

---

# JOHANNESBURG METROPOLITAN MUNICIPALITY

## HERITAGE ASSESSMENT SURVEYING FORM

---

Compiled by: Dr JJ Bruwer, 2002-07-29

JJ Bruwer ©

Cellphone: +27 82 325 5823

**NAME OF PLACE: BRAM FISCHER HOUSE**Previous/alternative name/s :  
:  
:**LOCATION:** Street : corner Main and Rissik  
Street number :  
: (101 Main; 25, 27 Rissik)  
Stand Number : 242, 246  
Previous Stand Number:  
Block number : BL  
Suburb : Marshallstown  
GIS reference :**ZONING:** Current use/s :  
Previous use/s :**DESCRIPTION OF PLACE:**Height :  
Levels above street level :  
Levels below street level :  
On-site parking :**CONSTRUCTION MATERIALS:**

Walls:

Roof:

Windows:

**SITE FEATURES:****ALTERATIONS:**

Rhodes-Harrison, Fee &amp; Bold Consulting. 1985.

2006 - The adaptation of the restaurant space was handled sensitively and all work done is easily reversible. (CJMB)

**INTEGRITY:**

**INSCRIPTION:**

**ARCHITECT:**

'Middleton, Orlando

(1869 ?), born at Dunstable, Bedfordshire, England and educated at Stamford Grammar School and Bedford County School, Middleton was articled for four years to HM Townsend, ARIBA, the Diocesan Surveyor for Peterborough and Westminster. Subsequently he entered the offices of JS Backett and of J Shield in NewcastleonTyne and Sunderland respectively, working as an assistant in both offices. From April 1893 he was assistant in the offices of Middleton Bros and of Phillipott & Prothero. After the dissolution of the latter partnership he worked in the office of HA Prothero, FRIBA, in Cheltenham and gained experience as Clerk of Works on the Ladies' College extensions, Cheltenham. He passed the RIBA examination in 1895: *'one of the first students to go through the three progressive exams without being relegated'* (ARIBA nom papers 1895). The same year he went on a sketching tour in Normandy, undertaking a further sketching tour of the continent before he left for South Africa in 1897.

Arriving in Johannesburg, Middleton was employed by WH STUCKE, perhaps having been given an introduction to Stucke through the office of Phillipott & Prothero where Stucke had also worked. In Stucke's office Middleton worked on the drawings for the Exploration Buildings in Johannesburg, the building in which a few years later Herbert Baker set up his office. In 1898 he was sent to Port Elizabeth to supervise the building of the Mutual Arcade building for Stucke. With the outbreak of the AngloBoer War, Stucke and his partner WE BANNISTER joined Middleton in Port Elizabeth. At the close of the war the partners returned to Johannesburg but Middleton remained in Port Elizabeth. In 1901 he was appointed local resident architect supervising the execution of the new public library building in Port Elizabeth, known as the Savage Memorial Hall for the architect H CHEERS. Middleton left Stucke & Bannister to set up practice in Port Elizabeth on his own account. In 1902 he married and travelled to England and on his return to Port Elizabeth settled in Walmer and recommenced practice. In 1905 he won the competition for the design of the Settlers' Memorial Tower with his plan for a Gothic octagonal lantern attached to the Baptist Church in Port Elizabeth. The project was not carried out. According to the *South African Architect Engineer and Surveyor's Journal* (SAAE&S Jnl Oct 1905:9) Middleton endeavoured *'to raise the popular tastes in matters architectural'* by giving talks locally on the styles in architecture. He was judged to be *'no mere slave to all old work being thoroughly in sympathy with the new school of artistic thought...'*

(Architects In South Africa 1780 – 1940; Draft manuscript, J Walker & G M van der Waal, 1992, HSRC, Pretoria.)

**BUILDER:**

**CONSTRUCTION DATE:**

Date on plans :  
Approval of plans :  
Completion date :

**BUILDING STYLE:**

Edwardian (1900 to 1914). 1920s.

