

Gendered Rhetorical Ideographs of Social and Economic Justice in South Africa

Or: Chasing The Constitution:

“South Africans always mention with pride that ours is the most progressive Constitution in the world. Unfortunately, however, the values of our society do not always match the progressive values of our Constitution”

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1. Introduction

This research paper examines South African public discourse concerning the social and economic justice of gendered groups. These include Women as well as Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) communities. The paper focuses specifically on the enactment of rhetorical ideographs within the context of relevant Constitutional Court rulings and their accompanying media coverage.

This report provides a brief overview of the gender debate in South Africa and proceeds with an outline of the legal framework pertaining to the rights of women and LGBTI groups. This paper reviews a number of landmark cases and verdicts in the post-Apartheid context that have had a decisive impact on gendered groups. These include *Fourie and Bonthuys v Minister of Home Affairs*, which prompted the legalisation of same-sex marriage under the provisions of the Civil Union Bill; *The State v Jacob Zuma*, a seminal case in the battle against rape and a proxy for larger political struggles; and the Choice on Termination of Pregnancy Amendment Bill, which reaffirmed women's reproductive rights.

These examples highlight the chasm that exists between national legislation and public opinion and serve as manifestations of greater social anxieties precipitated by the arrival of democracy. This report essentially addresses the contradictory ideological commitments embedded in post-Apartheid discourse, which espouses the right to practice cultural traditions, often rooted in machismo, patriarchy and conservatism, while promoting a larger, liberal, national agenda that Constitutionally guarantees equality for all, regardless of gender or sexual orientation.

1.1 Methodology

This report is an amalgam of material obtained through South African online news portals, websites belonging to associated NGOs, pressure groups concerned with the rights of women and LGBTI groups as well as government and legal websites. This data was examined using ideograph theory as the primary tool for analysis. This broad spectrum of sources offers representation to all parties who have contributed to the gender debate including the South African media, civic organisations, civil society, academics, legal practitioners and public figures.

1.2 Ideograph Theory

Rhetorical theorist, Michael McGee referred to “ideographs” as ubiquitous, abstract language terms that comprise the “building blocks of ideology.”¹ They signify culturally-specific, collective “commitments to a particular, but equivocal and ill-defined normative goal.”² They are bound and indeed legitimised by their “remoteness”³ as they champion a unique set of values, social codes and history espoused by a particular community.

Ideographs are reiterated in public discourse to inculcate the constructed imaginings of public consciousness and public opinion. Ideographs are signs of social inclusion and exclusion. They are “prerequisites for belonging”⁴ because they are seminal in the construction of communal identities.

While ideographs are constrained by specific ideological commitments, they are paradoxically malleable. They can be adjusted to serve a myriad of ends and purposes – include and exclude, reason and condemn behaviour or belief – because in themselves, they possess no intrinsic or actual worth.⁵

Rhetorical theorist, John Lucaites, hypothesises that crises of socio-political legitimacy occur most frequently when advocates attempt to convert essentially regulatory ideological commitments into substantive ideological commitments⁶.

South Africa, which has had to coalesce the ideological discrepancy between Apartheid and democracy, has faced a crisis through an effort to realise in actuality, a set of hard-won, yet “ill-defined” normative goals. South Africa is grappling with what it means to make an actual commitment to ideographs like “equality”, “freedom,” “democracy” and “The Constitution” when they oppose equally important if not primary obligations to “culture”, “The Struggle”, “religion”, “family” and being “African.”

Lucaites argues that the primary value of ideographic analysis is that it provides a means of examining directly the conflicts and contradictions, which emerge naturally within ideological communities or

¹ McGee, M. “The Ideograph: A link between Rhetoric and Ideology.” *Quarterly Journal of Speech*, Vol. 66. February, 1980: 7. Available from: The “Ideograph”: A Link Between Rhetoric and Ideology. Available from: <http://search.ebscohost.com/login.aspx?direct=true&db=ufh&AN=9993504&site=ehost-live>

² McGee, M. “The Ideograph: A link between Rhetoric and Ideology.” *Quarterly Journal of Speech*, Vol. 66. February, 1980: 15

³ Murphy, J. “History, Culture, and Political Rhetoric” in *Rhetoric Review* Vol. 20 Issue 1/2, 2001: 47. Available from: <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=7865085&site=ehost-live>

⁴ McGee, M. “The Ideograph: A link between Rhetoric and Ideology.” *Quarterly Journal of Speech*, Vol. 66. February, 1980: 15

