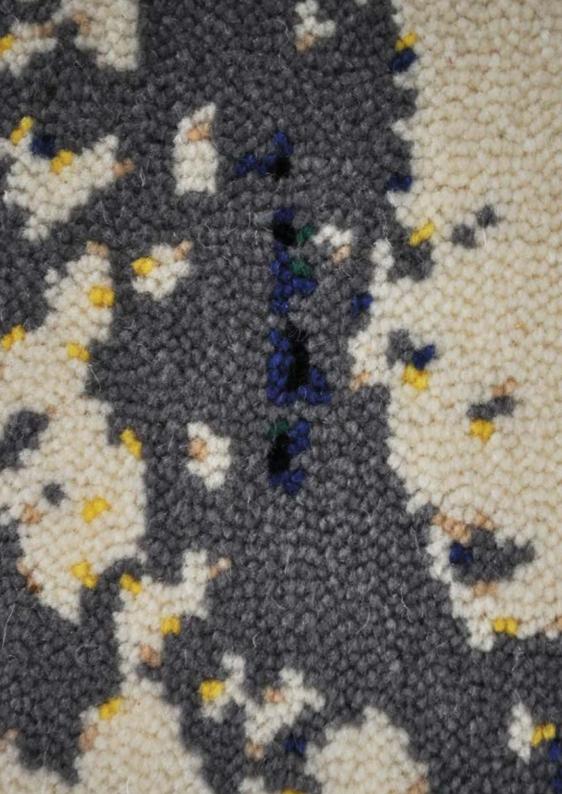
ARt & JUSTICe

A CONSTITUTIONAL COURT ART COLLECTION SERIES









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MARLENE DUMAS The Benefit of the Doubt

Art & Justice: A Constitutional Court Art

Collection series is a short monograph series about artworks and artists represented in the Constitutional Court Art Collection (CCAC), housed within the Constitutional Court of South Africa.

The series also showcases the critical behindthe-scenes conservation work undertaken to document, stabilise, store and preserve artworks in the CCAC, using a combination of historic research, scientific analysis and material treatment, so that they can be exhibited to the public well into the future.

It is published by the Constitutional Court Trust, the non-profit organisation that owns the CCAC, tending to its preservation and presentation through conservation and curatorial programmes.

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INTRODUCTION

The Benefit of the Doubt is a monumental tapestry triptych designed by the internationally acclaimed South African, Netherlands-based artist Marlene Dumas.

The artwork is one of the most recognisable pieces of the Constitutional Court Art Collection (CCAC), permanently installed at the entrance to the public gallery in South Africa's apex court.

This publication, one of the first of a series, explores the artwork in-depth, in the context of its placement at the Constitutional Court of South Africa and its broader relevance for art and justice in the world.



Marlene Dumas at the opening of the first Johannesburg Biennale titled Africus, February 1995, in front of her work *The Next Generation*, 1994–1995, ink and ink wash on paper, 45 parts of 66 x 50,5 cm each. Photograph by Paul Andriesse.

ARTIST PROFILE

Marlene Dumas was born in 1953 and grew up on a vineyard of her father in Kuils River, outside of Cape Town. Dumas was interested in art from an early age. She enrolled at the University of Cape Town's Michaelis School of Fine Art in 1972. During this formative period, she started to express her political concerns and reflections on her identity as a white. Afrikaans woman in apartheid South Africa in her drawings and paintings. She received her degree in 1975. She decided to move to the Netherlands, in part due to the similarities between Dutch and Afrikaans, around the time of the Soweto Uprising in 1976. Language is an important means of expression for Dumas in conjunction with her art, as is evinced in her artwork titles, texts and commentary.

The artist was awarded a two-year scholarship to enrol at Ateliers '63, an artist-run studio program in Haarlem.1 Dumas studied psychology at the University of Amsterdam between 1979 and 1980. Since then she has shown extensively at many of the world's leading museums, galleries and art institutions in group, solo and retrospective exhibitions. The exhibition Intimate Relations, the artist's first solo exhibition in South Africa, was shown at the Iziko National Gallery in Cape Town and the Standard Bank Gallery in Johannesburg between 2007 and 2008. Her work is represented in a wide array of important collections across the world. Dumas has also been conferred many prestigious awards and honours and is widely regarded as one of the most influential painters working today.

The complexities of identity and representation are explored in Dumas' work. Her subjects are depicted in gestural fluidity in uncertain contexts, exploring the ambiguous, shifting boundaries between public and private selves. The artist's depictions of the human form are typically drawn from her vast archive of images, including art historical materials, mass media sources, and personal – often intimate – snapshots of friends and family.