**BUILDING TYPE:**

Mainly an office building with a restaurant occupying the street corner floor space. (CJMB)

**ENVIRONMENT:**

This magnificent architectural edifice stands proud and enhances the quality of the street scene. (CJMB)

**CONDITION:**

As seen from the exterior the building appears in a good condition. (CJMB)

**URGENT ACTION:**

**SAHRA RECORD REGARDING ALTERATIONS, RENOVATIONS, RESTORATION:**

**PROTECTION STATUS:** (under National Heritage Resources Act, 1999)

General protection:	Section 34(1) structure/s	<input checked="" type="checkbox"/>
Formal protection:	provincial heritage site	<input type="checkbox"/>
	national heritage site	<input type="checkbox"/>
	provisional protection	<input type="checkbox"/>
	heritage area	<input type="checkbox"/>
	listed in provincial heritage resources register	<input type="checkbox"/>

Relevant Gazette Notice:

Gazette description:

**FORMER PROTECTION STATUS:** (under National Monuments Act, 1969)

**NOTES:**

**DEEDS INFORMATION:**

Original ownership:

**PRE-HISTORY OF SITE:**

**HISTORY:**

The *Bram Fisher House* was named in honour of Advocate Bram Fisher – one of South Africa’s most prominent human right activists. (CJMB)

‘Special South Africans  
Biographies

Those who have inspired us. Those who have defined us.

Bram Fischer

Revolutionary

To the apartheid regime in South Africa, Bram Fischer was a traitor. He was born in 1908, into a powerful Afrikaner family. His grandfather, Oupa Abraham, had been the first (and only) prime minister of the Orange River Colony, and later a minister in the Union Cabinet. Father Percy, studied at Cambridge and became judge president of the Free State. Bram himself was a Rhodes scholar to Oxford, a one-time scrum-half, good enough to play rugby for Free State against the touring All Blacks, and a well-respected lawyer (specialising in mineral rights).

Rejecting traditional South African views on race relations, he joined the Communist Party of South Africa and participated openly in its activities, while at same time he reached the top of his profession as a corporate lawyer. He was widely admired as a brilliant man who, given his family background and qualities of leadership, might have become a prime minister of South Africa had he followed an orthodox political route.



Fischer's Afrikaner-Nationalist background and his ultimate swing toward communism were not at such odds with each other. He loved the South African landscape and held his Afrikaner heritage dearly. He was in awe of the courage of the Afrikaners who fought in the Boer War against British imperialism; his paternal grandfather had fought in that war, and his father had defended the Afrikaner rebellion of 1914. He saw himself as a successor in this tradition of rebels, working to enlarge and redefine Afrikanerness

against the segregationist policies of the Nationalists.

The Fischers were part of a secular, European republican tradition - in a colonial setting, of course. Their Afrikaner nationalism was not so much an inward-turned conservatism as an enlightened critique of jingoistic British imperialism. In later decades this still resonated through Bram Fischer. Studying at Oxford in the early 1930s, he wrote home that he had visited Westminster Abbey, a "hideous building, but not bad as a national cemetery".

Fischer's time in Oxford was also used for travel on the European continent - Red Vienna, and, in 1932, the Soviet Union. It would be nearly a decade later before he was to become a communist, but the experience left a profound impression. He wrote to his father about the Russian "kleinboer" he encountered along the Volga, and he began to make a mental connection between the Russian kleinboer and South African blacks. A penny was beginning to drop. To the eternal credit of his parents, a great intellectual openness had marked his upbringing. While Percy and Ella Fischer did not agree with their son's later communist views, they respected and encouraged intellectual and political debate.

Fischer's mentor, Leo Marquard, taught him and then brought him into the Joint Council and the Institute of Race Relations -- and these were defining experiences. In the 1940s he served on both the Johannesburg district committee and the central committee of the CPSA and was charged with incitement in connection with the 1946 African mineworkers' strike. In 1943 he aided A.B. Xuma in revising the constitution of the African National Congress. A member of the Congress of Democrats himself, he worked with the legal team defending leaders of the Congress movement charged in the epic Treason Trial of 1956-1961.

Fischer had a long and intense courtship with Molly, which lasted through his years as a Rhodes Scholar at New College, Oxford, to their marriage in 1937. Three children were born from the marriage. They shared an uncompromising commitment to racial equality in South Africa. Like many political families, they were surrounded by secrecies, disappearances, bannings, police raids, and personal tragedy. In 1960, Molly Fischer was one of more than 1,000 people detained without trial in the state of emergency declared after the Sharpeville Massacre. In 1963, she died in a car accident, just after her husband and the Rivonia trial verdict made international headlines.

Fischer was leading Nelson Mandela's defense. What even his colleagues in the courtroom did not know at the time was that Fischer did so at great risk to himself: A number of documents seized at Rivonia were in fact in Fischer's own handwriting. While not a member of Umkhonto we Sizwe (the military wing of the African National Congress), Fischer was acting chairman of the South African Communist Party's central committee, and heavily involved with policy making and meetings at their headquarters at Rivonia.