⁵ Lucaites, J. “Substantive and Regulative Functions of Ideographs ‘Liberty’, ‘Order,’ and ‘Public Trust,’ *Conference Proceedings, Alta Conference on Argumentation*, 1983:299. Available from: <http://search.ebscohost.com/login.aspx?direct=true&db=ufh&AN=20916452&site=ehost-live>

⁶ Lucaites, J. “Substantive and Regulative Functions of Ideographs ‘Liberty’, ‘Order,’ and ‘Public Trust,’ *Conference Proceedings, Alta Conference on Argumentation*, 1983:299

These contradictions are particularly palpable in public discourse around gender issues, which have served as critical indicators of South Africa's transformation and development.

2. Analysis

2.1 The Gender Debate in Context

*"Sexuality is a transmission belt for wider social anxieties."*⁸

When South Africa became a democracy in 1994, it pledged itself to one of the most tolerant and progressive Constitutions in the world. Signed into law was a symbolic, collective, ideological commitment to the values of non-racialism, freedom and equality that many had fought and died for during Apartheid.

Section 9(3) of the Constitution entitled "Equality" stipulates:

"The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."⁹

The Constitution is intended to serve as South Africa's conscience – its moral compass – that unquestionably guides all action and behaviour. Its acceptance is the absolute "prerequisite to belonging" in the new social order and is attached to other political allegiances and affiliations such as the African National Congress (ANC) solidified during The Struggle.

Dishonouring the Constitution is considered to be one of the most perfidious acts one can commit because it resonates with the discrimination and injustice of the past. Despite the great diversity and dissonant opinions among South Africans, there is a perceived unanimous and unconditional duty to respect the Constitution.

This discrepancy that often exists between social values and national legislation demonstrates the inner-conflict and to some extent, the crisis of identity that South Africa faces. There is a sense of fear, uncertainty and hopelessness surrounding what the realisation of democracy has or has not meant.

Sexual politics have played a decisive role in expressing these greater social anxieties. Deborah Posel argues that in ways which are reminiscent of periods of unusually intense social and political change

⁷ Lucaites, J. "Substantive and Regulative Functions of Ideographs 'Liberty', 'Order,' and 'Public Trust,'" *Conference Proceedings, Alta Conference on Argumentation*, 1983:298

⁸ Hunter, M. "Cultural Politics and Masculinities: Multiple-Partners in Historical Perspective in KwaZulu-Natal" in *Culture, Health & Sexuality, Vol. 7, No. 3, African Sexualities*, May 2005: 215

Available from: <http://www.jstor.org/stable/4005492>

⁹ Constitutional Court of South Africa website:

<http://www.Constitutionalcourt.org.za/text/rights/know/women.html#28>

elsewhere in the world, post-Apartheid South Africa has experienced extraordinarily intense public controversy, activism and confrontation in respect of sexual issues.¹⁰

This gender debate is a distinct feature of post-Apartheid South Africa because democracy has in theory, opened the public sphere to such dialogue. Gender redress has also been an important part of the transformation agenda. However, the conservatism that often pervades public discourse and the insidious relationship between gender and stigmatised social issues like HIV/AIDS have meant that the empowerment of gendered groups is frequently not given priority. The gender debate has been assigned importance not necessarily for the purpose of addressing past discrimination, but because sexuality is entangled in relations of power, and fashioned in ways which bear the imprints of other vectors of inequality and difference, such as race, class, status and generation¹¹

The gender debate has particularly underscored the challenge that democracy poses to traditional patriarchal expressions of sexuality.

On one hand, many men, particularly non-white males who were stripped of their manhood during Apartheid, believed that democracy carried the promise of their empowerment. The pursuit of manhood became intertwined with the pursuit of political power. Today, there are influential men in the public sphere that attempt to silence dissent and drive many freeing expressions of gender and sexuality underground.¹²

On the other hand, there has also been an emasculation of South African society. Democracy means a commitment not only to non-racialism, but to non-sexism as well. Men and women Constitutionally enjoy equal rights and this has served to substantially diminish male authority. The empowerment of women, compounded by unremitting social circumstances of unemployment and limited access to economic opportunities, have meant that men have had to redefine their familial roles as providers.

Furthermore, democracy has promoted a greater tolerance for different versions of masculinity¹³, which has called the indispensability of men in romantic relationships into question. This has spurred phenomena like corrective rape, aimed at sexually coercing lesbian women into desiring men instead.

