



**EXPLORATION OF TRADITIONAL JUDICIAL SYSTEMS THROUGH THE
BUILT FORM: A Proposed Traditional Judicial Facility in Msinga, KwaZulu-Natal**

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A Dissertation Submitted in partial fulfilment of the
Requirements for the degree of Master of Architecture to
The School of Built Environment and Development Studies
University of KwaZulu-Natal
Durban, South Africa
December 2023

DECLARATION

A document submitted in partial fulfilment of the requirements for the degree of Masters, in the Graduate Programme in Architecture, University of KwaZulu-Natal, Durban, South Africa.

I declare that this dissertation is my own unaided work and conducted exclusively by myself under the supervision of Mr. Sibusiso Sithole. All citations, references, and borrowed ideas have been duly acknowledged. This dissertation is submitted for the degree of Masters in Architecture in the Faculty of Humanities, Development, and Social Science, University of KwaZulu-Natal, Durban, South Africa.

No part of this work has been submitted previously for any degree or examination in any other university.

.....
Sibonelo NB Dlamini

.....day of..... the year 2023

ACKNOWLEDGEMENT

I would like to thank my supervisor Mr. Sibusiso Sithole for the thoughtful comments and recommendations on this dissertation.

I am also thankful to the University of KwaZulu-Natal for affording me an opportunity to be part of this Master's program without which this dissertation may not have been possible.

Dr Y. Luckan, Dr M. N. Mthetwa and Magdalene Cloete for all the considerate guidance and patience.

To conclude, I cannot forget to thank my family and friends who provided me much needed encouragement and unconditional support in this very intense academic period, a great thank you!

DEDICATION

Dedicated to my mom, Nomusa F. “Mathofo” Sithole. Ngikhumbula amazwi akho athi “*Noma ngabe ayikho imali yokuyokwenza izifundo zakho, kodwa esikoleni uzoya, ufunde futhi uqede,*” I took those encouraging words with your unconditional support and soldiered on (*ngabangena*) see how far it brought us.

Thank you, ma!

ABSTRACT

The roles and functions of the traditional judicial court's system can be traced back to the pre-colonial era and up to the period of the current democratic dispensation, this system has been going through a continuous transformation in bridging the gaps restricting the system from being a more effective form of the justice system. A specific provision has been made in the Constitution that mandates Traditional Courts to provide a uniform legislative framework for the structure and functioning of this judicial system, in line with constitutional imperatives and values, and to provide for matters connected therewith.

This study explores the traditional judicial system through the built form, with the objectives of understanding the impact which the built form plays in the execution of the Traditional Judicial Court system and conceptualising the envisioned traditional court bill or framework into an effective built form that caters to contemporary needs of the society it serves.

Some of the key theories and concepts which will be utilised as an investigatory tool to achieve this are Critical Regionalism, Space Syntax, Phenomenology, and Symbolism with a mixed-method research approach of primary and secondary data analysis.

The document will be divided into two parts, the research component Part 1 and the design report Part 2.S

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CHAPTER 1:

1. IDENTIFICATION OF VARIABLES

1.0.1. Independent variable(s)

- Traditional Judicial Systems

1.0.2. Dependent variable(s)

- Built Form

1.1. INTRODUCTION

1.1.1. Background

Most communities in rural KwaZulu-Natal are led by traditional authorities which are restricted to former Bantustan's homelands. These communities habitually rely on a traditional judicial system as their first point of justice when resolving disputes in their homelands due to the: proximity of these facilities to these rural communities, their informal nature, accessibility, affordability, and accustomed environment that is not intimidating (Osmans, 2021).



Figure 1: The traditional court in progress under a tree.

Image sourced from: <https://www.timeslive.co.za/sunday-times/opinion-and-analysis/2019-03-10-traditional-courts-bill-props-up-a---system--spawned-by---apartheid/>. Accessed: 09 June 2022

Law is a set of rules that govern relationships between people, the community, and the environment. Natural law is the body of rules people must follow to live and work in peace. Traditionally, Africa is home to advanced legal institutions, such as the Bantu courts, Bantu refers to a group of African peoples who speak Bantu languages in the southern third of the continent

explicates Ayittey (2006;67). African societies had a hierarchy of courts to resolve disputes, such as the moot, family, ward, chief's, and king's court. Khunou (2009: 81) concurs that traditional leaders and authorities played an important role in the pre-colonial era and continue to do so today, as they were responsible for the well-being of the community. Ayittey (2006;67) asserts that African cultures and institutions underwent some transformations and adaptations to survive the onslaught of colonialism, despite the diminishing importance of rural life and Khonou (2009, 83) agrees by referring to Ntsebeza's observation that South African colonial governments endorsed legislative measures to change pre-colonial structures, such as the Black Administration Act to suit their colonial objectives.

Ndima (2013:3), promotes that the application of customary law must reflect its own social, political, and legal cosmology, in which its institutions function within their indigenous frame of reference. The solutions to African problems must be African, not Western Governments advocate Ayittey (2006;17) and believe solutions to the African crisis lie in Africa itself. Current discourse suggests that the current judicial system/common law does not benefit its current constituents, as it was adopted from a Eurocentric ideology and was not suited for the current African context. Tshehla (2005:10), contends that African governments have grown to merge traditional leaders with democratic systems, but creating a home for traditional leadership remains a challenge. Van Dirjk (2021) and Osmans (2021) agree that the traditional judicial system still holds limitations and gaps that need to be properly addressed.

The Constitution of the Republic of South Africa, (1996: Act no. 108) acknowledged that the Traditional courts and institutions were marginalised and underdeveloped under colonial and apartheid legal orders, subverted to support colonial and apartheid rule, with customary law ignored or corrupted. Judin (2021;110) argues that Colonial and Apartheid architects struggled to reconcile disruptive forces that shattered relationships between culture, land, and communities that they sought to usurp, and many of South Africa's modern architectural ideas were imported from abroad mostly Europe, during these earlier decades expounds Judin (2021;91).

The courthouse serves as a gateway to access justice. It must be welcoming and accessible, both physically and psychologically, explicates Murphy (2016;269), and should be designed in a way

that is sensitive to the needs of Indigenous societies. This may help to right some of the legal wrongs of colonialism.

Murphy (2016;269) argues that the story that a building tells through its design may be as important to the community it serves as its function. It will have a direct impact on the efforts to collaborate productively by shaping their thoughts about themselves and their institutions. Although the built form is unlikely to solve social disadvantage, cultural loss, alienation, or dysfunctional justice systems, it can be viewed as a symptom of a successful culture, providing a tangible grasp on the reality of a just and prosperous culture.

1.1.2. Motivation.

Colonial architecture had a significant impact on society, particularly in the South African context. The most enduring legacy of colonialism and apartheid is the configuration of space according to Low, (2018;380), and advocates for the need to address this legacy of colonial heritage (Low, 2018;381). South Africa's 1994 democratic elections marked a departure from the apartheid past, with architects imagining new public buildings, institutions, and typologies that would speak to a new spatial order contend Silverman (2014;263), however Western thinking violently overwrote and obliterated Indigenous approaches to land, settlement, space, and ways of being and becoming explicate (Low, 2018;70).

The Government of South Africa introduced the Traditional Court Bill (2017:1), as a uniform uniform legislative framework for the structure and functioning of the Traditional court system. The evolution of the system has created a gap by not simultaneously evolving into a built form that addresses the post-apartheid Eurocentric approach to the built environment and that aids the evolution of the Traditional Judicial System for accommodating contemporary issues of the traditional societies. The extremes that separate tradition and modernity have served to keep the status quo in place, impeding effective societal change; the challenge is to reposition local tradition at the forefront of modernism through built form. (Low,2018;73). To unpack these limitations critical inquiry needs to occur.

1.2. DEFINITION OF THE PROBLEM AND OBJECTIVES

1.2.1. Definition of the problem

The Traditional courts are acknowledged for their influence in providing a Traditional Judicial System. However, it is argued that, with it being an outdated system, it comes with some snags, which, if appropriately addressed, possess the potential of being a more effective traditional method of managing disputes/justice system in the rural areas.

The built form can be further explored to close the gap preventing transformation and adapting to a more effective Traditional Judicial System that is inclusive when seeking justice and resolving disputes in the rural areas.

1.2.2. Aim

This study aims to explore the Traditional Judicial System through the built form in the rural area of Msinga, KwaZulu-Natal.

1.2.3. Objectives

The objectives of this study are:

1. To understand the constitutes of the Traditional Judicial Systems.
2. To explore the impact of built form in the execution of Traditional court systems in Msinga, KwaZulu-Natal.
3. To understand the influence of socio-spatial and cultural factors on the Traditional Judicial Systems' built form of Msinga.
4. To determine the ways in which the Traditional courts bill or frameworks can be conceptualised into a built form that caters to the contemporary needs of the communities they serve.

1.3. SETTING OUT THE SCOPE

1.3.1. Delimitation of the problem

The study will be limited to a rural area of Msinga, KwaZulu-Natal where the Traditional court systems are still active, beginning with the history in pre-colonial, up until the current era of the Traditional court systems. This is to understand the gaps restricting transformation in the implementation of these facilities. Exploration of the system through the built form will be

extended to accommodate related social issues, cultural influences, and what role the built form can play in enhancing the traditional court's functions in today's times. There will be a critical inquiry into how the Traditional Judicial System/Bills can be realised or interpreted through built form.

1.3.2. Definition of Terms and Acronyms

Bantustans – *“(also known as Bantu homeland, black homeland, Black state or simply homeland; Afrikaans: Bantostan) was a territory that the National Party administration of South Africa set aside for black inhabitants of South Africa and South West Africa (now Namibia), as part of its policy of apartheid.”*

Built form – *“refers to the function, shape, and configuration of buildings as well as their relationship to streets and open spaces”*

Customary – *“according to the customs or usual practices associated with a particular society, place, or set of circumstances.”*

Courts – *“is a legal institution or forum that has the authority to hear and decide legal disputes, interpret and apply the law, and provide justice.”*

Constitutional – *“refers to anything related to a constitution, which is a fundamental set of principles or established precedents that guide the governance and legal framework of a country, state, or organisation.”*

COGTA – *“Department of Cooperative Government and Traditional Affairs”*

Indigenous – *“originating or occurring naturally in a particular place; native.”*

Induna – *“an iNduna (plural: iziNduna) is a Zulu/Xhosa title meaning advisor, great leader, ambassador, headman or commander of a group of warriors. It can also mean spokesperson or mediator, as the iziNduna often acted as a bridge between the people and the king.”*

Justice – *“is a concept that represents the fair and equitable treatment of individuals, guided by principles of moral rightness and fairness.”*

Judicial – *“of, by, or appropriate to a law court or judge; relating to the administration of justice.”*

Legal Framework – *“refers to the entire set of laws, regulations, principles, and institutions that together form the framework for governing and regulating a specific jurisdiction, industry, or activity.”*

Restorative – *“having the ability to restore health, strength, or well-being.”*

Reconciliation – *“is a process or action that involves the restoration of friendly relations, harmony, or agreement among individuals, groups, or nations that were previously at odds or had strained relationships.”*

Traditional Authority – *“a form of leadership in which the authority of an organisation or a regime is largely tied to tradition or custom of a particular place, region or country.”*

TCB – *“Traditional Court Bill of the Republic of South Africa – From the 2008 to current ongoing proposed TCB of 2022”*

Traditional Court - *“a court established as part of the traditional justice. system, which— (a) functions in terms of customary law and custom; and. (b) is presided over by a king, queen, senior traditional leader, headman, headwoman, or a member of a royal family who has been designated as a.”*

Traditional – *“existing in or as part of a tradition; long-established.”*

Ubukhosi – *“sovereignty / Chieftainship”*

Ubuntu - *“Ubuntu (Zulu pronunciation: [ùbúnt`ù]) is a Nguni Bantu term meaning "humanity". It is sometimes translated as "I am because we are" (also "I am because you are"), or "humanity towards others" (in Zulu, umuntu ngumuntu ngabantu)”*

Transformation. – *“a marked change in form, nature, or appearance.”*

1.3.3. Stating the Assumptions

- Traditional courts systems might be biased, oppressive, and have an unfavourable outcome.
- If appropriately addressed, it possesses the potential of being a more effective traditional method of managing disputes/justice system for communities who rely on this system for justice.
- Traditional courts use an unwritten version of customary law familiar to the Indigenous community, there are possibilities of a wide and different interpretation depending on the various individuals and on the region where the society is based.

- Colonialism deprived African architecture of an opportunity to develop and evolve into a more contemporary form of architecture.

1.3.4. Key Questions

- 1 What constitutes the Traditional Judicial Systems?
- 2 What impact does the built form play in the execution of the Traditional court system in Msinga, KwaZulu-Natal?
- 3 What influence does socio-spatial and cultural factors have on the regional Traditional court-built form of Msinga, KwaZulu-Natal?
- 4 How can Traditional courts bills or frameworks be conceptualised to a built form effectively and be further explored to address the architecture of Traditional courts in Msinga, KwaZulu-Natal?

1.3.5. Hypothesis

This research seeks to understand the Traditional Judicial System and its impact on the community, as well as to investigate the impact the built form has in the evolution of the Traditional Judicial court justice system by conceptualising an appropriate architecture that communicates with the envisioned Traditional court, Bill.

1.4. CONCEPT AND THEORIES

These have significance in further unpacking the nature of the research problem and the philosophies around it. **Space Syntax** as a paradigm of urban research, **Phenomenology** as a paradigm of human experience with the theory of **Critical Regionalism** and **Symbolism**, will be explored in the realisation of an effective Traditional Judicial system through built form. These concepts and theories will also form a foundation for understanding the relationship between the Judicial Systems' built form, and their influences on the societies they serve.

1.4.1. Space Syntax

Pioneered by Bill Hillier in the 1970s, the phrase "space syntax" refers to a collection of theories and methodologies for analysing spatial configurations. The method has enabled a more improved understanding of the interaction between space and society; unlike previous methodologies for space analysis, it mixes physical aspects such as movement and land use with intangible factors such as cognition and behaviour (Yamu, at al, 2021:1).

Space syntax, as a paradigm of urban research, manifests people's intuitive and abstract perception of a material space with a solid mathematical way, of exploring how space represents its social characteristics, space syntax is a valuable theory for deconstructing the relationship between space and society, the interaction between human behaviour and built form, and human spatial perceptions and reactions in a built environment.

A tool to aid in the investigation and understanding of how earlier societies developed their spaces within the Traditional Judicial System both internal and external such that their arrangements suit their innate priorities and custom. Through understanding the Traditional spatial formation of these systems can we be able to design better functional built environments/spaces to suit the intended societies?

1.4.2. Phenomenology

A theory/paradigm derives from the philosophy and psychology disciplines, based on the work of the twentieth-century philosopher Edmund Husserl, subsequently refined by Martin Heidegger, primarily deals with in-depth topics and the study of hidden manifestations, In contrast to the reflective, third-person perspective that tends to dominate scientific knowledge and common sense, phenomenology calls for a return to the ideal forms and contents of experience as we live them, rather than how we have learned to conceive and describe them according to the categories of science and received opinion (Merleau-Ponty, 2012:8).

Phenomenology will explore the visualisation of the genius loci, and the explored built forms' responsibility is to create a meaningful place that encourages the connection of the Msinga community with the Traditional Judicial System and the anticipated built form (Norberg-Schulz,1980;5).

1.4.3. Critical Regionalism

Is a method of developing a more humane architecture in the face of widely accepted concepts and worldwide clichés, as coined by the architect Alexander Tzonis (1937) and Liane Lefaivrein (1981) as the originators of Critical Regionalism. It is an intelligent concept to argue against the modernist and postmodernism's lack of identity and disregard for context and was also a way of

limiting architecture that is mindlessly replicated for the sake of cultural or vernacular interests, explains (Lefaivre & Tzonis, 2003).

Critical Regionalism lenses will identify/highlight contextual forces that inform a sense of place and meaning to the Traditional Judicial Systems built from. It is also a reflection of cultural legacy and local identity, creating a strong sense of place and social structure, environmental consciousness, and the Traditional Judicial System stability. (Orozco, 2011; 01).

1.4.4. Symbolism

Symbolic representations of architecture may be viewed as a visual embodiment of politics, expressing the values, ambitions, and aspirations of the moment. In general, a symbol may be described as a picture having a specific and undefined reference, defined as a sign expressing a given thought or idea, and symbolism, as an art of thinking in images (Mankus, 2014; 274).

Modern architectural projects and structures illustrate a new stage of architectural symbolism, employing both ancient approaches and developing a new modern symbolic language.

1.5. RESEARCH METHODOLOGY

1.5.1. Introduction

A qualitative research approach will be adopted by the researcher based on the nature of the aims and objectives of the inquiry. The purpose of exploring qualitative research is to seek narratives and understanding of issues around the inquiry from the end user's lens.

1.5.2. Research Philosophy and Strategy

A qualitative approach was adopted for this study consisting of secondary and primary data. Theoretical and case studies were used in this research document to investigate and analyse the applied concepts and to evaluate the adopted theories.

Sample Size: The general sample group size will be determined by the number of relevant and prominent people in the community, but it is envisioned that not less than 10% of the selected eligible participants be interviewed. The targeted population around the study is at least 04x Chiefs, 04x Members of the council, 04x historiographers/village elders, 3x Knowledgeable

members of Cogta regarding traditional courts, 3x architects with involvement in Traditional court design, as well as the local community preferably women (previously marginalised).

Inclusion selection criteria: Prospective participants must be either knowledgeable in traditional leadership, traditional authority, African culture and customs, social structures and built form, local history, and the Traditional Judicial courts system peculiar to the region/place of study.

Exclusion selection criteria: Participants who have no significant engagement with the Traditional Judicial system or the local context will be excluded from the selection criteria.

Recruitment of interviewees. Following the selection of acceptable individuals from the target group using the Inclusion and Exclusion criteria, potential participants will be given Informed Consent Forms in which the study's specifics will be presented.

Logistics of interviews: The interviews took place in the participant's chosen environment where they felt comfortable and where necessary, *iphoyisa lenkosi* and the Community Liaison Officer, familiar with the local cultural tradition administered the interaction with higher ranking participants. The interviews duration was 30 to 45 minutes and no audio recordings were created. Everything was transcribed into text during the interviews, a diary was made accessible to accommodate further material gleaned from the interview.

1.5.3. Secondary Data Collection

Secondary data will give context for the investigation and aid in the interpretation and enhancement of the main data. It consists primarily of a review of literature from studies conducted by other researchers that contributed to the resolution of the research problem. Most of this data was gathered from books, journal articles, report documents, maps, precedent, illustrations, and research papers.

Literature that was relevant to the inquiry was collected from other researchers who are reputable and relevant to the study, where it is explored at a global scale to get a broader insight into the inquiry and, at a local regional scale, to understand the impact of the study in the local context of South Africa specifically the rural Msinga, KwaZulu-Natal where the study is based. The Traditional court bill and any relevant traditional leadership and institutions publications from the

pre-colonial, colonial, and post-colonial eras that pertain to the research were the first sources of data in the literature.

Precedents relevant to the inquiry and typology were investigated to get insight into how others: architects, designers, and communities have approached the design of a Traditional Judicial facility, intending to gain a greater and global understanding of the study.

1.5.4. Primary Data Collection

Focused interviews, research observations, and case studies of existing Traditional courts in and around the study area, the data of this study is presented through analysis following text/narrative, plans, pictures, and illustrations, and standardised questionnaires were employed to collect primary data relevant to the study. The selection of interviewees was done through a targeted and snowballing approach. The approval of the gatekeepers was obtained to gain access in the existing traditional courts facilities.

Architectural documents and photographic analysis: The Protection of Personal Information Act (or POPI Act) will be followed through the study and interpretation of architectural drawings/photographs/records gathered from various sources, where identities in images will be managed with care, such as by completely obscuring faces and using pseudonyms where necessary.

Focused interviews: The interviews allowed participants to respond with greater flexibility, were directed by numerous research questions and open-ended inquiries as conversational talking points. The interviews were transcribed in text. To ensure the confidentiality of participants, pseudonyms were used if requested, and all visual/audio recordings of interviews will not be published. These interviews were conducted by the researcher via email, video call and face-to-face/physical contact-based research.

The targeted population around the study was at least 04x Chiefs, 04x Members of the council, 04x historiographers/village elders, 3x Knowledgeable members of Cogta regarding traditional courts, 3x architects with involvement in traditional court design, as well as the local community preferably women (previously marginalised) from the study area of Msinga, KwaZulu-Natal, as it is vital to compare responses from different participants for a broader understanding of the inquiry.

A comparative perspective was gained by the researcher based on experience as per the hierarchy or rank of society and organisations within the traditional court system. The collected data will be stored safely for 5 years by the researcher.

1.5.5. Research Material

The following research materials will be utilised to collect data for this study:

- Secondary sources: Most of this data was gathered from books, journal articles, newspaper articles, report documents, maps, precedent, illustrations, and research papers.
- Primary sources: Semi-structured interviews, questionnaires, and case studies.

1.5.6. Data Analysis

The researcher thoroughly evaluated the collected and recorded raw data. All material deemed significant was further evaluated by the researcher in its context and explored as additional research breakthroughs, and the research objectives were revisited to identify questions that can be answered using the data collected about the inquiry.

Matrix

Objectives	Research Question	Data Collection Question	Data Sources	Data Collection Methods	Data Analysis Methods	Data Presentation Style
To understand the constitutes of the traditional judicial systems.	What constitutes the traditional judicial systems?	How has the traditional courts change from pre-colonial, up to now?	Literature, Observation, case study, research papers and interviews	Interview Participants, Literature Review, Case Studies	Thematic Analysis, Interview Analysis, Textual Analysis	Text/ narrative, and illustrations
To explore the impact of built form in the execution of traditional court system in Msinga, KwaZulu-Natal.	What impact does the built form play in the execution of the traditional court system in Msinga	Are these traditional court buildings accessible or located closer to their communities?	Interviews, historical documents, case studies, illustrations, and research papers	Interview Participants, Literature Review, Case Studies	Thematic Analysis, Interview Analysis, Textual Analysis	Text narrative, sketches and Illustrations
To understand the influence the socio-spatial and cultural factors on the traditional judicial system- built form of Msinga	What influence does socio-spatial and cultural factor have on the regional traditional court-built form in Msinga	Does the existing built form have any expression of regional influence?	Published literature, journals, precedent studies, drawings / illustrations, and research papers	Interview Participants, Literature Review, Case Studies	Thematic Analysis, Interview Analysis, Textual Analysis, Illustrations and built form documentation	Text/ narrative, architectural documentation / sketches, and illustrations
To determine the ways in which the traditional courts bill or framework can be conceptualised into the built form that caters to the contemporary needs of the community they serve.	How can traditional judicial systems/Bill be conceptualised to a built-form and be further explored to address the architecture of traditional courts	Are there any other suggestions of what needs to be done to improve the Traditional courts-built form as they exist today?	Published literature, journals, precedent studies, drawings / illustrations, and research papers	Interview Participants, Literature Review, Case Studies	Thematic Analysis, Interview Analysis, Textual Analysis, Illustrations and built form documentation	Text/ narrative, architectural documentation / sketches, and illustrations

The proposed methodology will aid in the development of a better understanding of the inquiry by properly explaining each concept surrounding it, analysing every aspect, accurately portraying all project findings, and carefully defining the tools and techniques to be used for collecting, analysing, and interpreting data toward the solution. This Systematic structure will be a tool for improving research quality and developing a better understanding and detection of all problems, making it easier for the researcher to make efficient decisions toward the solution by presenting every aspect in a simplified manner that improves logical thinking.

1.6. CONCLUSION

The researcher understands the sensitivity and the different perceptions regarding the subject, especially to the vulnerable rural community who mostly rely on this traditional/customary system for justice. The lack of research in the inquiry, provides a wider platform for improvement during the evolution stage of the traditional court system. The study explores and conceptualises the envisioned Traditional court Bill into a built form that addresses the gaps in the evolution of the Traditional Judicial System to be more effective.

The researcher's primary goal is to conduct a study to identify principles for designing a Traditional Judicial facility capable of addressing current and potential future challenges within the traditional court system. The emphasis is on using the exploration of the built form as a tool to aid the evolution of the Traditional court's Bill or framework. The study's findings are intended to serve as a blueprint for Msinga, but they could also be used as a model for other traditional courts across the country. Importantly, the intention is not to replicate the design, but to apply the identified principles in such a way that each Traditional court receives a unique response tailored to its specific context. This approach acknowledges the need for context-specific solutions while providing a set of guiding principles that can be adapted and used elsewhere. It implies an understanding that while each Traditional court system faces unique challenges and requirements, there are overarching principles that can be universally applied to improve the design and functionality of Traditional Judicial facilities.

CHAPTER 2:

2. THE CONSTITUTE OF THE TRADITIONAL JUDICIAL SYSTEMS

2.1. INTRODUCTION

This study is an exploration of how the built form can influence and can be influenced by the Traditional court system, in lieu of the Traditional court bill or framework of (2017) of the Republic of South Africa.

This chapter is organised chronologically and reviews literature about the development of Traditional Judicial Systems, from the historical background of the systems in the pre-colonial era, colonial era, during apartheid, and up to the current developments of the system in South Africa, KwaZulu-Natal. The chronological structure of this chapter aims to identify the historical influences leading to the current evolution and transformation of the Traditional Judicial System as we know it today and what role the built form plays or can play in the execution of the envisioned Traditional Judicial System.

2.2. PRE-COLONIAL TRADITIONAL JUDICIAL SYSTEMS

Most scholars within the school of thought agree that the Traditional Judicial Systems are of ancient origins, dating back to pre-historic eras, narrated by our African ancestors through oral tradition, and can be traced back beyond most published literature.

Traditional African institutions, according to popular tradition, were created when a charismatic man, or leader of a clan, led his people to the place where they were to live. Whatever the causes for the group's travel across Africa's vast expanses, if favourable conditions were established, the group could remain permanently. The settlement provided a spatial framework within which future political and economic interactions might be structured, argues Bennet and Murray (2022; 51).

It is agreed by many scholars and elders that before the use of any built form for the gathering of the court proceedings, the traditional court would mostly take place under a tree, as this was, and still is regarded as the most basic, natural, and open/transparent form of shelter.

The openness of the setting with no walls symbolised transparency of the judicial system, and the local context/ natural landscapes created an accustomed environment to that indigenous society, trees could easily accommodate adequate or at least several sheltered participants at the time and are unreservedly provided by mother nature.

Ndulo (2011: 98) explains that in most African states' precolonial law was essentially customary, with its origins in the people's practices, traditions, and customs normative force. The legitimacy of customary law is derived from the idea that it is ancient, unchanging, and passed down by ancestors from generation to generation and that it is an integral part of people's identity and culture.

African Traditional Justice Systems refer to all the mechanisms that African peoples or communities have used to manage disputes and conflicts since time immemorial. These mechanisms have been characterised by many tags such as community, traditional, customary, Indigenous, and non-state justice systems according to Kariuki (2017: 1)

The term "African customary law" does not imply that there is a single uniform set of customs prevailing in any given country, but rather that it is used as a blanket description covering many different legal systems of ethnic origin. The sources of customary law that are historically and currently accepted as authoritative which are a product of social conditions and political motivations influenced by the interaction of African customs and colonial rule explicate Ndulo, (2011; 88).

Most Traditional Judicial Systems are based on cooperation, communitarianism, strong group coherence, social obligations, consensus-based decision-making, social conformity, and strong social sanctions. These will thus reflect traditional African norms and values because they are part of the social fabric in Africa explaining their resilience to date (Kariuki, 2017: 1).

Traditional conflict resolution systems are more community-based than the Western individualistic approach to dispute resolution, Traditional societies place a high value on reconciliation and reintegrating opposing parties into their communities, the systems seek to repair not just interpersonal relationships, but also interpersonal connections with communities (McQuoid-Mason, 2021; 594).

Indigenous African law is communal, Western law is more individualistic, social solidarity is the social necessity of the traditional African community, the preservation of law and order, as well as the restoration of social cohesion, penetrates the whole fabric of that legislation, an individual tried in a Traditional Court by his village men and women, those present in court feel as integral to the decision-making process, the individual is only one member of the larger group, the law is a potent instrument for disciplining, correcting, and shaping human nature argues Khunou et al (2013; 49).

South Africa's Traditional Judicial System was created to deal with customary disputes under customary law. Traditional courts function in South Africa's rural communities under the supervision of traditional leaders, as recognized by the constitution. In such cases, the chief and his headman or council use Indigenous law and custom to settle disputes brought before them. (Magistrates Matters, 2021).

According to Ndulo (2011: 92), the place of African customary law in African legal systems can be divided into three approaches, the historical approach used during colonial rule, the second approach used by new constitutions in the apartheid era, and the third approach used in the post-democratization era.

Aiyedun et al (2017;1) explicate the historical approach, that the colonial governments allowed Africans to be governed by their laws and leaders, resulting in a system of indirect rule in parts of Africa, including South Africa, as Traditional leaders were allowed to administer customary laws, provided the laws were not offensive to natural justice, equity, and a good conscience and were not in conflict with civic policy or conflicting to the stipulations of the Constitution.

According to Ndulo, (2011: 97) African states continued to recognize customary law alongside common law and legislation as a source of law in their post-independence constitutions integrating the court system by placing the Traditional Judicial Systems at the bottom of the judicial pyramid, the independent African states continued to recognize customary law together with the common law through legislation. In post-democratization constitutions, customary law in most African authorities is constitutionally protected as part of the country's general law. South African

Constitution recognizes that a system of customary law may function subject to any applicable legislation and customs, including amendments to or repeal of that legislation or customs.

The Traditional Judicial System has been constantly experiencing development from the pre-colonial era through to the colonial era to date and the current Traditional Court Bill evolution aims to provide a uniform legislative framework for the structure and functioning of this judicial system, in line with constitutional imperatives and values, and to provide for matters connected therewith (Traditional court's Bill, 2017:1).

2.2.1. Roles of Pre-Colonial Traditional Judicial Systems

Most scholars argue that in the pre-colonial era, the main roles of the Traditional judicial institution were to maintain peace and oversee the well-being of the communities they served.

The Traditional Judicial System has always been in existence in Africa, Khunou (2009: 81) highlights that the traditional leaders and authorities played a significant role as organisations in the pre-colonial era through an effective role in the day-to-day supervision of traditional society's lives.

Rugege (2003;171) accords that Traditional leadership has been the basis of local administration in most of Africa throughout history, in pre-colonial Africa, the civilizations were headed by kings who were backed by a hierarchy of chiefs and councils or advisers who were either their immediate relatives or picked from their communities, Traditional leaders functioned as judicial, political, military, spiritual, and cultural leaders and were seen as protectors of society's ideals.