Considering the charges of sabotage, the verdict of life imprisonment was a victory for the Rivonia accused -- the defense team's strategy had certainly saved Mandela and his comrades from the death sentence. But their leading lawyer soon faced his own trial. In September 1964, Fischer was arrested and charged with membership in the illegal Communist Party. He was released on bail to handle a case in London. He then skipped bail and went "underground". In 1965, the Johannesburg Bar Council disbarred Fischer and struck him off the roll. Fischer was unable to defend himself as he was on the run from the law, so his trial was completed in his absence. Advocate Sydney Kentridge and the present chief justice Arthur Chaskalson defended him at the hearing at which he was disbarred before judge Quartus de Wet, who was then judge president of the Transvaal.

Fischer could have chosen a life of exile. Instead, he made the deliberate and dangerous decision to return to South Africa to continue his political activities, in disguise. Arrested after nine months underground, he was convicted in 1966 on counts of violating the Suppression of Communism Act and conspiracy to commit sabotage, and sentenced to life imprisonment.

As a biography by Stephen Clingman so well demonstrates, the last thing Fischer wanted was a sense of tragedy to envelop his memory. Visiting Fischer in prison, his friend and fellow attorney George Bizos embraced him and asked if it had "all been worth it". Ordinarily a mild-mannered person, Fischer became prickly. He asked if Bizos had asked Mandela the same question when visiting him on Robben Island. After all, Mandela also had a family and a legal practice. No? "Well then," Fischer replied, "don't ask me."

When it became known in 1974 that he was ill with cancer, liberal newspapers and political leaders mounted an intensive campaign for his release, and he was permitted to move to his brother's home in Bloemfontein a few weeks before his death in May 1975. During the Truth and Reconciliation hearings of the 90's, the country finally learned the truth of how he died. Denied medical treatment for a fractured neck femur, caused by a fall related to the cancer that was eating away his brain, Fischer slipped further and further in and out of consciousness. After months of pain and being nursed by a prison inmate because he was unable to speak or go to the toilet, he was finally readmitted to the hospital. This was December 1974. Though he had been ill since September, the prison authorities

waited until then to notify the family. Fischer died a few short months later, on the 8th of May. In a bizarre sequel the prisons department demanded that his ashes be returned to them after the funeral. "Integrity" is the single word most frequently applied to Fischer. He was what he was not despite being an Afrikaner, not despite his devotion to family, and not despite his communism - but profoundly because of all of these.'

(<http://zar.co.za/fischer.htm>)

#### 'THE BRAM FISCHER MEMORIAL LECTURE

delivered by

CHIEF JUSTICE I MAHOMED

at the House of Assembly, Cape Town on February 3, 1998

Just occasionally in the life of a people, history produces a citizen the impact of whose life continues long beyond his physical demise, to stimulate profound reflections on the complexity and the potential grandeur of our species and its unique need and capacity to formulate and to develop for itself a moral basis to regulate the interaction of its members inter se and between those members and the evolving environment which it inherits and generates.

Such a rare man was Bram Fisher. Born in 1908, within the very core of the political and legal establishment which was to rule the land of this birth throughout his life and for nearly twenty years after, he was said to be destined to reach the highest public office in that land, as Prime Minister if he had chosen a political career or as Chief Justice if he had confined himself to the practice of the law.

There was a formidable and auspicious constellation of circumstances which appeared to qualify him and to accelerate him to such a destiny. His ancestral roots were powerful and unalloyed - his grandfather the Prime Minister of the Free State, his father the Judge President - both legendary figures in Afrikaner history. His intellectual endowment was towering, waltzing him to Oxford through a Rhodes Scholarship, enabling him as an advocate to sparkle among the very top of the largest Bar in the country with his intimidating skills as a civil jurist of distinction and a trial lawyer of great competence and dexterity. His professional reputation was enviable, winning the ungrudging respect of his colleagues who elected him year after year to assume the leadership of the Johannesburg Bar. His physical attributes were formidable, giving to him the tenacity and bounce to play a very skillful game of rugby and tennis at a very competitive level. His marriage was ideal, the love between him and Molly which produced Ruth, Ilse and Paul, itself a warm and wonderfully inspiring story of reciprocal caring and fidelity, of humility in celebration and fortitude in adversity. And above all he was gifted with a personality which conquered all who had the privilege to know him. It had a rare appeal combining with awesome magic and subtle power, a dignity and a courtesy which was unflinching, an integrity which was unbending, a warmth and a gentility which was rich and infectious, reservoirs of courage and persistence which were sometimes even frightening to others, and a deep and abiding compassion for the condition of so much of humanity, oppressed by poverty and injustice and degraded by their awesome consequences.