Although Dumas has been a Dutch citizen since 1989, she retains a South African identity: "Someone once remarked that I could not be a South African artist and a Dutch artist, that I could not have it both ways. I don't want it both ways. I want it more ways."

For Dumas, it is important that her work engages with the public in a long-lasting and meaningful way. She is dedicated to the pursuit of communicating, teaching, sharing and deepening our understanding of the world through art.

Someone once remarked that I could not be a South African artist and a Dutch artist, that I could not have it both ways. I don't want it both ways. I want it more ways.

- MARLENE DUMAS

¹Ateliers '63 later relocated to Amsterdam as De Ateliers.

JUDGING tHE BENEFIT OF tHE DOUBT

Francois Lion-Cachet



Photographs by Akona Kenqu of The Benefit of the Doubt, in situ at the Constitutional Court in Johannesburg, 2020.

"No, I was never thrown into jail or cross-examined in court."

These are Marlene Dumas' words, voicing her first reaction when asked if her personal experiences with the law influenced the creative direction she chose to follow in making *The Benefit of the Doubt* (1998). After having thought about it for a while, however, she adds: "Yes, I grew up under apartheid. And apartheid was the law. And the law was unjust, and it touched us all."

When she moved to the Netherlands in 1976 to further her studies, creative freedom in this European country stood in stark contrast to the oppressive apartheid regime, where strict censorship was enforced. Many books, films and newspapers were banned or redacted in South Africa if they were deemed to go against the nationalist ideology. Dumas grew up in a staunchly Calvinist Afrikaner society, in which sexuality was repressed. Newfound access to books about liberal politics, as well as pornography, first grabbed the artist's attention. It was especially the latter that would become a prominent theme in her practice. Moving to Amsterdam also enabled her to witness great works of art she had previously only seen in books.

Peter Schjeldahl, writing for *The New Yorker* in 2008, said of the artist's political expression: "In common with the draftsman and animator William Kentridge, another white South African of political bent, Dumas channels a direly exotic heritage of collective guilt and personally redemptive anger. She adds to it an element of truculent but breezy feminism, often expressed in her lively writing."

"I realise again how open this work is for all kinds of interpretations. Openness and ambiguity of images is my working area.

There is no historical narrative at work. No specific dramatic event has happened. It is all about the psychology of facial and gestural expression," says Dumas about The Benefit of the Doubt. The triptych is an industrially produced tapestry designed as computer-generated images by the artist, based on her drawings, prints and photographs. To her, the artwork is universal in its accessibility. not requiring the viewer to have pre-existing knowledge of any particular "national story" in order to respond to it. The artwork is not a direct response to apartheid, yet its making is steeped in the global history of injustice. "You do have to have empathy with human beings to relate to the work. If you are a robot, it would not do anything with and to you," the artist writes.

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The work is meant to have a visceral effect on the viewer, yet it also speaks to reason. exploring the relationship between art and justice, or law and visual culture, as many of the CCAC's works do. According to Richard K. Sherwin, the law does not function in a vacuum and lawyers cannot be exclusively preoccupied by the texts of the trade. "Law awakens from its dogmatic slumber upon contact with the flesh of the world and the skin of the image," Sherwin writes. As indicated by the artwork's title, the work symbolises the legal principle of innocence until proven guilty and speaks to the burden of proof being placed on the state in criminal law cases. It also speaks to extenuating or softening circumstances, as a wordplay on the medium of textiles

In 1998, Marlene Dumas attended a talk on South Africa's Truth and Reconciliation Commission presented by Justice Albie Sachs at the South African embassy in The Hague. She was early and he was late, so she helped herself to the South African champagne on offer. Sachs had not heard of Dumas before and it was only when a friend told him, "That's Marlene Dumas, she's famous! You should speak to her!" that he approached Dumas. The artist invited Sachs to her studio in Amsterdam and showed him a few meters of one of the textiles there, unrolled from what Sachs described as "huge looking cigar boxes". Sachs was taken by the artwork and Dumas offered to donate her set of these tapestries to the CCAC. The Dutch Government then sponsored the transportation of the artwork to Johannesburg.