Traditional chiefs ruled with the consent of their people throughout most of pre-colonial Africa. They supplied land for their society's sustenance requirements through cultivation and grazing, cared for the impoverished and orphaned, and oversaw maintaining order in their villages. Not all traditional leaders were kind and sympathetic to their subjects, some were authoritarian and could only be deposed by civil war (Rugege, 2003; 171).

Mawere and Mayekiso (2014; 3) agree with other scholars, that the role of traditional authorities in Africa has been defined by anthropologists and sociologists since the 19th Century when they were viewed as defenders of African values and practices such as ubuntu, meaning "I am because

you are". Traditional authorities' responsibilities included land allotment, peace promotion, cultural norms and values, and judicial obligations within their communities.

Forje (2010; 149) argues that African traditional institutions, whether political, economic, or social, have never been inactive; they always responded to changes caused by a variety of factors and forces, and the goal of the traditional justice systems in most African communities is reconciliation, to forgive, forget, and move on.

Makhari (2021; 73) explains that most Africans were grouped in communities ruled by traditional leaders and lived according to traditional customs and culture. Pre-colonial Africans appeared to have legal institutions based on indigenous law, but the systems of traditional courts differed slightly between ethnic groups, and pre-colonial traditional leaders would have dispensed justice within the confines of custom and culture.

2.3. COLONISATION OF THE TRADITIONAL JUDICIAL SYSTEMS

There is an argument that during colonialism, these traditional justice systems were colonised, altered, and codified in the process of accomplishing the colonial assignments. Forje, (2010; 149) maintains that colonial rule harmed the traditional mechanisms of justice.

Some scholars argue that the colonisation of the Traditional Judicial System was introduced through the theory of 'indirect rule, then the cording of Indigenous laws to customary laws by the introduction of different acts/laws, implemented through indirect rule by administering the natives through tribal leaders.

The British tried two different methods of ruling the indigenous African populace, by undermining the chieftaincy institution and governing through the colonial administration and the second was to rely on local indigenous rulers to manage the local people through 'Indirect rule', known as the 'Shepstone System,' implemented in colonial Natal by the Secretary for Native Affairs, Sir Theophilus Shepstone (Beall, 2009; 08).



Figure 2: *The Portrait of the Secretary for Native Affairs, Sir Theophilus Shepstone.*
Image source <https://www.britannica.com/biography/Theophilus-Shepstone>.
Accessed: 18 July 2023

"Indirect rule" refers to a situation in which two or more geographically separated, non-coextensive entities are socio-culturally or politically distinct and unequal in power, with an established form of control over them (Gerrit et al, 2011; 378).

Chieftdom was used as an effective tool of indirect rule by British administrators in the colonies to exert control over their subjects during colonial times. Those who refused to cooperate were treated harshly and frequently overthrown, whereas those who were more pliable were co-opted into colonial government and used as effective tools for direct rule, expound, Lambert (1995; 271).

Khonou (2006; 56) asserts that colonial power gave traditional leaders less administrative and judicial power than they had in autonomous pre-colonial cultures. Most functions and powers were entrusted to magistrates rather than the people they were elected to represent. Traditional leaders were viewed by the British as cheap administrators who could be used to reduce the cost of running the colony.

According to Beall and Ngonyama (2009; 08), throughout the colonial era, chiefs were agents of the colonial authority and were heavily reliant on it for resources, Sir Theophilus Shepstone's

appointed and ousted traditional chiefs, and his involvement with colonialism forever altered the character of chieftaincy in the region of KwaZulu Natal.

The loyal chiefs were protected by the colonial administration and the chief's duties included collecting an annual hut tax and supplying the state with forced labour (*isibhalo*). Such duties did not make these chiefs favourable to African society and also demeaned their status as chiefs meant to oversee the well-being of their people (Lambert, 1995; 269).

Khonou (2006; 58) insinuates that the other reason for the indirect rule system is that the use of traditional leaders in administration in the early days of Natal, was necessitated by the limited number of civil workers available to control Natal's black people as magistrates struggled to keep up with the workload of dispensing justice, then more chiefs were recruited.

Maloka (1996; 39), affirms that colonialism resulted in the formation of government-appointed chiefs, as opposed to hereditary chiefs, in locations like the Eastern Cape and Natal. In this instance, chiefs rose to prominence as colonial bureaucrats, individual chiefs, and headmen's positions were assured "*inkundla*", a council of advisors drawn from male family leaders, lost importance as a framework to which a chief was accountable, while the "imbizo", popular assemblies, were limited to meetings to receive instructions by colonial authorities, colonial administrators reinterpreted, fixed, and codified historically variable and dynamic African laws into "customary law" under the imperatives of colonial control.

According to Mamdani, (2001: 655) under the indirect rule of colonialism, colonial power aimed to build native tradition as immutable and distinct by sanctifying the authoritarian interpretation of custom as authentic. The issue is evident if comparing the modes of organisation of civil and customary power under colonial control with the native authority, on the other hand, which was structured on the premise of power fusion.

Most scholars agree that colonisation was accomplished through indirect rule by recognizing tribal leaders and turning them into government officials, with limited authority, which made it possible for the colonists (minority) to rule the natives (majority) through their traditional leaders by codifying the traditional control mechanisms already in existence.

2.3.1. Coding of Native Law to Customary Law

Sir Martin West, the first civilian administrator of the Colony of Natal in 1845, was directed to interfere as little as possible in the affairs of the chiefdoms, as explained by Lambert (1995; 272), and that Natal was established as a separate administrative region for the Africans of Natal in 1849 and Chiefs' role as government workers was emphasised in 1863 when they earned modest pay.

Judges administer Native Law and head criminal cases, and traditional leaders oversaw minor criminal matters and conflict settlement. Sir Theophilus Shepstone's codification led to a total control regime for the *amakhosi*, explained Beall et al (2005; 761). Codification is a process of legislation emphasised by Bennet et al (1980; 207).

The magistrates failed to administer justice in Natal, as they were less informed about African customary law, except for some distorted concepts, thus the British authorities chose to put customary law into the text as a remedy (Khunou, 2006; 60).

Ordinance 3 of 1849 stated that courts were to use customary law if it was not contradictory to the general principles of humanity acknowledged throughout the civilised world. accord Bennet et al, (2003; 218).

According to Lambert, (1995; 281), Figure 3, The Code of Native Law is considered the earliest legislative attempt to define the formal position of chiefs and subject them to codified legal authority. Before this, mainly jurisdiction was based on consensus rather than the direct imposition of laws by a chief, who met with his councillors and elders for law drafting. Shepstone's resignation in 1878 effectively stopped these consultations and decreased chiefs' judicial authority.

The Natal Code of Native Law, which was originally passed as Law No. 19 of 1891, was revised and re-published in 1932 in terms of the Native Administration Act, No. 38 of 1927, section 24, amendments have been made since 1932 (Natal Code of native law, African Studies, 1943; 01), refer to figure 3.

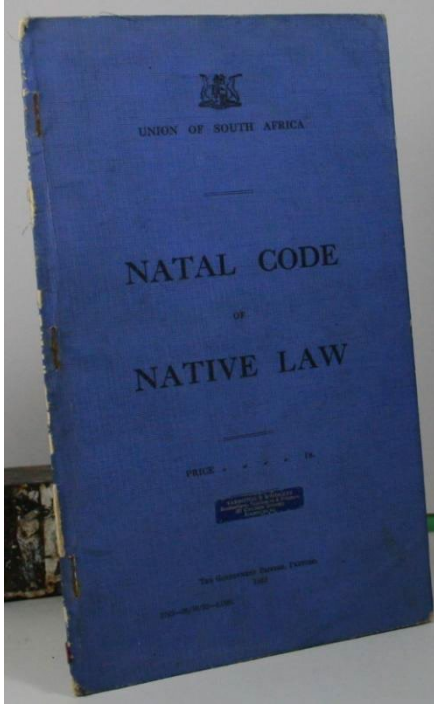


Figure 3: The Hardcover of the publication by the South African government in 1932 of the Natal Code of Native Law.No19 was set up in 1891.
Image source <https://www.africanabooks.co.uk/product/natal-code-of-native-law/>
Accessed: 18 July 2023

According to Khunou et al (2013; 52), Natal was South Africa's first colony to recognize and apply customary law, to use traditional leaders in controlling the vast number of displaced people. The legislation was enacted in Natal to establish Traditional Courts, Magistrates Courts, and a Special Court known as the Black High Court had the power to hear cases involving blacks, disbanded in 1895, and the Supreme Court took its place. A new Natal Black High Court was established in 1898.

More modifications occurred in 1967 and 1987, for purposes of applying the 1932 and 1967 versions of the Code, Zululand was treated as part of Natal, however, the territory gained partial autonomy from South Africa under the Bantu Homelands Constitution Act 21 of 1971. In 1981, KwaZulu issued its own Code of Zulu law, the same as the Natal Code but with improvements to female status. This Code has been going through amendments since 1984 till to date accords Bennet & Pillay (2003; 220).

The South Africa Act, passed on May 31, 1910, established the Union of South Africa by bringing together four British colonies: Cape Colony, Natal, Transvaal, and Orange River Colony. The Union remained part of the British Empire, but it had some autonomy. On May 31, 1961, South Africa became a republic and officially left the Commonwealth, opting for a republic with a president as head of state rather than a monarch. This decision signalled the end of formal ties with the British Crown and the establishment of full sovereignty (Faris, 2015; 172).

The passage of the Native Administration Act by the Union government in 1927 established a distinct judicial system for Africans and established a style of indirect control based on a "highly authoritarian notion of primary rule. The Bantu Authorities Act established in 1951, created tribal authority in territories designated to chiefs and defined their borders. In the inception of apartheid, the state's control over Africans strengthened through the institution of traditional authority expounds Thipe, (2013; 490). The Black Administration Act 38 of 1972 states that it was created for better control and management of native affairs (Union Gazette Extraordinary, 1927,35).

Land purchased under the 1913 Land Act was set aside for African occupancy. In 1936, legislation was passed to buy more land, known as "released areas," for the consolidation of the Reserves. The Act established a "license to occupy" (PTO) mechanism for land occupancy (Ntshebenza, 1999, 85).

In reference to figure 4, The Natives Land Act of 1913 was a significant piece of legislation in South Africa during the colonial era, however, instead of reserving land for African settlement, it had the opposite effect. The act sought to formalise and institutionalise segregation among different racial groups in South Africa.

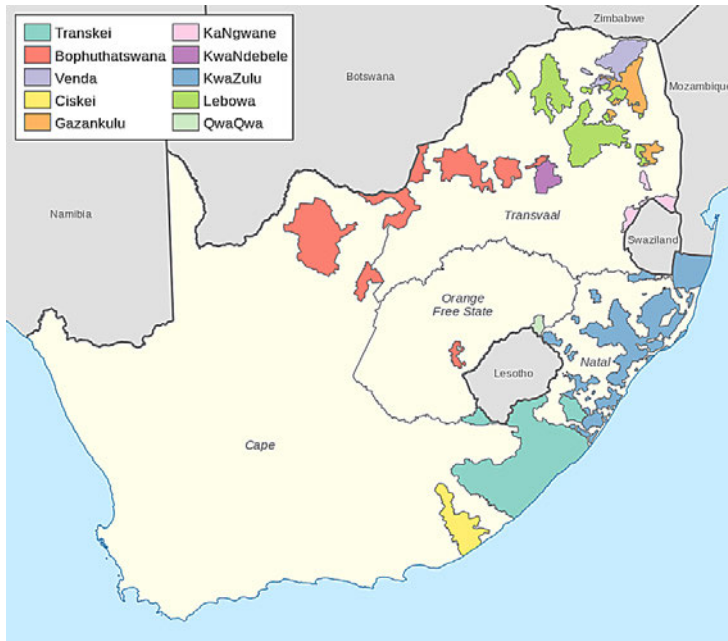


Figure 4: Map showing the Bantustans in South Africa at the end of the apartheid period, before they were reincorporated into South Africa proper.
 Image source <https://www.thoughtco.com/pre-apartheid-era-laws-43472>. Accessed: 18 July 2023

In South Africa, the transition from colonial-era laws, including those governing indigenous peoples, to post-apartheid legal frameworks involved a shift away from discriminatory legislation and towards a more inclusive and equitable legal system. Customary law, which reflects the traditions and practices of various communities, played an important role in this transition.

2.4. TRADITIONAL JUDICIAL SYSTEMS IN THE DEMOCRATIC DISPENSATION

Two legal systems currently exist in democratic South Africa, which are the common law as well as the inherited Indigenous African laws signified as customary law, primarily used by Indigenous communities in the Traditional judicial court system.

Ghebretkle et al (2019; 346) argue that Colonisation resulted in a cultural clash between African and Western traditions, by subjugating African civilizations, the Western culture was considered superior and dominant. However, in the democratic dispensation, there have been significant policy adjustments regarding the role of conventional dispute settlement, the irony is that repugnancy is to be assessed by Western senses of justice and morality, while African senses of right and wrong are relegated.

Faris (2015; 171) agrees that the legal systems in South Africa are the result of the interaction of different historical narratives. This resulted in the development of legal pluralism, and notes that, even though both systems have equal legal standing, the issue is jurisprudential parity, and the study believes that African customary law is being recolonized and deconstructed to fit into the mould of a predominantly Western legal system, and in the process losing its individuality.

Bennett, (2009; 7) elucidates that in the democratic constitution, customary law was accepted as a basic component of the country's legal system, on par with Roman-Dutch's "common law. Faris, (2015; 177) contends that after many years of democracy, there has been only a little trend toward legal diversity, with insufficient attempts to broaden the common law to meet South African society's multicultural values, notably African culture, and customary law.

Van Niekerk (2009; 221) argues that the challenge is to accommodate a fundamental indigenous African institution within existing State structures while also aligning it with constitutional principles and to do so for the sake of safeguarding the cultural heritage of a large segment of South African society rather than for political gain.

The phrase "restorative justice" in the Western context, refers to victim/offender mediation or methods for offender rehabilitation, whereas the African context is much broader. Ubuntu "*I am because we are...*" pervades the community underpinnings of traditional processes; the customary procedure is non-dualistic because the conflict is owned by the entire community; and the usual procedure's goal is the restoration of social peace (Faris, 2015; 181).

According to researchers, the traditional leaders' powers, responsibilities, acts, and obligations were linked to the inner chambers of custom and culture, which became identified with the ideal of *ubuntu* or *botho*. Khunou, and Koketso, (2013; 49) further commend that the position of traditional courts in pre-colonial countries must be assessed considering African societies' unique social order.

In traditional courts, the adjudicating authority accumulates the components of evidence and renders a verdict. The wisdom and authority of the judge, as well as the presence of various

members of the society at the hearing, are frequently channels for getting genuine declarations from witnesses or confessions from the accused (Mancuso, 2013; 47).

Mnisi (2016; 32) emphasises that customary courts are not professional entities. His study reflects that they are community forums in which mature community members participate, and community members can so freely engage in their operation.

Bennert (2009; 2) assures that when implemented in their social context, customary law rules offer no challenges for litigants or traditional courts. This is due to the fact that traditional courts are not bound by a set of predetermined regulations. Interestingly, these are more concerned with substantive justice and the maintenance of harmonious relationships, and in this type of judicial system there is dynamism which is enshrined in the spirit of tolerance, debate, and consultation.

All Traditional Judicial Systems are believed to be founded on social practices that originate in the community in question, as a result, community acceptability is an important litmus test for the validity and legitimacy of such policies (Bennert, 2009; 6).

Culture and tradition are widely regarded as the two fundamental components of customary law, people in Africa commonly use these beliefs to justify their actions, culture identifies the group to whom a rule applies, and the Bill of Rights recognizes it as a constitutional right, maintains Bennert, (2009; 25).

Mawere, et al (2021; 266) highlight that traditional leaders in South Africa play an important role in contemporary South Africa, and their position as keepers of tradition and culture should be acknowledged and institutionalised. Traditional leaders need to promote non-sexism, equality, human dignity, and freedom, according to the Traditional Leadership and Governance Framework. Furthermore, they must also promote the ideas of cooperative governance in their interactions with all branches of government and state organs. It is also key that as per the Constitution (1996), traditional leaders should advocate for an effective, fair, and efficient conflict resolution mechanism, as well as a fair system of justice administration.

The Republic of South Africa's Constitution (1996) recognizes traditional leadership institutions as governing institutions, the Constitution, Municipal Structures Act, Traditional Leadership

Governance Act, and Communal Land Rights Act are among the various Acts of Parliament that establish provisions for traditional leadership (Mathonsi et al, 2017; 37).

Amidst the contemporary developments, Traditional courts are still recognized as somewhat governed under the Native / Black Administration Act of 1927. Only the elements of the 1927 statute that govern conventional courts are still in effect, and the remainder of the Act has been repealed or overturned by the Constitutional Court elucidates Ubink et al (2017; 831).

Efforts have been made to transform the judiciary to reflect the diversity of South African society. South Africa's legal landscape is dynamic, with ongoing efforts to address challenges and promote democratic and just values. The country's legal system reflects a commitment to reconciling diverse legal traditions within the framework of a democratic regime.

Mawere, et al (2021; 266) advocate for a challenge to the Eurocentric view of reality that has depicted Africans in Western discourse. This view provides that it is critical to discuss the African Renaissance. In this context, Africans should go back in time to identify the African achievements and institutions that were influenced by African thinking during the pre-colonial era.

2.5. WESTERN VIEWS OF CUSTOMARY LAW

Customary law can differ, as do perspectives among legal scholars, policymakers, and the general public. Customary law is commonly defined as the traditional practices and rules established and followed by a specific community or group.

Eurocentric-influenced society failed to understand how African customary law and conflict resolution processes evolved Mancuso, (2013; 48) Some of the Common Western views on customary law:

Recognition and Respect	Customary law as an important component of cultural diversity and identity, it a legitimate legal order that can coexist with state systems;
Legal Pluralism	Advocates for the incorporation of customary law into a country's overall legal framework.

Human Right Concerns	Prompting questions about its compatibility with international human rights standards.
Colonial Legacy	Western legal systems frequently marginalised or suppressed existing customary traditions, resulting in complex interactions between the two.
Integration and Reform	Western legal systems incorporate customary law into national legal frameworks or reforms that accommodate both customary and state laws in order to address diverse community needs and values.

According to Mawere, et al (2021; 259) due to Eurocentric institutions, indigenous peoples have lost their identity and way of life, and lost touch with the institution of traditional leadership, the civilization provided by colonisation has educated indigenous peoples to draw connections between what their elders teach them and what is taught in classrooms, this is because Eurocentric institutions do not encourage cultural language and way of life.

Some researchers contend that dismantling tribal authorities is a necessary but insufficient condition for democratic transition in rural Africa; this is because of the hereditary character of the main authority, which precludes universal suffrage, preventing democratic transition (Ntshembenza,1999, 83).

Mancuso (2013; 55) cautions that Africans cannot accept many civilizations at the same time, and there is a danger of over-Westernization of African legal cultures through Western culture, history, and background.

Opinions on customary law can vary greatly, and they are not uniform, however, Western perspectives are evolving, with ongoing debates about the role of customary law in legal systems and its relationship to human rights and justice.

2.6. THE EVOLUTION OF THE TRADITIONAL JUDICIAL SYSTEMS AND THE TRADITIONAL COURT BILL (TCB)

During the colonial and Union of South Africa periods, there was uncertainty about the validity of customary law. The British imposed Western legal systems on indigenous tribes.

African cultures in South Africa established social organisation systems, including conflict resolution mechanisms based on indigenous legal institutions and customary law. The interaction of indigenous and Western legal systems in South Africa has been divided into several historical periods, including pre-colonial, colonial, Union of South Africa, Apartheid, and democratic.

In 2003, Act 41 of 2003 comprehensively addressed traditional leadership. This act sought to recognise, validate, and legitimise the role of traditional leadership in communities, emphasises Tshehla, (2005; 5), and Traditional Leadership and Governance Framework Act is an enabling law. The Traditional courts exemplify the African system of justice administration, which is inclusive and democratic, the repetitive charge that African culture discriminates against and oppresses women are opponents refusing to study African courts' evolution, and willing to repeat colonial nonsense that assumes African culture is inferior to Western civilization, (Holomisa, 2011; 20)

Thipe, (2013; 492) affirms that the traditional court bill (TCB) seeks to maintain the African justice value system that has grown over time, as well as to safeguard the traditional court system's efficacy in the administration of justice. Holomisa (2016; 19), highlights that the traditional court system is preferable since justice in the conventional court system is for sale and costly as it requires the appointment of lawyers and advocates and excludes the general populous in their processes, Osmans, (2018; 51) highlights that the TCB-2017 guarantees traditional courts the opportunity to hear some criminal cases, but it does not provide legal counsel in civil disputes. The process of reforming the Traditional Judicial System needs to be carefully managed so that it does not harm the traditional leadership institution (Soyapi, 2017; 1442).

Most scholars agree that traditional courts in rural areas align with customary law and restorative justice ideals in South Africa. According to the African Human Security Initiative, Traditional courts offer the following advantages: (i) a sense of ownership by the people since the society is

bound by its norms, people are more at ease since they are involved in the process and are subject to indigenous rather than foreign legislation; (ii) According to other scholars, the procedures are flexible, straightforward, and accustomed; (iii) The method is based on mediation and is intended to be more therapeutic than punitive, the community is more essential in this aspect, and relationships are intended and anticipated to persist after the process; (iv) The courts are easily accessible, affordable, and quick because they are geographically closer to the people, they frequently incur no travel expenditures (Sopayi, 2017; 1443). These advantages highlight the cultural relevance, efficiency, accessibility, and community-oriented nature of Traditional courts.

However, some significant drawbacks of these courts include the following: (i) The inquisitorial aspect of the procedures contributes to a presumption of guilt against the accused since he must prove his innocence, which is a breach of clause 35(3)(h) of the Constitution; (ii) Referring to observes, that during court procedures, males frequently state that they do not "tolerate womanish discourse" while addressing important issues, the practice is called patriarchal because males are regarded to be superior and females are thought to be inferior, accords Sopayi (2017; 1443), it is worth noting that the severity and prevalence of these disadvantages can vary depending on the legal system and jurisdiction. Traditional Courts and legal systems are frequently evolving and adapting to address such concerns, implementing reforms to ensure fair and impartial proceedings.

The Traditional Courts Bill (TCB) contains no rules for how traditional courts should resolve disputes about the existence of a custom if the Bill is to be passed, this omission must be corrected, given the heterogeneous culture in which most South Africans live, there will inevitably be disparities in recognizing and defining customs clarify Sopayi, 2017; 1447).

The capacity of traditional leaders to attach themselves to the administration appears to be enduring. Traditional courts have been able to obtain the governing party's support for their status as the default source of justice in rural regions, argues Ubink & Mnisi-Weeks, (2017; 832).

Ubink et al (2017; 833) highlight that the TCB-2008/2012 only mentioned senior traditional leaders serving as presiding officers in the community's traditional court and did not include headmen's courts. The Bill also maintained the Act's incorrect portrayal of Traditional courts as consisting of a traditional leader and a civil court judge.

In traditional African cultures, family disputes are initially resolved within the family, with the family head acting as a mediator. They facilitate discussions and offer guidance, and counsel to help resolve conflicts. If aggrieved, they can challenge the matter at a local tribunal with the chief and community elders. Family heads have a deep understanding of family dynamics and individual personalities, helping identify the root causes of disputes. However, they may be emotionally invested in the outcome, making it difficult to maintain emotional distance and make decisions based solely on facts (Holomisa, 2016; 19).

Mnisi-Weeks (2011; 32) consent that Customary courts have never existed solely at the level of the chief's court, historically, colonial and apartheid administrations attempted but failed, to ignore and so abolish the lesser courts (family, clan, and headmen's courts), these courts are ingrained in the communities; they are frequently founded by people of the local communities gathering to resolve problems, they do most of the dispute settlement job. Most cases never make it to the chief's court, which is often located distant from most community members.

According to Mnisi-Weeks, (2013; 26), the TCB introduced in the National Assembly in May 2008 was withdrawn because women were not consulted during the Bill writing. The practice of excluding women from judicial sessions is being phased out. Some of the advisers in court hearings are female. As a result of this tendency, trials are managed with compassion and understanding for both the aggrieved and the criminal, affirms Holomisa (2016; 19).

According to Ubink et al, (2017; 840), the TCB-2017 seeks to address the issue of patriarchy in customary communities, to promote the right to equality, and the TCB-2008/2012. The TCB-2017 permits women and men to represent themselves before traditional courts and be aided by whomever they want.

Ntshebenza, (1999, 83) argues that the merging of administrative, judicial, and executive authority in a single functionary was a hallmark of rural local government throughout the apartheid period, and to some extent during the colonial period, other academics have adequately caught this fusion in their definition of "decentralised despotism" or the "bifurcated state," especially the Native Authority, the chief's authority, therefore, merged all moments of power, judicial, legislative, executive, and administrative, into one person.

Legislation Powers of Customary law allow for the creation of new laws, and all rulers, regardless of their position in the hierarchy of posts, have some degree of legislative authority Traditional leaders continue to participate in law-making through their participation in provincial and national houses of traditional leaders, as well as through the Traditional Leadership and Governance Framework Act, however, the final Constitution has since supplanted this power.

The Traditional Leadership and Governance Framework Act requires councils to report to their communities at least once a year, The Act requires provincial legislation to govern the operations of a traditional council. It must also keep adequate records, have its financial statements audited, report donations received, and follow a code of conduct, explains Bennet & Murray, (2022, 53).

In a plenary session on the 8th September, 2022, the National Assembly enacted the modified Traditional Courts Bill, this version of the Bill was to be signed into law by President Cyril Ramaphosa, elevating traditional courts to the status of courts of law, subjecting them to the formalities and constraints of the existing court system in towns and cities (Mail & Guardian, 2022).

The Bill was earlier altered by the selected committee on Security and Justice before being approved by the National Council of Provinces (NCOP) on the 2nd December, 2020, following a hurried procedure that failed to address important problems highlighted by rural people and civil society, the Traditional Courts Bill was passed on 8th September, 2022, (Mail & Guardian, 2022).

2.7. COMPOSITION OF TRADITIONAL COURTS IN SOUTH AFRICA

The traditional court system is comprised of the following levels of traditional leadership, refer to table 1, as contemplated by applicable legislation providing for the recognition of traditional leadership and acknowledged by customary law:(a) a headman or headwoman's court, (b) a senior traditional leader's court, (c) a principal traditional leader's court; and (d) a king or queen's court, where available (Traditional Court Bill, B1D-2017; 07).

Provinces	Level of traditional leadership position			
	Kingship/Queenhip	Principal Traditional Leaders	Senior Traditional Leaders	Headmen/women
Eastern Cape	4	2	215	1193
Free State	1	1	13	96
Gauteng	0	0	2	14
KwaZulu-Natal	1	0	296	3100
Limpopo	3	0	183	2118
Mpumalanga	2	0	58	522
Northern Cape	0	0	8	25
North West	0	0	54	59
TOTAL	11	3	829	7127
GRAND TOTAL	7970			

Table 1: 2016 Statistics of traditional leaders per province and level in South Africa

Image sourced from (<https://www.cogta.gov.za/index.php/2016/07/22/getting-to-know-the-institution-of-traditional-leadership/>). Accessed: 02 February 2023

2.7.1. Contemporary Statutory Structure of Traditional Leadership in KwaZulu-Natal

The following traditional leadership structures currently exist as the common basic structure within the area of the inquiry, KwaZulu-Natal and they slightly differ from one place to another.

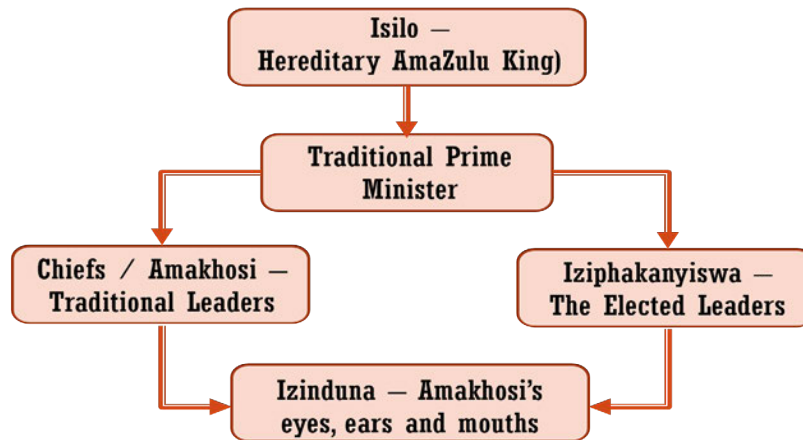


Figure 5: Diagram Illustrating the Contemporary Statutory Structure of Traditional Leadership in KwaZulu-Natal.

Illustration: Author

Isilo is the hereditary King of AmaZulu and the traditional leader of the Usuthu community. Isilo's primary role and purposes include the following: Leader of the Zulu Nation, Leader of the Usuthu traditional community, Provincial Development Functions, and Ceremonial Functions (Traditional Leadership and Governance Framework Amendment Act 23 of 2009)

At the time this document was written the current Traditional Prime Minister was member of the Buthelezi traditional community in Mahlabathini. Roles and Function; Traditional Prime Minister, The *iNkosi* of the Buthelezi traditional community.

In KwaZulu Natal, there are approximately 268 *amakhosi* and *iziphakanyiswa*. Amakhosi are the traditional leaders of various communities in KwaZulu-Natal. In the eyes of the public, they are considered equal. *Iziphakanyiswa* are elected leaders in areas that were previously *amakhohwa*. *Iziphakanyiswa* are 'leaders without land,' and their authority is determined by election rather than birthright. The appointment period varies, but five years appears to be the norm. Roles and Functions in their various capacities: Promotion of Peace, Dispute resolution, Land administration responsibilities, General development functions, Customary functions, and administrative functions, however, they operate at different levels.

The current number of *izinduna* is unknown. However, because each *iNkosi* and *isiphakanyiswa* has multiple *izinduna*, the number of *izinduna* is at least twice that of *amakhosi* and *iziphakanyiswa*. *Izinduna* are recognized as *amakhosi*'s "eyes, ears, and mouths" in all traditional areas of KwaZulu-Natal. In most cases, *izinduna* are appointed by the presiding *iNkosi* to act as his representatives in the various areas of his domain. Traditionally, the position of *induna* is not hereditary, though this varies by group. Roles and Functions: Land Administration, Social, Cultural, Security, and administrative functions, mostly operate in sub-structures like *induna yesigodi nebandla* (Traditional Leadership and Governance Framework Amendment Act 23 of 2009).