But these rare, even exciting combination of gifts within Bram and the circumstances outside him with which he interacted, did not lead to the romantic fulfilment of the destiny which had been predicted for him. Bram did not become the Prime Minister or the Chief Justice of his country.

That rich mysterious spark in the spirit of the human condition, which sometimes so intriguingly defies all predictions, set him on a course in irreconcilable collision with the laws of the land of his first love. He died in 1975 at the age of 67, not a Prime Minister, or a Chief Justice but a convicted prisoner, serving life imprisonment, his emaciated body riddled with incurable cancer, his professional claims publicly repudiated by his removal from the roll of Advocates on the initiative of his own colleagues at the Bar.

There is a deep and abiding sadness about this tragedy which must transcend political differences. But beyond the intensely personal, the life of Bram Fischer, also raises important issues of legal philosophy and jurisprudence. In order to appreciate these questions it is necessary to examine reasons why according to Bram, he found himself in fundamental conflict with the law and why he eventually embarked on a course of conduct, which led to his imprisonment for life and to a destiny so dramatically different from the destiny which had, with so much persuasive force, been predicted for him.

These reasons appear substantially from three documents for Court written by Bram. In the first letter to Counsel which was read to the court trying him for certain political offences, he sought to explain why he would not continue to appear before the court. He said:

"I have not taken this step lightly. As you will no doubt understand, I have experienced great conflict between my desire to stay with my fellow accused and, on the other hand, to try to continue the political work I believe to be essential. My decision was made only because I believe that it is the duty

of every true opponent of this Government to remain in this country and to oppose its monstrous policy of apartheid with every means in his power. That is what I shall do for as long as I can.

In brief, the reasons which have compelled me to take this step and which I wish you to communicate to the Court are the following:

There are already over 2,500 political prisoners in our prisons. These men and women are not criminals but the staunchest opponents of apartheid.

Cruel, discriminatory laws multiply each year, bitterness and hatred of the Government and its laws are growing daily.

...Unless this whole intolerable system is changed radically and rapidly, disaster must follow. Appalling bloodshed and civil war will become inevitable because, as long as there is oppression of a majority, such oppression will be fought with increasing hatred.

To try to avoid this becomes a supreme duty....

...I can no longer serve justice in the way I have attempted to do during the past thirty years. I can do it only in the way I have now chosen..."

The second document is a letter written by Bram to oppose the application brought by the Society of Advocates to remove his name from the roll of advocates, while he remained underground within the country. He said:

"...When an advocate does what I have done, his conduct is not determined by any disrespect for the law nor because he hopes to benefit personally by any 'offence' he may commit. On the contrary, it requires an act of will to overcome his deeply rooted respect of legality, and he takes the step only when he feels that, whatever the consequences to himself, his political conscience no longer permits him to do otherwise. He does it not because of a desire to be immoral, but because to act otherwise would, for him, be immoral..."

He went on to say that his protest against the laws which he found repugnant had to take "a sharper form - in an open defiance, whatever the personal consequences might be, of a process of law which has become a travesty of all civilized tradition..."

The third document is his speech at his trial after he had been recaptured following upon a prolonged period of underground political activity. He said:

"...My Lord, when a man is on trial for his political beliefs and actions, two courses are open him. He can either confess to his transgressions and plead for mercy, or he can justify his beliefs and explain why he has acted as he did. Were I to ask for forgiveness today, I would betray my cause. That course, my Lord, is not open to me. I believe that what I did was right, and I must therefore explain to your Lordship what my motives were; why I hold the beliefs that I do, and why I was compelled to act in accordance with them..."

...I accept, my Lord, the general rule that for the protection of a society laws should be obeyed. But when the laws themselves become immoral, and require the citizen to take part in an organised system of oppression - if only by his silence and apathy - then I believe that a higher duty arises. This compels one to refuse to recognise such laws."

What these statements amount to is this: there must be a rational and purposive relationship between law and morality and particularly between law and justice. The law must have a morally defensible content. It is that which compels my fidelity to it. Your laws do not have that content. They are immoral. I am therefore not obliged to obey them. Indeed I am entitled to defy them with the object of causing other laws to be enacted which are ethically purposive and which can therefore properly compel my fidelity.