It is a possibility that the proliferation of violence against women in the post-Apartheid context has been driven by an increasing need among men to assert their dominance in the public sphere. According to People Opposing Women Abuse (POWA), a woman is raped every 26 seconds in South

¹⁰ Posel, D. "The Scandal of Manhood: 'Baby Rape' and the Politicization of Sexual Violence in Post- Apartheid South Africa" in *Culture, Health & Sexuality, Vol. 7, No. 3, African Sexualities*, 2005: 239. Available from: <http://www.jstor.org/stable/4005494>

¹¹ Posel, D. "The Scandal of Manhood: 'Baby Rape' and the Politicization of Sexual Violence in Post- Apartheid South Africa" in *Culture, Health & Sexuality, Vol. 7, No. 3, African Sexualities*, 2005: 241. Available from: <http://www.jstor.org/stable/4005494>

¹² Gqola, P.D. "Welcome to the Slippery Slope" in Mail and Guardian Online, 2 October 2006. Available from: <http://www.mg.co.za/article/2006-10-02-welcome-to-the-slippery-slope>

¹³ Theron, L. "Transgender or Detransgendered in South Africa?" *Gender Dynamix website*, 17 April 2008. Available from: <http://www.genderdynamix.org/content/view/335/204/>

Africa¹⁴, and an Interpol survey revealed that this is the highest rate of rape in the world¹⁵. Research suggests that the incidence of rape is even higher than reflected due to underreporting.

South Africa's rape statistics belong to a country under siege. These figures reflect a deeper psychological crisis of morality, order and identity.

Culture has also played a critical role in the gender debate and is unfortunately used to vindicate intolerant attitudes and behaviour. As was the case with other African countries, cultural practices in South Africa were interrupted by historical processes. Accordingly, there is a need to preserve culture in South Africa.

Beal, Mkhize and Vawda argue that "this historic period of change in South Africa has been accompanied by a 'surprise re-entry' and 'resurgence' of traditional leadership, a view that chimes with wider observation of 're traditionalisation' across Africa. In this context, it could be argued that South Africa has become caught up in a wider drift towards revitalised tradition and the increased salience of customary practices, despite its fairly recent democratic transition."¹⁶

Women are particularly vulnerable under the traditional system, where they have curtailed rights, no access to communal resources outside their relationship with their father or husband and limited representation on traditional councils¹⁷ Traditional cultures, which are governed by Customary Law that tolerates polygamy and promiscuity among men, are required to function within a democratic framework under the new dispensation. An interesting case in point is the Recognition of Customary Marriages Act of 1998, which gave spouses in customary marriage equal status and capacity.

Democracy contests the power structures embedded in cultural traditions and institutions and undermines traditional authority. Accordingly, democratic values are often deemed as Western imports, which must like colonialism, have corrupted African society. This highlights the centrality of gender in greater political power struggles.

Democracy is frequently blamed for the perceived moral degeneration of South African society, particularly on sexual issues, as it makes controversial, "un-African" practices like abortion, same-sex marriage and perhaps even prostitution permissible. These issues directly involve and affect women and LGBTI groups, and therefore, they are frequently held responsible for the moral breakdown in South African society. Women are culpable because of their gender. This is a perception perpetuated not only by men, but other women as well.

¹⁴ "Rape Statistics", *People Opposing Women Abuse (POWA) website*, Available from: <http://www.powa.co.za/Display.asp?ID=2>

¹⁵ "Rape in South Africa." Available from: <http://www.paralumun.com/issuesafrica.htm>

¹⁶ Beall, J., Mkhize, S. and Vawda, S. "Emergent Democracy and 'Resurgent' Tradition: Institutions, Chieftaincy and Transition in KwaZulu-Natal", in *Journal of Southern African Studies*, Vol. 31, No. 4, *Fragile Stability: State and Society in Democratic South Africa*, 2005: 756. Available from: <http://www.jstor.org/stable/25065045>

¹⁷ Beall, J., Mkhize, S. and Vawda, S. "Emergent Democracy and 'Resurgent' Tradition: Institutions, Chieftaincy and Transition in KwaZulu-Natal", in *Journal of Southern African Studies*, Vol. 31, No. 4, *Fragile Stability: State and Society in Democratic South Africa*, 2005: 764. Available from: <http://www.jstor.org/stable/25065045>

It is on the subjects of abortion, same-sex marriage and prostitution particularly that South Africa's progressive Constitution and traditional values are most conflicted. They serve to highlight the plight of women and members of LGBTI groups, who may have strong traditional heritages of their own, in contributing meaningfully to the gender debate: Their role as agents of change in the post-Apartheid context demands that they create dissonance among their communally-cherished, yet fundamentally conservative, "male" values, which threaten to perpetuate their oppression¹⁸.