2.7.2. Non- Statutory Structure of Traditional Leadership in KwaZulu-Natal

Other important layers of authority play significant roles in how communities support one another in their daily activities, even though these structures are not formally recognized, their presence and role are felt strongly in rural areas (Traditional Leadership and Governance Framework Amendment Act 23 of 2009). The following is a brief breakdown of the non-statutory supporting structures to the chief:

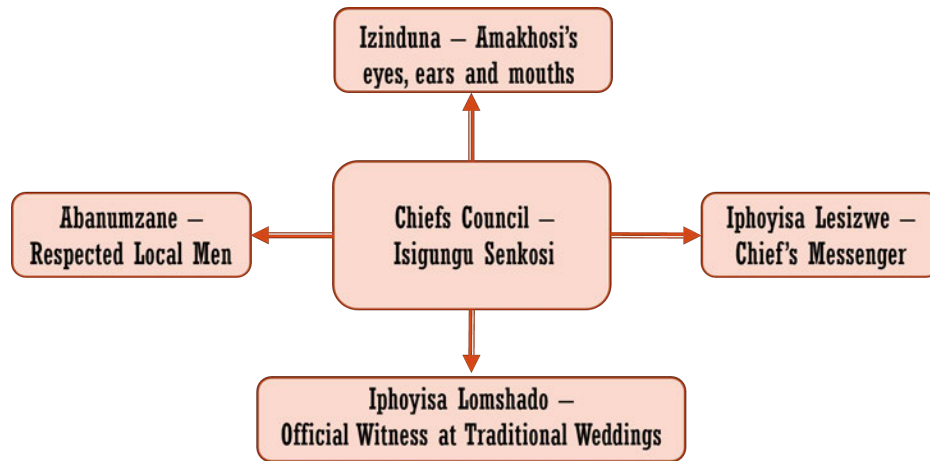


Figure 6: Diagram Illustrating the Contemporary Statutory Structure of Traditional Leadership in KwaZulu-Natal.
Illustration: Author

The *Isigungu senkosi*, which is a chiefs Council, is made up of a traditional leader's close advisers. These are usually local elders, some of whom may be blood relatives of the chief. *Izinduna* are tribal council members.

Abanumzane or *Ibandla* are respected area men who are occasionally consulted on major issues affecting rural communities.

Iphoyisa lesizwe is an *iNkosi* messenger who delivers messages to people summoned to appear before *iNkosi*, *isigungu*, or traditional authority. It is argued that *Iphoyisa lesizwe* serves *isizwe* in situations where *iNkosi* plays the role of an *Induna yesigodi*. This is when *iNkosi* is attending to matters in his or her area.

Isigungu senduna or *Ibandla* performs functions like *isigungu senkosi*, except that they do so on behalf of *induna*.

Iphoyisa lomshado also known as *iphoyisa lenkosi* is a chief's representative who is the official witness at traditional weddings, he verifies marriages and ensures that women are not forced to marry against their will. He is called to testify in cases involving marriage or inheritance, the observed customary roles and functions that require formal harmonisation across the province of KwaZulu-Natal are the provision of security, order maintenance, dispute resolution, clan

unification, and social welfare functions (Traditional Leadership and Governance Framework Amendment Act 23 of 2009).

2.8. TRADITIONAL COURT PROCEEDINGS – RULES OF PROCEDURE

The Traditional court Bill makes provision for traditional courts to be wholly inclusive and not discriminate against sexism, classism, or any form possible. It must cater to and be accessible equally to all members of the community (Traditional Court Bill, B1D-2017).

Holomisa, (2016; 18) portrayal of the court proceedings, is that they were held informally and in a relaxed atmosphere, normally under a tree or near a cattle kraal, and the processes and procedures were all-inclusive, all present in the court were allowed to participate in both the examination and cross-examination of all the parties to a case, the pre-colonial Traditional Courts were inquisitorial and reconciliatory, with the inquisitorial proceedings primarily geared at achieving compromises and reconciliation.

“Important here is the Lobedu custom of Lu Khumela [to beg pardon of one another] by which reconciliation is reached by an emissary who intervenes between two parties usually accompanied by the slaughtering of a goat [Nguni hlamba ritual]. This granting of pardon stops court procedures and ... it is estimated that about 80 percent of disputes are solved in this way without ever coming to court ...” (Khunou & Koketso, 2013; 51).

The African Traditional Court system's inquisitorial method was far more active throughout and even before the trial, the trial was not perceived as a battle between two adversaries, the accused was interrogated because he or she was seen to be a good source of information, the accused was not simply the topic of an investigation, but also a full procedural subject, Khunoun and Koketso (2013; 51) refer to Kriege's description of the Traditional Court procedure in this circumstance is as follows: *“Legal procedure is thus not absolute, it was subservient to the human situation and man was not made for law but the law was made for man”* (Khunou & Koketso, 2013; 52)

Justice, according to Kriege, was always served in a Traditional Court, Kriege is thus accurate when he says: *“If a reconciliation ensures, the court not only rejoices but watches from afar, vicariously participating in the return of the prodigal son, the wrongdoer with the beer brewed and brought to become reconciled with his father, the aggrieved party* (Khunou & Koketso, 2013;

52). Traditional Courts and adjudicators saw their function in the administration of justice in this spirit of reconciliation, pre-colonial African law was profoundly entrenched in the notion of community responsibility.

Khunou & Koketso, (2013; 53) advocate that with a well-documented history of African Traditional Justice Systems distortions and the disintegration of the institution of traditional leadership and Traditional Court systems, a new dynamic culture informed by pre-colonial systems and the Constitution should be resurrected to facilitate social justice in rural areas, The process of Traditional Court reform should be guided by the need to build an open, transparent, and accountable Traditional Court system.

CHAPTER 3:

3. TRADITION AND ITS IMPACT ON SOCIETY AND THE BUILT ENVIRONMENT

3.1. INTRODUCTION

This chapter investigates the relationship between tradition and traditionality in the context of traditional court facility design, emphasising its importance in reflecting cultural, historical, and societal values passed down over generations. It emphasises the importance of preserving a society's roots while also fostering continuity and cultural identity.

The concept of tradition or traditionality has a significant impact on how society perceives and experiences the built environment. Tradition generally refers to a set of customs, beliefs, practices, and knowledge that are passed down through generations. Therefore, tradition can have an impact on the built environment, including architecture, urban planning, and space design.

Graburn, (2013;06) refers to Alice Horner's Ph.D. dissertation on anthropology which emphasises the significance of tradition as a 'passing down process' and custom. Multi-generational dances are examples of this transfer, which became more self-conscious when continuity was threatened or the inability to pass things down became apparent. Over time this self-consciousness of tradition emerged in historical situations where people were aware of change. With this understanding, tradition in court design should entail preserving and reinforcing architectural, symbolic, and functional elements that have endured over time. The architecture conceptualisation of court buildings frequently draws inspiration from historical precedents, incorporating cultural styles and motifs with architectural elements that represent authority, stability, and justice.

According to Horner, tradition can be viewed as a reservoir, asserts Graburn, (2013;09) a source of historically defined identity and a sense of safety, specialness, or difference, refer to figure 5. In modern times, tradition is frequently defined as selected aspects of a past way of life, giving the option of choosing from one's tradition, belonging, and identity. Tradition is not an antithesis to modernity, but rather a source of strength, richness, and meaning in life.



*Figure 7: Traditional woman and child in traditional sartorial in Msinga
Image sourced from <https://mapio.net/a/114445014/>. Accessed: 16 July 2023*

Understanding tradition is crucial for positive and creative connections with the past. It influences the present and future, but the past is the point of reference for decision-making elucidates Adam, (2020;552), Traditional court buildings can be designed to preserve and highlight tradition judicial systems' heritage, historic structures or design elements can be incorporated into modern courthouses to maintain a connection to the past. Collective memory and tradition are essential for communities to retain their identities, as they must be distinct, visible, and often symbolic, traditional markers of community identity revolve around significant family or societal events, such as parades, uniforms, and ceremonies Traditionality in architecture entails not only replicating historical designs, but also incorporating cultural symbols and meanings, court designs frequently incorporate national emblems and culturally relevant icons to convey principles of justice, fairness, and order, emphasising the importance of these symbols in society.

Traditional court design must be a reflection of a society's past, embodying values, beliefs, and cultural identity, with careful integration of symbolism, cultural motifs, and architectural elements

to communicate principles of justice and order. As societies evolve, the challenge is to preserve tradition while embracing modern advancements for a functional and culturally resonant judicial system. Tradition has a significant impact on society's relationship with the built environment, shaping architectural styles, urban planning principles, construction techniques, and cultural rituals while promoting continuity and identity across generations.

3.2. THE CONCEPT OF THE AFRICAN TRADITION OF JUSTICE UNDER A TREE

There has been a recognition that necessitates the exploration of how built form can further assist to accommodate the ongoing development of the Traditional Judicial Systems, to be able to cater to the contemporary demands of the traditional societies it serves.

Murove, (2020;89) argues that colonialists abused the concept of African tradition for expedient colonial political purposes, the idea of organising colonial African society into reserves and homelands was justified by colonialists as the imperative of allowing the colonised African to preserve his or her traditions and identity. In other words, tradition referred to socioeconomic, religious, and political practices that existed in African culture before colonialism.

President Nelson Mandela unveiled the Constitutional Court's first symbol, a plaque showing its emblem, on 14 February 1995. The emblem represents individuals seeking refuge under a canopy of branches, a symbol of the Constitution's protective function and a nod to a recurring motif in the Court, that of justice under a tree. Justice Albie Sachs was heavily involved in the formulation of the emblem and the design of the new building, which had to express the Court's position in Africa and its historical roots in the fight for human rights. (<https://www.concourt.org.za/index.php/about-us/the-logo>).

According to Justice Sandile Ngcobo (2021), "Open justice" is the principle that all courts in the country must be open to the public and the press, and it is deeply rooted in African tradition, as justice was administered in the open in the literal sense of the word in African societies, trials were held under a tree, with no walls and only a roof made of leaves and branches to provide shade from the sun and shelter from the elements, as a common object, tree can be found throughout the rural context, but the fact that there is a function of court beneath the tree gave it a unique identifiable feature that represented place.

Bodiat (2021) enlightens that the logo of the Institutional Court represents the core subject of its design, which is Justice beneath a Tree, a tribute to the old cultural customs of village elders debating and settling on matters presented to them by community members while sitting beneath a tree.

On figure 7, Carolyn Parton (2005), the designer of the Constitutional Court's logo, describes the design as a tree sheltering people sitting beneath it, a depiction of the traditional African notion of justice under a tree, and that it represents the preservation of people's rights in the new South Africa.



*Figure 8: Logo of the Constitutional Court portraying justice under a tree
Image sourced from (<https://www.concourt.org.za/index.php/about-us/the-logo/>).
Accessed: 02 February 2023*

The adoption of the theme of justice under a tree by the South African Constitutional Court demonstrates that the relationship between justice and trees retains significant cultural importance in certain sophisticated nations. This concept is consistent with the larger concept of community-based justice, in which legal proceedings are transparent, inclusive, and open to the community; it reflects a longstanding practice of holding legal proceedings in a way that allows the public to observe and participate in the justice system. (Mulcanhy, 2011; 15).

The influences of the symbolic significance of justice under a tree can be further explored as a concept, vision, and design driver in the realisation and development of a Traditional judicial architecture in Msinga, KwaZulu-Natal, holding court under a tree is often deeply ingrained in a

community's cultural heritage and reflects a historical and traditional approach to justice that existed before formal traditional courts.

During democratic dispensation, customary law has been recognized by the constitution, and the developments of the system are currently being implemented. There was recognition and an attempt to provide basic infrastructure for the Traditional Judicial System in the form of traditional court buildings that proved to be inadequately explored and implemented, Holomisa (2016; 19) advocates for tribal authority facilities, and traditional courts-built forms to be refurbished, modernised, and outfitted with the required personnel as well as office and appropriate court equipment.

3.3. REGENERATING BUILT ENVIRONMENT SPACES FOR RURAL CONTEXT: NURTURING SUSTAINABLE COMMUNITIES.

The regeneration of built environment spaces in rural contexts is critical for promoting sustainable development, preserving cultural heritage, and improving the overall quality of life in rural areas. This thesis investigates the importance of regenerating-built spaces in rural areas, focusing on the integration of cultural, social, and sustainable principles to create resilient and thriving rural communities.

Luckan (2023,01) argues that in South Africa, rural development initiatives frequently lack a connection to rural contexts, instead relying on urban models and globally acceptable methods. The postcolonial South African built environment is dominated by centralised approaches and systems inherited from the Global North and Political responses to appease communities undermine collaboration and interdisciplinary engagement, effectively excluding rural communities from legislative, financial, administrative, and design decisions.

Low (2018;70) asserts that Colonialism, which was anti-Ubuntu and intolerant of difference, contested local practices and traditions, resulting in the arrested development of Indigenous people. This ruthlessly contested approach to land, settlement, space, and ways of being was violently overwritten and obliterated by non-negotiable Western norms and standards.

South Africa must be reconceived as a spatial continuum, with a focus on rural regeneration, to transform the spatial legacy of apartheid. Ignoring this critical component, which is deeply rooted

in tradition, jeopardises authentic and sustainable transformation. Low (2018;73) further elucidates that South Africa's post-colonial context emphasises the need for a shared national/cultural identity. Colonialism and apartheid limited cultural autonomy and self-determination, while Western modernity emphasised economic gains. Following the democratic transition in 1994, there was a need to rediscover African heritage and rebuild a sense of belonging.

South Africa's democratic elections in 1994 marked the end of apartheid and the beginning of a new era for architects, and Silverman (2014;263) elucidates that architects envisioned new public buildings, institutions, and typologies that would transform apartheid's traditional space and government structures. As white architects frequently adopt African personas, the issue of race is central to these new spatial imaginaries. These designs, which address African landscapes, craft, and indigenous traditions, frequently clash with identity issues.

Silverman (2014;264) argues that the architectural profession faces challenges due to race, with the majority being white and relying on "overseas glossies" for architectural clues. African identity is frequently equated with African motifs, leading to problematic practices, particularly for less talented architects who ignore local spatial clues. This problem persists even after two decades of democracy, Noble's book on post-apartheid public architecture, suggests a positive potential for the use of African elements in contemporary architecture, by incorporating traditionally oppressed elements, architects may aim to challenge and redefine dominant architectural codes, fostering a more inclusive and representative built environment (Chronopoulos, 2012;493).

Noble (2011;112) argues that spatial change emerges as a response to contestations of the socius, where functional typologies and racialized constructs are re-impressed. The task of architecture lies in a radical re-writing of space, both typologically, through individual buildings, and morphologically as urban or rural terrain, South African society remains caught between tradition and modernity, with tradition aligning with tribal collectivism and modernity with Western colonialism and capitalist practices. The extremes between tradition and modernity have perpetuated the status quo, inhibiting effective societal change.

Luckan (2023,01) encourages architects to design using a bottom-up, humanistic, and inclusive approach that includes indigenous cultures and knowledge systems, through community

participation and collaboration. This study deems that modernist education can be transformed into place-responsive practices as conducted investigations indicate that sustainable rural development necessitates a deep engagement with situated culture and knowledge systems, and lessons from place are critical for forward-thinking proposals. This approach should be re-contextualized and adapted to analyse and conceptualise rural development by engaging people in place and time.

Regenerating built environment spaces in rural areas is a transformative process that necessitates a thorough and culturally sensitive approach, rural regeneration serves as a catalyst for long-term development by preserving cultural heritage, encouraging community-centred design, embracing sustainability, improving infrastructure, and utilising technology. The revitalization of rural built spaces not only improves residents' living conditions, but it also helps to preserve cultural identity and fosters the growth of resilient rural communities.

3.4. DESIGNING PUBLIC FACILITIES FOR INDIGENOUS AND TRADITIONAL SOCIETIES

Scholars have engaged in research and exploration to address the challenging issues of designing spaces for contemporary Tribal court facilities that primarily cater to the requirements of indigenous society in the modern day.

Murphy (2016;269) argues that the story that the traditional court building tells through its design may be as important to the community it serves as its institutional function. It will have a direct impact on the efforts to collaborate productively by shaping their thoughts about themselves and their institutions. Although the built form is unlikely to solve social disadvantage, cultural loss, alienation, or dysfunctional justice systems, it can be viewed as a symptom of a successful culture, providing a tangible grasp on the reality of a just and prosperous culture.

Traditionally the court serves as a gateway to ensure citizens have access to justice to settle disputes and vindicate or protect their rights within it. Courthouses must be welcoming and accessible, both physically and psychologically, explicates Murphy (2016;269). The study further asserts that by designing traditional courts that are sensitive to the needs of Indigenous societies, courts designed in the approach of native architectural influences and cultures may incrementally right some of the legal wrongs of colonialism. Murphy (2016;270) recognizes that the staggering

rates of Native contact with the non-Native legal system are in part the product of intergenerational trauma and disadvantage wrought by colonialism.

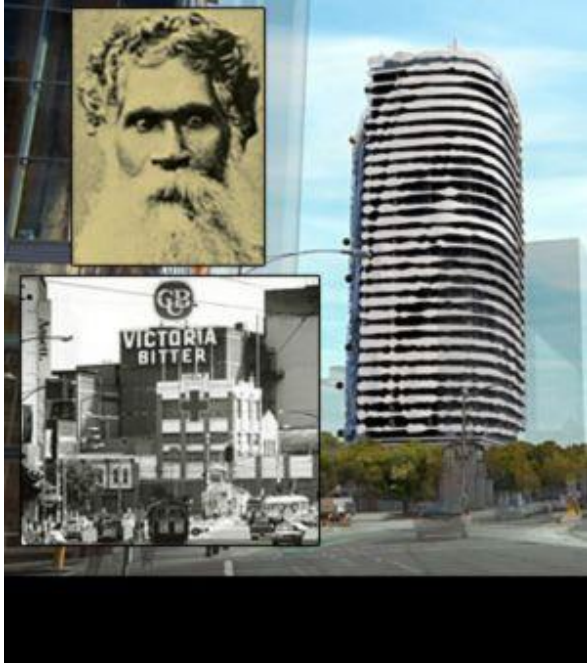
Luckan (2023,01) advocates for consultation when designing buildings for Indigenous communities because it leads to authorization, a sense of ownership, and a more culturally appropriate and user-friendly built form. It also guards against re-enacting the colonialist power dynamic, in which colonial values are imposed on local/native people in the authoritarian belief that they know what is best for that society.

Collaborative design is the best way to gain buy-in and facilitate a shared journey in which solutions are developed collaboratively. In designing a built form for traditional communities, the process is just as important as the result, as one directs the other.

The traditional court is the most visible physical manifestation of the Law in Msinga, imposing an intricate web of obligations and rights emphasised by Murphy (2016;280), it represents the commitment to justice as well as law and order, it is also important in a practical sense, as it is the most visible point of contact between the public and the law, and it must be as accessible as possible to facilitate public legal engagement.

Innovative courtrooms are being built in ways that blur traditional spatial hierarchies by fusing indoor and outdoor spaces, allowing natural light, and views of the surrounding landscape, and bringing the sounds and smells of nature into the courtroom described by Murphy (2016;287), this inside-out architecture movement in court design is also applicable to buildings that do not have a specific focus on indigenous users but exhibit similar design priorities.

Murphy (2016;293), warns against using meaningless symbols, citing the Australian Portrait Tower as an example, refer to figure 9. This luxury apartment tower features a relief of William Barak, which represents the frontier wars, critics argue that, despite its symbolism, the tower does not effectively engage with Aboriginal people and is unlikely to house any Aboriginal tenants and emphasises that courthouse architects must avoid using empty symbolism in their designs.



*Figure 9: Image of the Portrait Tower designed by ARM Architecture, Murphys regards as Empty Symbolism.
Image sourced from (<https://za.pinterest.com/pin/343329171570415447/>)
Accessed: 02 February 2023*

Murphy (2016;287) concludes that the enculturated courthouse approach sends a strong message to the Indigenous community and court users that their input is valued, and that their voices will be heard. This message is not transitory or ephemeral, but rather a statement that future generations will be able to decipher by reading the traces of the structures they inherit. The significance of public buildings that are long-lasting inscriptions of social values is emphasised, leaving encoded messages that will be used to judge societies in the future.

3.5. SUMMARY

Kwaa Prah (2013; 62) questions whether African development can be successful if the approach is not based on African culture, and believes that development must include, among other things, the ability for people to innovate, create, accept, adapt, refresh, and incorporate new values and ways into their social structure.

African and immigrant populations are asking that the global world recognize their cultural practices and identities, because of the arbitrariness with which African governments were founded explicates Kwaa Prah, (2013; 68).

It is widely understood that Africans without cultures provide little or no prospect for significant transformation. Evolution can only occur when African cultures are used as the foundation for social transformation. Of Course they may add, remove, and borrow from other civilizations, but not at the price of Africans' fundamental supremacy concludes Kwaa Prah, (2013; 69).

It is therefore prudent that the solutions for African problems be African, not Western, and those solutions to the African crisis lie in Africa itself.

CHAPTER 4:

4. THEORETICAL FRAMEWORK

4.1. INTRODUCTION

Manolia (2018; 84) argues that in architectural schools across the world, the notion of a building is still emphasized above the actual thing, the architect has evolved into a shape designer, without regard for how those precise designs would affect people, several contemporary architects, and thinkers advocate rehumanizing architecture.

The adopted theoretical framework lenses have significance in further unpacking the nature of the research problem and the philosophies around it. **Space Syntax** as a paradigm of urban research, **Phenomenology** as a paradigm of human experience with the theory of **Critical Regionalism** and **Symbolism**, is explored in the realisation of a Traditional Judicial System through the built form. These concepts and theories will also form a foundation for understanding the relationship between the judicial systems-built form, and their influences on the societies they serve.

4.2. SPACE SYNTAX: NAVIGATING THE INTERSECTION OF TRADITION AND FUNCTIONALITY

This study investigates the relationship between space syntax theory and traditional court design, with a focus on how spatial configurations affect functionality, justice, and user experience, space syntax theory, which is based on the study of spatial configurations, has gained traction in contemporary architectural discourse, demonstrating its relevance in a variety of contexts.

To be able to interpret space intended for a traditional community that has existed since time immemorial into a contemporary form, the designer must gain insight into the social and cultural factors that lead to their preferred spatial configuration/formation, and by analysing key precedents and case studies of the similar built environment through space syntax approach, one can gain insights to their spatial arrangement preference and be able to design better-suited environment for the intended communities.

According to Hillier (2005; 05) space syntax is a space theory and approach founded on two notions that represent both the objectivity of space and intuitive involvement with it.; a set of analytical, quantitative, and descriptive methods for analysing spatial formations in many forms, such as buildings, cities, interior spaces, or landscapes.

In 1984, Bill Hillier developed a theoretical approach to space based on the belief that different cultures develop distinct methods of utilizing space, and that such social space manifests itself through a hierarchy of forms ranging from public, prominent, and accessible areas to private, individual, and confined spaces, this realization was an inspiration to propose a technique for "understanding" how societies develop their spaces both internal and external such that their settlements suit their innate priorities and custom, explains Ujam et al (2004).

Space syntactic study provides description methodologies for inhabited areas (buildings, towns, or constructed complexes) so that their underlying social logic may be articulated. This, in turn, might lead to secondary theories or, often, practical explanations of the impact of spatial layout on various social or cultural factors and attributes through observation of the interaction between human civilization and space via the lens of a theory of inhabited space structure and contends that human cultures employ space as a critical and required resource for organisational purposes, in doing so, the space of inhabitation is configured, a word defined by space syntax as the transformation of a continuous space into a linked set of discrete components (Bafna, 2003; 18).

Through space analysis one gets an insight into social and cultural influences of historical and current spatial formation. According to Nes (2014, 238) what matters in the built environment is the degree of accessibility, visibilities, adjacencies, openness, and enclosures and through the analysis of design scenarios, space syntax provides an intriguing insight into the link between social and cultural patterns in a design process.

Spatial patterns reveal social inequality or segregation within a community or organisation and even on abandoned ruins contends Nevadomsky et al (2014,75).

Architecture is a cultural object that influences social interactions, movement, experiences, differentiation, and capacity. It shapes control and surveillance which is critical in the traditional court building that seeks to also control individuals in conflict. Different cultures may require

different modelling principles to define spatial distinctions. Syntactic modelling should consider spatial articulation modalities prevalent in the architectural culture, as architecture conveys culture and ideals. Koch (2021,08) emphasises the importance of understanding these cultural aspects.

The space syntactic analytical technique incorporates both tangible and intangible variables, movement, and land use as well as cognition and behaviour, Yamu et al, (2021;01) commend that both these technologies should be incorporated into planning practice to improve the sustainability of built environments.

4.2.1. Space Syntax of the Dispute Resolution Built Form and Environment

Traditional court designs, which are rooted in cultural and historical heritage, represent the legal system's values and rituals, they have hierarchical spatial arrangements, symbolic elements, and a distinction between public and private spaces, emphasising aesthetics and symbolism over utilitarian architecture, Space syntax analysis investigates the interconnectedness of spaces in traditional court designs, focusing on hierarchical layouts with distinct zones for various purposes such as courtrooms, waiting areas, and administrative offices, this layout influences people's flow by emphasising the distinction between public and private domains, as well as the court's symbolic significance.

Through careful analysis of indigenous court precedents and regional case studies, one can extract convex spaces, where every point of the perimeter is visible from every point within the built form, allowing for structural genotype identification and tracking spatial manifestations of social-cultural trends accords (Dawes et al 2013;11).

The principle of convex spaces should be explored in creating interaction spaces in the built form in which all points can be linked without crossing the border. When moving between two spaces, occupants will frequently pass through the central ones. As a result, such spaces have a greater potential for inhabitants' co-presence resulting in increased social interaction within the intended court architecture, explicates (Yamu, et al 2021;05), however, this should be carefully explored in a manner that reflects and respects the local culture, beliefs, hierarchical order, and consideration of vulnerable groups within the traditional court facilities.

Convex maps will be used for spatial analysis in proximity or within that small community to evaluate and understand the connection of spaces inside buildings and public spaces within the built environment context (Yama, et al, 2021;05).

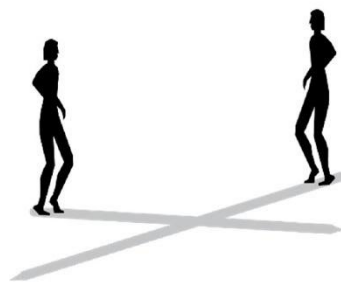


(b) The convex space for interaction

Figure 10: Bill Hillier's Illustration of the convex space for interaction

Image source: Bill Hillier's Legacy: Space Syntax—A Synopsis of Basic Concepts, Measures, and Empirical Application
Accessed: 02 February 2022

Exploration of axial line analysis might predict social encounters and identify spatial structures that may cause navigation problems in the court-built environment. This type of analysis may be a useful tool in the design exploration phase so as to identify the parties and be able to separate the two parties in dispute or to protect the vulnerable through design intervention. (Yamu, et al, 2021;05).



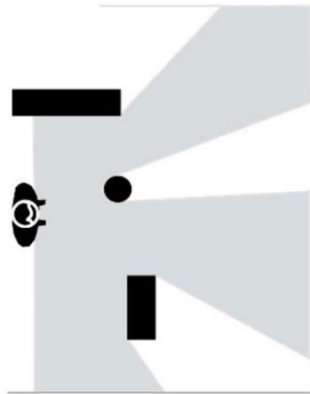
(a) The axial sightline for movement

Figure 11: Illustration of the axial sightline for movement

Image source: Bill Hillier's Legacy: Space Syntax—A Synopsis of Basic Concepts, Measures, and Empirical Application
Accessed: 02 February 2022

An isovist field is a visual record of what may be seen from a particular place in a 360-degree or 180-degree perspective. It is a range of visions within the built form explains Yamu et al, (2021;05). It is a relevant tool to explore connecting the inside of the court facility to the place/local

landscape of the uMsinga Region, bringing the spirit of the place within the court space, a concept of Genius loci, and improving visual surveillance within the court public spaces.



(c) The isovist field for orientation

Figure 12: Illustration of the isovist field for orientation

Image source: Bill Hillier's *Legacy: Space Syntax—A Synopsis of Basic Concepts, Measures, and Empirical Application*

Accessed: 02 February 2022

By syntactically viewing space, we may begin to comprehend how social and cultural patterns are imprinted in spatial layouts, as well as how these patterns impact our understanding of how these patterns interact (Yamu et al, (2021;04) explicates that the built environment's accessibility, visibility, permeability, adjacency, openness, and enclosure influence the link between space and society.

Through interpretation of the built environment, Seo (2022; 04) suggests that the message encoded by its designers can be decrypted by reading the textual meaning embedded in the constructed structure. Because of its quantitative approach to meaning, the topological approach of space syntax has been effective in spreading its impact throughout the previous decades.

Space syntax analysis aids in enhancing the functionality and efficiency of court designs by optimising connectivity and accessibility, thereby enhancing legal processes and ensuring timely access to justice, by balancing traditional symbolic elements and incorporating symbolic elements to convey authority, justice, and solemnity, spatial configuration, following space syntax principles, reinforces these messages, emphasising justice and the dignity of legal proceedings, traditional court design necessitates a nuanced approach to balancing tradition with functionality, modern accessibility, inclusivity, and adaptability to changing legal processes and technological

advancements. The incorporation of space syntax principles into traditional court design enables architects to maximise efficiency while maintaining symbolic richness, this approach improves court complex functionality and contributes to a more dignified user experience, reinforcing justice's importance in society. Space syntax helps architects create timeless, responsive spaces.

4.3. PHENOMENOLOGY: A HOLISTIC EXPLORATION OF SPATIAL EXPERIENCE

The phenomenological approach focuses on people's current feelings about themselves and their environment in assessing personality functioning and change. According to Rudd (2019), the most well-known classical phenomenologists are Husserl, Heidegger, Sartre, and Merleau-Ponty, and these four philosophers have unique viewpoints on phenomenology, various methodologies, and different consequences.