On 28 February 2001, the Dutch Prime Minister Wim Kok formally presented the tapestries to the Constitutional Court at a ceremony in the Market Theatre in Johannesburg, where they were exhibited for some time. In Sachs' book *Free Diary*, he tells the story of how enthusiastically the triptych was received at the Market Theatre and how Arthur Chaskalson, then-president of the Constitutional Court, was bowled over by the works, even though he was normally reticent about his views on art. Chaskalson wanted them installed as soon as possible in the court's temporary offices in Braampark.

The architects initially suggested installing the textiles in the courtroom of the new Constitutional Court building, as was Sachs' preference; however, it was the wish of the first bench of justices to keep the chamber a more sober space. The triptych ultimately found a home on the concrete beams linking the court foyer with the exhibition gallery in 2004, in a space that was designed to accommodate them specifically. Dumas visited the Constitutional Court on 21 March 2004 for its official opening, where she spoke and saw the textiles installed.

No matter how much it would seem to be a perfect fit, it cannot be said that *The Benefit of the Doubt* was made for South Africa's Constitutional Court. This triptych was originally commissioned for the *Paleis van Justitie* (Palace of Justice) in Den Bosch in the Netherlands, as part of a larger project involving nine artists and 17 textile works that would adorn and give meaning to the new court complex built in the 1990s. Dumas' contribution was installed in one of its larger courtrooms on the ground floor of the complex. Two copies of the textiles made for the Palace of Justice were produced so that the artworks could also be exhibited elsewhere. The Benefit of the Doubt was exhibited at Museum Boijmans van Beuningen in Rotterdam in 1998 just before the Palace of Justice was opened. The extra sets were later offered to the artists.

There were some initial concerns when the designs of *The Benefit of the Doubt* were sent to the art commissioner and architects working on the Palace of Justice. The one image depicted Justice as a naked, blindfolded female figure. Was this not too intrusive, especially considering that cases of sexual abuse and offences would be heard in the courtroom? A number of changes were made in collaboration with the artist, taking out the nudity, and the blindfolded Justice.

According to Wessel Le Roux, *The Benefit of the Doubt* adds a new dimension to the discourse about the limits of the law in society, specifically in the Netherlands. Similarly, in South African society, the courts are often the spaces where social and political battles are fought out. This does not come without any challenges, as Le Roux points out: "The doubt at the heart of the law is precisely a doubt about the ability of modern law to neatly administer everything and everybody on the basis of logical or economic rationality. This doubt disrupts the modern ideal of a purely functional legal order."

Leora Maltz-Leca agrees: "Dumas' title for her tapestry, *The Benefit of the Doubt*, is a relatively sanguine counter to her somber image; it nonetheless evinces suspicions about the dubious ideal of nation, and certainly about the ability of a capitalist democracy to deliver on its promises of equality and justice." It can be asked what position *The Benefit of the Doubt* occupies in the transformation of the post-apartheid legal order, both symbolically and physically. The Constitutional Court building, in itself a work of art, filled and adorned with art, was designed to be open and accessible and to embody and give expression to South Africa's constitutional democracy. It is valuable to explore how Dumas' *The Benefit of the Doubt* adds to the visual representation of South Africa's legal order within its apex court.

In the artwork, eight faces are depicted symmetrically around what is supposed to be a central figure, Liberty.² Each panel contains three figures, appearing digitally pixelated, largely unidentifiable yet intimate. As pointed out by Eliza Garnsey, Liberty is personified as a young girl, shrugging her shoulders, as a departure from a more "conventional portrayal of liberty as a heroic woman leading the people, such as in Eugène Delacroix's Liberty Leading the People". The figure's forearms pointing outwards also allude to (the blindfolded) Lady Justice who holds a scale in one hand and a sword in the other, a common symbol of the law. Maltz-Leca writes that, "[f]or some, Dumas' infantilising of Liberty defuses her eroticism. But for me, rather than mitigating the sexual undertones of the original, Dumas' image makes overt - and uncomfortably so - the perverse sexualization of violence and power that structures Delacroix's nineteenth-century painting." A few of the other figures are neutrally gendered, and their ethnicity is also not evident, signalling that freedom can perhaps be found in a less gendered and non-racial society. Additionally, it has been noted by Dumas that, like illegal immigrants, these figures don't want to attract too much attention by being overly expressive, as doing so could cost one's life.

²As per the design of the Constitutional Court, the first and second panels are split from the third, breaking the triptych's sequence.



Liberty , 1993, oil on canvas, 400 x 300 mm. Collection: Mr. and Mrs. Dirk and Carla Schutyser, Ghent, Belgium. © Marlene Dumas.