There are also substantial ideological cleavages between and within women and LGBTI groups which precludes their ability to assert and empower themselves in a heterosexually-male orientated public sphere.

The gender debate in South Africa reveals that sexual politics exist within the broader matrix of power struggles, social anxieties and conflicting ideological commitments.

The following articles *Welcome to the Slippery Slope* and *The Hype of Women's Empowerment* by Professor Pumla Dineo Gqola and *Gender Debate Should Shift from Mean to Meaningful* by Barbara Boswell were published on *Mail and Guardian Online*. They offer valuable insight into the challenges and realities of the gender debate in South Africa. They address the continuing exclusion of gendered groups from public discourse within a climate of deeply-entrenched patriarchy and anxiety about the future. The "hype" of empowerment, led by the ideals prescribed by the "founding document"¹⁹ – the Constitution – have not translated into *actual* empowerment. This has impeded a meaningful, rigorous and inclusive debate and therefore real progress regarding sexual issues in the new South Africa.

Welcome to the Slippery Slope

Pumla Dineo Gqola

The past year has provided myriad opportunities to reflect on South Africa's future. Many of us are still hung over from the euphoria of the celebrations of 2004. We also feel the increasing confidence that comes with growing up. □□ We no longer debate the merits of the African renaissance because we have found a way to declare unwavering allegiance to the continent with the same tongue with which we speak xenophobia.

But this business of identity and belonging is always a contradictory, complicated and knotty affair, fraught with joyous discovery at the same time that it demands leaps of faith and courage. While we have spent the necessary time celebrating our transition to democracy, it is now urgent to think about what maturing democracy requires of us. □ What does the future look like? What role can we play? How do we engage with the present to safeguard the noble victories of our past?

¹⁸ Campbell, K. "The Sounds of Women's Voices", *Quarterly Journal of Speech*; May 89, Vol. 75 Issue 2:213.

Available from: <http://search.ebscohost.com/login.aspx?direct=true&db=ufh&AN=9993499&site=ehost-live>

¹⁹ Gqola, P.D. "Welcome to the Slippery Slope" in *Mail and Guardian Online*, 2 October 2006

Recent events invite us to probe these questions. Such moments of self-examination come to us in different guises, and staring them in the face, it seems foolhardy to proceed as though our future is poised to be exactly what we anticipated in 2004. □□As a highly differentiated populace, we will choose different events to serve as a compass, but many of these demand the same levels of rigorous contemplation.

Some of us will use the recent countrywide, eight-week conversation on collective values as a navigation tool. Perhaps somewhat troubled by the moralistic tone of this campaign, others might find the furor around the two Jacob Zuma trials and the future presidency a fitting drama on which to concentrate. For others still, the bizarre muted conversation on the sexual offences and same-sex marriage Bills might work as our true north. □□

All these moments of extreme discomfort are tied to the role of our much talked about founding document -- the Constitution. □□Last week, Mosibudi Mangena, the president of the Azanian People's Organisation and a government minister, told a conference of his party: "We should indicate what our view is on the question of same-sex marriages. More fundamentally, whether it is acceptable for the judiciary to determine issues of morality, norms, values and culture. Or do we believe that whatever the courts say is law and should be obeyed?"

There have also been irresponsible calls for the amendment of the same Constitution to limit the rights of those who form partnerships with people of the same gender.□ The hate speech articulated in these sentiments jars with the knowledge that the provisions and protections of the Constitution are written in blood. And, as navel-gazing as we sometimes are as citizens of this country, we would do well to learn from other societies about how to protect the freedoms we enjoy. These same freedoms allow us to live in a society often touted as a shining example to the world.