The phenomenological approach in traditional court architecture is the manipulation of space, form, material, light, and shadow to create a one-of-a-kind memorable experience through an effect on the human senses. Phenomenology begins in silence, only those who have felt true uncertainty and frustration in the face of phenomena while attempting to find appropriate descriptions for them understand what phenomenological witnessing truly entails (Mata, 2016; 26)

According to Merleau-Ponty (2012;8), Phenomenology, calls for a return to the ideal forms and contents of experience as we live them in the built form, rather than how we have learned to conceive and describe them, and architecture is the visualisation of the *genius loci*, and the architect's responsibility is to create meaningful places that encourage man to dwell (Norberg-Schulz, 1980;5).

The built-form design should focus on the human experience of how they perceive or comprehend the built environment. Mallgrave and Godman (2011;101) refer to Norberg-Schulz's conclusion idea that architectural space should be an imageable built form with rich possibilities for identification, and Steven Holl's plea for the interplay of the built form materiality with its site, the linking of built form, material, space, colour, and light is essential for a successful design.

Mallgrave and Godman, (2011;211), justify that exploring phenomenological implications on the built form contributes to human perception and experience of the space/built form, hence we touch, see, smell, hear, and viscerally feel spaces.

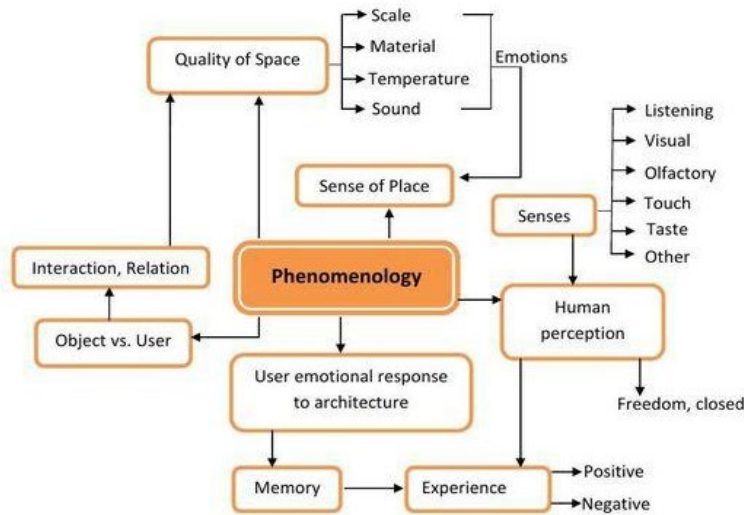


Figure 2.1: Phenomenology and its aspects

Figure 13: Mind map illustrating Aspects of Phenomenology
 Image sourced from (issuu.com Pinterest). Accessed: 02 February 2023

In the garb of the quest for the primordial idea of habitation, architecture is about the hunt for a non conceptual representation of its rendering capable of supporting a fundamental reform of itself. The concept eventually leads to a profound comprehension of architectural shapes. This similar retroactive drive toward a non-conceptual but retroactive and retroactive interpretation of human experience needs to be found frequently in the built form (Furtado, 2006;13).

Architectural phenomenology has gained traction as a critique of architectural modernism's notion of "users". However, the processes used to operationalize this shift from functional and abstracted reasoning to intuitive experience also serve to essentialize bodies while making others invisible. Boys (2018; 56) argues that all humans share the same understanding of material space, and designers may best reach the collective unconscious by reading it in the material and sensory aspects of built environments. The architect's task is to be more sensitive to these interpretations of created space, refers to Unwin's book on Design, which states that the built-form design should begin with recognizing the key aspects of daily life and places that coincide with users' views and expectations.

Manolia, (2018: 86) elucidates that while the body is the origin of the spatial axes and provides directions and dimensions to the space, the mind recalls previous similar places and the sensations, thoughts, and dreams linked with them. Perception is subjective in the sense that it is relative to the individual's body and mind.

The ultimate purpose of architecture extends beyond its physical manifestation, by guiding awareness back to the world and towards the feeling of self and being in the place, built form must convey meaning and becomes meaningful, and the phenomenological approach to design must promote an experienced understanding of the built form space by engaging the functions of memory, imagination, and fantasy (Manolia, 2018: 89).

4.3.1. Phenomenology of the Traditional Judicial Facility

Phenomenology investigates the relationship between architecture, human perception, and justice administration in traditional court design, which influences both legal proceedings and people's experiences with justice, with a focus on sensory perception and bodily involvement in human experience, court designs, such as grand entrances and imposing facades, have an emotional impact, either inspiring reverence or intimidating others, materials, light, and acoustics influence the embodied experience and its interaction with the legal process.

The interesting use of forms, textures, light, and shadow in, figure 14, the St Ignatius Chapel By Steve Holl influences spatial perception, reflecting intrinsic experiences in architectural design projects.



Figure 14: Visual perspective reflecting on spatial and material phenomenology at St Ignatius Chapel by Steven Holl
Image source: <https://www.world-architects.com/en/architecture-news/headlines/25-year-award-to-chapel-of-st-ignatius>
Accessed: 02 February 2023

Perceptions, connecting our physical bodies through sensory organs, are essential for intellectual and personal perception of the universe. Finnish architect Juhani Pallasmaa emphasises architectural phenomenology discourse as an intellectual "inner language" of places, emphasising emotive and poetic worlds of geometric aesthetics. This metaphysical underpinning allows residents to relate to a place's unique character in their way (Poon, 2018; 02).

Pallasmaa maintains that for buildings to enhance meaning and embody memories, they must do more than simply reflect practical environmental realities of creating geographical and physical spaces to match their surroundings. The intended traditional court building should communicate the sacredness of human situations by abstracting emotional connections and perceptual awareness, encapsulating empathy, joys, tragedies, and the shared experiences of people's lives (Poon, 2018; 06).

Soltar & Kirci (2019; 04) concur that a basic difficulty that built form faces and generates is the breach between man and his constructed surroundings, to avoid alienation, phenomenology seeks to design settings that are based on experiences and address the senses, simultaneously sensory activation would also make space a feasible and imaginative habitat.

Place-lessness, in contrast to the concept of place, is defined by uniformity, standardisation, and separation from local contexts, this is evident in Msinga's traditional court facilities, appreciating location distinctions can help promote social and environmental responsibility and instil a strong sense of place in these buildings, a pragmatic sense of place is formed through location experience and daily life context (Relph, 2009; 24).

Court designs frequently incorporate symbolic elements reflecting cultural values and historical narratives, which influence perceptions of justice, these elements influence attitudes and expectations, resulting in a shared understanding of the legal system, phenomenology will investigate how spatial arrangements in court designs influence human interactions, including seating placement, visibility of key elements, and spatial hierarchy, understanding these relationships is critical for comprehending the legal process within the courtroom's physical boundaries, with a focus on the temporal aspect of human experience, acknowledging that perception changes over time, traditional court designs should incorporate rituals and ceremonial elements within specific historical frameworks, influencing the emotional states and engagement of those participating in or watching the legal process.

Phenomenology in traditional court design should reveal a rich experience that goes beyond functionality, the interplay of architectural elements, symbolism, spatial arrangements, and temporal dimensions contributes to our understanding of how people perceive and interact with justice administration. Architects and court users can use phenomenological lenses to design environments that improve the overall experience of justice for those who enter these sacred spaces.

4.4. CRITICAL REGIONALISM: BALANCING TRADITION AND MODERNITY

Critical regionalism, an architectural concept, emerged in the late twentieth century to strike a balance between modernity and local identity, emphasising regional context through design. This chapter investigates its use in traditional court design, with a focus on combining modern functionality with cultural and contextual factors.

Critical regionalism emphasises the incorporation of cultural elements into architectural design, especially traditional court design, this entails incorporating local customs, materials, and styles to

create spaces that serve practical purposes while preserving the cultural identity of the community they serve, architectural elements, such as symbolic motifs and historical materials, are selected to reflect the region's distinct history.

According to Amirjani (2018; 931), Alexander Tzonis and Liane Lefaivre established the term Critical Regionalism in their article *The Grid and the Pathway* in 1981 where they argued that no new architecture can be sustained without addressing a new relationship between designer and user, a new link that Critical Regionalism may maintain a bridge over which any humane built form of the future must travel.

Orozco (2011; 01) explains that a true connection to place is essential for developing a built-form design that meets the needs of society in that specific geographic place, it also reflects the cultural legacy and an extension of local identity.

Egger (1984; 232) illuminates that the Latin American interpretation of regionalism is distinct from that presented by Kenneth Frampton, Alexander Tzonis, and Liane Lefaivre, referring to Marina Waisman's description of regionalism as embracing local culture within the overall march of history, rather than a rejection of the West or modernity.

Critical regionalism can be utilised as a resilient medium against place-lessness and a lack of identity in architecture, real regionalism built form should convey the region's values, traditions, and culture, and endorse those traditional and historical elements that should be included in the traditional judicial built form designs, not as afterthoughts but as fundamental parts of the built form's idea and shape since contemporary critical regionalism seeks to integrate local culture with an already evolved modern language.

Zahiri, et al (2016; 14), maintains that it is important to work with the knowledge that has already been acquired and begin to adapt the critical regionalism approach with the best technological achievements possible, to achieve greater regional quality, structural and other relevant performance concerns should be tackled holistically, and tectonic articulation between built form, engineering, and handicraft may bridge the gap between critical regionalism approaches and technical answers, allowing for regional diversity, adaptation, and modification.

Critical regionalism encourages architects to respond to the distinct characteristics of a specific region while also considering global influences, while, traditional court design entails incorporating local cultural, historical, and environmental influences into the design process, and historically, courts are significant symbols of justice and governance and have evolved to reflect regional cultural, social, and environmental influences, however, globalisation has resulted in standardised designs that frequently ignore local context, forcing architects to reconsider their approach and reclaim cultural identity through critical regionalism, a method of reclaiming cultural identity in architectural practices.

Critical Regionalism emerged as a reaction to Modernism, which was grounded in location rather than mimetically vernacular, arguing that it was a critical local interpretation of modern heritage that should be reinterpreted and expanded upon while rejecting historicist postmodernism elucidate Marcos and McCormick, (2021; 1661).

Marcos and McCormick, (2021; 1666) suggest that one might employ digitally disruptive tactics to produce a regionalist approach to the modern design of the built form, many places abandoned their local identity and age-old construction practices in favour of Western architectural styles as emblems of power and riches, resulting in widespread place lessness amid new buildings, a general disconnection from nature, and ecological damage.

Matter (1989) claims that Douglas Kelbaugh's book *Towards an Architecture of Place* contains a set of criteria for distinguishing a critical regionalist approach, identifying five key attitudes: love of place, love of nature, love of history, and love of crafts, on the other hand, what makes a place special is worth recognising and safeguarding through architecture, and for the Environment, Architects, landscape architects, and urban planners can protect ecosystems by working together, where there is room for genuine interaction between innovation and tradition, guidelines can still be found within the unique place's character. New materials with higher supporting capabilities can be used in conjunction with traditional enclosing materials. A rational critical regionalist-built form rejects the standardised responses of a universal civilization.

4.4.1. Seven Points of Critical Regionalism in the Traditional Judicial Built Form

Frampton (1992; 327), Critical Regionalism is a critical category geared towards some common qualities, which may or may not be present in this mentioned 7-point. The section best describes how the 7 points of Critical Regionalism can be used as a tool in the investigation or the creation of appropriate architecture for a traditional court and Postekkis, (2014; 24) study gives a clearer narrative to these seven characteristics, or rather mindsets, which are arguably best summarised as follows:

Critical regionalism prevails over modern architecture by integrating elements of cultural history into the design of traditional judicial structures, this approach serves to distance and resist the influence of the International Style, which, during the early years of modernism, detached buildings from local connections, treating them as mere living machines, instead, critical regionalism advocates for building facilities that harmonise with their surroundings, metaphorically transmitting forces to the earth and establishing a meaningful presence in the broader world.

The built form is a crucial aspect of spatial experience, contributing significantly to spatial aesthetics. Successful integration into the surroundings depends on adaptation to the local climate and the utilisation of diverse natural resources, fostering a seamless merger between nature and the traditional judicial built form, Kenneth Frampton highlights the importance of natural light as an illustrative example, not only for illuminating interiors but also for showcasing form and function, influencing the spatial and qualitative experience of the structure.

In Traditional Judicial built-form design, the incorporation of natural elements enhances the spatial experience and engages the human senses, this approach allows for the incorporation of high-quality local data and experiences, enabling users to recall sensory interactions with natural elements, a departure from the predominantly digital experiences of modern life.

Critical regionalism advocates discreetly housing historic characteristics without isolating them, blending parts of contemporary architecture in a balanced manner, thriving in environments dominated by the International Style, critical regionalism challenges established norms, in South Africa, traditional courts represent a Western imposition of classical revival architecture, here,

critical regionalism emerges as a tool for crafting traditional courts that defy the existing order (Postekkis, 2014; 36).

The Traditional Judicial built form must acknowledge native culture in a modern language, specifically address environmental and regional qualities, and reinterpret cultural heritage; this will provide an architectural identity that effectively responds to regional and modern demands, fostering an intimate relationship to place and culture, finally, enhancing the link between people and place via built environment may be crucial for improving current living situations and deepening ties to regional roots, according to Orozco (2011; 103), and further expounds that this design effort is critical towards a sustainable environment that is accommodating to the end users.

Critical regionalism provides a comprehensive and context-sensitive approach to Traditional court design, by emphasising cultural integration, historical sensitivity, environmental responsiveness, spatial harmony, community engagement, aesthetic expression, and adaptability, architects can design Traditional court structures that are not only functional but also woven into the rich tapestry of their regional context, this synthesis of tradition and modernity not only meets the practical needs of the judiciary, but it also contributes to the cultural heritage and long-term development of the communities they serve.

4.5. SYMBOLISM: ARCHITECTURAL NARRATIVE OF AUTHORITY AND JUSTICE

Traditional court designs are a complex tapestry of symbols that convey authority, justice, and cultural values, these designs usually provide information about the historical, cultural, and social contexts of these institutions, from material selection to layout and ornamentation, every aspect of court architecture has a deeper meaning, reflecting the values and ideals of the societies they serve.

Symbolism is often expanded in modern architectural theory discourse with terminologies such as association, ornament, ideogram, visual sign, and code, symbolism's expression, shapes, and meanings are linked to the social, economic, and cultural evolution of society, as it reflects the function of buildings and emphasises the context and forms of cultural identity (Mankus, 2014, 273).

As a result, symbolic representations of architecture may be viewed as a visual embodiment of politics, expressing the values, ambitions, and aspirations of the moment, in general, a symbol may be described as a picture having a specific and undefined reference, defined as a sign expressing a given thought or idea, and symbolism, as an art of thinking in images (Mankus, 2014; 274).

According to Mankus, (2014; 276) Venturi's postmodernist criticism emphasised the pragmatic nature of modernist architecture and its lack of emotional and symbolic content. Industrial and mechanical images are examples of modernist symbolism, but they are dry, empty, and boring. The distinction between modernist and postmodernist architecture is not defined by the rejection or acceptance of symbols and ornaments.

Symbols continue to hold significance in contemporary architecture, with their meanings and qualities playing an important role, postmodern and contemporary architects, as well as various societal and power groups, all contribute to the expression of symbolism through architecture, according to Mankus, (2014; 281), symbols in contemporary architecture serve as public relations tools, visual representations of economic prosperity, and reflections of cultural diversity in a global context, postmodern architecture has moved away from esoteric and elite symbolism and towards a more accessible and everyday approach, which incorporates cautious abstraction and direct figurativeness, historical forms, building morphology, and surface modelling are examples of postmodern architecture's symbolism, which reflects the use of culture and aesthetics.

Buivydas, (2014; 219) advocates for the use of symbolic artefacts to embody human knowledge about holy ideals connected to the essence of human life in the structure and pieces, shapes of geometrical forms, the number of parts, proportional ratios, construction material, colours, lights, and symbolical meanings, the essence of symbols should be revealed via the built form, which is to be a particular mediator between the ideal and the material, as well as a method of communication that allows a human being to experience and grasp the principle and meaning of an all-surrounding relationship.

Many older architectural traditions have become stigmatised because of modernism, few contemporary architects attempt to incorporate old archaic symbol meanings into their works or to give them a visual metaphoric character, while some practitioners in the field believe it is

appropriate to approach-built form from a semantic standpoint and use specific symbols accordingly and feel compelled to emphasise the spiritual aspects of their structures, suggestiveness, and individuality, as well as communicative aspects of expressivity (Buivydas, 2014; 219).

4.5.1. Symbolism of the Built Form

According to Astakova (2020), the symbolism of architectural form may be solved at numerous levels, including digital/numerical symbols, graphic characters, conceptual-planning level, conceptual-spatial level, associations, metaphors, and imitation. Architectural objects can include both single and multiple means of establishing form symbolism, which can be supplemented by pictorial and sculptural imagery and goes on to describe the mentioned levels of symbolism.

- **Graphic Symbol**

Ancient symbolism may be found in graphic symbols such as the circle, square, triangle, star, and spiral, the temples of the Sun, Moon, and the Earth Goddess Vesta were all circular, whereas the rest were rectangular. Astakhova (2020).



*Figure 15: A model of a Temple of Vesta the Goddess located in ancient Rome.
Image sourced from: <https://oldworldgods.com/romans/roman-goddess-vesta/>. Accessed: 09 June 2022*

Astakhova, (2020) concludes by articulating that Architecture is a functional space organisation system, artistic form organisation, unusually powerful symbolism, and image. Modern

architectural projects and buildings represent a new stage of architectural symbolism by developing an entirely new modern symbolic language.

Alihodzic et al (2017; 01), confer the importance of architectural form, focusing on two key questions: determining the functional purpose of a facility and identifying the memories associated with it, claiming that the search for meaning in architectural forms reflects humanity's innate desire to understand the world, modern civilization's separation from nature has resulted in a diminished spiritual connection and a scarcity of properly interpreted symbols, the modern built forms lack a deliberate stylistic system, making it difficult to extract meaning or symbolism from neutral and variable designs and conclude by accentuation the difficulty of interpreting function or symbolism from modern architectural elements, emphasising the value of meaning over ornamentation.

Human existence is inextricably linked to symbol and symbolism argues Daghar, (2022; 109). A symbol is more than just a sign; its meaning can be read whenever it is understood. Exploration of architectural vocabulary from different eras can enrich the symbolic meaning of the design approach. If the vocabulary does not match the rest of the space and functional components of the built form, the metaphor remains superficial, traditional court systems rely heavily on symbolism to improve legal interpretation by conveying cultural, historical, and social meanings, it preserves heritage, communicates authority, legitimacy, and ethical principles, and encourages inclusivity while recognising community diversity. Symbols enrich our understanding of law, culture, and community.

Symbolism in built form is different from symbolism in other arts, as it requires a favourable benefit and interacts with functional, environmental, cultural, and economic influences, it is not an emotional symbol, but an expression of its truth, need and feasibility have become symbols, and they include the reasons and principles that have found their way through architectural forms and possible interpretations.

Daghars (2022; 123) conclusion is that symbolism should serve a social function; as a means of communication between humans, the building, with its outer envelope and interior spaces, is an important means of meeting the human need for that particular purpose, then, appreciating its effective use to enrich the living environment and aspirations of the moment, where strange

elements appear on the facades and interiors of many newly designed buildings without regard for the building user, perimeter, or even meaning.

Architecture is more than just physical enclosures argues Adjei & Oppong, (2021; 90); it is a communication of thoughts, preferences, beliefs, and emotions in built form, and it must symbolically speak to and impart meaning to its users, serious architecture must have a strong moral and social core that bears the manifested mantle, symbolic meanings are most often derived from the user's contextual orientation.

Referring to figures 16 and 17, Adjei & Oppong (2021; 96) found that some Ghanaian symbols and patterns were explored in Fry and Drew's architectural works for school architecture. In the case of Opoku Ware Senior High and Prempeh Senior High Schools, the stool and crocodile designs were used as precast concrete to serve both practical and aesthetic architectural demands. These solutions manifested themselves as brise soleil, sun breaks, ventilation devices, and ornamentations for aesthetics and meaning.



Figure 16: Illustration of the crocodile motifs employed as balustrades bears symbolic and philosophical significance.
Image source: Exploring Fry and Drew application of Ghanaian symbolism in architectural ornamentation: case study of Opoku Ware and Prempeh Senior high School in Kumasi Ghana.
Accessed: 09 June 2022



Figure 17: Illustration of stool symbol cast in concrete moulding used as sunbreaks and ventilation device that is also appreciated for its socio-political and educational significance
Image source: Exploring Fry and Drew application of Ghanaian symbolism in architectural ornamentation: case study of Opoku Ware and Prempeh Senior high School in Kumasi Ghana.
Accessed: 09 June 2022

The location of the traditional court facility in uMsinga should express cultural values, ambitions, and aspirations of open justice, which is deeply rooted in African tradition, and this should be realised through accessibility, transparency, openness, and an accustomed environment, metaphorically resembling conventional justice under a tree.

The court design may employ materials such as stone and wood to represent the enduring nature of justice and the need for the legal system to evolve with the times. Stone represents permanence and unwavering justice, whereas wood represents flexibility and adaptability, emphasising the need for the system to evolve in response to changing circumstances. The colours palette on the built form should symbolise the local aesthetics by extracting ideas and suggestions from the local landscapes of Msinga region to connect the built form to the place with local identity, the spatial arrangement of a traditional court is critical to its symbolic design, reflecting power structures within the legal system, the elevated position of the judge's bench represents authority and impartiality, while the intentional separation of spaces for different parties reinforces a structured legal process.

The Traditional court design must explore incorporating ornamental elements to enhance the architectural narrative, scales, as a symbol of justice, emphasise the importance of weighing evidence impartially, murals, and sculptures, depict legal figures, historical events, or allegorical scenes, which contribute to the space's tradition and continuity, influenced by cultural and regional factors, with distinct symbols, colours, and motifs that reflect local culture, in some areas, courthouses incorporate indigenous patterns, which harmonise architectural aesthetics with local identity, these variations add to the character of each courthouse and promote community connection.

The Traditional courts should have a physical presence and serve as an expressive physical connector, be established, and be designed to reflect aspirations of the Traditional Judicial System of uMsinga through cultural and localised elements and symbols, the process necessitates the exploration of various elements of visuality in the traditional court buildings, such as the built form, spatial arrangements influenced by local culture and customs, paintings, portraits, statues, murals, and logos. These elements should be informed by findings of an ethnographic study (Shailesh's, 2017; 02).

Architects must respond to elements of function, aesthetics, and symbolism, in an attempt to capture, among other things, a people's or organisation's ideas, rituals, history, culture, philosophy, outlook, and notions. According to Prof Robert Rukwaro of the University of Nairobi, "*most of*

the buildings in Nairobi have no cultural value and could just as easily be transplanted to myriad cities around the world." (Kiarie Njoroge ,2012)

Symbolism has a significant influence on the design of traditional courts, transforming them into powerful symbols of authority, justice, and social values, the legal system's ideals are expressed through the materials used, layout, and ornamentation, understanding the symbolic language of traditional court architecture is critical because it reflects the worldwide search for justice.

CHAPTER 5: PRECEDENT STUDIES

5. INTRODUCTION

Chapter 5 investigates precedent studies of buildings that are influenced by "Indigenous judicial systems/institutions. The precedents of the Kununurra courthouse in Australia, the Kalgoorlie Court Project, and the Pokagon Band of Potawatomi Justice Centre in Michigan are discussed to comprehend the challenges, opportunities, and considerations in their formation and existence. In order to create an Indigenous 'place' in each location, architects have attempted to meet the respective Indigenous people's environmental needs, accommodate cultural practices, enculturate court buildings, and reinforce Natives cultures and value systems to incorporate Indigenous connections to their Country or native land. The findings of the precedent analysis will inform the conceptual and functional direction of the proposed Traditional Judicial facility in Msinga, KwaZulu-Natal.

5.1. KUNUNURRA COURTHOUSE

Architects: TAG Architects + Iredale Pedersen Hook Architects

Description: The Port Augusta Courts Complex

Location: Lot 2445, Coolibah Drive, Kununurra, Western Australia

Year of project: 2014

Built Form Typology: Courthouse

Inhabitants: Public, Miriuwung, and Gjerrong Aboriginal population



Figure 18: *The Outdoor Waiting Area Kununurra Courthouse Complex*

Image sourced from: <https://www.archdaily.com/642583/the-new-kununurra-courthouse-tag-architects-iredale-pedersen-hook-architects>.

Accessed: 03 March 2023

5.1.1. Justification of the precedent study

The Kununurra Court House is the third of three recent place-based courthouse developments located in Kununurra, Western Australia. The development is well-researched and designed specifically with Indigenous court users in mind, and according to Murphy et al, (2018; 510) the courthouse architecture is a civic, landmark structure that represents the local community and promotes the courthouse's role as a centre for dispute resolution.

5.1.2. Locality

Kununurra is located at the eastern extremity of the Kimberley Region about 3,200 kilometres northeast of Perth in Kununurra in North Western Australia. The courthouse is closer to the police station and a shopping centre, on a route that connects community services in a hub, increasing the community's accessibility (Murphy et al, 2018; 511). The replacement court was designed and built on the former site to replace the 1970s-era single-court facility with a distant view that captures the surrounding landscapes of the eroded forms of Kelly's Knob and Hidden Valley accord (Nield 2015),



Figures 19: Map of Australia locating The Kununurra Courthouse.

Image sourced: Google Maps.
 Accessed: 01 March 2023



Figures 20: Aerial View of the Kununurra Courthouse Context

Image sourced: Google Maps.
 Accessed: 01 March 2023

5.1.3. Historical and social context of the precedent study

The town had a population of 7,775 people of Aboriginal descent, with more than half of them being Miriuwung and Gajerrong people. These are Kununurra's recognized Native Title holders. Kununurra's population had increased significantly in the previous five years and was expected to double in the next decade, necessitating the construction of a new court complex to replace the inadequate existing facility that could no longer undertake the amount of judicial work. TAG Architects and Iredale Pedersen Hook were assigned to design the new Kununurra Courthouse to provide a less formal court environment for Aboriginal people, enlightens Anthony and Grant, (2015).

5.1.4. Programme and planning

The court facility includes two life and an additional mediation or multifunctional room, and the facility was designed for a 50-year economic life and includes other amenities. The courthouse's design reflects Indigenous people's socio-spatial needs, with informally planned waiting areas that allow people to wait individually, as small family units, or in larger groups. Screens are used to provide privacy and to defuse potential user conflict. There is a secure external courtyard where people can wait before entering a courtroom depicts Murphy et al, (2018; 512).

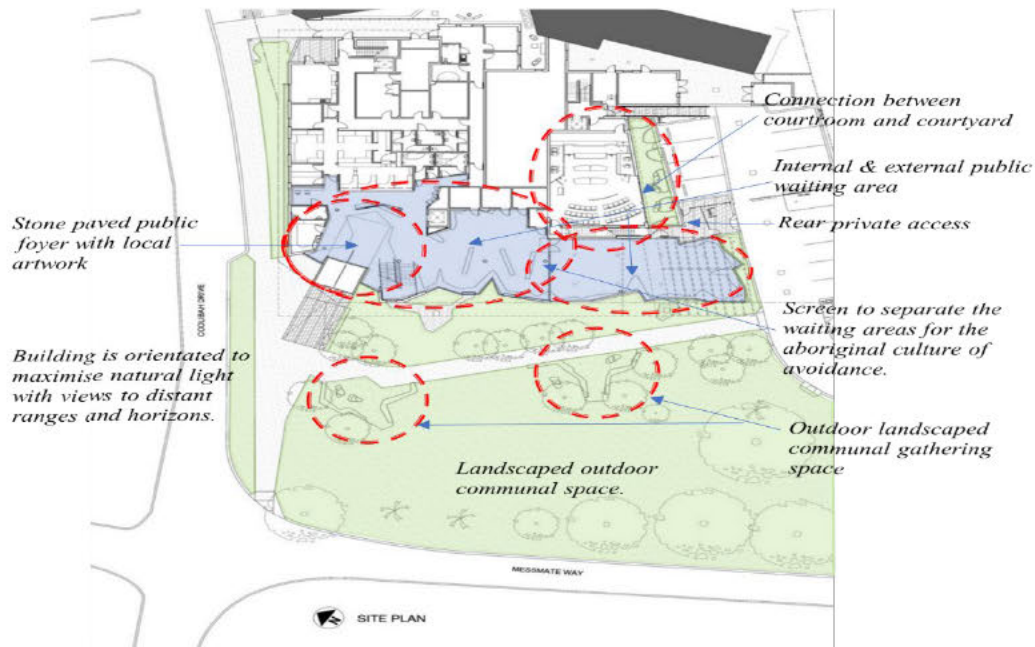


Figure 21: Site Plan/Ground Floor Plan of the Kununurra Courthouse Complex
 Image sourced from: <https://www.archdaily.com/642583/the-new-kununurra-courthouse-tag-architects-iredale-pedersen-hook-architects>. Accessed: 03 March 2023

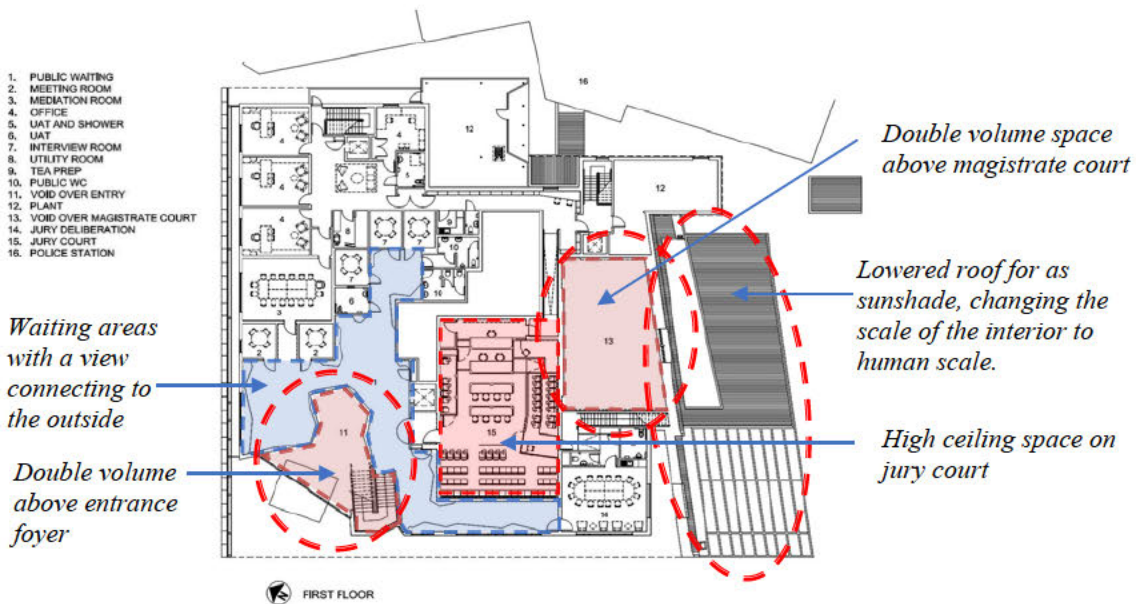


Figure 22: First floor of the Kununurra Courthouse Complex
 Image sourced from: <https://www.archdaily.com/642583/the-new-kununurra-courthouse-tag-architects-iredale-pedersen-hook-architects>. Accessed: 03 March 2023

Precast concrete panels, stone metal cladding, and a metal roof were used to construct the courthouse, the structure is designed to maximise natural light and provide views of the horizon and distant ranges, breaking the tradition of courtroom isolation (Murphy et al, 2018; 512).