Young Boy (Baby Face) , 1996, ink wash and watercolour on paper, 1250 x 700 mm. Collection: Fundación Mer, Madrid, Spain. © Marlene Dumas.

The work was inspired by Antonella de Messina's *The Martyrdom* of *Saint Sebastian*. "The symbolism of this image – the stoic calm with which this youth endures his martyrdom for a higher cause - is particularly pertinent in a country where so many youths sacrificed their lives for freedom. The sense of helplessness is heightened by the figure's exquisite androgynous beauty, lending an erotic and masochistic dimension to this image of suffering," writes Emma Bedford.



Young Boy (Blue Body), 1996, ink wash and watercolour on paper, 1250 x 700 mm. Collection: Johannesburg Art Gallery, Johannesburg, South Africa. © Marlene Dumas.

This work depicts a young boy hugging his own body in a self-conscious gesture, capturing the awkwardness between childhood and maturity.



Underage , 1996, lithograph, 360 x 280 mm, edition of 50 with 15 APs. \odot Marlene Dumas.

Emma Bedford writes that the unsettling ambiguity of the figures depicted raises questions about degrees of culpability and innocence, especially in relation to youth .



Female (no. 123), 1992–1993, watercolor and ink wash on paper, 320 x 240 mm. Collection: Sammlung Garnatz, Städtische Galerie, Karlsruhe, Germany. © Marlene Dumas.



Female (no. 124), 1992–1993, watercolor and ink wash on paper, 320 x 240 mm. Collection: Sammlung Garnatz, Städtische Galerie, Karlsruhe, Germany. © Marlene Dumas.

According to Garnsey, adding to Le Roux, in this work "doubt is implicated in a narrative of ambiguity about guilt and innocence. The facial expressions are a mixture between austere, resigned, and pensive; closed eyes, direct stares, and sidelong glances are disconcerting in their uncertainty: the faces 'evoke an immediate and powerful sense of responsibility towards these unknown strangers ... [but they are also] completely decontextualised and therefore provide no starting point from which any concrete legal or moral response can be formulated."

Yet, Garnsey posits that The Benefit of the Doubt embodies a significant political relationship between the Netherlands and South Africa regarding justice: "While the imagery presents a wider and more universal view of humanity. the artwork itself is embedded in the political structures of Dutch colonial rule and their influence on successive South African governments." Garnsey adds that it is as if the Dutch government, through having gifted the work, is asking for the benefit of the doubt. "International relations seep into the Court through the Dumas artwork, implicating the deliverance of justice in South Africa to a wider political circle." It bears mentioning that the Dutch government provided financial assistance to the Architectural and Artworks Committee in its early days, which steered the conceptualisation of the Constitutional Court building.

What are the artist's views on, and intentions with, this work? She confirms that the identities of the figures depicted are left open to interpretation and that an almost sceptical view of universal justice is instilled in the triptych. "I deliberately chose more females than males. The central panel is all female. I believe the one might even be a self-portrait, but as the identities are rather fluid, and as it's not about me, it could also be someone else. The young girl in the middle is the only one with arms and hands, as if she is the real judge of Fate saying Yes... or..., No, or what will it be?! Or someone who has just thrown a dice...? The game can start."

Dumas is interested in how the visceral reading of the tapestries is affected by the space in which they are exhibited. "In Holland it was made for three different walls. In South Africa it hangs as a frieze; the figures seem to move along. In Holland the focus is different, inwards towards the centrum." She also points out that the height at which the work is hung in relation to the ceiling is also very important. In the courtroom in Den Bosch, the heads appear very large in the confined space. "I did not want them to feel 'oppressive.' In South Africa they are hung high, and the architectural space is not 'claustrophobic.' I think I did not realise how small the Dutch courtroom would be, or would become because of these enormous heads especially when seen in relation to the head of an ordinary person sitting underneath the tapestry. No wonder that in South Africa the work is not seen as 'disturbing' or 'aggressive', but rather as more sympathetic, while in Holland it is nicknamed the Voodoo room." the artist writes.

Dumas has never sat in this Dutch courtroom at the time of a court case being heard, although she admits: "I am a bit worried now, looking at the images... [I'm concerned] that the scale is too obtrusive when you actually stand there and have to be judged. It was not my intention to scare those who have to be heard. I hope mercy, doubt and fairness do not go lost because my small, intimate works were translated with a harsher mechanical method into this large scale."



Photographs of The Benefit of the Doubt triptych installed at the Palace of Justice in Den Bosch. The faces solemnly overlook the court proceedings and have an imposing presence.