Yet there is a brutal price for complacency, and once the Constitution is conceived of as a mere conglomeration of puzzle pieces that can be moved around to reflect opportunistic and oppressive interests, the cracks that appear beneath our feet will widen to swallow us whole. The record of genocide on three continents as we moved towards our country's freedom are enough to confirm this assessment.□

The Constitution is a record of the spirit and core values of the society we want to defend, an invitation to think beyond narrow self-interest. And we would do well to be suspicious of the farce of consultation on the same-sex marriage Bill that suggests that a vulnerable "minority" is safe to victimise, and that government consultation processes are appropriate stages for hate speech. □□

We cannot surrender our rights to contest unholy ground and to reject the conservative use of processes for the public to voice opinions and influence major political processes. Such "small" concessions are a slippery slope, whether you feel that your preferred presidential candidate deserves the kind of support

that justifies trampling on others' freedoms or believe that sexual minority rights are up for debate. □

Defending the spirit of Constitution means speaking up, whether or not we perceive ourselves to be in immediate personal danger. The poet-activist Audre Lorde often said "your silence will not protect you". Our future mandates our outrage at suggestions that a referendum is the appropriate channel to authorise government on sexual rights, reproductive rights or the death penalty. We need to play a more active role in the creation and questioning of a national culture rooted in supporting everybody's right to full humanity and protection under the law.

Indeed, our own humanity and safety are at stake when we choose to bite our tongues in the face of attempts to rubbish the freedoms and integrity enshrined in the Constitution. □□ And, as slippery slopes go, we can all become the minority that is safe to victimise and exile tomorrow unless we make it impossible to silence those that are weaker than we are. □□

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The Hype of Women's Empowerment

Pumla Dineo Gqola

The anti-Apartheid struggle attempted to create a country free of all oppressions based on race, class, gender, sexual orientation, religion, language, geographical location and (dis)ability. This is the country of the Constitution. Yet the legacy of Apartheid continues to be felt by the black poor, who are written out of capital, most victimised and predominantly women. For the more affluent, gender, race and class still exert control either in the backlash against affirmative action or the pressure to participate in a culture of rampant materialism and consumerism. □□

Arguably, public discourse on race and class is complex. Public-sphere South African gender-talk, however, is very conservative: "women's empowerment" is discussed in ways that are not transformative. The programmes it props up exist comfortably alongside overwhelming evidence that South African women are not empowered. Indicators of disempowerment are the rape and other gender-based violence statistics, rampant sexual harassment, curative rapes, raging homophobia and the relentless circulation of misogynist imagery, metaphors and language. □

I wonder, what would Ruth First -- communist, anti-racist, journalist and historian -- make of the South Africa she fought for? She did not shy away from difficult questions even within the left. I think she would have found our "gender talk" in need of much critique. □ The "women's empowerment" discourse rests on the flawed assumption that limited women's access to wealth transforms society meaningfully. It ignores that women's access to wealth and high office is mediated by class, homophobia, race and xenophobia, and can only empower a small minority of women. □□

Second, the dominant talk of “empowerment of women” expects women to conform and become “honorary men”, as Mamphela Ramphele might say, rather than altering the formal workplace into a space that is more receptive to women. □□

The hijacked “women's empowerment” talk is also flawed in a linked, third sense. As Shireen Hassim reminds us, real transformation cannot leave out poor women and it requires a strong feminist movement in civil society. □□

The fourth most immediately dangerous flaw emerges when we recognise that this conservative “women's empowerment” only applies to women while they are in the official “public space”: in the workplace. A completely different set of rules governs the “private” world of the home, public transport, the streets, clubs, restaurants and shebeens. Outside of work, the dominant gender-talk forces women to adhere to very limiting notions of femininity. The recycling of the “cult of femininity” takes place across sectors, and is so pervasive that it retains high visibility among the ranks of ostensibly highly empowered women.

In interview after media interview, the question is posed to economically powerful women: Who are you really? Thus, pressure is applied to prove that they exhibit traditionally feminine traits. □□ This highly circulated cult of femininity is linked to the ways in which most women live our lives: with the haunting fear of rape, sexual harassment, smash-and-grabs and other violent intrusions into our spaces, bodies and psyches. □□ The hijacked “women's empowerment” hype is a smokescreen and assumes that women are the only ones who need empowerment, as limited as routes to such empowerment are. It leaves the cult of femininity intact and violent masculinities untouched. □

Gender transformative work requires that masculinities -- black, white, straight or queer -- be radically revisited and transformed. It demands honesty in dealing with the siege under which all South African women continue to live. Thenjiwe Mtintso once remarked: “You find there are comrades who bow to the question of gender equality, but in terms of their own behaviour are quite different.”

Until we are able to address these double standards as well as the long histories we come from, we are trapped in gender-based violence. Our denial will not protect us. We should recognise that this continuum contains much that we call “normal”: the twist of the arms of teenage girls, the assumption that girls “play hard to get” and should not be listened to, the oppressive claims that women cannot say what we mean and mean what we say. Consequently, a man can decide that a known lesbian is aroused and that he is meant to have sex with her.