5.1.5. Design Rationale

According to Anthony and Grant (2015), the guiding principles for designing environments for Aboriginal users include connections between the inside and outside to provide visual and auditory surveillance of the outside environment. The courthouse is designed to connect people to their accustomed external environment world from within the building through glass walls for transparency to identify with place/surroundings.

The courthouse's folded roof is inspired by the shape of Kelly's Knob, Kununurra's most visible landmark. The design profile reflects the silhouettes of the distant mountain ranges, whilst the interior has large volumes, elevated ceilings, and strategic lighting, giving court users a unique phenomenological experience of space, refer to figure 43 and 44.

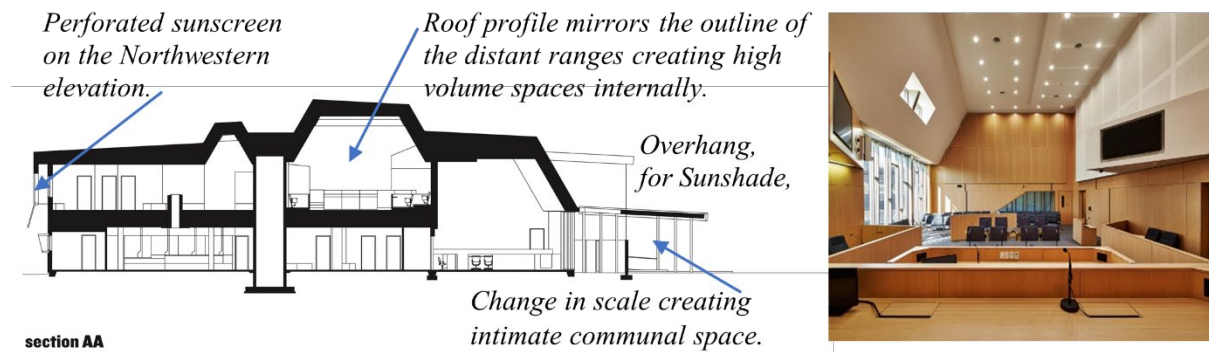


Figure 23: Design Section of The Kununurra Courthouse Complex
Image sourced from: <https://www.archdaily.com/642583/the-new-kununurra-courthouse-tag-architects-iredale-pedersen-hook-architects>. Accessed: 03 March 2023

Figure 24: Image showing the inside of the courthouse layout and finishing's.
Image sourced from: <https://www.archdaily.com/642583/the-new-kununurra-courthouse-tag-architects-iredale-pedersen-hook-architects>. Accessed: 03 March 2023

The design, colours, and finishes utilised, were chosen to reflect the local cultures and landscape explicates Murphy et al, (2018; 511), who further elaborate on the use of local natural materials, mainly stone, wood, and colour. This is an intentional form of connecting the built form with the local natural environment.

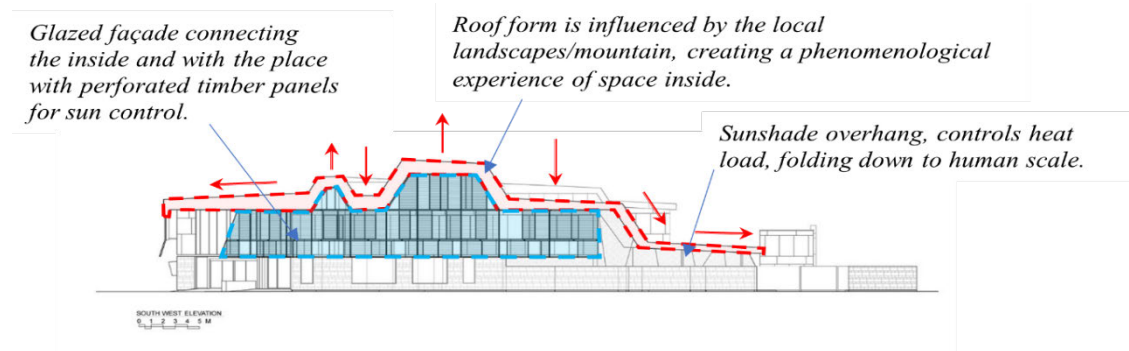


Figure 25: Northwest Elevation of the Kununurra Courthouse Complex - Roof Formation
 Image sourced from: <https://www.archdaily.com/642583/the-new-kununurra-courthouse-tag-architects-iredale-pedersen-hook-architects>. Accessed: 03 March 2023

Indigenous artists created artworks symbolising the aspirations of 'law and culture', in many forms, ranging from sculpture and painting to designs built into the building and this is to share knowledge about the country and its culture (Murphy et al, 2018; 512), refer to figure 46.



Figure 26: Indigenous Artwork, Metaphorically Narrating the History of the Country.
 Image sourced from: <https://www.waringarriarts.com.au/our-projects/boab-project-waringarri-artsource-landcorp/kununurra-courthouse>. Accessed: 03 March 2023

A sculpture in the courtyard refers to the 'balance' principles that underpin the legal system, portraying the aspirations of the project to identify as the Aboriginal judicial facility. The artworks

also depict the region's landscape and geological forms, and this serves to infuse local identity into the built form, clarifies Murphy et al, (2018; 513).



Figure 27: Illustration of the public entrance of the Kununurra Courthouse Complex
Image sourced from: <http://tagarchitects.com.au/2015/07/06/kununurra-courthouse-featured-in-architectureau/>
Accessed: 03 March 2023

Figure 7 and 46 illustrate the western side of the building which is shaded by perforated aluminium screening that depicts a landscape scene of the nearby Lake Argyle. However, Murphy et al, (2018; 513), contend that the artwork's symbolic impact would have been more effective if displayed inside the courtroom.

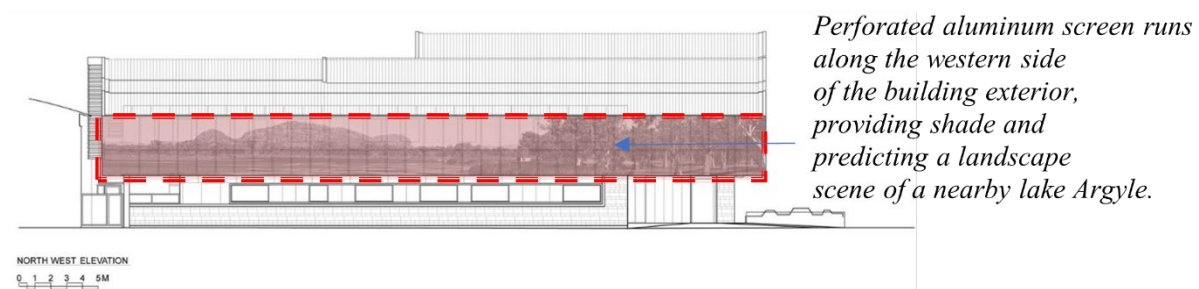


Figure 28: Illustration of the sun control on the Northwest Elevation of the Kununurra Courthouse Complex
Image sourced from: <https://www.archdaily.com/642583/the-new-kununurra-courthouse-tag-architects-iredale-pedersen-hook-architects>. Accessed: 03 March 2023

Stone-paved public foyers are lined with natural wood and local artwork to create an engaging and contextual interior that is immediately identifiable by the local community, creating a sense of an Indigenous place for the court users.

Murphy et al, (2018; 513) articulate that the use of heavy materials in the construction of the Kununurra Courthouse creates a commanding presence in the local landscape. They highlight that some Indigenous members of the community may feel intimidated and interpret it as a declaration of the Anglo-Australian criminal justice system's dominance and inflexibility (Murphy et al, 2018).

The Kununurra Courthouse Complex serves as an important precedent for designing traditional courts that honour and celebrate the cultural heritage of KwaZulu-Natal's Msinga traditional community, by incorporating and adapting fundamental design principles such as regional cultural integration, cultural specificity, active engagement, and creative symbolism, as this study aims to explore the design of Traditional courts facility in Msinga, KwaZulu-Natal. The study is aspiring to create possible solutions for spaces that embody notions of justice, inclusivity, and cultural identity. Therefore, the Kununurra Courthouse model can serve as one of the guiding beacons, demonstrating the potential to transcend borders in the effort to create culturally sensitive and community-centric courthouse designs.

5.2. THE KALGOORLIE COURTS PROJECT

Architects: Hassell in collaboration with Professor Graham Brawn, Lin Kilpatrick Architect, and Kevin Palassis Architects, *project principal* Caroline Diesner *project architect* Philip Kirke

Description: The Kalgoorlie Courts Project

Location: Kalgoorlie, Western Australia

Year of project: 2013

Built Form Typology: Courthouse

Inhabitants: Public and Aboriginal population, Aboriginal and Torres Strait Islander people.



Figure 29: The arrival forecourt Area of the Port Augusta Court Complex

Image sourced from: https://www.researchgate.net/publication/309620649_Courthouse_Design_Principles_to_Dignify_Spaces_for_Indigenous_Users_preliminary_observations/figures?lo=1/. Accessed: 09 June 2022

5.2.1. Justification of the precedent study

The design of the Kalgoorlie court project sought to incorporate cultural expressions and the diverse needs of Aboriginal users, as determined by consultation with the Aboriginal reference group, respect Aboriginal kinship avoidance practices and facilitate conflict resolution among disputing parties. Designers had to balance the physical and cultural requirements of a contemporary courthouse for Indigenous users with the constraints of existing colonial buildings, explicate Anthony and Grant, (2016; 50).

5.2.2. Locality

The Kalgoorlie courts complex is in Kalgoorlie, a remote regional town in Western Australia's productive goldfields.



Figures 30: Map of Australia locating The Kalgoorlie courts complex.
Image sourced: Google Maps. Accessed: 01 March 2023



Figures 31: Ariel view of the context of the Kalgoorlie courts complex
Image sourced: Google Maps. Accessed: 01 March 2023

Figure 32, shows the heritage-listed 100-year-old Warden's Court and Post Office building in the heart of Kalgoorlie's heritage precinct which is part of the Government buildings complex (Kirke, 2009).



Figures 32: 100-year-old wardens court and post office
Image sourced: <https://www.alamy.com/the-courthouse-kalgoorlie-wa-australia-image216966946.html>.
Accessed: 01 March 2023

5.2.3. Historical and social context of the precedent study

Kalgoorlie-Boulder has a population of about 30,000 people, with Aboriginal and Torres Strait Islander people accounting for 8% of the total. The town serves as a regional hub for people seeking services and fleeing weather extremes and community dysfunction in 17 Aboriginal communities in the Goldfields, Kalgoorlie-Boulder has the highest proportion of disadvantaged and transient Indigenous people, making them vulnerable to policing and criminal justice elucidates Anthony and Grant, (2016; 50).

According to (Kirke, 2009) the Kalgoorlie Courts have authority over a large area of Western Australia, from Esperance on the coast of the Great Southern Ocean up to parts of the Northern Territory

5.2.4. Programme and planning

Kirke (2009) highlights that the major design issues were the physical and cultural constraints of fitting a contemporary courthouse's highly complex programmatic and technological requirements into a nineteenth-century building in a highly urban site's constrained nature with Cultural sensitivity to the diverse needs of Kalgoorlie's Indigenous and non-indigenous populations, and users, who are strong traditional-oriented communities and outstations.

The projects comprised both the renovation of the colonial stone-fronted Kalgoorlie Government Offices and the construction of new buildings, refer to figure 33 and 34. Traditional and ceremonial higher courts are housed in the old building to capitalise on its existing internal spaces and civic architecture, while the magistrates' courts are housed in the new building, explains Anthony and Grant, (2016; 50).

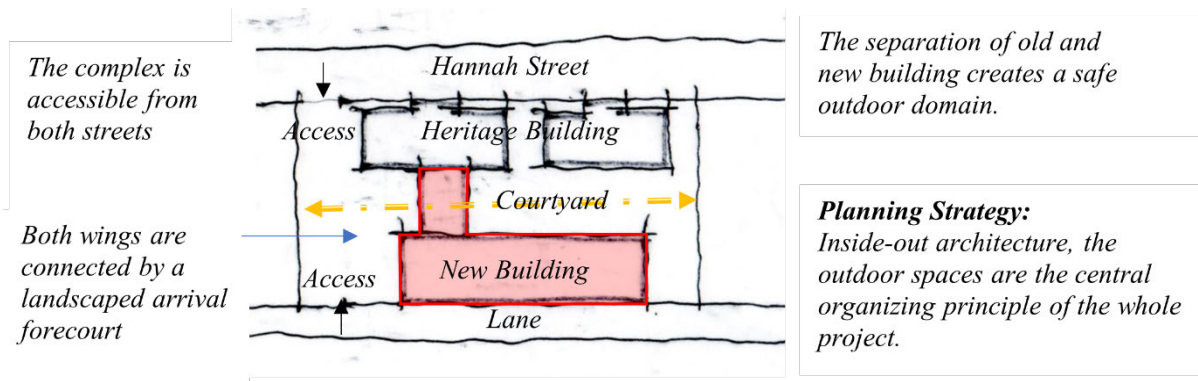


Figure 33: illustration of the inside out architectural planning layout of the Kalgoorlie court
Illustrations by Author

There are three magistrates' courts, two jury courts, and a variety of mediation, registry, and other support facilities. The separation of the old and new buildings allows for a secure outdoor domain. A landscaped arrival forecourt provides access to both wings of the complex, set back from Hannan Street. The site's 90-degree reorientation allows large family groups to arrive safely and privately, away from the commercial street, with access from both directions, refer to figure 33. Specific functions are located on the Hannan Street frontage to create a civic relationship between the building and the city it serves clarifies Kirke, (2009).

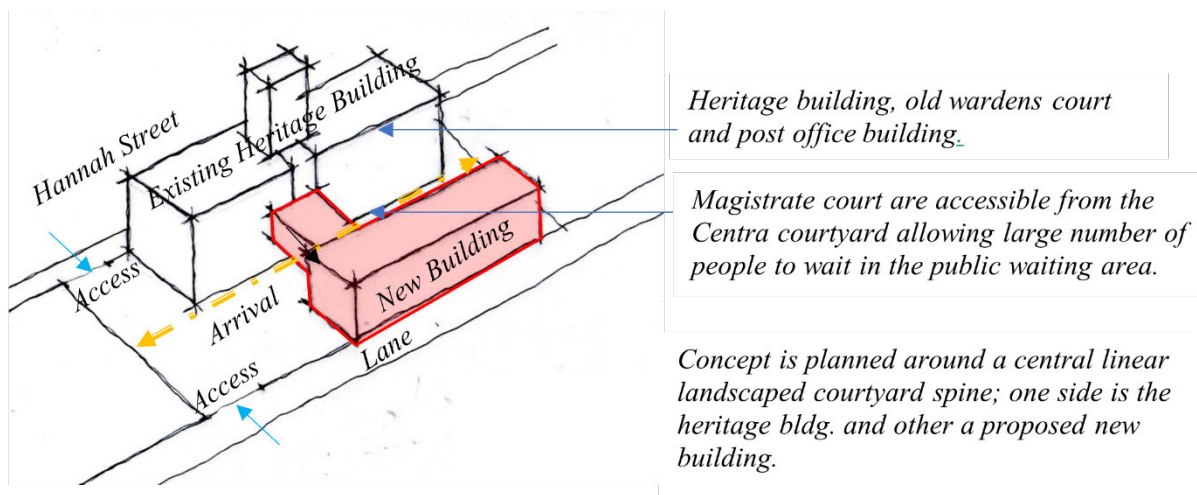


Figure 34: Perspective diagram illustrating the planning strategy of the Kalgoorlie court.
Illustrations by Author

The Magistrates' Courts are accessible from a central courtyard as illustrated in figure 34, allowing crowds to wait in the enclosed public waiting area or outside in the fresh air with light and visual connection to native bush gardens, people can be easily found and called when it is their turn, no

need for names to be called over public address systems. One of the Magistrates' courtrooms is designed to provide flexibility in operation (Kirke, 2009).

Two small, landscaped courtyards, each connected to a holding cell outside the magistrates' courtrooms, provide a visual relief and a calming outlook, fresh air, and the opportunity for stress relief before the hearing (Kirke, 2009).

According to Kirke, (2009) five independent circulation systems exist in the complex, never crossing each other for avoidance culture, and the importance of Aboriginal Elders in the judicial process is recognized, with an Elders' meeting room in the community court directly off the judicial circulation route, allowing Indigenous Elders a role in the sentencing process by contributing cultural knowledge and understanding, expands Murphy et al, (2018; 509).

The new construction was kept separate from the original structure so that it can be restored to its original condition and enjoyed as its original designers intended. Natural ventilation is enabled by opening the public area to landscaped courtyards and zoned air-conditioning, which is cost-effective for air-conditioning (Kirke, 2009).

5.2.5. Design Rationale

The Complex was integrated by installing a series of courtyards with glass panels, allowing the internal and external areas with native bush gardens to be connected seamlessly, refer to figure 35, the views connect Indigenous users to the exterior environments affording a "sense of place" and ownership (Anthony and Grant, 2016; 51).

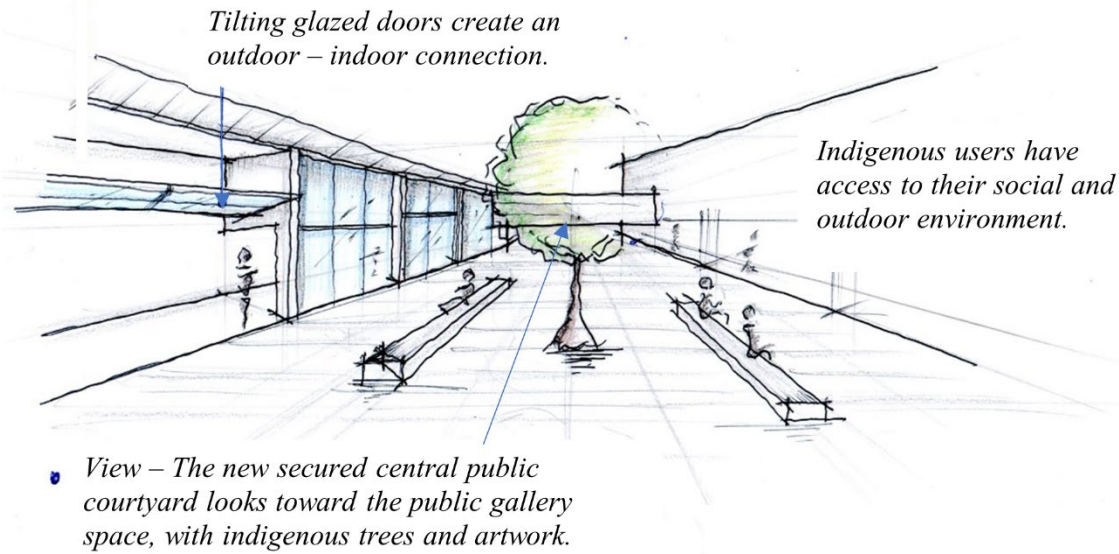


Figure 35: Illustration of the Waiting area/courtyard connecting the new building with the old historic building (inside-out architecture).
Illustrations by Author

Aboriginal sculptures and Indigenous art were created to enhance Aboriginal ownership of the courthouse and establish it as an Aboriginal 'place' (Anthony and Grant, 2016; 51), sculptures are installed in the public waiting area and central courtyard, symbolising the courthouse's fusion of old and new, and the interior colour scheme incorporates shades from the surrounding landscape (Murphy et al, 2018; 509).

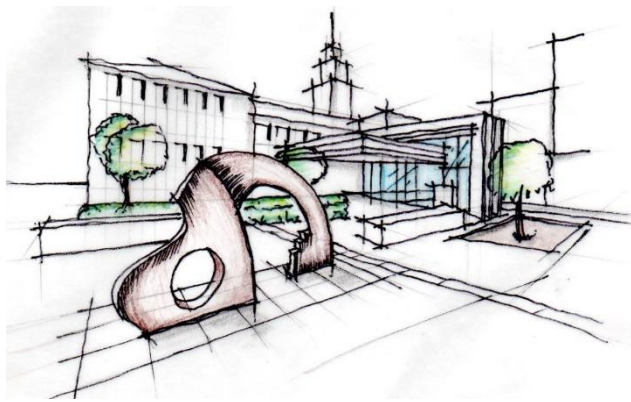


Figure 36: Sketch of the arrival forecourt
Sculptures/indigenous art by aboriginal artists.
Illustrations by Author

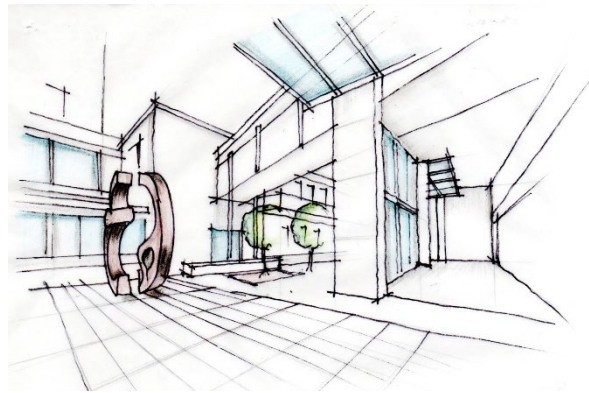


Figure 37: Sketches of Courtyard Sculptures/indigenous art by aboriginal artists.
Illustrations by Author

The clear visual surveillance of the social and natural environment and alternative access routes facilitate respectful space arrangement of Aboriginal kinship avoidance culture and self-management (Kirke, 2009).

The concept of inside-out architecture was adopted in resolving the connection between the existing built form with the new. Therefore, the design inverted conventional architectural thinking by making outdoor spaces the project's central organising principle. This was making these spaces accessible to both traditionally oriented Aboriginal people and non-Aboriginal residents, explains Kirke, (2009).

The success of Kalgoorlie court project was driven by a consultative approach which was necessitated by the project being more culturally based. Guidance of the Indigenous group was taken into consideration and explored in addressing the design challenges. However, due to the nature of the project, the design left behind thoughtful questions. Does the addition of Indigenous meanings to these structures mask messages of colonial dominance and injustice? Can colonial architecture be modified to meet the cultural and socio-spatial needs of Indigenous users by opening or adding external areas? Do external areas with no long-range views provide Indigenous users with a sense of place that can help to redefine the built environment as an Indigenous place? Murphy et al, (2018; 509) conclude that only through time and further exploration can these questions be fully answered.

As a precedent, this project enlightens that an effective design of Traditional judicial courts facility for Indigenous groups requires the integration of emerging cultural and social-spatial principles on a regional level. It further enlightens that cultural specificity should be prioritised to address the concerns of local indigenous communities. Importantly, as well is that active engagement of end users forms part of the use of Inside-Out Architecture to create a meaningful connection between court space and Indigenous places. This approach, aided by creative symbolism, acts as a bridge between memory and tradition, fostering a positive outlook on the future.

5.3. POKAGON BAND OF POTAWATOMI JUSTICE CENTRE

Architects: Seven Generations Architecture and Engineering (7GAE)

Description: Pokagon Band of Potawatomi Indians Justice Centre

Location: United States of America, Dowagiac, Michigan

Year of project: 2019

Built Form Typology: Native Justice Centre -Tribal Court, Peace-Making Centre, and tribal police offices.

Inhabitants: Pokagon Band Indians Tribal Members



*Figure 38: Showing the Rear Tree Structure Patio and The Outdoor gathering space of Pokagon Tribal Court
Image sourced from: <https://7genae.com/project/pokagon-band-tribal-courts-peacemaking/>. Accessed: 15 June 2023*

5.3.1. Justification of the precedent study

The Pokagon Band of Potawatomi Tribal court and peace-making space was created to serve Pokagon Band Indian Tribal members. The Native justice referred to peace-making is focused on healing the individual and the community, thus this initiative aims to restore the spirit and ideals of Native justice in a modern setting in Pokagon Band (Jackson, 2018).

5.3.2. Locality

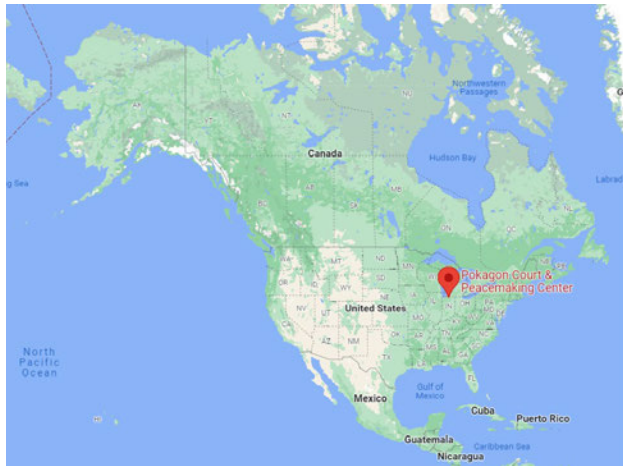


Figure 39: Map of the United States and indicating Pokagon Tribal Court and Peace-Making Centre.
Image sourced: Google Maps
Accessed: 15 June 2023

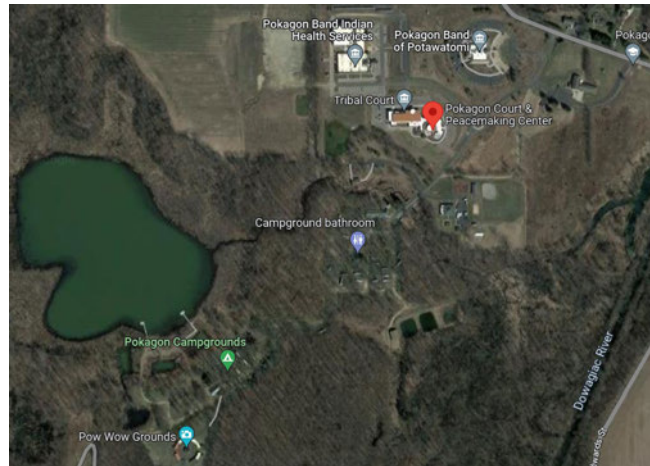


Figure 40: Ariel image of the context of the Pokagon Tribal Court and Peace-Making Centre.
Image sourced: Google Maps
Accessed: 15 June 2023

The tribal court-peace-making centre is in the United States of America, Dowagiac, Michigan on the Pokagon Band of Potawatomi Indians' Rodger's Lake campus.

5.3.3. Historical and social context of the precedent study

The Potawatomi were known as the Keepers of the Fire also known as Neshnabék in the early 17th century, which means original or true people. The Pokagon Band of Potawatomi Indians signed 11 treaties with the Federal Government, including the Treaty of Chicago in 1833. Chief Leopold Pokagon negotiated to keep his Potawatomi band in southwestern Michigan. This band became the only one left west of the Mississippi River. Subsequently the Pokagon Band applied for tribal recognition, but they were denied due to their treaties and legislation and eventually only regained recognition in 1994 (Pokagonband-nsn.gov/our-culture/, 2023).

Through values of Wisdom, Love, Respect, Truth, Honesty, Humility, and Bravery, the Pokagon people have been able to sustain their culture and connection to their homeland. As a result, they have become an economic development engine and a model for sustainable living in the region. With these values they have been taking steps to advance economic development, improve healthcare, housing, education, and elder services. They even developed language and cultural

programs to engage its citizens in the Pokagon people's cultural heritage and traditional lifeways (Pokagonband-nsn.gov/our-culture /, 2023).

5.3.4. Programme and Planning

The Potawatomi Tribal court and peace-making space facility commenced construction in September 2018 and was unveiled in December 2019. The 2787 square metres Pokagon Justice Center houses the Tribal Court and the Tribal Police Department wing, with interior and exterior designs that are culturally appropriate for peace-making and native justice proceedings. An outdoor peace-making circle, an indoor healing fire room, and a circular courtroom are among them (Project Presenter,2023).



Figure 41: Artist impression of the Pokagon Justice Centre showing spatial arrangement and connection to the place. Image sourced from: <https://7genae.com/project/pokagon-band-tribal-courts-peace-making/>. Accessed: 05 June 2023

The main entrance to the Justice Centre leads to an open public circulation space/open foyer with waiting areas, which connects to all public service spaces, including the courtroom and the peace-making room, before transitioning to administration support spaces and connecting the court to the tribal police wing, refer to figure 41.

The peace-making room features an indoor fire pit with a copper hood as its focal point, incorporating Native justice cultural elements expounds Jackson, (2018). The circular courtroom and the healing fire room are to honour the Pokagon’s cultural heritage. According to Michael Petoskey, the Pokagon Band of Potawatomi Indians Chief Judge, traditionally the way to resolve conflicts and disputes was by bringing people together, and typically it would be on the circle and around the fire, with equal opportunity for everyone to participate (WSBT22, 2019).



Figure 42: Image of the Courtroom ceiling design and lighting portraying a circular spatial formation.
Image sourced from: <https://7genae.com/project/pokagon-band-tribal-courts-peacemaking/>.
Accessed: 05 June 2023.



Figure 43: The image of the Peace-making round room portrays the central indoor fire pit with a copper hood as the focal point.
Image sourced from: <https://7genae.com/project/pokagon-band-tribal-courts-peacemaking/>.
Accessed: 05 June 2023.

Figure 44 of the outdoor whole tree fire pit pavilion and whole tree entrance porch structure incorporates Native justice cultural elements as part of the Pokagon Community's initiative to restore the spirit and ideals of Native justice (Whole Trees, 2020).



Figure 44: Image of the fire pit pavilion in the outdoor gathering space and the entrance porch of the main building. Image sourced from: <https://wholetrees.com/portfolio-item/pokagon-band-of-potawatomi-peacemaking-center/>. Accessed: 05 June 2023

The whole tree structures in the outdoor fire pit pavilion and the entrance foyers, figure 44, create a connection between the building and the local landscapes. Furthermore, the view of the wetlands from the courtroom, peace-making spaces, and the foyer serves to connect the inside of the building with the place, particularly the natural landscapes of Pokagon Band, as illustrated in figure 41.

