**FACTSHEET ON CONSTITUTION HILL**

**BACKGROUND**

Constitution Hill is a National Heritage Site proclaimed on 10 March 2017, and a living museum that tells the story of South Africa’s journey to democracy and reflects the history of Johannesburg.

Nowhere can the story of South Africa's turbulent past and its extraordinary transition to democracy be told as it can be told at Constitution Hill.

In 1995, the historic decision was taken to locate the Constitutional Court of South Africa at Johannesburg’s oldest prison site in the inner city of Johannesburg. The four separate prisons on the site are over 100 years old. They were places of horrific degradation and torture, where political prisoners were jailed among common criminals.

The site provides the opportunity for the public to gain an understanding of the how segregation and apartheid, and the abuse of power by the state, impacted on people’s lives. It also illustrates how people in turn rose up against oppression, for their rights whatever the cost.

The site dates back to 1893, when the doors to the [Old Fort](https://www.constitutionhill.org.za/sites/site-old-fort) first opened as a prison for white men. Later it was turned into a military fort. In the early 20th century, more prison sections were added to the site, including a section for black male prisoners, known as [Number Four](https://www.constitutionhill.org.za/sites/site-number-four), a [Women's Jail](https://www.constitutionhill.org.za/sites/site-womens-jail) and an [Awaiting Trial Block](https://www.constitutionhill.org.za/sites/site-awaiting-trial-block).

After South Africa become a democracy in 1994, the precinct was renamed Constitution Hill and the Constitutional Court was built on the site.

Intense negotiations in the late 1980s and early 1990s with the unbanning of the African National Congress (ANC) and other political parties, plus the freeing of Nelson Mandela and other political leaders.

An Interim Constitution was adopted to come into effect on 27 April 1994, when South Africa held its first democratic elections. Nelson Mandela was elected the first president of democratic South Africa.

This was South Africa’s fourth constitution but its first democratic one. It set in place a revolutionary principle in South Africa’s constitutional history – that the Constitution would be supreme and there would be judicial review to enforce it.

A Constitutional Assembly was mandated to draw up a new, final, constitution within two years. Finally, on 8 May 1996, this final Constitution was adopted as the highest law of the land.

One of President Mandela’s first tasks after his inauguration was the appointment of 11 Constitutional Court justices. The Constitutional Court was inaugurated on 14 February 199, in an office block in Braamfontein, Johannesburg.

On 4 December 1996, the Constitutional Court approved the Constitution of the Republic of South Africa. On 10 December that year, International Human Rights Day, Mandela signed it into law.

He did so in Sharpeville, where 69 people had been shot dead while peacefully protesting against the pass laws on 21 March 1960 in the worst police killing in apartheid history

After a long process to choose a suitable site for its new building, the authorities settled on the site of the Old Fort, where so human rights abuses had occurred over more than a century, as an appropriate location for the Constitutional Court. This symbolic building was opened on 21 March, national Human Rights Day, in 2004.

A walk through the various sites at Constitution Hill is a walk through South Africa’s history from the pain of the past to the hope of a strong democratic future that is still under construction. While these sites witnessed so many abuses, they were also the place where many sacrificed their own freedom for the democratic rights now enshrined in our Constitution.

**HISTORY OF THE PRECINCT**

The original Johannesburg Jail – later known as the Old Fort – was built on orders from President Paul Kruger of the Zuid-Afrikaansche Republiek (ZAR)in 1893, in response to growing concerns about rising crime in the fast-developing mining town of Johannesburg. The prison was the burgeoning city’s first high-security prison. Gold had been discovered on the Witwatersrand in 1886, sparking the biggest gold rush in world history.

In 1896 a group of British loyalists under Leander Starr Jameson tried, but failed, to overthrow the ZAR government in what became known as the Jameson Raid. This incident motivated the government under Kruger to erect a number of forts to strengthen the ZAR’s military capacity and to protect the entrances to major towns such as Pretoria and Johannesburg. The ramparts of the Old Fort were built around the prison between 1896 and 1899 at great cost and using prison labour.

After the Boers surrendered Johannesburg to the British in 1900 during the South African War (also known as the Anglo Boer War), the British used the Old Fort as a lookout, to warn them of the approach of Boer commandos. They also imprisoned Boer prisoners of war here, and executed some as traitors.

By 1904 the Old Fort’s prison population had doubled and the “Number Four” prison was erected to hold Black convicted prisoners. The Women’s Jail was built around 1910. An underground tunnel connects the prison complexes with the old magistrate’s court.

The Old Fort was declared a national monument in 1964. This meant no changes or alterations could be made to the building’s basic structure, even if they would improve the facilities for prisoners.