This is an intellectually and even emotionally provocative challenge which raises questions which are fundamental for serious lawyers everywhere, whatever be their political position about some of the ideological perspectives which propelled Bram Fischer in his life.

What indeed is the relationship between law and morality and law and justice? How are the imperatives of morality and justice properly identified for this purpose? Is the relationship between law and justice a permissive or a substantially necessary relationship? What if it is severed? Does law without justice retain its status as law? Does it justify disobedience at any point? Does it justify organized resistance? How substantial must be the severance to justify such resistance? How does civilisation best protect itself against exposure to the risks inherent in such conflicts?

The debates on such issues are both old and new, both philosophical and jurisprudential, sometimes both stimulating and frustrating. But they share one central premise, often articulated but sometimes unarticulated. It is this. Whatever be the eventual content of law, its objective must always be consistent with justice. Law does not constitute its own justification. Law cannot be built on law. It must be built on justice. In the words of Professor Ernest Barker in his seminal treatise on the "Principles of Social and Political Theory"

"The supreme sovereign which stands in the background of any politically organized community is justice: justice in the sense of that right order of human relations which gives to the greatest possible

number of persons the greatest possible opportunity for the highest possible development of all the capacities of their personality"

Professor Barker is articulating a thesis which goes to the very root of the rationale for all law. It is the pursuit of justice which must in principle be the rationale for all law. The very real necessity for order and stability is not a competing rationale; it is simply an incident of justice; the means to ensure its pursuit fully and effectively and to guarantee its protection and enjoyment by its beneficiaries. The pursuit of justice is an autonomous, sovereign and self-legitimizing justification for law. The pursuit of order is not. It has little independent value if it is not harnessed in the pursuit of justice to facilitate the conditions which are conducive to the realisation and development of the dignity and potential of every person. The submission, therefore that there must be a necessary and symbiotic relationship between law and justice sparkles in philosophical insights through the ages from Aristotle to Cicero through Grotius and Thomas Aquinas, and in modern times, -through varying angles- in Mahatma Gandhi, Gustav Radbruch, Professor Lon Fuller of Harvard and Professor Ronald Dworkin of Oxford.

Indeed Fuller following Radbruch goes further. He makes a formidable case in support of the proposition that a purported law in conflict with the internal morality of the law is not a law at all. What does this mean? What is its practical relevance? Does it impact only on philosophical or c semantic perspectives? Not if regard is had to the approach of the German court after the end of the Second World War, in a case in which a wife had been indicted on a serious charge of causing the deprivation of the liberty of her husband during the period of Nazi rule. In 1944 the husband, who was a German soldier paid a short visit to the wife for a single day. He conveyed to her some strong disapproval of Hitler and the Nazi party. He had also expressed regret that the assassination attempt that year on Hitler's life had been unsuccessful. Shortly after he left home the wife saw an opportunity to get rid of him. She reported his remarks to the Nazi party. The result was a trial of the husband by a military tribunal. He was sentenced to death, but this was subsequently reduced to imprisonment.

After the defeat of the Nazi government, the wife was brought to trial for having caused the imprisonment of her husband. Her defence was that in making the remarks which he had done, her husband had committed a crime in terms of the law then in force. She had therefore acted lawfully by bringing a criminal to justice.

The Court rejected that defence. It held that the Nazi law on which the wife relied offended the "sense of justice of all decent human beings". It was not a law at all.

There is strong support for this approach among lawyers following the naturalist temper in legal philosophy which has always insisted that a legitimate law must at least have that degree of minimum rationality and ethical content which is defensible in civilised society and that if it did not, it forfeited its status as law. On that approach many of the laws enacted to sustain the imperatives of apartheid, which were repugnant to the conscience of Bram Fischer, Nelson Mandela and Mahatma Gandhi among others when they were prosecuted in this country must, subject to jurisdictional issues, arguably have been vulnerable to serious attack, even without a written Constitution defining the parameters of the disciplines to which law making must inherently be subject. It is an approach vigorously supported by Professor Fuller and Gustav Radbruch among others. They would argue that laws in this country made by a Parliament elected by a racial minority, such as those which caused the incarceration of many millions of black citizens for contravening Pass Laws which applied to no other group, laws which compelled the removal of huge and entire communities from their traditional homes to distant, alien and desolate areas of habitation on racial grounds alone and laws such as those which made it a criminal offence punishable by imprisonment for a person of one colour sharing deep emotional and spiritual bonds with a person of different colour to marry and nurture a loving family, forfeited any claim to recognition as laws at all, because they were so utterly repulsive to the moral conscience of all civilized communities.