5.3.5. Design Rationale

Figure 45 is demonstrating the Potawatomi Indians' tradition of resolving conflicts and disputes by gathering the tribe in a circle around fire. This was the key inspiration of the courthouse's wing design concept, including the courtroom spaces with indoor and outdoor circular Peace-making spaces (WSBT 22, 2019).



Figure 45: Image Illustrating the old American Indian tradition of gathering around the fire to resolve community issues. Image sourced from: <https://www.istockphoto.com/vector/native-american-indian-illustrations-group-gathered-near-fire-by-teepees-gm1131893146-299858579>. Accessed: 05 June 2023.

The circular formation around fire pits in the peace-keeping spaces, in figure 43 symbolises the ancient Indian tradition of gathering around the open fire when discussing tribal issues as demonstrated in figure 45.

The playful ceiling design elements, form, volume and lighting inside the courtroom space as illustrated in figure 42 and 43, create a phenomenological experience for the courtroom space users. To further enhance this by the use of natural materials like timber cladding on walls creating special connection to nature, respecting an accustomed environment to the Potawatomi Indians.

Figure 46 and 47, illustrates similarities between the African tradition of gathering around the tree and the ancient American Indian tradition of gathering around the fire to discuss community matters. African history was mostly passed down orally around the fire. Indigenous communities prefer to gather in a circular formation bringing out equality, especially if the gathering will engage the community in discussions. The ancient American Indian traditions influenced the design of the Potagowan Justice Centre and by celebrating their indigenous traditions, the Pokagon people have been able to sustain their culture and connection to their homeland. As a result, they have become an economic development engine and a model for sustainable living in the region.

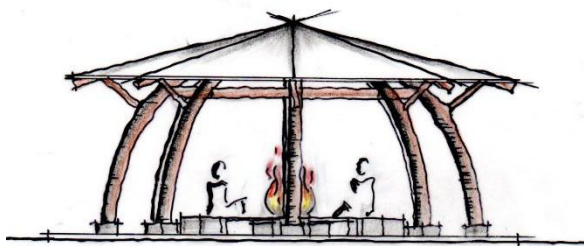


Figure 46: Illustration of the fire pit pavilion reflecting the ancient Indian tradition of gathering around the fire.
Image source: Author



Figure 47: Image illustrating the old African tradition of gathering under a tree to resolve community issues.
Image source: Author

The influence of the old Pokagons' cultural heritage and customs on the court design concept, particularly the practice of gathering around the fire to discuss tribal issues, reflects a deep

connection between architectural choices and cultural traditions. On the same vein this concept, reminiscent of the African tradition of gathering around a tree for tribal discussions, not only reflects a shared appreciation for communal spaces, but it also represents cultural continuity and identity.

5.4. CONCLUSION

The findings presented in this chapter clearly demonstrate that colonialism had a global impact, and that Indigenous communities around the world are actively working to reclaim their cultural identities by incorporating the built environment as a means of continuity. They realise this by investigating architectural designs that reflect and respond to their cultural heritage, customs, beliefs, history, and local context in a modern setting. The principles identified in the interrogated precedents can be explored and incorporated into the design exploration of the Traditional judicial facility in Msinga, KwaZulu-Natal.

CHAPTER 6: CASE STUDIES

6. INTRODUCTION

The study aims to investigate the Traditional courts buildings within the Msinga Region in KwaZulu-Natal, with a focus on their location. This is in order to provide precise and localised understanding for better responses to the local society's requirements, cultural practices, heritage, traditional judicial system aspirations, and their social impact. There are six case studies that will be tested against the previous chapter's content of literature, concepts, and theories with global precedent. The study focuses on Msinga Traditional Courthouses and their judicial activities. All case studies are set in the Msinga Region to investigate the significance and requirements within the Msinga rural context, with the aim of exploring the Traditional court facility design within one of Msinga's tribal authority. The findings of the focused investigation will guide the conceptual and functional design of the proposed Traditional Judicial facility in Msinga, KwaZulu Natal.

6.1. STUDY AREA OF MSINGA

6.1.1. Locality Maps of the Study Area of Msinga



Figures 48: Location of KwaZulu Natal in the Map of South Africa
Images sourced: Google Maps
Accessed: 23 June 2023



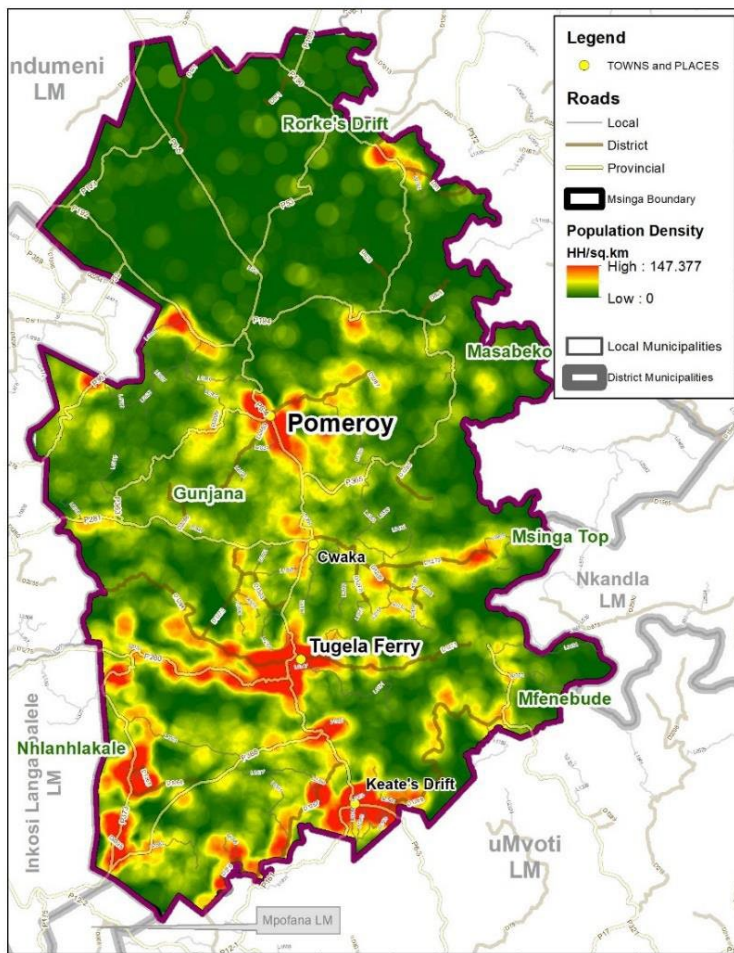
Figures 49: Location of Msinga in the Map of KwaZulu Natal
Images sourced: Google Maps
Accessed: 23 June 2023



Figures 50: Location of existing Msinga Tribal Courts in the Map of Msinga
Images sourced: Google Maps
Accessed: 23 June 2023

Msinga is in the KwaZulu-Natal Province's central region, uMzinyathi District Municipality and is bounded to the North by Endumeni Local Municipality, to the east by Nquthu and Nkandla Municipalities, to the south by Umvoti and Mpofana Municipalities, and to the west by uMtshezi and Indaka Local Municipalities. Within the boundaries of the uMzinyathi District Municipality. Although the study area is defined by wards according to the formal municipal demarcation process, it should be noted that traditional areas have their traditional ward structures known as *izigodi* that have existed for a long time. However, the extent of these areas is common knowledge within the community in the area and may not necessarily be formally demarcated.

2.1.1. Historical and social context of Msinga

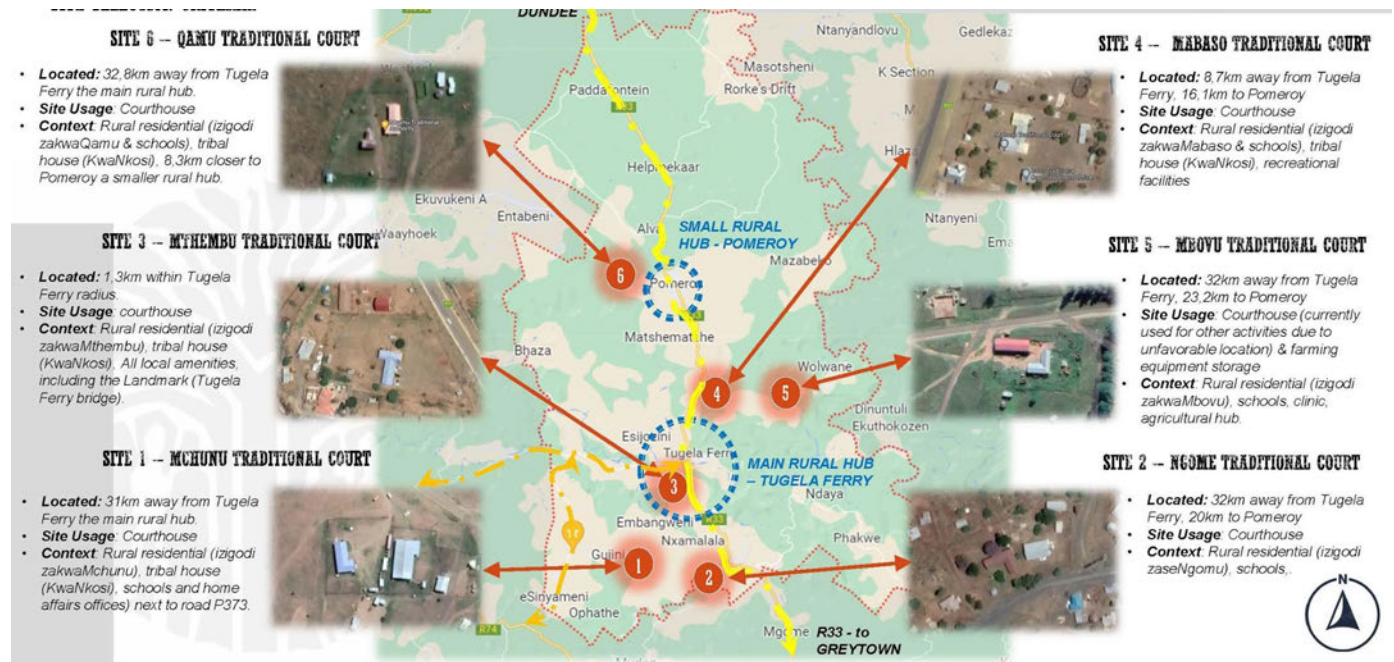


Msinga is in the deep gorges of the Tugela and Buffalo Rivers, isolated from the immediate neighbouring municipalities. As a result of societal dynamics in Msinga, in contrast to most other areas in the country, there is a decline in urban areas and growth in rural areas. This could be due to Msinga's small urban areas' inability to provide the standard range of goods and services found in large urban areas. However, Tugela Ferry appears to be growing into a significant service centre in Msinga's context, refer to figure 51.

Figures 51: Map showing the Population Density of Msinga
 Images sourced: Msinga Local Municipality: Traditional Settlement Master Plan (2020)

6.1.2. Location and Proximity of all Existing Tribal Courts in Msinga

Currently, Msinga is divided into six Tribal Authority areas; Mthembu Tribal Authority, Mabaso Tribal Authority, Ngome Tribal Authority, Mchunu Tribal Authority, Bomvu Tribal Authority, and Qamu Tribal Authority are among them. Each Tribal Authority with its own Tribal Court for its Traditional judicial activities as illustrated on figure 52.



Figures 52: Image Showing the Location and Ariel photographs of all existing Tribal Courts within Msinga
Images sourced: Author.

The Mchunu, Ngome, Mthembu, Mbomvu, Mabaso, and Qamu traditional courts are the six existing Traditional judicial courts in Msinga. Each of these courts serves the respective villages (*Izigodi*) within their tribal chief's jurisdiction. Each Traditional court is administered through Traditional leadership and traditional practices.

The study will primarily concentrate on three of these courts, being: Mthembu tribal court, Mabaso tribal court, and Mbomvu tribal court, owing to their importance in the investigation in comparison to the other similar existing courts.

6.1.3. Justification for Investigating the Selected Tribal Courts for the Study

All three courts-houses are generally similar or generic with certain significances.

<p><i>Mthembu Tribal Court</i></p> <p><i>Site 3</i></p>	<ul style="list-style-type: none"> ● The building form is a T-shape. ● Located adjacent to the tribal house, visible from the access route, within the rural hub - Tugela Ferry. ● Central to all six tribal courts
<p><i>Mabaso Tribal Court</i></p> <p><i>Site 4</i></p>	<ul style="list-style-type: none"> ● The U-shaped formation is the biggest of all six courts. ● Located in between the two rural hubs.
<p><i>Mbovu Tribal Court</i></p> <p><i>Site 5</i></p>	<ul style="list-style-type: none"> ● L-shaped layouts like Ngome, Mchunu, and Qamu tribal courts. ● Located in a deeply rural site, currently deserted, not utilized for intended purposes.

2.2. MTHEMBU TRADITIONAL COURT: Courthouse

Architects: Unknown

Client: Department of Cooperative and Traditional Affairs (Cogta)



Figure 53: Image Showing the Front Elevation of The Mthembu Traditional Court. *mage source: By Author*

6.1.4. Introduction

Following the South African government's recognition of Traditional Judicial Systems, an initiative was launched by the Department of Cooperative Governance and Traditional Affairs (Cogta) to develop these systems while also providing adequate facilities to accommodate these judicial systems in areas under Tribal Authorities.

6.1.5. Justification of the case study

Mthembu is one of the six courts within the Msinga Region and is critical for ensuring access to justice in the Mthembu area. These courts, formerly known as chief's courts, are intended to handle customary issues under customary law. In such cases, the chief and his headmen decide cases brought before them by parties within their jurisdiction using Indigenous law and custom. By investigating how these facilities function within the study area of kwaMthembu may give insight into the study.

6.1.6. Location

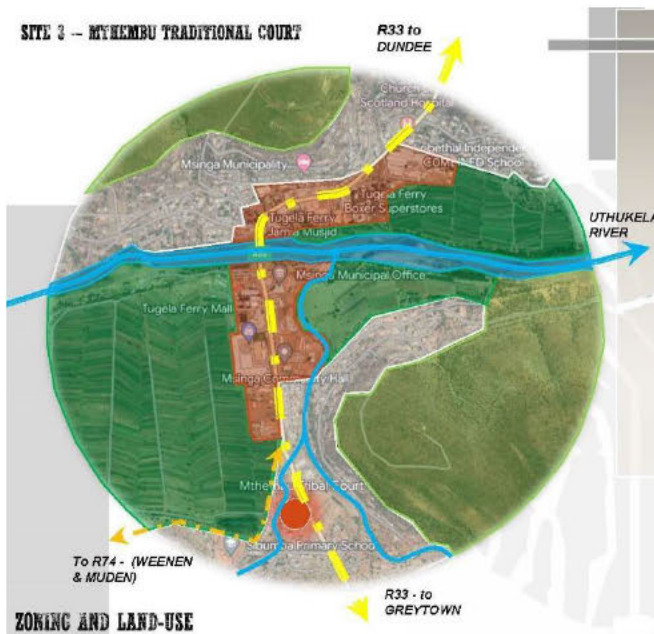


Figure 54: Locality map of the Mthembu court within context showing zoning and land-use.
Image source: By Author

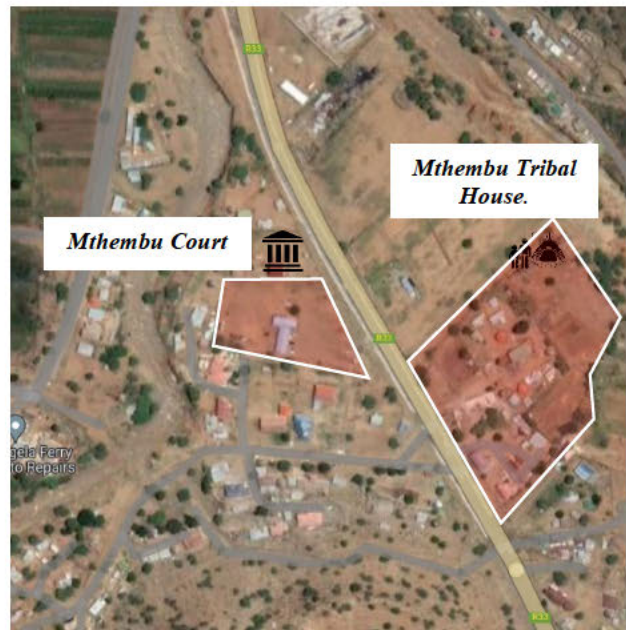


Figure 55: Ariel Image Highlighting the Location of Mthembu Court and Tribal House.
Image source: By Author

The Mthembu Tribal Court is located at Msinga within the Mthembu Tribal Authority (*Isigodi sakwaMthembu*) wards 3 and 5, approximately 1,3km away from Tugela Ferry, along the R33 road that is linking Greytown from the south Mvoti Local Municipality with Dundee on the North Endumeni Local municipality. The Mthembu Traditional Court is in Umsinga Local Municipality, in the western region of the municipal boundary. The Traditional courthouse is in the proximity of the Tribal house and is within the Mthembu community.

6.1.7. Historical and social context of the case study

The Mthembu area is divided into *izigodi*, which include Parafin/Ngcingcini, Mashunka, Mandleni/Jozini, Mashuka/Mbabane, and Machobeni/Bubu/Mahlathini/Mzisho with iNkosi (Chief) serving as the community leader and several spokespersons, representing unity. They also help with land administration by advising on land allocation, resolving disputes, and ensuring long-term use. Induna-Nkulu is a traditional leader who advises iNkosi on tribal issues, acts as a liaison between iNkosi and izinduna, and governs specific *isigodi* within the Traditional Council area. Each Induna governs their *isigodi* and oversees issues about that *isigodi*. Induna Nkulu leads on behalf of iNkosi, with elders assisting in each *izigodi*. Induna Enkulu is the iNkosi's chief advisor. The Mthembu Traditional Council is sparsely populated, with the area leading to Tugela Ferry being the most densely populated. The uMsinga Tribal areas have high unemployment, with the majority classified as Non-Economically Active. According to the 2016 census data from Stats.SA, the population of uMsinga, including tribal areas, was 184 494 people, with 100 percent Black Africans. The young population, ages 0 to 18, has far-reaching consequences for service delivery, social facilities, and educational and employment opportunities.



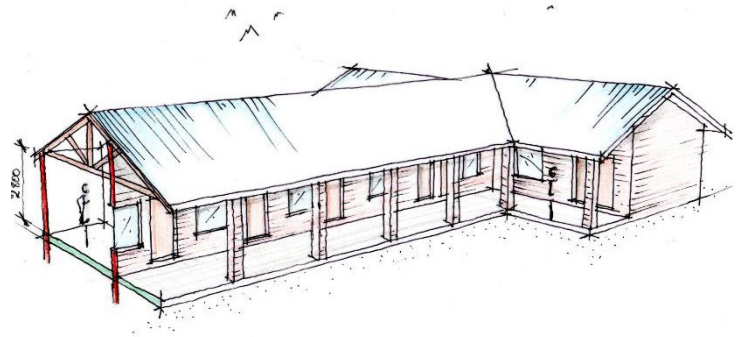
Figure 56: View of Mthembu Traditional Court from the R33 Access Road sidewalk.
Image source: By Author



Figure 57: View of Mthembu Traditional Court from the R33 Access Road.
Image source: By Author

6.1.8. Empirical Data

The existing Traditional courthouse is located next to the R33 access road but can be easily missed as it is unidentifiable as a courthouse. It is a basic face brick building like most public buildings in the area; upon arrival at the gatehouse, there are no wayfinding mechanisms and no visible parking area; it is simply building blocks that were placed on-site with disregard to the user's experience. An uninviting, unresponsive, and isolated building with no symbolic meaning as a gateway to justice and no identifiable connection to the place of Msinga. Standard building technology and materials are used with no regard for the local climate and local natural material. Within the courthouse, there is no phenomenological exploration of spatial experience.



*Figure 58: Sectional Perspective sketch of the Mthembu traditional court
Illustration: By Author*

The courthouse has a basic layout that is insensitive to vulnerable groups. The court consists of a western-influenced main rectangular hall that serves as a courtroom space, a boardroom, the iNkosi's, the local chiefs, office, a reception area serving the public waiting area, and a kitchen, all of which are accessible from the verandah (circulation area). The ventilated improved pit toilets are in the far back of the courthouse, with no walkways and there are no designated outdoor gathering social spaces.

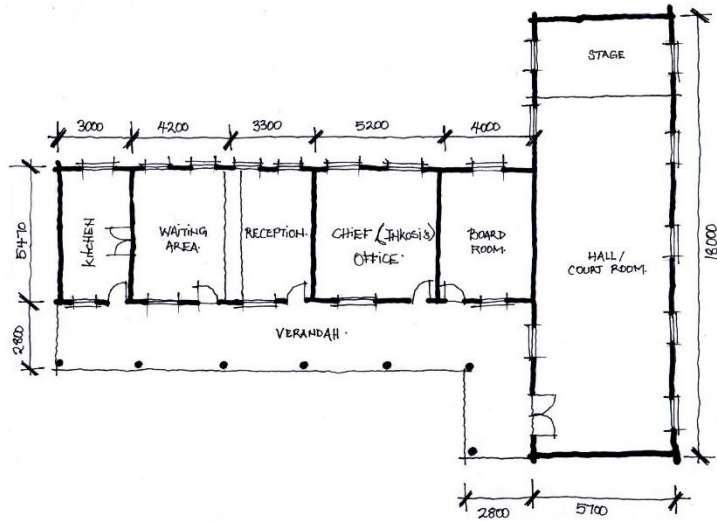


Figure 59: Illustration of the Mthembu Traditional Court Layout Plan
 Illustration: By Author



Figure 60: Image showing the public service area - The Waiting Area and the reception
 Illustration: By Author

The waiting area design is identical to all six courts, with no modern technology, no telephone, and no internet. Basic finishing and colours like other courts, plaster, and face-brick.



Figure: 61: Image showing the Mthembu Traditional Courtroom Internal Layout
 Illustration: By Author

The courtroom space is identical to all six existing courts with stage furniture to accommodate the iNkosi, the Chief, council, and the people in dispute with the rest of the participants occupying the hall.

6.1.9. Findings

The Mthembu Traditional court was a good effort by Cogta to accommodate the administration of justice in the Mthembu area. Traditionally, tribal issues were reported at the chief's homestead, and the presence of the courthouse has provided the much needed privacy to the chief's homestead as well as a designated location for tribal issues. The facility is conveniently located near the tribal house, within the community, near the access road, and within the rural hub. However, the facility currently carries no semblance of the people's way of life.

6.2. MABASO TRADITIONAL COURT: Courthouse

Architects: Unknown

Client: Department of Cooperative and Traditional Affairs (Cogta)



*Figure 62: Image showing the front elevation of the Mabaso Traditional Court from the visitor's parking's.
Image source: By Author*

6.2.1. Justification of the Case Study

Mabaso traditional court is one of the six courts within the Msinga Region and is critical for ensuring access to justice in the Mabaso area, investigating how this facility function within the study area of kwaMabaso may give insight into the investigation.

6.2.2. Location

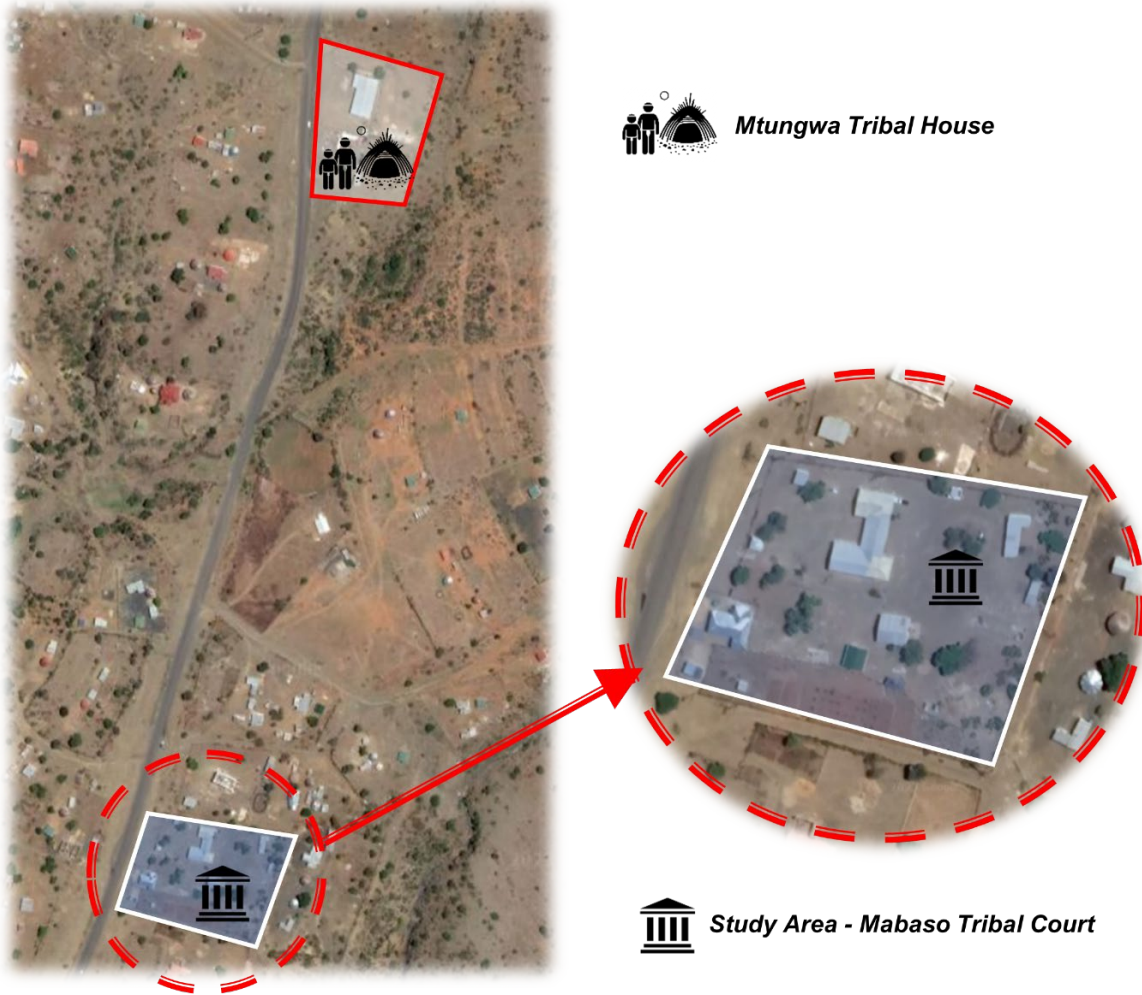


Figure 63: Ariel Images Highlighting the Location of Mabaso Court and the proximity of the Tribal House
Image source: By Author

The Mabaso Tribal Court is located at Msinga within the Mabaso Tribal Authority (Isigodi sakwaMabaso), approximately 8.7km away from Tugela Ferry and 16.1km from Pomeroy, along the R33 linking Greytown from the south Mvoti Local Municipality with Dundee on the North Endumeni Local municipality. Mabaso Traditional Court is in the jurisdiction of Umsinga Local

Municipality. This Traditional courthouse is in proximity to the Tribal house and within the Mthembu community under Chief Mtungwa.

6.2.3. Historical and social context of the case study

The Mabaso area is divided into *izigodi*, which include Cwaka/Bhubesini/Ngidi, Barnhill/Gxobanyawo, Mabaso Lower, Tugela Ferry, Ezingulubeni. with iNkosi (Chief). Induna-Nkulu and izinduna serve a similar purpose as all other tribal authorities within the Msinga Region. The Mabaso area is densely populated along its southern edge, but it is moderately populated overall.

6.2.4. Empirical Data



*Figure 64: View of Mabaso Traditional Court from the R33 Access Road.
Image source: By Author*

The courthouse is located next to the R33 access road, the colours give the facility some sort of presence in the area; it is a basic face brick building; with no wayfinding mechanisms and designated parking area; simply building blocks. An unresponsive architecture is very identical to the Mthembu Court.

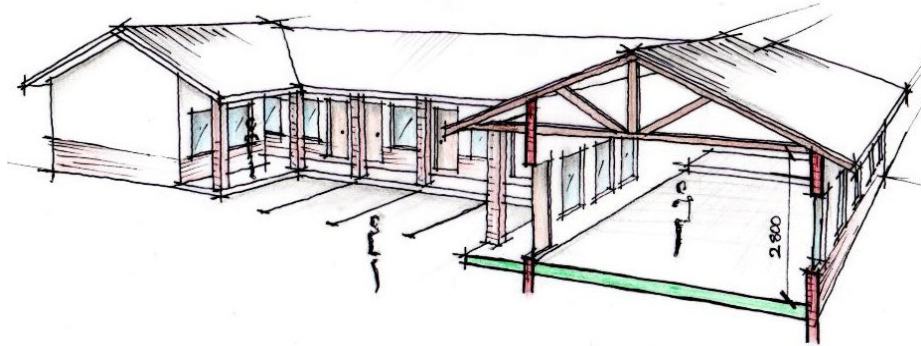
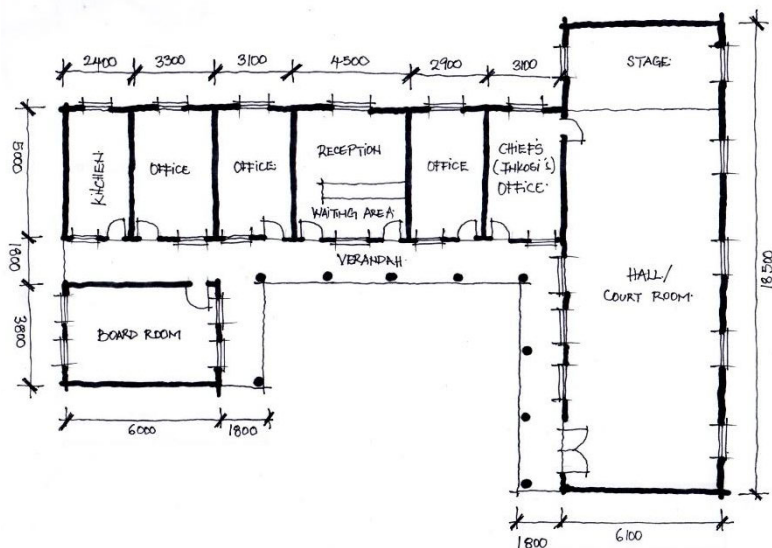


Figure 65: Sectional Perspective sketch of the Mabaso Traditional Court
 Illustration: By Author



Figures 66: Sketch of the Mabaso Traditional Court Layout Plan
 Illustration: By Author

Standard building technology and materials are used with no regard for the local climate. There is no phenomenological exploration of spatial experience within the courthouse.