In the same continuum, women are so stupid, passive and beaten down that we can only wear short skirts, revealing or tight clothes, get drunk, wear kangas, smoke cigarettes or do drugs, anything to signal to men that we are aroused except to say it. □□ Every man in this country has a responsibility to transformation. Men need to think about how they speak to and about women and girls, question what

they were taught and what they are teaching to boys and younger men. □□ Just like Steve Biko and his comrades in the Black Consciousness Movement left us a legacy of psychological liberation from self-hate and harmful beliefs about ourselves as black people. As South Africans, we need psychological liberation from patriarchy -- to learn to engage as partners across genders, to respect women's bodily autonomy and entitlement to sexual and other pleasures.

But no gender-progressive country, psychological liberation or national freed zone will be accessible without an honest look at our society, our language and our everyday practice. We can learn how to value ours and others' freedom and pay attention to the histories that have brought us here. □□ When we talk about the revolutionary 1980s, we also need to deal with what else young black women were experiencing in addition to sexist and racist state brutality. Whatever we may want to use as a lens to explain jackrolling in Transvaal townships, which was pervasive, or the rise of iintsara (gangs made up of mostly Nyanga east youths) as part of the gendered gang violence of the Cape Flats, these cannot continue to be moments we evade. We make these women disposable citizens when we pretend this era away. □□

“What happens to that collective trauma?” Ingrid Masondo asks. And how do we deal with the incessant communication to us in our formative years that we do not have freedom of movement, a communication reinforced by the statistics and the incredibly damaging masculinist posturing around the Jacob Zuma rape trial? □□ An accompanying question needs to be asked: What happened to all those young men who were jackrollers or iintsara? In what ways did getting away with mass rape solidify violent masculine patterns and what kind of socialisation did it have on other black men and boys watching? How does another history of sanctioned women's kidnapping -- known as ukuthwala -- contribute to the possibility of jackrolling being normal? At which point do we take responsibility for unlearning harmful behaviour regardless of which part of our complicated history it comes from? At which point do violent men in this country, and the women who are their cronies, women Desiree Lewis has called “phallic women”, stop using “culture” as a way to justify violating us? □□

South African women are saying we cannot escape gender-based violence in the classrooms of urban and rural South Africa, in the streets of our cities and towns as well as in the fields and homes of our rural areas, in buses, taxis, trains and private cars, in shopping malls, cafés, factories, police stations and hospitals. The statistics support us and the criminal justice system either re-violates or ignores us. And all the while gender-conservative men threaten and violently silence women who speak out in self-defence against a former vice-president that women's votes helped elect when he dares speak misogyny about what women want when we dress a certain way, act a certain way and choose to love women. □□

There is a clear and urgent need to change South Africa's public and private gender-talk. As part of this we need to rid ourselves of the “passwords” that Sibongile Ndashe speaks about, which refer to the disclaimers and qualifiers that silence real debate. So, those black and white feminists who defied the

passwords by contesting the gender-talk around the Zuma trial were dismissed as “elites” “irresponsible”, “disingenuous”, “apolitical” and out of touch with most poor women, who are coyly called “real women on the ground”. It is an incredible statement coming from elite men, and amazingly condescending, since these men, we are to assume, know better what women want. □□ Gender-conservative South African men would do well to choose another battleground from now onwards -- not our bodies -- because claiming that women who call them on their misogyny do not speak as “real” South African women is direct complicity with the scourge of gender-based violence.

It is not enough for leaders of political formations of various sorts to mouth commitment to gender equity when they excuse misogyny spoken in their midst. □□ The current situation makes a mockery of the values of the Constitution. But choosing different behaviour can bring us closer to a society in which the gender values of the Constitution are entrenched. Would it not be a wonderful thing to live in a country in which a thing such as the Zuma rape trial is impossible? It would be an amazing thing, if waking up in 2056, South African girls and women really had freedom of movement. □□

This is an edited extract of the fifth annual Ruth First Lecture presented by Pumla Dineo Gqola at Constitution Hill in Braamfontein on 15 November. The full text of the lecture will be available at www.pumladineo.co.za at the end of November

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Gender Debate Should Shift from Mean to Meaningful

Barbara Boswell: A Second Look

Khadija Magardie raises important points about women intellectuals and their lack of access to public discourse in her commentary (“Where are all the clever chicks?”, February 6). Her critiques of gender machinery and the hollow, official rhetoric around gender issues are justified and compelling. □