In his famous address to the Harvard Law School in April 1957 Professor H.L. Hart disagrees: supported by others with a more positivist temper he argues that this approach does not sufficiently separate what law is from what law should be, but he shares with equal vigour the important proposition that justice and morality are clearly relevant to the issue as to what law should be. This concession has one crucial consequence directly impacting on the challenge made to the law by Bram Fischer in Court: If the rationale for law is justice and morality, defiance of a manifestly unjust or immoral but valid law, may still be morally perfectly permissible.

The symbiotic and real relationship between law and morality therefore might become inescapable on either approach. Resistance to a manifestly unjust law may be justified on either basis: It is not a law at all because it is immoral or if it is it cannot morally compel obedience to its commands. The same moral assessment become relevant in both propositions.

Because persistent or widespread disobedience on either ground might have serious implications for a defensible stability in society, it is necessary to examine the qualifications which must be inherent or necessary in both these propositions.

The most important qualification is this: The test for immorality on either basis must be objective and not subjective. The subjective opinion of one person -or even a group of persons - that a particular law is unjust or immoral would not suffice to render that law immoral or unjust enough to justify disobedience. It must be an opinion manifestly demonstrable in the judgment of reasonable men and women in the community at large. Moreover, the degree of immorality or injustice sanctioned by the impugned law, must be sufficiently serious to justify such disobedience in the judgment of such men and women and there must be no other effective means to secure its reversal.. Were it otherwise, every citizen would be free to obey or disobey every law depending on his or her private perception about its morality or justice. The exercise of that kind of freedom would not only be potentially anarchic, but would itself be conducive to injustice and immorality because it would impermissibly invade the rights of others; it would fundamentally and unacceptably be subversive of the very foundations of a system upon which the defence of civilisation must rest both logistically and ideologically.

How is the objective test to be applied? How is the judgment of reasonable men and women in the community at large determined?

The extent of the support enjoyed for the claims of the dissenter in a particular society would clearly be relevant and important but not decisive: many of the aggressive decrees of the Third Reich aimed at a minority, might arguably have been supported by substantial groups, but that would not help to rescue their proper designation as evil and monstrous expressions of immorality and injustice, in the legitimate judgment of a caring civilisation, transcending parochial pathologies and informed by universally shared ethical values.

How is that judgment legitimately made? The philosophic answers to that question are complex and diverse, influenced by different perspectives concerning the proper role of our species on earth and its duties and obligations in relation to its own members and to its environment , its place in the cosmos, its spiritual condition and development and its existential challenges.

The jurisprudential, political and sociological answer is perhaps less complex: Every civilisation makes its judgment of what is moral and just through an evolving consensus of fundamental values. To quote Barker again:

"Justice is mediated by, or comes through the medium of, a process of social thought, which in the course of its operation produces a body of common conviction about the dictates of justice, backed by a common will or purpose of acting in the strength and under the guidance of that conviction. This product of social thought is mediated ... by the State, in the sense that it undergoes a process of being declared and enforced by a legal association..."

Professor Barker must be correct in this conclusion. It is necessary however, to bear in mind that the relevant search is to identify the "common conviction" on the fundamental values of morality and justice informing the civilization and not merely on the ad hoc responses which a particular society might favour as expressions of those values. I think it is also necessary to insist that the conditions under which the "process of social thought" operates and matures into "a common conviction about the dictates of justice", are free and open. In modern society at least four conditions must operate in sufficient measure to give legitimacy to its conclusions:

Firstly, every citizen must have a free and unfettered right to make an informed input into the evolution and maturation of any emerging common conviction on justice, and the content of moral values. This involves not only the formal opportunity for citizens to vote for and to be voted into public office, but the right vigorously and fearlessly to express themselves, to dissent from, to qualify and to oppose any perceived orthodoxy or direction, to organise and to persuade others to share their perceptions and to have access to the information necessary to make that right meaningful and effective. The content of Democracy must not only be sufficiently strong to allow governments to be voted out of power when they deserve to be, but sufficiently participatory, active and alive to influence the quality and depth of moral values, impacting upon the direction and richness of society.