The courthouse has a basic U-shape layout like Mthembu Court. The court consists of a western-influenced main rectangular hall that serves as a courtroom space, a boardroom, the iNkosi's office, a reception area serving the public waiting area, a kitchen, and support offices, all of which are accessible from the verandah circulation area. The ventilated improved pit toilets are at the far back of the courthouse, with no walkways.

The waiting area design is identical to all six courts, with no modern technology, no telephone, and no internet. Basic finishing and colours like other courts.



Figure 67: Image showing the public service area - The Waiting Area and the reception.

Illustration: By Author

The courtroom space is identical to all six existing courts with stage furniture to accommodate the Chief, council, and the people in dispute with the rest of the participants occupying the hall.



Figure: 68: Image showing the internal layout of the Mthembu Traditional Courtroom.

Illustration: By Author

6.2.5. Findings

The Mthembu Traditional court facility is conveniently located near the tribal house, within the community, near the access road and in between the rural hub. This court facility shares a lot of similarities with all six traditional courts in Msinga.

6.3. THE MBOVU TRADITIONAL COURT: Courthouse

Architects: Unknown

Client: Department of Cooperative and Traditional Affairs (Cogta)



*Figure: 69: Image showing the front elevation of The Mbomvu Traditional Court.
Image source: By Author*

6.3.1. Justification of the Case Study

Mbomvu traditional court is one of the six courts within the Msinga Region and is critical for ensuring access to justice in the Mbovu area. This courthouse is inactive and currently being used for other activities unrelated to judicial activities. By investigating how this facility functions within the study area of kwaMbomvu may give insight into the study.

6.3.2. Location

The Mbomvu Tribal Court is located at Msinga within the Mbovu Tribal Authority (*Isigodi sakwaMbovu*), approximately 32km away from Tugela Ferry and 23.2km from Pomeroy, P17 along the R33 linking Greytown from the south Mvoti Local Municipality with Dundee on the North Endumeni Local municipality. Mabaso Traditional Court is in the jurisdiction of Umsinga Local Municipality. The courthouse is in proximity to the Tribal house and within the Mthembu community under Chief Mtungwa.



**Study Area –
Mbovu Tribal Court**



Mbovu Tribal House

*Figure 70: Ariel Image Highlighting the Location and proximity of the Mbovu Tribal Court and tribal house.
Image source: By Author*

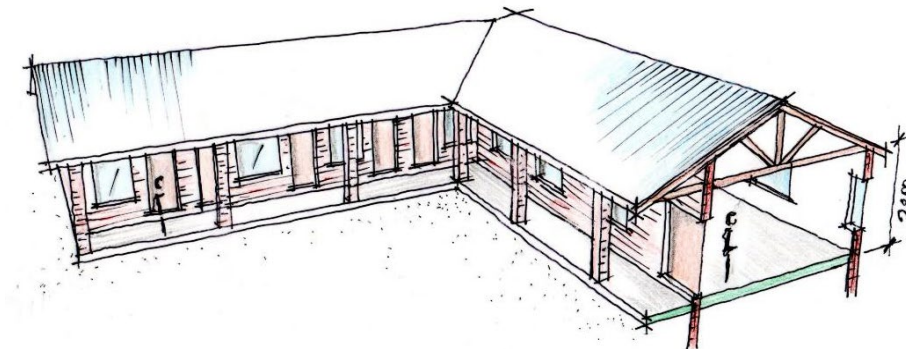
6.3.3. Historical and social context of the case study

The Mbovu area is divided into *izigodi*, which include Othobothini, Msinga Top/Noncomboshe/Othame, Dayiswayo, Nguebu/Nhlonga, Nhlesi, Nhlungwane/Ndaya, Mkhupula, Qobela/Latha. The iNkosi (Chief), Induna-Nkulu and izinduna serve a similar purpose as all other tribal authorities within the Msinga Region. The population density of the Mbomvu area is low, although some parts are moderately dense.

6.3.4. Empirical Data



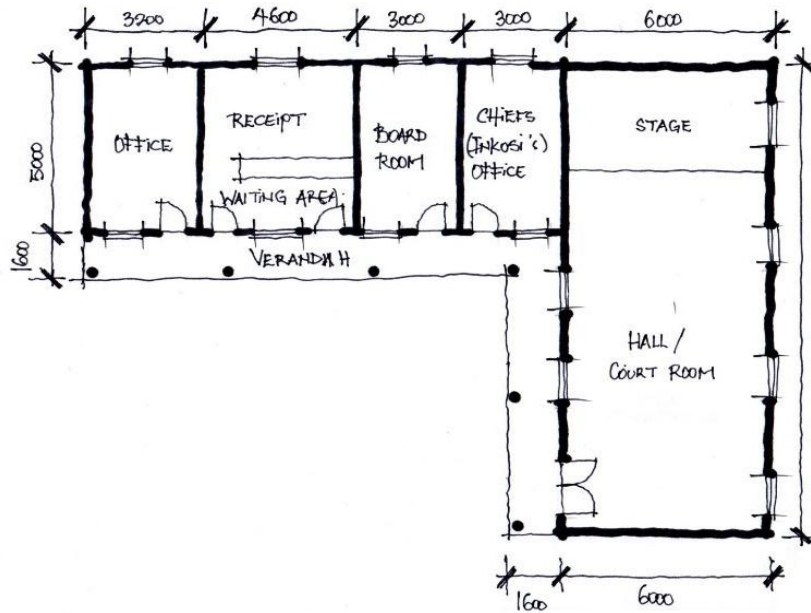
*Figures 71: View of Mbomvu Traditional Court from the Dirt Access Road.
Image source: By Author*



*Figures 72: Sectional Perspective Sketch of the Mbomvu Traditional Court
Illustration: By Author*

The Traditional courthouse is located far from the tribal house and is currently deserted due to its unfavourable location. The courthouse is a basic face brick building; with no wayfinding mechanisms and designated parking area; simply building blocks with an unresponsive architecture, identical to other local traditional courts.

Standard building technology and materials are used with no regard for the local climate, there is no phenomenological exploration of spatial experience within the courthouse.



*Figures 73: Sketch of the Mbomvu Traditional Court Layout Plan
Illustration: By Author*

The Traditional courthouse has a basic layout L-shape layout generic to Mthembu Court. The court consists of a western-influenced main rectangular hall that serves as a courtroom space, a boardroom, the iNkosi's office, a reception area serving the public waiting area, a kitchen, and office, all of which are accessible from the verandah. The pit latrine toilets are at the far back of the courthouse, with no walkways.

6.3.5. Findings

The Mbomvu traditional court facility suffers from a suboptimal location, being situated too far from the tribal house. Consequently, the local community has opted to utilize the nearby One Stop Centre for their judicial activities, rendering the designated traditional court virtually abandoned. Presently, it serves alternative purposes such as functioning as a church hall and agricultural storage. This situation underscores the significance of accessible Traditional court facilities and their proximity to both the tribal house and the communities they serve. Additionally, the findings from the case studies shed light on the insufficient consideration given to the implementation of existing traditional court architecture and a disregard for local cultural influence.

6.4. CONCLUSION

The investigation findings of this chapter reveal that the Mthembu traditional court, established by Cogta, effectively addressed the need for justice administration in the Mthembu area, it provided privacy to the chief's homestead and served as a designated space for tribal issues. The facility's strategic location near the tribal house, within the community, and near the access road contributed to its success. Similarly, the Mbomvu traditional court faced challenges due to its suboptimal location, leading the local community to prefer the nearby One Stop Centre for judicial activities. The abandonment of the designated Traditional court highlights the importance of accessible court facilities situated close to both the tribal house and the communities they serve. Furthermore, the case studies underscore the insufficient consideration given to existing Traditional court architecture and a lack of attention to local cultural influence in the implementation process.

CHAPTER 7 - ANALYSIS AND DISCUSSION

7. INTRODUCTION

The section that follows is a focused review of the information gathered through primary data collection, interviews, questionnaires, and secondary data collection, as well as literature related to the development of Traditional Judicial systems, precedent studies of global approaches to similar built form typologies challenges, and local case studies of all six traditional courts within the rural Msinga tribal authorities in KwaZulu Natal, with a focus on three specific chosen case studies which are a part of Msinga's tribal authority facilities that promote dispensation and access to the Traditional Justice system. The analysis will aid in the compilation of the dissertation's final chapter, which discusses the research conclusion and recommendations.

The conceptual theories guide the process of extracting and implementing the most important points in part two of the dissertation. Based on the qualitative research methodology, the snowball system form of analysis compelled the study to focus on the fieldwork response of the number of relevant and prominent people in the community and within the inquiry, which provides much of the contextual data that will influence the proposed Traditional Judicial facility design. This analysis' relevance allows for a more focused approach to the design principles recommended in the final Chapter.

7.1. INVESTIGATIVE APPROACH

The study includes all respondents who took part in interviews and surveys. The tribal chiefs, village elders who are council members (*izinduna*), court administration (secretary), the built environment professionals (Architects and local infrastructure engineers), gatekeepers (Cogta), and members of the local community, mostly women and the local youth, were among those who responded.

The initial conducted interviews indicated a necessity to include the youth's perspective on the investigation, this is due to their perceived lack of interest in the Traditional Judicial system. The researcher was also allowed to conduct a collective interview during the court sessions in the presence of the tribal council (Inkundla), where the researcher was able to cross-question all members to gain understanding and insight into their collective perception and aspirations of the Msinga Traditional Judicial system.

7.2. ANALYSIS OF EMPIRICAL FINDINGS:

The following section is divided into four parts and discusses the interviews and responses of all participant's general understanding of the Traditional Judicial systems and their impact on society as they exist today. This is followed by the understanding of the developments /evolution of the system and the impact the built form plays in the execution of the Traditional Judicial system. Lastly, views on the aims and aspirations of this Traditional Judicial system were sought.

The following questions were posed to interview participants regarding their understanding of the Traditional Judicial systems:

- *What do you know about traditional courts (inkantolo yakwankosi) as they exist today?*

It must be noted that the selection of interviewees was based on their knowledge and involvement with the traditional judicial system, mostly in KwaZulu-Natal, Msinga region, and when asked about their understanding of the traditional court system, which locals refer to as “*inkantolo yakwankosi*”, The general response from all participants was that it serves as a chiefs court, also known as “*inkundla yamacala/isigcawu senkantolo*” in Zulu, mostly active in rural areas under tribal authority, and is mostly used by rural communities for dispute resolution through restorative justice and reconciliation, by using Indigenous law and customs of the land, to maintain harmony and peace “*ukubuyisana*” within the community thus instilling the concept of “*Ubuntu*” meaning, I am because you are.

Mr. Joseph Mthembu, a local businessman who is part of the Mthembu tribal council in Mbabane, gave a response that “*izinkantolo zamakhosi ziyalawula*” meaning the traditional courts are dominant in Msinga. He expressed that they currently govern the people of the land by being responsible for the people’s wellbeing and they give direction within the tribal authorities in a similar fashion as they did in pre-colonial eras before the Traditional Judicial systems were colonised and altered to serve the colonizers objectives.

- *Have you ever used traditional courts to seek justice or know anyone who used it and if yes how was your / their experience?*

Mbikezeli Mntungwa, a local businessman and a community liaison officer in charge of introducing and overseeing that new developments are progressing well within the tribal authority, describes the experience as a little intimidating to outsiders who are unfamiliar with the local traditions of the Traditional court system, due to the protocols that must be followed. He mentioned that however, you get accustomed to the court environment with time.

Two anonymous traditional women have described their experience as slightly intimidating due to the male-dominated tribal council in their area. However, they have learned to accept these conditions as part of their way of life, as women are expected to be respectful around men. Although the chief's court is respected by the community, they felt that the male-dominated environment restricted their freedom of expression, as they are expected to be respectful of their actions as traditional women.

One of the anonymous resident engineers explained that he was familiarized with the Msinga Traditional courts during the introduction of the water line projects. The water projects are currently being implemented in the Msinga region. He explained the challenges of adapting to the Traditional court processes but highlighting that he had grown to understand most of the court's protocol and traditions.

- **Can you explain, in your understanding the process of the traditional court when seeking a dispute to be resolved?**

During the interviews, Mntungwa, Mr. Joseph Mthembu, and Nkakwe Xulu described the process of the Traditional court proceedings. They both concur that upon arising of a dispute, the matter must follow the structures in place for the dispute to be addressed accordingly at different levels, which is first, to report the dispute to *iphoyisa lenkosi*, to see if the dispute cannot be resolved at that level. Should the matter be found to be serious then it is escalated further to the Induna to see if it cannot be resolved within the ward (*isigodi*) level. If it cannot be resolved at that level, the dispute is then escalated to the tribal council (chiefs court, Traditional court) as the last resort.

Below is the diagram illustrating the traditional court process/ stages for dispute resolution:

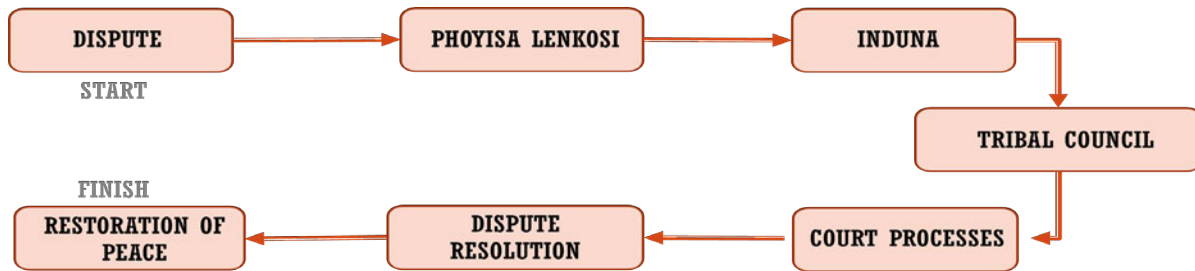


Figure 74: Diagram Illustrating the Traditional Judicial System Dispute Resolution Process.
Illustration: Author

The researcher observed the Mthembu Traditional court proceedings and traditions during the day of the hearings, taking place as described by Mntungwa and Joseph Mthembu during the interviews. Upon arrival in the public waiting area, a greeting tradition must be performed as a form of expression that you come in peace; “Bayede! Bayede! Bayede! Ndabezitha!”. Only then can one proceed to the reception to register their name and join the queue in the waiting area waiting to be summoned by *iphoyisa lenkosi*. When summoned you then proceed to the Traditional courtroom where the tribal council congregates. Again, upon arrival you repeat the greeting tradition as mentioned; “Bayede! Bayede! Bayede! Ndabezitha!”. This is to show respect and recognition to the chief and the tribal council. You are then introduced and welcomed, then the court proceeds. You are then afforded a platform to present your case, which the researcher observed to be in an environment that is relaxing as it was not the first experience within the Traditional court environment.

Below is a diagram illustrating the procedures on the day of the hearing.

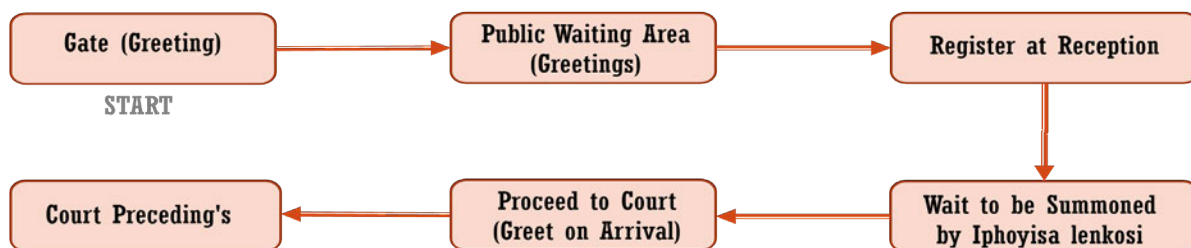


Figure 75: Diagram Illustrating the Traditional Court Procedures on the Day of the Hearing.
Illustration: Author

This section of the interview questions and discussions is strongly related to the impact the traditional judicial systems play in the Msinga rural community:

- **How has the traditional courts changed from the older days, up to now?**

Chief Mthembu and Chief Mntungwa of the Mabaso Traditional court both agree and enlighten that in the olden days, the dispute cases would be reported directly at the chief's homestead. The court proceedings would take place on the outside of the chief's homestead, mostly under a tree. There were no records kept and the cases were heard and concluded orally without the aid of writing. Since then, administration buildings have been provided to cater to Traditional court activities, and that now everything is recorded for record keeping.

Nonhlanhla Sokhela, the secretary at Mthembu court highlighted that the constitution demands that women be part of the tribal council, and most tribal councils are warming up to the idea. She referred to Mbomvu tribal authority which is headed by a woman, a wife of a late chief Mbomvu as an illustration. However, there are still challenges that come with accepting these developments.

The anonymous resident engineer raised a concern that some of the Traditional courts are heavily influenced by politics and tend to be distorted from their main purpose. A similar concern was independently raised by chief Mntungwa of Mabaso tribal court during an interview. He indicated that that politics sometimes undermines and interferes with tribal courts and their authority thus presenting challenges to the functioning of the tribal authority.

- **What is your view regarding traditional courts compared to judicial / magistrate courts?**

Joseph Mthembu and Nkakwe Xulu concur with Nonhlanhla's response that the traditional courts are preferable as they aim to restore peace unlike the magistrate courts where you are judged. Restorative justice is the traditional way of life for the traditional community from pre-colonial eras till to date in the notion of "*ukubuyisana*" - to forgive and make peace. Also, the Traditional courts are easily accessible, affordable, and accustomed to rural communities.

Kundai Chiranga a female architectural professional and a Master of Architecture student at the University of KwaZulu-Natal explained that both concepts have a higher power to answer to; in a judicial court there is a judge and for traditional court is a chief. She also stated that previously traditional courts were also less inclusive of women and believed only men had a voice to be heard.

Mbikezeli Mtungwa's concern was that the Traditional court system may at times be portrayed as dictatorship because under this system the citizens cannot challenge the chief's decision if there is a disagreement.

Members of the Mthembu tribal council (izinduna and chief) enlightened that the Traditional court uses familiar laws of the land which the local community is accustomed to and have been passed down as tradition from their ancestors who were responsible for peace-keeping and the wellbeing of the community.

- **Do you think, enough is being done to change the Traditional court to work better when resolving disputes in rural communities? If not, what do you think must be done to improve these courts?**

The general response from participants is that not enough is being done to better the functioning of the Traditional courts.

The anonymous resident engineers advocated for improvements to occur in the court facilities in terms of accessibility, infrastructure, administration, and modern communication technology in these courts, noting that you may sometimes wait up to 6 hours to be attended. The researcher concurs, that he shared a similar experience, whereby he was attended very late.

Mbikezeli Mtungwa is of the view that the Traditional courts do not work according to the Constitution (1996), which needs to be enforced for the system to be more effective and fairer.

Nonhlanhla Sokhela, the secretary, advocates for the improvement of technology and infrastructure within the court facilities. Currently, modern technology is non-existent in these facilities, and there are no telecommunication connections or computers to aid the administration of the courts.

Mthembu tribal council noted that there is a need for more proper training to improve the functions of the Traditional courts. The chief believes the court facility should serve more than just court activities. The researcher concurs with the chief and believes the Traditional courts should be viewed as a gateway to Traditional justice and a reservoir of local traditions for future generations.

Local youth's lack of participation in the traditional judicial system

The main concern raised by the Mthembu tribal chief is the lack of the local youth partaking in the Traditional court processes. The chief expressed his fears that there will be no one to pass down this tradition to.

Youth participant, Phathokuhle Sikhakhane (32), clarified that conflicts amongst the youth are usually resolved at a lower level. He went on to describe his experience of the young men's courts taking place mostly in the mountains (*entabeni*) outside of the Traditional court. The same sentiment applied to young women as well. They have their structures at lower level. This leaves the notion of the chiefs court being respected and strongly associated with the village elders, thus contributing to the cause of the youths' perceived detachment from the traditional court system and matters related to tribal authority.

Mbikezeli Mntungwa explained that the lack of interest by local youth is due to the perception that the Traditional courts are for old people, they are outdated and sometimes biased, and as a result, the youth opt for the magistrate court when seeking justice.

During discussions, the Mthembu chief emphasized a need for the inclusion of activities that will draw the youth closer to Traditional judicial systems.

This section of the interview questions and discussions focuses on the influence of the traditional judicial system in the built form:

- **What is the importance of the place where these courts were held before the usage of court buildings?**

According to the Mthembu tribal council, chief Mthembu enlightens that Traditional court proceedings would normally take place closer to the chief's homestead, in the old days before the usage of court buildings. The conflicts were reported directly to the chief house, and the chief would set a hearing date with all the participants present, and for convenience purposes it would be near the chief's homestead but outside the homestead boundary, for the nearness of the chief. The setting would be on the open sometimes by the river but most preferable under the nearest available tree to serve as shelter from the inclement weather.

Doctor Khanyisa, one of the izinduna, authenticated that to-date these Traditional court sessions are still held by the river or under a tree from time to time, when izinduna have hearings in the lower courts within their wards (izigodi). The river bank is preferred, since they are in the open, easily accessible and visible to the immediate community. The preferred location should be able to accommodate several participants.

- **Does the building or location of the building influence your experience of the place of uMsinga?**

Most responses, from the interviewees, were negative. Mntungwa mentioned that the current building resembles a modern court of law, nothing of local influence, however, one of the engineers indicated that the court's proximity to the chief's homestead and the distant views of local landscapes, creates significant importance and a connection to the place of Msinga. Through physical observation, the researcher agrees with the engineer's observation, that indeed the distant local landscapes create a different natural environment and create a connection to the place, and an experience of a relaxed simple rural life compared to the busy city life.



Figure 76: Collage Portraying the local landscapes around the court sites of Mthembu and Mabaso Court
Source: Author

- **Are these traditional court buildings accessible/located closer to their communities?**

The majority of the interviewees had no complaints with the accessibility and location of most of the courts. However, one of the resident engineer's complaints was that some of these courts are not easily accessible. From observation and experience, the researcher agrees with the majority of the interviewees, but when, referring to the case study of Mbovu Traditional court, the researcher noted the failure of a poorly located courthouse facility which is located far from the chief's house and the intended community. In the case of the Mbovu Traditional court, the result was that the

courthouse has been abandoned and is used for farming equipment storage and church services. The tribal council opted to relocate the Traditional court activities to a nearby One-Stop Centre that is located closer to the chief's house.

- **Are the rooms/spaces for activities in these traditional courts well accommodated by these buildings?**

The responses, half of the interviewed participants indicated that all activities are well accommodated, and the other half disagree. Albeit they all advocate for the improvement of these spaces.

- **Would you say the room layout is influenced by the old Traditional court setting under a tree or magistrate court layout?**

All participants agree that there is no influence of the old Tradition of justice under a tree and describe the current courtroom as a rectangular shape which is a more Western-influenced magistrate courtroom layout. The Traditional arrangement of the court under the tree was more circular where all participants could engage with each other easily enhancing eye contact and equality.

Mosotho Motau a specialist in the Conservation of the Built Environment and a Master of Architecture student at the University of KwaZulu-Natal was of the view that the room layout of these courts is not influenced by either of the two. His view being that they are mostly influenced by modernity and by factors such as sitting, furniture and site parameters.

Kundai responded that the only influence noted is the judge's position similar to the chief who sits above everyone and oversees that all court processes are in order.

- **Please describe the old traditional court setting under a tree.**

When the tribal council describes the Traditional court setting under a tree, they mention that the tree would be in an accessible and visible location, and the sitting arrangement would be more of a circular form with a focus on the individuals in dispute. The chief would sit in front against the tree trunk which acts as a rear protective element, facing the centre stage "*inkundla*", supported by the tribal council members (*izinduna*) on either side, the individuals in dispute would be located

at the centre at the focal point, but separated. Then the members of the community would sit at the back, following the traditional sitting arrangement, where women will be located on the left and man located on the right. The separation of women and men is based on the symbolic idea that the right hand is normally stronger than the left hand, and the strong (men) are responsible for defending the vulnerable (women).

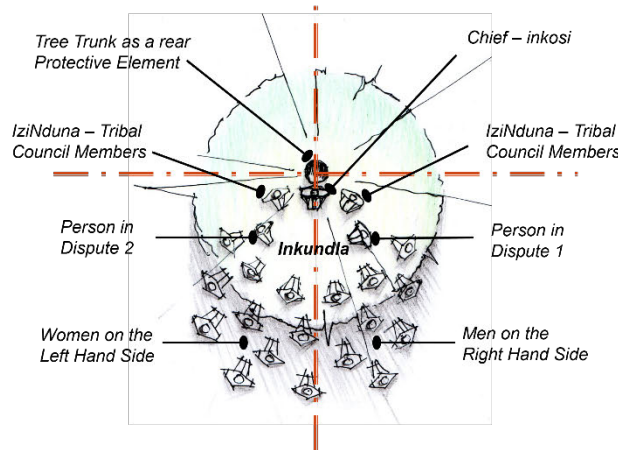


Figure 77: Court Setting Arrangement 1- Illustration of the Zulu tradition of spatial arrangement where women are located on the left and men on the right-hand side.

Source: Author

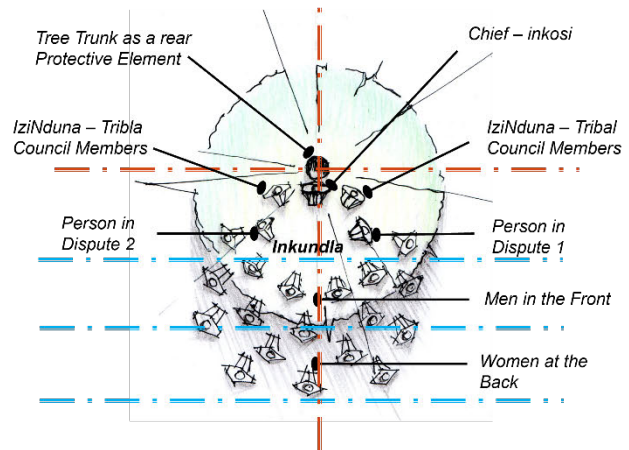


Figure 78: Court setting Arrangement 2- Illustration of the spatial arrangement where women are located at the back and man at the front
Source: Author

Joseph Mthembu and Nkakwe Xulu, explained that sometimes the sitting arrangement would differ, where men would be located at the front and women at the back. They also highlighted that these sitting arrangements remained the same regardless of the location. For instance, where the setting is by the river the chief would sit against the river or a huge boulder as a protective barrier facing “*inkundla*”.

- **Does the existing court building have any identifiable symbols as the Traditional court? If yes, please explain.**

All participants agreed that the existing Traditional court buildings lack a symbolic expression that identifies the facility as a gateway to Traditional justice/ court in Msinga KwaZulu-Natal. One of the engineers described the existing facility as being similar to standard Department of Education classrooms, and therefore does not identify as a gateway to justice in the rural setting of Msinga.

Kundai responded that there is no identifiable symbol, only a reflection of a colonised structure that is less engaging to the participants, unlike *inkundla*.

Mosotho responded that the Traditional court buildings in Msinga are not identifiable as Traditional courts. He highlighted that they resemble more ordinary residential houses with no signage that points to the function or use of the building.

Chief Mthembu emphasised that they are currently working on a logo that will symbolise the Mthembu's tribal authority and aspirations as a tribal council.

- **Please describe the current room arrangement/layout of the currently existing traditional court buildings.**

The general response from all participants familiar with all the Traditional courts within Msinga tribal authority described these traditional courts as generic, standard in design with a basic layout either U-shape, T-shape, or L-shape. With a Western judicial court influence, there is a main rectangular hall that serves as a courtroom space, a boardroom, the iNkosi's (chiefs) office, a reception area serving the public waiting area, a kitchen, and support offices, all of which are accessible from the veranda (circulation area). The veranda would also be serving as an outdoor waiting area with no consideration to the vulnerable. The pit latrine toilets' sanitary system is usually at the far back of the courthouse, with no way-finding mechanism/ walkways.

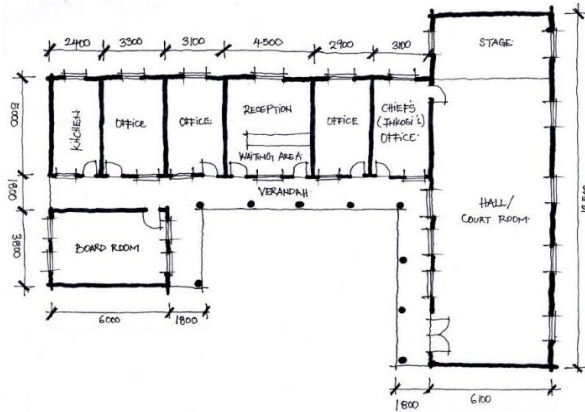


Figure 79: Existing Layout of Mabaso Traditional Court
Illustration: Author

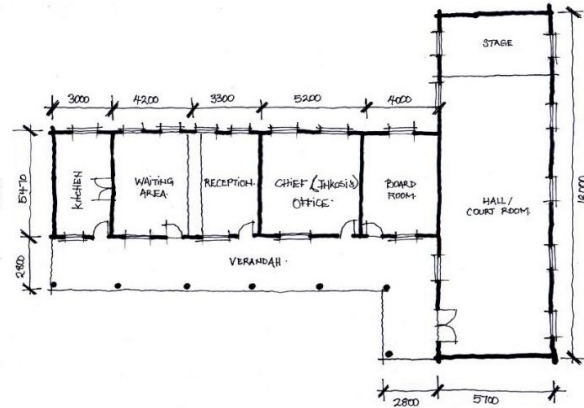


Figure 80: Existing Layout of Mthembu Traditional Court
Illustration: Author

The following section of the interview questions and discussions seeks recommendations for the infrastructure improvement of the traditional judicial system facilities.

- Are there any other suggestions of what needs to be done to improve the Traditional buildings as they exist today? (Comments and/ or suggestions)

During discussions, the Mthembu chief raised a need to broaden the scope of the Traditional buildings by adding more spaces for activities related to the tribal authority. Specifically, he mentioned the need for a resource centre within the Traditional court facility to accommodate the youth. He further encouraged that Traditional court facilities be updated with modern technology like computers and Wi-Fi. One of the engineers recommended the provision of a proper waiting area. Through observation, the researcher concurs with the need to provide a conducive waiting area in a manner that is sensitive to vulnerable groups and promotes separation of the individuals in conflict.