The artist also created the design for this lesser-known diptych that also hangs in the Palace of Justice, of the same title and including the phrase "The benefit of the doubt" in English and Dutch ("Het voordeel van de twijfel"). These two panels, when seen together with the triptych, adds to its reading. One figure holds what seem to be abstracted forms of animal carcasses in either hand. This recalls not only the scales of justice but also the "W" shape seen in Dumas' Liberty.

It might be that the arresting power of the works arises from the viewer's inability to make out exactly what is happening. The artist adds: "How judgements are made intrigue me, but I would never want to be a judge myself as the responsibility would weigh too heavy on me." The artist has also commented that doubt is the basis of the constitutional state. Maltz-Leca wrote: "Dumas embraces the futility of representing ideals of nation, circling the limits of painting and prowling the border where lucidity bleeds into doubt." Through this artwork the roles of the judge and the artist meet one another, speaking to the necessity of viewing truth and reality from all angles to achieve an understanding of the various elements. And, ultimately, to reach a fair verdict.

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- MARLENE DUMAS

The Benefit of the Doubt directly engages with the work of the judges at the courts at which they are installed. The viewer is encouraged, like judges, to see the humanity of the person before them. Diverse people are depicted without any visible clothing or markers, leaving their societal status or class unknown. A society is envisioned that does not discriminate on the basis of race, gender, sexuality and the many other grounds of unfair discrimination that is now outlawed in South Africa.

According to the artist, the triptych is meant to be welcoming instead of conveying authority. Le Roux, in turn, writes that the "abstract human images appear infinitely vulnerable, as if they are urgently appealing for help (to the court and the law perhaps?), but are waiting desperately upon a reply and a sign of redemption. The tapestries introduce a haunting and disruptive sense of postponement into the otherwise familiar court environment and the small finalities of the daily administration of justice."

The three faces appearing on each of the panels suggest a multiplicity of voices and testimonies to take into account — the viewer is reminded of the courts' work to make value judgments impartially and without prejudice. It also speaks to the constitutional value of *ubuntu*, which means something in the vein of "I am because you are", or simply "humanity." Aptly, Dumas has written that "one is alone, two is a couple, three is politics."

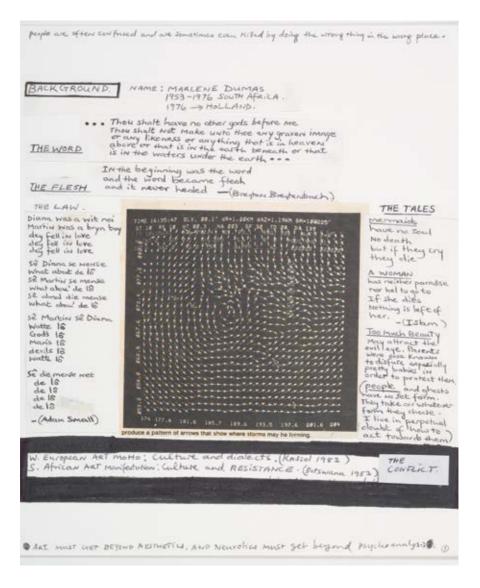
one is alone two is a couple three is politics

Dumas cites South African poet Adam Small's poem 'What abou' de lô' as an influence on her thinking of the law.³ The poem speaks about the infamous *Prohibition of Mixed Marriages Act* of apartheid South Africa, that prohibited intimate relations between people of different races. Dumas calls this an "immoral law" about the "obeying [of] the impossible" and "making love into a crime".

The artist relates the poem to when she was asked to create *The Benefit of the Doubt*: "Recently, regarding laws against homosexuality in Russia, I remarked that The Law should protect us from hate, not from love. Yet history is filled with opposite examples. When asked to do a tapestry for a court building in Den Bosch, I could not immediately decide if it was a good or a bad thing to say yes to, and what would this context make of me. Guilty of indecisiveness or of collaborating with the wrong side, or none of these."

Dumas concludes: "It is for others to judge me now."

³ In 2020, Dumas donated filmmaker and illustrator Charles Badenhorst's short animation film What abou' the lô (2014) to the CCAC. The film features a voice-over by Small reading this poem of his.



Dumas made this collage of texts and found photographs as part of an invitation to contribute some pages in the magazine *Dutch Art + Architecture Today* in 1982. This introductory page titled 'The Word, The Flesh, The Law,' quoting a part of Adam Small's poem, shows the artist's thinking about the law. She has recited the poem at many public events in her life.