Yet, I have to challenge Magardie’s analysis of South African women as “intellectual pussies who cannot think beyond their own”. With this crass generalisation, Magardie dismisses the work of scores of independent writers, artists, academics and thinkers who are changing perceptions of women -- and women's lives -- through their work. □□ These intellectuals include Gabeba Baderoon, Pregs Govender, Amina Mama, Zimitri Erasmus, Shamim Meer, Desiree Lewis, Lebogang Mashile, Sheila Meintjes, Pumla Dineo Gqola, Zine Magubane and many, many others. □□ Many of these women are internationally respected and often cited, as Magardie would have learned had she done a simple Internet search. To tap into feminist intellectual politics she could have visited a number of excellent websites produced in South Africa, including Agenda Journal (www.agenda.org.za), Feminist Africa (www.feministafrica.org), Fito (www.fito.co.za) or Chimurenga (www.chimurenga.co.za). □□

But I suspect that Magardie is more interested in spewing vitriol than hearing intellectuals or fostering

debate. After all, she has at her disposal a book with the names of 300 "smart" women who she could easily have consulted to answer the question posed in your headline. Having declared women "intellectual pussies", Magardie's argument inexplicably shifts. She lightens up on the misogyny, concedes that at least some South African women are deemed worthy intellectuals, and points out that these women are simply not heard or cited. □□While acknowledging the media's role in marginalising women, Magardie fails to examine her complicity as a journalist and opinion-maker in deciding who is or isn't a public intellectual. Instead, she chooses a hands-off approach, and proceeds as if the media is a value-free conduit that gives equal access to all people. □□Where Magardie has the opportunity to lay bare the ideological processes that govern supposedly neutral news values, she declares, instead, that journalists will start quoting "smart" women "just as soon as we start knowing who they are".

In other words, women are to blame if they are not heard in the media. And journalists have no responsibility for sourcing and reflecting a diversity of opinion. □□Her article comes in the wake of the third Global Media Monitoring Project study being launched in London on February 15. The study, first conducted in 1995, will show yet again that women's voices are systematically excluded from the media. While South Africa has shown some improvement, the playing field is still far from even.

If Magardie is truly interested in hearing a range of women intellectuals in the media, she should stop berating and do something. She is, after all, privileged in her access to the commentary pages of this paper. □□Magardie could start by persuading her bosses to insert one or two women into the exclusively male gallery of M&G columnists. Then, she could ask her editors to stop equating "women" with sex and the body, as they do each week by publishing women's writing under the "Body Language" rubric. Finally, Magardie could stop reducing women to their "pussies" and "tits". □□Let's raise the bar a little higher than mean-spirited misogyny, and start a meaningful debate on this issue. □□

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Available from: <http://www.mg.co.za/article/2006-02-22-gender-debate-should-shift-from-mean-to-meaningful>

2.2 Landmark Legislation and Rulings

South Africa has passed groundbreaking legislation within the context of its young democracy. It has set a precedent not only for the African continent, but for the rest of the world as well. These developments have played a critical role in restoring dignity and equality to gendered groups.

South Africa's Constitution is the only in the world to prohibit unfair discrimination on the grounds of sexual orientation.²⁰ It is the first country in Africa and the fifth internationally to legalise same-sex marriage.²¹ South Africa is the only country on the continent other than Tunisia to espouse women's reproductive rights by sanctioning abortion on demand²² (health abortion bill: lobbyists unhappy).

There have been setbacks, namely the Jacob Zuma rape trial, which further entrenched the stigma and silence that surrounds violence against women.

The greatest problem that South Africa faces is honouring the liberties prescribed by the Constitution in action and behaviour.

Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Empowerment

This report focuses on the following related rulings:

- *Fourie and Bonthuys v Minister of Home Affairs (2004)*

Complete judgement available from: <http://www.saflii.org/za/cases/ZASCA/2004/132.pdf>

Marie Fourie and Cecelia Bonthuys, a lesbian couple, approached the Supreme Court of Appeal to have their marriage legally recognised in 2004, after their application had been dismissed by the Pretoria High Court in 2002. The Supreme Court of Appeal ruled that the common law definition of marriage, based on the union of a "man" and "woman", would be developed to include same-sex unions on the grounds that it affirmed the right to dignity and equality prescribed by the Constitution. Judge Edwin Cameron recommended in his judgment that the definition of marriage read: "Marriage is the union of two persons to the exclusion of all others for life." Parliament was given until 1 December 2006 to legalise same-sex marriage.

