collection looks backward in order to move human dignity forward; it is a way of knowing human dignity differently. In

---

<sup>51</sup> This fact is deliberately emphasised by the curator during tours.

particular, the three artworks by Feni, Mason, and Goldblatt raise the idea that the visual jurisprudence of human dignity lies in the responsibility of those who are doing the looking. Reciprocity is important in recognising and questioning what it means to uphold human dignity against the ramifications of apartheid and historical injustice. Far from being utopian ideals of what human dignity should be, the artworks serve as reminders of past violations of human dignity, underscored by a norm of non-repetition. In doing so, the art collection positions human dignity as a process; a utopia still 'out there'. This sits in contrast with the site of the Court, where its spatial transformation constitutes a utopia somewhere; an intentional realisation of human dignity in time and space. These tensions are important in understanding what human dignity means and entails in South African human rights discourse.

### Reference list

- Benjamin, Walter (1999), *The arcades project* (Harvard University Press).
- Bennett, TW (2011), 'Ubuntu: an African equity', *PER: Potchefstroomse Elektroniese Regsblad*, 14 (4), 29-61.
- Bisschoff, Lizelle and Van de Peer, Stefanie (eds.) (2013), *Art and trauma in Africa: representations of reconciliation in music, visual arts, literature and film* (IB Tauris).
- Cameron, Edwin and Sachs, Albie (2014), 'Celebrating Transition: Apartheid to Democracy', *World Policy Blog* (World Policy Institute).
- Chaskalson, Arthur (1995), 'The State versus T Makwanyane and M Mchunu', *Case No. CCT/3/94* (Constitutional Court of South Africa).
- Cohen, Drew F (2014), 'A Constitution at a Crossroads: A Conversation with the Chief Justice of the Constitutional Court of South Africa', *Northwestern University Journal of International Human Rights*, 12 (2).
- Constitutional Assembly (2015), 'Bill of Rights', <<http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng-02.pdf%3E>, accessed May.
- (2015), 'Interim Constitution', <<http://www.constitutionalcourt.org.za/site/constitution/english-web/interim/ch3.html%3E>, accessed June.
- (1996), *The Constitution*.
- Cooper, Davina (2013), *Everyday utopias: The conceptual life of promising spaces* (Duke University Press).
- Cornell, Drucilla (2012), *Ubuntu and the law: African ideals and postapartheid jurisprudence* (Fordham University Press).
- Cornell, Drucilla, Woolman, Stu, and Fuller, Sam (eds.) (2013), *The Dignity Jurisprudence of the Constitutional Court of South Africa: Cases and Materials*, (1 & 2: Fordham University Press).
- Feigenson, Neal (2014), 'The Visual in Law: Some Problems for Legal Theory', *Law, Culture and the Humanities*, 10 (1), 13-23.
- Gazette, Government (2015), <<http://www.justice.gov.za/legislation/acts/2013-010.pdf%3E>, accessed February.
- Himonga, Chuma, Taylor, Max, and Pope, Anne (2013), 'Reflections on judicial views of ubuntu', *PER: Potchefstroomse Elektroniese Regsblad*, 16 (5), 01-61.