THE BENEFIT OF THE DOUBT

A poem by Marlene Dumas⁴

or—now that Blindfolded Ladies with Bare Breasts and swords don't stand for Justice no more, who can

we trust, that does, your honour?

I am showing a tapestry in Mexico, even though I have my doubts.

I have my doubts about free choice, chance, fate and destiny-when it comes to life.

I have my doubts about carpets, courtrooms and consolance when it comes to art.

(Making art for one's friends is sweet.

Making art for one's enemies is better.)

I doubt that a courtroom can ever be a pleasing place.

I doubt that Respect is the Keyword, neither between Criminal and Victim nor between Judge and Accused.

Power and Fear are the strongest bedfellows here yet, let's not weep, about the discomfort to sleep, between a

rock and a hard place.

It's very seductive to try what you thought you'd never do, at least once.

Yes, this is one of the tapestries that hangs in a Dutch court of Justice by my name.

Yes, I took a small intimate oil painting of a naked girl and changed it greatly into a computer scanned machine woven image, larger than life and too big for Blame.

Yes, she's achieved a dubious Fame.

Some think she's guilty of pleasing the sexual offenders and upsetting the abused. But she begs to differ and

is proud that her face looms in a space, that has been nicknamed the voodoo-room.

⁴ Originally appearing in the Cinco continentes y una ciudad / Five continents and one city exhibition catalogue (2000). The Constitutional Court's The Benefit of the Doubt formed part of this exhibition, the second international salon of painting, held at the Museum of the City of Mexico (Museo de la Ciudad de México) between November 1998 and February 1999. The artist said: "This was a great opportunity to show one of the tapestries in a country with a rich tradition of murals and public art."

CONSERVING THE BENEFIT OF THE DOUBT

A grant from the Mellon Foundation enabled the Constitutional Court Trust (CCT) to send Dumas' 28-metre long artwork to Cape Town for restoration with textile conservator Louise Man-Nel in July 2018. A further grant from the Bank of America Art Conservation Program in 2019 funded the construction and installation of a secure, bespoke conservation frame in the Court building that can easily be lowered in future without the need for scaffolding.



The de-installation of The Benefit of the Doubt required 15 people, dozens of Nitrile gloves, metres of bubble wrap and a bank of 5.6 m-high scaffolding in a process that took 12 hours.



Annotated analysis of the first tapestry panel before the treatment process commenced. The conservator noted sagging, dirt, fading and holes due to nails, screws and staples.



After having removed the staples with which the tapestries were attached to wooden frames, the deinstallation team took care in rolling up the textiles to be hung in specially designed crates for transport to the conservator's studio in Cape Town.



Once in Cape Town, the tapestries had to be fumigated, rested and cleaned using a dry method of cleaning. The weight and size of the artwork made the handling of the panels extremely time- and labour-intensive.



After the cleaning process the laborious task of stitching heavy-duty Velcro around each panel was performed. Two rows of stitches were needed to secure each strip of Velcro to the artwork. The handstitching process took more than a month per panel.



After the conservation process, the panels were hung in their original crates. Each panel was clearly marked to ease identification during unrolling and re-installation.



Metal frames were made to the exact size of the original wooden frames on which the panels were attached to. Heat-treated pine slats were fastened to the metal frames on which Velcro was attached with stainless steel staples.



The tapestries were carefully unrolled as per the conservator's instructions and guidance onto the metal frame, ensuring that it does not move or sag as this would affect its weight distribution and display.



To attach each panel to the frames, each frame was positioned horizontally on plastic sheeting, with the textiles being attached using Velcro that had already been stitched in place.



The panels were inspected one last time by conservator Louise Man-Nel, to check for any damage that might have occurred during the reattachment, before they were hoisted into position.



The first of the three panels being hoisted up into position using the newly produced pulley system. The textiles now hang on the wall and can be lowered for inspection and cleaning with relative ease, without the use of scaffolding. The end results are satisfactory from a textile conservation perspective.

CONSERVATION IN NUMBERS

598 grams of dust

and sand were removed from almost

300 kg of textile

during the conservation process.

Over 2000 staples

of stainless steel were used in the new conservation framing system to distribute weight and stress of the fibres evenly to under 120 grams per staple.

70 meters of Velcro

was stitched by hand to the

55.5 square meters

of tapestry making up the three panels.

More than

400 hours

were spent on stitching, with an estimated

250 needles

broken in the process.

Up to

15 people

were required for the de-installation of the panels for which

5.6 m-high scaffolding

was needed.

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