Secondly, when a manifest common conviction, on justice or morality, legitimately shared and identified by a society, is clearly invaded by a law, rule or direction there must be an independent mechanism to negate its command when it is properly challenged. This power must vest in an independent Judiciary, appointed by an objective and independent process, imbued with a temper which is objective and independent and endowed with the skills necessary to assess the cogency of the challenge made to it, without fear or favour. Threaten that independence and you threaten the capacity of the civilization it mediates to correct its own pathology. Imperil that independence and you imperil the protection of the values upon which that civilization is premised and its capacity to defend its fidelity to those values. In making its assessment, the Court is assisted by the specific but often by the necessarily broad strokes of a written constitution where there is one, by the increasingly common culture of human rights which is beginning to manifest itself internationally, by the heritage of the best in the common law and by the rich traditions of literature and poetry and learning from different



strains in civilization as they come to express the shared nuances of an increasingly shrinking world of greater togetherness and universal fraternity, facilitated by science, telecommunication and education. Thirdly, substantial parts of the population must be able to identify with such issues and to perceive their crucial relevance in their lives. They must feel the need to and be empowered to make effective inputs into the evolution and identification of common convictions. They must be able to perceive at least the real prospect of escape from the disempowering combination of obscene disparities in living standards, by degrading poverty, by pervasive illiteracy, by widespread homelessness, and by the crippling disease which stalks so much of Africa and other parts of the world.

Fourthly, even deeply and commonly held convictions impacting on values on justice and morality maturing in consequence of a long and legitimate process of social thought evolved under acceptable conditions of democratic participation, are themselves nevertheless open to review and maturation by the penetration of new frontiers in science and technology and developing spiritual and philosophical perspectives. The orthodoxy of yesterday often becomes the heresy of tomorrow. It is therefore necessary that even in the case of very deeply held and common convictions about what is moral or immoral, just or unjust, the voice of the dissident, the unorthodox and even the apparent maverick must not be suppressed.

Where does all this leave us? Does it in principle concede large and protean areas of imperfection in the capacity of the human condition to respond with confidence and finality to the intellectual, jurisprudential, moral and arguably even spiritual challenges provoked by what Bram Fischer did and said and by what different parts of organised society effectively said and did to him? Undeniably.

But that admission should not be any source for despair. It was not for Bram, during his quite remarkable life as a jurist, a thinker and an activist deeply concerned with the destiny of his country and its people. Imperfection in a very necessary and significant sense is inherent in the human condition; in the growth which comes from the exercise of our freedom; in the very quality and meaning of that freedom which necessarily involves a choice of potential alternatives and not staticity or finality and perhaps in the interface between the finite and the infinite. Indeed it is precisely this consciousness of imperfection, and the enjoyment of a creative freedom which propels the pursuit of perfection, giving energy and romance to the pursuer, and meaning to the pursuit as new vistas of beauty and sparkling mystery unfold themselves in the wonder and the excitement of the unfinished symphony of life.

But the excitement of this pursuit into the future is immeasurably enhanced by the truths absorbed from the past and the present. For lawyers these include the insistence, at all times, that the attainment of justice must be the rationale for all law; that law cannot be distanced from justice and morality without losing its claim to legitimacy; that the ethical objectives of the law contain the life blood of a nation; that justice must not only be procedurally fair but substantially fair in its execution; that the law must be seen to be fair in its impact on the life of the humblest citizen in search of protection against injustice; that the law is accessible, intelligible, visible and affordable; and that any retreat from these truths imperils the very existence and status of a defensible civilization, first by corrosively destroying within it the source of the energy which sustains it and second by provoking disdain, disorder and rebellion from those it seeks to discipline.

We weep and we celebrate these truths as we remember Bram Fischer.

(<http://www.law.wits.ac.za/sca/speeches/bramfis.html>)

#### **GENERAL NOTES:**

Estimated cost of building	:
Estimated cost of drainage	:
Accommodation approved	:
Valuation at completion	:
Occupied	:

### Transforming Gandhi Square (continued)

The square was revamped through a public-private partnership and is managed by the Central Johannesburg Partnership, a private sector organisation dedicated to urban renewal. A self-imposed levy borne by the surrounding property owners pays for 24-hour security and other services. Demand for office space has risen, as Gandhi Square has become a more prestigious address.

To coincide with the upgrading in 1999, the area was renamed Gandhi Square. Following on from this, in October 2003, 100 years since Gandhi first settled in Johannesburg, a bronze statue of the young activist lawyer will be unveiled on the square.