Throughout its history, the prison complex remained overcrowded and extremely unhygenic. In 1959, this led to an outbreak of typhoid amongst the prisoners.

On 31 January 1983, nearly 100 years after the original jail was built, the prison was closed down and all prisoners were transferred to the new Diepkloof Prison.

**PRISONERS AT THE PRECINCT**

A wide range of prisoners were held at the site over its over 100-year history. They included prisoners of war during the South African War, and those who were considered traitors by the British. Many “traitors” were executed on the site.

Unsubstantiated reports suggest that Winston Churchill was also held briefly at the Old Fort during the South African War, during which he was a war correspondent.

The Old Fort was also the prison in which many white mine workers were imprisoned during a number of strikes that turned into violent rebellion in the early part of the 20th century. In 1922, hundreds of white miners were held at the Old Fort Prison after going on a major strike to protest wage cuts and the proposed removal of job reservations for white workers.

Afrikaner rebels who took up arms against South Africa’s participation in World War One (1914-1918) on the side of Britain and its allies were also imprisoned in the Old Fort. General Christiaan de Wet, a South African War Boer hero, was sentenced in 1914 to six years imprisonment at the Old Fort. He served nearly a year.

The precinct also confined tens of thousands of ordinary: men and women of all races, creeds, ages and political persuasions, the indigenous and the immigrant. In this way, the history of every South African lives here.

Throughout the 20th century, along with common criminals housed in the Old Fort, Number Four and the Women’s Jail, thousands political prisoners were jailed in the complex for violating harsh segregation and apartheid legislation. Some of these laws criminalised people’s efforts to earn a living in Johannesburg. Babies and children were also caught up in the incarcerations.

**Political prisoners**

The jail complex’s political prisoners included participants in the anti-apartheid Defiance Campaigns and other anti-pass protests of the 1950s, the 156 Treason Trial accused, women involved in the struggle against apartheid, including students and children arrested during the Soweto uprising and its aftermath. Political imprisonment at the complex continued into and throughout the 1980s.

Soon after the National Party came to power in 1948, its leaders began to suppress the political opposition that arose in opposition to their imposition of apartheid legislation.

Through the Suppression of Communism Act of 1950, the Communist Party of South Africa was banned. In the years that followed, many members of the Communist Party were detained in the Old Fort prison. After the Sharpeville Massacre in 1960, a State of Emergency was declared that enabled the apartheid government to ban political parties, particularly the African National Congress and the Pan African Congress.

There is perhaps no other site of incarceration in South Africa that imprisoned the sheer number of world-renowned men and women. The include Nobel Peace Prize winners Albert Luthuli and Nelson Mandela, Mahatma Gandhi, Joe Slovo, Sheila Weinberg, Rica Hodgson, Albertina Sisulu, Winnie Madikizela-Mandela, Robert Sobukwe, Ruth First, Fatima Meer, Ellen Kuzwayo, Joyce Seroke and Barbara Hogan.

**PRECINCT KEY SECTIONS**

**Number Four**

The prison section generally known as Number Four comprises sections four and five of the Old Fort prison complex. Black men and boys were imprisoned here, mostly for contravening petty segregation and apartheid laws. They were subjected to severe indignities, and there extreme overcrowding and intimidation by gangs.

The practice of ‘*Tausa’* was notorious as one of the worst indignities. Naked prisoners had to jump in the air, clap their hands and land crouching so that warders could inspect their anuses for any hidden items.

Prisoners were a source of cheap labour for private companies, schools and government institutions. Whereas black prisoners were hired out for hard manual labour, the prison authorities tried to place whites in clerical jobs.

The most severe form of punishment was to be locked up in the ‘*Emakhulukuthu’* or isolation cells. Today visitors can see the cell inmates graffiti, scratched on the isolation cell. gang symbols mixed with political slogans.

The history of organised gangs and the Old Fort is a long one. The first major gang leader Nongoloza (born Mzuzephi Mathebula), who started a gang called, among other names, the Regiment of the Hills in the late 19th century, was imprisoned at the Old Fort in 1899. In the 1950s, many of the gangsters who lived in Sophiatown. Johannesburg, were repeatedly held in Number Four. Gang warfare continued in the prison.

156 activists were arrested in December 1956 and held in the Awaiting Trial Block before being charged with treason. By the time the trial ended in 1961, all the accused had been acquitted.