Kundai suggested that by designing according to the local cultural identity of the place, the Traditional court should symbolise the communal principles and spiritual beliefs deeply rooted in their culture, which should inform the space planning and zoning leading up to the core gathering space.

Mosotho suggested that these court buildings be designed to demonstrate their function as judicial structures, which he believes can be accomplished by understanding local culture and protocols within the Traditional judicial system. And, as Louis Sullivan once said, "form follows function". This means that the building's function will influence its design and layout.

During the interview, an interesting discussion occurred with a young black architect and Durban University of Technology (DUT) lecturer Andile Ncapai, where he observed the inquiry through a different lens, and posed the following question to the researcher: "What is your visualisation in terms of African architecture development if colonisation never occurred and if African architecture evolved to a more contemporary form of architecture considering the material and construction technology available to date".

- **Ongoing developments of the Traditional judicial systems**

The chiefs mentioned that there are structured courses currently offered to tribal chiefs for leadership skills and development.

Mr. Basil Sikhakhane of the Department of Cooperative Government and Traditional Affairs (Cogta) informed this study that a framework is being developed to improve the functioning of traditional leadership and institutions. He indicated that Cogta is promoting its recognition for its powers and functions. The objective is to transform Traditional courts into Traditional Authority Administration Centres, which will oversee all aspects of Traditional leadership administration in KwaZulu-Natal. These developments are related to Agriculture, Arts, Culture, Science and Technology, Education, Environmental Affairs and Tourism, Home Affairs, Finance, Health, Housing, and Justice and others are: Labour, Land, Minerals and Energy, Public Administration, Public works, Safety and Security, Sport and Recreation, Trade and Industry, Transport, Water Affairs and Forestry, and Social Welfare. Sikhakhane confirmed that there is an unpublished report that has been submitted to the Department of Provincial and Local Government in this regard.

7.3. CONCLUSION

Traditional judicial systems should be viewed as a gateway to access Traditional justice for dispute resolution in societies. The facilities should be open and accessible to everyone, their influence and ongoing developments are to be recognised as continually passing down values of functional institutions. Valuing their aesthetics and functional values is essential for future generations to preserve their traditional way of life and identity in the forever changing societies.

Our worldview is shaped by our ancestors' beliefs. Social relationships are shaped by behavioural patterns, and appropriate behaviour is learned through experience. Human activity is organised into patterns, which are supported by customs, traditions, institutions, and laws.

Assisting the functioning of these institutions with supporting built form is vital, it is argued that the story that a building tells its story through its design may be as important to the community it serves as its function. It will have a direct impact on the communities' efforts to collaborate productively by shaping their thoughts about themselves and their institutions.

CHAPTER 8 – CONCLUSION AND RECOMMENDATION

8. INTRODUCTION

The subject of traditional judicial systems lacks substantial research within the discipline of architecture in the local context, the researcher, had to interrogated the social science, local cultural traditions, and traditional justice influences to unpack the justification of the study by identifying the problems and how the built form can contribute in the evolution of traditional judicial systems and related issues.

8.1. DISCUSSION AND RECOMMENDATIONS

The study aimed to understand the historical influences on the traditional judicial system in South Africa, specifically in KwaZulu-Natal, by examining its constituents and the built form. It delved into the pre-colonial eras, colonialism, and current developments, focusing on the impact of tradition on changing societies and the built form of the system.

Literature reveals that African cultures and institutions adapted in order to survive colonialism, despite losing respect for rural life. The Republic of South Africa's Constitution (1996) acknowledged the marginalisation of traditional institutions, including courts, under colonial and apartheid legal orders. It suggested regulating courts to emphasise their obligations and hold them accountable to users and the state. Preserving African traditions is crucial for fostering a sense of belonging and identity as well as allowing individuals to choose between traditional, mainstream, or modern lifestyles. Restoring neglected cultural traditions is essential for the development of marginalised traditional institutions.

The concept of African tradition of justice under a tree was explored to understand the connection between the traditional justice system and the old court setting. Before court buildings, sessions would take place outside, typically under a tree, thus providing an open and accessible location for tribal issues and protection against inclement weather. This concept is now used to explore traditional judicial built form, supported by a theoretical framework, space syntax, phenomenology, critical regionalism, and symbolism.

Due to lack of appropriately designed built forms that demonstrated a sensitivity and understanding between local culture and judicial systems, built form typologies locally. However, literature

linking theoretical framework and the development of Indigenous/Traditional court facilities was demonstrated through recent global precedent studies of the similar built form typologies specifically designed for Indigenous/ Traditional court users, located in different Indigenous societies. The Pokagon Band Indian tribe in Michigan and the Aboriginal communities in Western Australia, seeking new contemporary approaches and design developments in similar building typologies.

Literature suggests that case studies be focused on the study areas, local traditional judicial functioning, users' needs, cultural traditions, and history of the area. The study investigated all six courts in Msinga by integrating previous theoretical framework, precedent studies and literature review chapters, focusing on Mthembu, Mbomvu, and Mabaso traditional courts. The findings revealed that the buildings did not explore traditional cultural influences, spatial experiences, or symbolic expression of the local justice system. The current iteration of the traditional court is inadequate as they were generic and standardised in design. Moreover, they did not engage with the place and local community of Msinga, KwaZulu-Natal. Clearly, sustainable principles were not explored.

Njoroge, (2012) refers to Prof. Robert Rukwaro of the University of Nairobi that Architects must respond to elements of function, aesthetics, and symbolism. Symbolism is an attempt to capture, among other things, a people's or organisation's ideas, rituals, history, culture, philosophy, outlook, and notions.

Anthony and Grant (2016,55) recommend that indigenous courthouse design consider regionalization, cultural specificity, user engagement, and linking court space to Indigenous places (Inside-Out Architecture) in a way that promotes Indigenous use of the space.

Murphy (2016,287) suggests that the enculturated courthouse approach signals value to Indigenous communities and users, ensuring their voices are heard and valued, leaving long-lasting social values that future generations will interpret through their inherited structures.

The findings from previous chapters, literature review, concepts and theoretical framework, precedent studies, case studies and views of interviewed participants should be considered and

integrated as a base in the building typology design process when exploring the built form that caters to that certain function for that group of society.

8.2. SUGGESTED DESIGN GUIDELINES

The suggested design guidelines below were extracted from previous chapters, the precedent studies, theoretical and conceptual framework, and ought to convey valuable and insightful points of departure for the design of the proposed Traditional Judicial Facility in Msinga, KwaZulu-Natal:

- Place Specific Design, design should respond to the local context and be adaptable to address other local social related issues.
- Location and context should be accessible, in proximity to the chief's homestead and the user community.
- Towards Cultural Agency, influence and inclusion of local cultural traditions, beliefs and customs to enculturate the court facility. Provide for diverse indigenous groups and spatial practices.
- Influence local landscapes to connect the facility with rural Msinga, make the land visible as the ultimate reference, providing a silent context for court and community events.
- Consideration of user experience in traditional court facilities.
- Caution of Symbols without Substance – Avoid symbolism without meaning
- Inside-Out Architecture connects indoor courtrooms to outdoor spaces, utilising natural light for concentration and wellbeing, and establishing sightlines to the surrounding landscape for improved flora and fauna.
- Inclusive Design Process - Engaging local communities in the design process promotes a sense of ownership.
- Contribution to improvement of local economy – Consideration of trading activities, informal trading for rural communities.

- Way finding mechanism – navigation systems within the facility, pathways.
- Security and Comfort for Indigenous court users.
- Consideration of vulnerable groups, Users living with Disabilities and Chronic Health Conditions.
- Separation of individuals in dispute before dispute resolution.
- Minimise the hierarchical nature of the courtroom, tribal council to sit at eye-level with the offender, and the court participants, for ease of engagement and relaxed court environment.

Architectural designers have adopted principles from research studies, emphasising the importance of acknowledging Indigenous users and language groups' cultural and socio-spatial requirements. These principles provide a basis for recasting orthodox courthouse design assumptions, but local Indigenous adaptation is necessary to ensure responsiveness to their spatial priorities.

8.3. CONCLUSION

The Traditional judicial systems have evolved in South Africa from pre-colonial times to the present because evolution is a process that will continue to do so beyond the timeframe and scope of this study. The issues identified in this study may be useful for further investigating the evolution and the developments of traditional judicial systems into an appropriate built form and any other related Traditional Authority Administration built form. This particular area of research has received insufficient attention, and a significant portion of the South African population continues to depend on the traditional court system. Given the substantial role it plays in serving the community, establishing a suitable facility is crucial. South Africa is in a continuous pursuit of defining its unique identity by bridging traditional and indigenous customs with contemporary Western practices and through a thoughtful integration of these two seemingly opposing systems, Thus a modern reinterpretation of traditional practices can lead to a more comprehensive and meaningful response. The study done for this thesis should not be considered as final but must be read and understood with the goal of future research.

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Appendix III

III CONSENT FORM

Research Title: Exploration of Traditional Judicial System Through the Built Form: A Proposed Traditional Judicial Facility in Msinga. KwaZulu-Natal

Principal Researcher:

Name of researcher: Sbonelo Nkululeko Blessing Dlamini

Program: Master of Architecture (M. Arch)

Student Number: 221119786

University of KwaZulu-Natal

School of the Built Environment and Development Studies

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Purpose of the Study: I am required to perform a research project as part of the Master of Architecture (M. Arch) requirements at UKZN. This is an exploration of the traditional judicial system through the built form, intending to gain insight into how to approach the conceptualization of the envisioned traditional court Bill into an effective built form that caters to the contemporary needs of rural communities that rely on the traditional judicial system as their first point of contact for justice.

Background: You have been invited to participate in this research project. Before you decide to participate in this study, you should understand why the research is being conducted and what it will entail. Please take the time to thoroughly read the following information. Please contact the researcher if something is unclear or if you want further information.

What will the study involve? This study will require around 30-45 minutes of your time. The research will consist of an interview in which you will be questioned about your ideas and/or experiences with the traditional court system and the built form. There will also be a few easy points referring to historical events on which you may be questioned. The amount to which you share is totally up to you and your comfort level. A digital Dictaphone will be used to record the interview.

Risks The hazards associated with this study are minor. These dangers are comparable to those you face when releasing work-related information to others. Some respondents may be offended by the survey's themes. You may refuse to answer any or all questions, and you may withdraw your participation at any moment. Because the questions may offend you, you may prefer that the researcher merely take notes during the interview rather than recording them. This, however, may extend the interview's time.

Benefits: There will be no direct benefit to you for your participation in this study.

Alternative Procedures: If you do not wish to participate in the study, you may do so by leaving your responses blank.

Confidentiality:

Please do not convey any identifying information during your interview. Your responses will be anonymous.

Every effort will be made by the researcher to preserve your confidentiality including doing the following:

- Assigning code names/numbers for participants that will be used on all researcher notes and documents.
- Notes, interview transcriptions, transcribed notes, and any other identifying participant information will be kept in a locked file cabinet in the personal possession of the researcher. When no longer necessary for research, all materials will be destroyed,
- The researcher and members of the researcher's committee will go over the data that the researcher has gathered. This research's findings will be utilised strictly for this study and any publications that may come from it. Any final publication will include the identities of public figures who have agreed to participate in this study (unless a public figure participant has requested anonymity): all other participants in this study will not be named and will preserve their anonymity.
- Each participant can obtain a transcribed copy of their interview. Participants should tell the researcher if a copy of the interview is desired.
- Participant data will be kept confidential except in cases where the researcher is legally obligated to report specific incidents. These incidents include, but may not be limited to, incidents of abuse and suicide risk.

Person to Contact: Should you have any questions about the research or any related matters, please contact the researcher at 221119786@stu.ukzn.ac.za / sbonelonb@gmail.com or 0832964172 / 0317011669
Supervisor: Mr. Sibusiso Sithole at Sithole6@ukzn.ac.za or 031 260 1480 /082 685 5595
HSSREC Research Office (Tel: 031 260 8350/4557/3587, Email: hssrec@ukzn.ac.za)

Voluntary Participation: Your participation in this study is voluntary. It is up to you to decide whether to take part. If you do decide to take part in this study, you will be asked to sign a consent form. Upon signing this form, you are still free to withdraw at any time and without giving a reason. You are free to not answer any question or questions if you choose. This will not affect the relationship you have with the researcher.

Unforeseeable Risks: There may be risks that are not anticipated. However, every effort will be made to minimise any risks.

Costs to Subject: There are no costs to you for your participation in this study.

Compensation: There is no monetary compensation to you for your participation in this study.

I agree to my interview being audio-recorded.	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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CONSENT I..... (Full names of participant) hereby confirm that I understand the contents of this document and the nature of the research project, and I consent to participate in the research project and to the interview to be recorded. I understand that I am at liberty to withdraw from the project at any time, should I so desire.

.....
SIGNATURE OF PARTICIPANT DATE

Appendix IV



IV QUESTIONNAIRE

Research Title: Exploration of Traditional Judicial Systems Through the Built Form: A Proposed Traditional Judicial Facility in Msinga, KwaZulu-Natal

Name of researcher: Sbonelo Nkululeko Blessing Dlamini

Program: Master of Architecture (M. Arch)

Student Number: 221119786

My name is Sbonelo Nkululeko Blessing Dlamini, and I am a student in the School of the Built Environment and Development Studies (SOBEDS) at the University of Kwazulu-Natal and in the Department of Architecture, Planning, and Housing.

This questionnaire is one of my primary data collection tools for my dissertation. The title of my research dissertation is outlined above. Through this research, I want to answer the key questions and the objectives of my research dissertation which are outlined below.

Key Question:

How can traditional courts-built form be improved and updated to respond and beneficial to communities that rely on the traditional judicial system as their first point of justice?

Secondary Question:

How do the traditional judicial system and regional cultural practices influence the traditional courts-built form?

The objectives:

1. To understand the constitutes of the traditional judicial systems.
2. To explore the impact the built form plays in the execution of traditional court systems in Msinga, KwaZulu- Natal.
3. To understand the influence of social spatial and cultural factors on the traditional judicial systems-

built form of uMsinga, KwaZulu-Natal

4. To determine the ways in which the traditional courts bill/frameworks can be conceptualized into a built form that caters to the contemporary needs of the communities they serve.

You have been identified as a suitable respondent to this research and you are therefore requested to take the time and complete this questionnaire. This study depends on your valuable participation. The questionnaire will not take more than 30-45 minutes of your valuable time. The university has approved ethical clearance for this research and participants of this research will be treated in line with the conditions of the approved ethical clearance.

Thank you for your valuable time and participation.

Part A: Consent and Personal Information

Do you agree to participate in this study? **Yes / No**

Do you prefer to be anonymous? **Yes / No**

Demographics

Age range (Please tick applicable box)

18 – 21 yrs.	
22 – 31 yrs.	
32 – 41 yrs.	
42 – 51 yrs.	
52 yrs. and older	

Gender

Male	
Female	
Non-binary	
Rather not say	

What is your nationality?.....

What is your race? (Please tick applicable box)

African	
White	
Indian	
Coloured	

What is your occupation?.....

Where do you reside? (Name of City / Village in full and not your full address)

.....

Part B: The Questionnaire

-
1. Are you familiar with the traditional courts (enkantolo yakwaNkosi), and their functions and procedures? **Yes / No / Not sure**
 2. Do you think the traditional court are useful for conflict resolution? **Yes / No / Not sure**
Do you think traditional courts are quicker to resolve disputes? **Yes / No / Not sure**
 3. Do you think they are a simpler and fair system of dispute resolution for the community of uMsinga? **Yes / No / Not sure**
 4. Do you think the traditional courts provide familiar processes during court proceedings? **Yes / No / Not sure**
 5. Do you think traditional judicial system is an affordable option for the rural community? **Yes / No / Not sure**
 6. Do you think the local laws of the land are still used for conflict resolution in these courts? **Yes / No / Not sure**
 7. Do you think traditional court are welcoming to women, children and the disabled? **Yes / No / Not sure**
 8. Do you consider the traditional courts systems to be part of African culture? **Yes / No / Not sure**
 9. Do you think the location of traditional courts are close enough/accessible to the community they serve? **Yes / No / Not sure**
 10. Do you think the existing traditional court facilities are considerate of the vulnerable groups (The aggrieved, women, children and disabled) experiences within the facility? **Yes / No / Not sure**

11. Do you think the existing court buildings accommodate spaces for all the activities related to the operation of the court? **Yes / No / Not sure**
12. Do you think the rooms arrangement inside the courtroom relates to the activities of the court? **Yes / No / Not sure**
13. Does the courthouse have any identifiable features indicating that it is a court building? **Yes / No / Not sure**
14. Do you think the uMsinga court building had any influence from the local traditional buildings of uMsinga? **Yes / No / Not sure**
15. Do you think the court buildings need to be improved? **Yes / No / Not sure**

Appendix V



V INTERVIEW GUIDE

Research Title: Exploration of Traditional Judicial Systems Through the Built Form: A Proposed Traditional Judicial Facility in Msinga, KwaZulu-Natal

Name of researcher: Sbonelo Nkululeko Blessing Dlamini

Program: Master of Architecture (M. Arch)

Student Number: 221119786

My name is Sbonelo Nkululeko Blessing Dlamini, and I am a student in the School of the Built Environment and Development Studies (SOBEDS) at the University of Kwazulu-Natal and in the Department of Architecture, Planning, and Housing.

This questionnaire is one of my primary data collection tools for my dissertation. The title of my research dissertation is outlined above. Through this research, I want to answer the key questions and the objectives of my research dissertation which are outlined below.

Key Question:

How can traditional courts-built form be improved and updated to respond effectively and be beneficial to communities that rely on the traditional judicial system as their first point of justice?

Secondary Question:

How do the traditional judicial system and regional cultural practices influence the traditional courts-built form?

The objectives:

1. To understand the constitutes of the traditional judicial systems.
2. To explore the impact the built form plays in the execution of traditional court systems in Msinga, KwaZulu- Natal.

1. To understand the influence of social spatial and cultural factors on the traditional judicial systems-built form of Msinga.
2. To determine the ways in which the traditional courts bill/frameworks can be conceptualised into a built form that caters to the contemporary needs of the communities they serve.

You have been identified as a suitable respondent to this research and you are therefore requested to take the time and complete this questionnaire. This study depends on your valuable participation. The questionnaire will not take more than 30-45 minutes of your valuable time. The university has approved ethical clearance for this research and participants of this research will be treated in line with the conditions of the approved ethical clearance.

Thank you for your valuable time and participation.

Part A: Consent and Personal Information

Do you agree to participate in this study

Yes / No?

Do you prefer to be anonymous?

Yes / No

Demographics

Age range (Please tick applicable box)

18 – 21 yrs.	
22 – 31 yrs.	
32 – 41 yrs.	
42 – 51 yrs.	
52 yrs. and older	

Gender

Male	
Female	
Non-binary	
Rather not say	

What is your nationality?.....

What is your race? (Please tick applicable box)

African	
White	
Indian	
Coloured	

What is your occupation?.....

Where do you reside? (Name of City in full and not your full address).....

Part B: The Interview

-
- What do you know about traditional courts (*inkantolo yakwaNkosi*) as they exist today?
.....
 - How have the traditional courts changed from the olden days, up to now?
.....
 - Have you ever used traditional courts to seek justice or know anyone who used it and if yes how was your / their experience?
.....
 - Can you explain, in your understanding, the process of the traditional court when seeking dispute to be resolved?
.....
 - What is your view regarding traditional courts compared to judicial / magistrate courts?
.....
 - Do you think enough is being done to change the traditional court to work better when resolving disputes in the rural communities? If not, what do you think must be done to improve these courts?
.....
 - What is the importance of the place where these courts were held before the usage of court buildings?
.....
 - Does the building or location of the building influence your experience of the place of Msinga?
.....
 - Are these traditional court buildings accessible/located closer to their communities?
.....
 - Are the rooms for activities in these traditional courts well accommodated by these buildings?
.....

- Would you say the room layout is influenced by the old traditional court setting under a tree or the magistrate court layout?

.....

- Please describe the old traditional court setting under a tree.

.....

- Does the existing court building have any identifiable symbols as the traditional court? If yes, please explain?

.....

- Please describe the current room arrangement of the court in the current existing court buildings.

.....

- Are there any other suggestions of what needs to be done to improve the traditional buildings as they exist today? (Comments and/ or suggestions)

.....

Appendix VI

VI GATEKEEPERS LETTER FROM COGTA



KWAZULU-NATAL PROVINCE

COOPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS
REPUBLIC OF SOUTH AFRICA

DIRECTORATE

POLICY AND RESEARCH

Private Bag X9078, PIETERMARITZBURG, 3200
Natalia Building, 330 Langalibalele Street, Pietermaritzburg, 3200

Tel: 031 204 1751 Fax: 033 00 0000

To whom it may concern

Permission sought to fulfil Qualification: M.Arch

Student: Mr Sbonelo Nkululeko Blessing Dlamini

This is to confirm that the Department of Cooperative Governance and Traditional Affairs (COGTA) in KwaZulu-Natal was approached by **Mr Sbonelo Nkululeko Blessing Dlamini** (student number: 221119786) from the University of KwaZulu-Natal to request permission to conduct a research study titled:

Exploration of Traditional Judicial Systems Through the Built Form: A Proposed Traditional Judicial Facility at uMsinga, in KwaZulu Natal.

This study seeks to fulfil the following research objectives:

- To explore the impact the built form plays in the execution of customary law or traditional court system.
- To conceptualize the envisioned Traditional Court Bill/framework into an effective built form that caters to the contemporary needs of the communities they serve.
- To understand the influence of social spatial and cultural factors on the traditional court built form of uMsinga.

The study seeks to answer the following research question:

- What impact does the built form play in the execution of customary law or traditional court system?
- How can traditional judicial systems/Bill framework be conceptualized to a built form and be further explored to address other social-related issues?
- What extent of influence do socio-spatial & cultural factors have on the regional built form of uMsinga?

Permission is hereby granted for the study to be undertaken provided that:

1. Permission to conduct research is issued only in relation to Cogta and the student must seek permission from other Provincial Departments and/or stakeholders should a need arise. Thus, the permission granted by Cogta cannot override that which needs to be sought from other organisations/institutions. In particular, with regards to protocol followed within the institution of traditional leadership, the students must seek own permission from Amakhosi and their traditional councils as well as from the Provincial House and relevant local house/s.



KWAZULU-NATAL PROVINCE

COOPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS
REPUBLIC OF SOUTH AFRICA

2. The study relates to Cogta in that the evolution of the traditional court system has created a gap by not evolving into the built form to cater to the provisions of the development and the more recent or current interpretations of traditional court facilities were not suitable for their function, the necessity of exploring an easily accessible Traditional courts facilities that reduce long-distance travel for justice in rural areas, with an accustomed environment that is not intimidating to the end-users, and how the notable lack or absence of any identifiable architecture within the traditional judicial court system can be addressed to aid the evolution of the traditional judicial system to be effective and be able to accommodate contemporary issues within the intended system.
3. The study has to be undertaken in line with the methodology described within the proposal submitted to the Department prior to granting of this permission. The target population is among others, 5 Senior Traditional Leaders, 5 members of the council councils. The approach involves focused interviews, research observations, case studies of existing Traditional courts in and around the study area, and standardised questionnaires will be employed to collect primary data relevant to the study. The selection of interviewees will be done through a targeted and snowballing approach.
4. The student must liaise directly with Traditional Affairs Branch colleagues to assist in obtaining further guidance and information related to data collection.
5. The role of the Department in this study will not incur any costs whatsoever or carry any obligations to release information it deems confidential and classified.
6. The student must furnish the Department with an electronic copy of their final research report once the University has passed it.
7. The student will be expected as and when requested to share through a presentation, the key findings of the study with the Department.
8. Any employees of the Department that may be identified to partake in the study have rights to withdraw from participating in the study at any stage and any information shared by them should be handled with confidentiality and without any prejudice.

Yours Sincerely,

Mr T. Tubane

Head of Department

Signature:

Date:

10/3/23

Appendix VII

VII GATEKEEPERS LETTER FROM TRADITIONAL COURTS

MABASO TRADITIONAL COUNCIL UMKHANGLU WOMBADU WAKWA MABASO eMisinga
09 FEB 2023
P.O. BOX 418 TUGELA FERRY 3010 UMZINYATHI

DATE: 09/03/2023


To whom it may concern

Mr. Sbonelo Dlamini is a Master's student (221119786) in the School of Built Environment and Development Studies and formally requests permission to interview staff/colleagues in your institution/department. The data collected will be used in his Master's Research Project entitled: **Exploration of Traditional Judicial System Through the Built Form: A Proposed Traditional Judicial Facility /Court in uMisinga, KwaZulu Natal.**

The study may be compiled in a few days, as it sets to include the following:

- Interviews will be conducted with selected participants including staff / local government employees and members of the judicial council to gain insight into their perceptions of what impact the built form play in the execution of customary law or traditional court system.
- Distant Observations will be done to understand how the end-users (community) engage with the built form.
- Architectural surveys of the buildings will include sketches and photographs to capture the architectural form and qualities of both internal and external spaces for research purposes.

Thank you and Kind regards



 (Designation) Sign Above
 Name of Institution / Department: MABASO
TRADITIONAL Council

MABASO TRADITIONAL COUNCIL UMKHANGLU WOMBADU WAKWA MABASO eMisinga
09 FEB 2023 stamp
P.O. BOX 418 TUGELA FERRY 3010 UMZINYATHI

Mr. Sibusiso Sithole
Supervisor.

SCHOOL OF BUILT ENVIRONMENT AND DEVELOPMENT STUDIES

Email: Sithole6@ukzn.ac.za

Tel number: 031 260 1480 / 

Built Environment and Development Studies, University of KwaZulu-Natal, Howard College Campus, Durban 4041

INSERT LETTERHEAD

MBOMVU T. COUNCIL
P.O. BOX 7034
TUGELA FERRY 3010
DATE: 09/03/2023

DATE: 09/03/2023

To whom it may concern

Mr. Sbonelo Dlamini is a Master's student (221119786) in the School of Built Environment and Development Studies and formally requests permission to interview staff/colleagues in your institution/department. The data collected will be used in his Master's Research Project entitled: **Exploration of Traditional Judicial System Through the Built Form: A Proposed Traditional Judicial Facility /Court in uMzinga, KwaZulu Natal.**

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- Distant Observations will be done to understand how the end-users (community) engage with the built form.
- Architectural surveys of the buildings will include sketches and photographs to capture the architectural form and qualities of both internal and external spaces for research purposes.

Thank you and Kind regards

[Redacted Signature]

(Designation) Sign Above

Name of Institution / Department: MBomvu Traditional Court

MBOMVU T. COUNCIL
P.O. BOX 7034
TUGELA FERRY 3010
DATE: 09/03/2023

Mr. Sibusiso Sithole
Supervisor.

SCHOOL OF BUILT ENVIRONMENT AND DEVELOPMENT STUDIES
Email: Sithole6@ukzn.ac.za
Tel number: 031 260 1480 / [Redacted]

Built Environment and Development Studies, University of KwaZulu-Natal, Howard College Campus, Durban 4041

INSERT LETTERHEAD

DATE: 09/03/2023

To whom it may concern

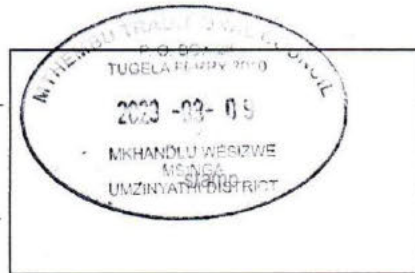
Mr. Sbonelo Dlamini is a Master's student (221119786) in the School of Built Environment and Development Studies and formally requests permission to interview staff/colleagues in your institution/department. The data collected will be used in his Master's Research Project entitled: **Exploration of Traditional Judicial System Through the Built Form: A Proposed Traditional Judicial Facility /Court in uMzinga, KwaZulu Natal.**

The study may be compiled in a few days, as it sets to include the following:

- Interviews will be conducted with selected participants including staff / local government employees and members of the judicial council to gain insight into their perceptions of what impact the built form play in the execution of customary law or traditional court system.
- Distant Observations will be done to understand how the end-users (community) engage with the built form.
- Architectural surveys of the buildings will include sketches and photographs to capture the architectural form and qualities of both internal and external spaces for research purposes.

Thank you and Kind regards

(Designation) Sign Above
Name of Institution / Department: MTHEMBO TIC



Mr. Sibusiso Sithole
Supervisor.

SCHOOL OF BUILT ENVIRONMENT AND DEVELOPMENT STUDIES

Email: Sithole6@ukzn.ac.za

Tel number: 031 260 1480 /

Built Environment and Development Studies, University of KwaZulu-Natal, Howard College Campus, Durban 4041

Appendix VIII

**VIII HUMANITIES AND SOCIAL SCIENCES RESEARCH ETHICS COMMITTEE
(HSSREC) APPROVAL LETTER**



07 December 2023

Sbonelo Dlamini (221119786)
School of Built Env & Dev Stud
Howard College Campus

Dear S Dlamini,

Protocol reference number: HSSREC/00006147/2023

Project title: Exploration of traditional judicial systems through the built form: A proposed traditional judicial facility at uMsinga, in KwaZulu-Natal

Degree: Masters

Approval Notification – Expedited Application

This letter serves to notify you that your application received on 05 August 2023 in connection with the above, was reviewed by the Humanities and Social Sciences Research Ethics Committee (HSSREC) and the protocol has been granted **FULL APPROVAL**.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number. PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

This approval is valid until 07 December 2024.

To ensure uninterrupted approval of this study beyond the approval expiry date, a progress report must be submitted to the Research Office on the appropriate form 2 - 3 months before the expiry date. A close-out report to be submitted when study is finished.

HSSREC is registered with the South African National Health Research Ethics Council (REC-040414-040).

Yours sincerely,



Professor Dipane Hlalele (Chair)

/dd

Humanities and Social Sciences Research Ethics Committee

Postal Address: Private Bag X54001, Durban, 4000, South Africa

Telephone: +27 (0)31 260 8350/4557/3587 Email: hssrec@ukzn.ac.za Website: <http://research.ukzn.ac.za/Research-Ethics>

Founding Campuses: ■ Edgewood ■ Howard College ■ Medical School ■ Pietermaritzburg ■ Westville

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