Other members of the legal fraternity are also returning to the site. Bram Fischer House overlooking the square at the corner of Rissik and Main Streets, houses the papers of lawyer and revolutionary Bram Fischer.

The Legal Resources Centre is also based there, an independent public interest law centre which provides to historically disadvantaged and marginalised people. Life-long human rights lawyer George Bizos is a leading figure associated with the centre, heading its Constitutional Litigation Unit.

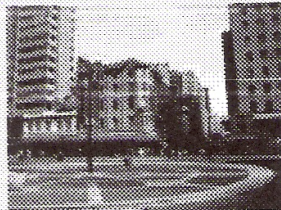


Photo: Sally Gaule

*Gandhi Square, previously known as Van der Bijl Square and, before that, Government Square*

### TRANSFORMING GANDHI SQUARE

Though the name has changed several times, the square at the southern end of Rissik Street continues to play a major role in the city's development as it has done for more than a century. Previously known as Van der Bijl Square, it was a major transport hub. Before that it was known as Government Square, site of Johannesburg's first law courts. Today as Gandhi Square it is coming into its own as a successful improvement district and heritage site.

Attracted by the convenience of having offices near the courthouse, droves of lawyers moved nearby in the early 1900s. Among them was Johannesburg's first black attorney, MK Gandhi, who ran a flourishing law practice at the corner of Rissik and Anderson Streets. Gandhi appeared professionally at the law courts, often defending clients charged with political offences and he also appeared at the courts as an accused, tried and convicted like so many others for political offences.

The old courthouse was demolished in 1948 to make way for Johannesburg's main bus terminus. The area was then renamed Van der Bijl square after the first chairman of Escom, Dr Hendrik Johannes van der Bijl.

Van der Bijl Square became increasingly squalid and unsafe during the 1990s, adding to the general air of deterioration in the central city area. But by the close of the decade it had become the centrepiece of efforts to revive the central business district and restore confidence in the city centre.

*Continued on p 84*



Sketch: Tirka Christopher

*MK Gandhi, Johannesburg's first black attorney*

#### PREVIOUS TENANT/S:

By 1954:

99 Main – Flying Service.

(The Rand-Pretoria Directory 1954 (Comprising Complete Alphabetical And Trades Directories of Johannesburg, Pretoria And Reef Towns), Cape Times Limited, Cape Town, 1954.)

#### CURRENT TENANT/S:

Nando's

OPH  
C U Assurance.

Legal Resources Centre; 6th Floor Bram Fisher House, 25 Rissik Street, JOHANNESBURG 2001; P O Box 61174, Marshalltown 2017; Tel: (011) 838-6601; Fax: (011) 838-4876; Docex: 278 Johannesburg; Email: [contact@lrc.org.za](mailto:contact@lrc.org.za); (<http://www.lrc.org.za/About/contact.asp>)

#### **SOURCES:**

##### Published Sources

The Rand-Pretoria Directory 1954 (Comprising Complete Alphabetical And Trades Directories of Johannesburg, Pretoria And Reef Towns), Cape Times Limited, Cape Town, 1954.

##### Unpublished Sources

Architects In South Africa 1780 – 1940; Draft manuscript, J Walker & G M van der Waal, 1992, HSRC, Pretoria.

Johannesburg Building, Space & Urban Feature Classification, 1998: Inner City - Metropolitan Planning, Johannesburg Metropolitan Council (Cool Factory).

Plans records of surveyed buildings, Marshallstown and City of Johannesburg: Archives, Building Control, Development Management, City of Johannesburg Metropolitan Municipality.

##### Internet sources

<http://www.lrc.org.za/About/contact.asp>

<http://www.law.wits.ac.za/sca/speeches/bramfis.html>

<http://zar.co.za/fischer.htm>

#### **ASSESSMENT OF CULTURAL SIGNIFICANCE:**

##### Historic Value:

Associated with historic person, group or organisation

Associated with historic event or activity

##### Architectural/Aesthetic value:

Important example of building type

Important example of a style or period

Fine details, workmanship or aesthetics

Work of a major architect or builder

##### Social/Spiritual/Linguistic value:

Associated with social, spiritual, linguistic, economic or political activity

Illustrates an historical period

##### Scientific/Technological value:

Example of industrial, technical or engineering development/achievement

New, rare or experimental building techniques

#### **RECORDED BY:**



Heritage Resources Management team Johann J Bruwer and Alezea Bruwer.

And Catharina JM Bruwer.

Photographs (unless otherwise indicated) by Johann J Bruwer and Alezea Bruwer.