**The Awaiting Trial Block**

The infamous Awaiting Trial Block was built outside of the ramparts. Thousands of black people passed through this prison. In 2001, the building was demolished to make way for the new Constitutional Court, but staircases were kept, encased in glass, to commemorate this space. Bricks from this building were incorporated into the Constitutional Court as a constant reminder of the site’s history

**The Women’s Jail**

In 1910, construction of the Women’s Jail started. The Victorian building accommodated both black and white prisoners, but in different sections of the building. After closing with the rest of the site in 1983, the Women’s Jail re- opened in October 2004 as part of the Constitution Hill museum site. It also houses South Africa’s Gender Commission.

From the early days of Johannesburg, many African women came to the city to find ways to support themselves. Because economic opportunities were mostly closed to them, many resorted to beer brewing, cooking and selling food and ended up in jail because these were deemed illegal activities.

The 1952 Pass laws made it compulsory, for the first time, for African women to carry “passes” that allowed them passage in “white areas. By restricting movement into urban areas, this law divided families and increased the vulnerability of women.

Throughout the 1950s, the Federation of South African Women organised protest marches against the pass laws. In 1958, many of the 2 000 women who were arrested for protesting against passes were held at the Women’s Jail.

During the State of Emergency in 1960, the police arrested and detained many activists, including mothers. Some of these women were jailed with their babies.

After the 1976 Soweto Student Uprising, teenage girls and women were held here for “indefinite preventive detention” without trial. These women protested against the fact that women prisoners were not even provided with panties or sanitary pads.

One of the last women political prisoners to be transferred from the Women’s Jail was Barbara Hogan on 31 January 1983. TO?

**The Constitutional Court**

President Nelson Mandela inaugurated South Africa’s first Constitutional Court on 14 February 1995. The Court is the guardian of the South African Constitution.

The Republic of South Africa is a sovereign, democratic state founded on the supremacy of the Constitution and the rule of law.

The Judges of the Constitutional Court chose the site of the Old Fort Prison complex as the Court’s new home to symbolise how the pain and terrible suffering of the past could be transformed into hope for the future. In 2004, the Constitutional Court and Constitution Hill were opened.

An international architectural competition was held to find a design for the Constitutional Court building. The court was designed to reflect the openness and transparency called for in the Constitution. The building – its architecture, design and the local art and craft highlighted both outside and inside – is intended to emphasise that the 1996 Constitution applies to all who live in South Africa.

The three South African architects of the Court wanted the building to represent the constitutional values of human dignity, equality and freedom. The doors to the Court carved with depictions of the Bill of Rights’ 27 rights.

The courtyards and chambers of the Justices are secure, quiet and sheltered. The public spaces are more open, with delicate light filtering from above to evoke the African way of “justice under a tree”. The emblem the Court depicts this too, and the foyer is designed to simulate being in the shade of the tree of justice.

The Constitutional Court Trust owns and maintains an extraordinary collection of artworks donated by prominent artists and other benefactors to celebrate the court’s role in South Africa's transition to democracy.

The collection was primarily assembled by Justice Albie Sachs, who practised as a judge at the Constitutional Court from 1994 to 2009. It includes artworks by such high-profile artists as Marlene Dumas, William Kentridge, Dumile Feni, Judith Mason, Willie Bester, Karel Nel, Cecil Skotnes, Hamilton Budaza, Kim Berman, Sue Williamson, Anton van Wouw, John Baloyi, Andrew Verster, Marc Chagall, and many others.

The collection is more than an aesthetic addition to the Constitutional Court building – it is a unique collection of South African and international heritage that contributes to education, critical debate and research on the roles of the Constitution and the Court.

**Early Milestone rulings of the Constitutional Court**

**The First Case in the Constitutional Court:**

* 1995: State v Makwanyane and another.

The Constitutional Court in a unanimous judgement ruled the death penalty unconstitutional.

* 1999 August and Another v Electoral Commission and Others

The Constitutional Court declared that denying any citizen the right to vote was in breach of Section 19 of the Constitution. Thus prisoners were entitled to vote.

* 2000: Grootboom and others V Government of Republic of South Africa and others

The Constitutional Court ruled that the government has an obligation to provide shelter to homeless people living in crisis..

# 2002: Minister of Health and others v Treatment Action Campaign and others

The Treatment Action Campaign was active in many South African cities. In April 2002 they marched on the Constitutional Court. The Court ruled that government must make Nevirapine available to pregnant women to reduce the risk of mother-to-child transmission of HIV.

* 2005 Minister of Home Affairs and Another v Fourie and Another ;Lesbian and Gay Equality Project and Others v Minister

The Constitutional Court ordered that same-sex couples be enabled to enjoy the status, benefits and responsibilities that marriage offers to heterosexual couples and that the Marriage Act be amended accordingly.