- Lagon, Mark P and Arend, Anthony Clark (2014), *Human Dignity and the Future of Global Institutions* (Georgetown University Press).
- Langa, Pius (2000), 'The Investigating Directorate: Serious Economic Offences and Others versus Hyundai Motor Distributors (PTY) LTD and Others', *Case No. CCT 1/00* (Constitutional Court of South Africa), 1-43.
- Law-Viljoen, Bronwyn and Law-Viljoen, Ben (2008), *Art and justice: the art of the Constitutional Court of South Africa* (D. Krut).
- Le Roux, Wessel (2007), 'War memorials, the architecture of the Constitutional Court building and countermonumental constitutionalism', in Karin Van Marle and Wessel Le Roux (eds.), *Law, memory, and the legacy of Apartheid: Ten years after AZAPO v. President of South Africa* (PULP), 65-92.
- (2013), 'Descriptive overview of the South African Constitution and Constitutional Court', in Oscar Vilhena, Upendra Baxi, and Frans Viljoen (eds.), *Transformative Constitutionalism: Comparing the Apex Courts of Brazil, India and South Africa* (Pretoria University Law Press), 135-75.
- Lederach, John Paul (2004), *The Moral Imagination: The Art and Soul of Building Peace* (Oxon: Oxford University Press).
- Levitas, Ruth (2003), 'Introduction: the elusive idea of utopia', *History of the Human sciences*, 16 (1), 1-10.
- Mandela, Nelson (2015), 'Nelson Mandela's statement from the dock at the opening of the defence case in the Rivonia Trial', <<http://www.anc.org.za/show.php?id=3430%3E>, accessed June.
- (2015), 'Statement of Nelson Mandela at his Inauguration as President', <<http://www.anc.org.za/show.php?id=3132%3E>, accessed June.
- Manderson, Desmond (2012), 'The Law of the Image and the Image of the Law: Colonial Representations of the Rule of Law', *New York Law School Law Review*, 57, 153-68.
- Massey, Doreen (2005), *For space* (Sage).
- Metz, Thaddeus (2011), 'Ubuntu as a moral theory and human rights in South Africa', *African Human Rights Law Journal*, 11 (2), 532-59.
- Perry, Melissa (2015), 'The Role of the Courts under the South African Constitution: An Australian Comparison', <<http://www.fedcourt.gov.au/publications/judges-speeches/justice-perry/perry-j-20140221%3E>, accessed January.
- Rosen, Michael (2012), *Dignity: its history and meaning* (Harvard University Press).
- Sachs, Albie (2009), *The strange alchemy of life and law* (Oxford University Press).
- Sargent, Lyman Tower (2010), *Utopianism: a very short introduction* (Oxford University Press).
- Segal, Lauren (2006), *Number four: the making of Constitution Hill* (Penguin Global).
- Sherwin, Richard K (2011), *Visualizing law in the age of the digital baroque: Arabesques and entanglements* (Routledge).
- Sherwin, Richard K. (2012), 'Visual Jurisprudence', *New York Law School Law Review*, 57 (11), 11-39.
- South African History Archive (2015), 'The Birth of the Bill of Rights', <[http://www.saha.org.za/billofrights/the\\_birth\\_of\\_the\\_bill\\_of\\_rights.htm%3E](http://www.saha.org.za/billofrights/the_birth_of_the_bill_of_rights.htm%3E), accessed June.

The Court (2015), 'Media Summary',  
<<http://41.208.61.234/uhtbin/cgiisirs/20150611172358/SIRSI/0/520/S-CCT60-04%3E>, accessed June.

--- (2002), 'Minister of Health and Others versus Treatment Action Campaign and Other', *Case No. CCT 8/02* (Constitutional Court of South Africa).

United Nations (2015), 'History of the Document',  
<<http://www.un.org/en/documents/udhr/history.shtml%3E>, accessed May.

--- (2015), 'The Universal Declaration of Human Rights',  
<<http://www.un.org/en/documents/udhr/index.shtml - a1%3E>, accessed May.

--- (2015), 'International Covenant on Economic, Social and Cultural Rights',  
<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx%3E>, accessed May.

--- (2015), 'International Covenant on Civil and Political Rights',  
<<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx%3E>, accessed May.

Wolff, Spencer (2014), 'Human Dignity and Freedom of Speech in the Post Apartheid State',  
*Macquarie Law Journal*, 13, 99-127.

Yacoob, Zac (2000), 'Government of the Republic of South Africa and Others v Irene Grootboom and Others', *Case No. CCT 11/00* (Constitutional Court of South Africa).



**Figure 1**  
Joseph Ndlovu  
*Humanity* 1994  
Tapestry, 181.4 x 150.5cm  
Photograph courtesy of the Constitutional Court



**Figure 2**

Dumile Feni

*History* 2003

Bronze

Photography by Akona Kenqu



**Figure 3**  
Judith Mason  
Installation view of *The man who sang and the woman who kept silent* 1995  
Mixed media, dimensions variable  
Photography by Akona Kenqu



**Figure 4**

David Goldblatt

Installation view of *Twenty six punishment cells and lavatory, Number Four, Hillbrow, Johannesburg, 32 December 1999*

Photographic print on cotton paper

Photography by Akona Kenqu



UNIVERSITY OF  
CAMBRIDGE

Centre of Governance and Human Rights

**Citation:** Garnsey, E., (October 2016) 'Framing Human Dignity: Visual Jurisprudence at the Constitutional Court', *CGHR Working Paper 12*, Cambridge: University of Cambridge Centre of Governance and Human Rights



Copyright: Eliza Garnsey, 2016

You are free:

to copy, distribute, display, and perform the work  
to make derivative works

Under the following conditions:

Attribution — You must give the original author credit.

Non-Commercial — You may not use this work for commercial purposes.

Share Alike — If you alter, transform, or build upon this work, you may distribute the resulting work only under a licence identical to this one.

Please see full details of this license here: <http://creativecommons.org/licenses/by-nc-sa/2.0/uk/>

---

Centre of Governance and Human Rights

POLIS · 7 West Road · Cambridge · CB3 9DT · United Kingdom

[www.cghr.polis.cam.ac.uk](http://www.cghr.polis.cam.ac.uk)

---