²⁰ "Gay and Lesbian Rights", *South African Constitutional Court website*. Available from: <http://www.Constitutionalcourt.org.za/text/rights/know/homosexual.html>

²¹ Quintal, A. "Civil Union Bill Approved in Historic Vote", *Cape Times*. 15 November, 2006. Available from: http://www.iol.co.za/index.php?set_id=14&click_id=6&art_id=vn20061115043713495C702320

²² De Lange, D. and Sapa, "Abortion Bill: Lobbyists Unhappy" in *Cape Argus*, 3 October, 2007. Available from: http://www.iol.co.za/index.php?set_id=1&click_id=125&art_id=vn20071003112418892C515204

- *The Civil Union Bill (2006)*

Copy of legislation available from: <http://www.pmg.org.za/bills/090613b26-06.pdf>

In accordance with the Supreme Court of Appeal ruling on *Fourie and Bonthuys v Minister of Home Affairs*, the Civil Union Bill, which was passed on 30 November 2006, provided for same-sex couples to register a voluntary union either by marriage, if religious officers agreed, or civil partnership.

Other Relevant Legislation – LGBTI Empowerment

National Coalition for Gay and Lesbian Equality v Minister of Justice (1998)

Complete judgement available from: <http://www.saflii.org/za/cases/ZACC/1998/15.pdf>

The law prohibited sodomy between two consenting adult men. The Constitutional Court had to confirm an order that the existence of this common-law offence was unconstitutional and invalid. The Court found that the existence of these offences violated the right to equality. Sodomy laws criminalised the intimate relationships of gay men, which constituted a violation of the rights to dignity and privacy.

National Coalition for Gay and Lesbian Equality v Minister of Home Affairs (1999)

Complete judgement available from: <http://www.saflii.org/za/cases/ZACC/1999/17.pdf>

The High Court had declared section 25(5) of the Aliens Control Act of 1991 unconstitutional because it failed to give persons who were partners in permanent same-sex life partnerships the benefits it extended to “spouses”. The act allowed the immigration of foreign spouses of permanent South African residents. This did not include same-sex life partnerships.

The Constitutional Court held that section 25(5) discriminated unfairly on the grounds of sexual orientation and marital status, and limited rights to equality and dignity in a way that was not reasonable and justifiable. The words “or partner in a permanent same-sex life partnership” needed to be added to the statute.

Du Toit v Minister of Welfare (2002)

Complete judgement available from: www.saflii.org/za/cases/ZACC/2002/20media.doc

Two partners in a longstanding lesbian relationship had brought an application in the Pretoria Children’s Court jointly to adopt two children. Because the Child Care Act confined joint adoption to married couples, custody and guardianship rights could be granted to one partner only. The Constitutional Court found that the statutory provisions discriminated on the grounds of sexual orientation and marital status. It confirmed the order of Constitutional invalidity.

Satchwell v the President of the Republic of South Africa (2003)

Complete judgement available from: <http://www.saflii.org/za/cases/ZACC/2003/2.pdf>

A High Court order had declared sections 8 and 9 of the Judges' Remuneration and Conditions of Services Act unconstitutional to the extent that they afforded benefits to the spouses of judges but not to their same-sex life partners. The Constitutional Court found that the provisions unfairly and unjustifiably discriminated on the basis of sexual orientation. It ordered that sections 8 and 9 be read as according benefits not only to spouses of judges but also to permanent same-sex life partners of judges where reciprocal duties of support had been undertaken.

J and B v the Director-General of Home Affairs and Others (2003)

Complete judgement available from: <http://www.lrc.co.za/docs/judgments/jandb.pdf>

This case concerned provisions of the Children's Status Act of 1987, which defined the status of children conceived by artificial insemination. Section 5 of the act provided that that the child be considered the legitimate child of the married couple where artificial insemination had taken place. These rights were not extended to same-sex couples. The Court ordered that the section be read to provide the same status to children born from artificial insemination to same-sex permanent life partners.

Unedited summary of the above is available from the South African Constitutional Court website:

<http://www.Constitutionalcourt.org.za/text/rights/know/homosexual.html>

Conclusion

The above information provides a contextual legal framework concerning LGBTI empowerment. It demonstrates that South African lawmakers have led the way in promoting the ideals of dignity, freedom and equality in post-Apartheid South Africa.

An analysis of the legislation reveals a continuing process of the readjustment of ideographs like "marriage" and "spouse" in order to ensure their compatibility with the Constitution.

To an extent these ideographs are imprisoned by the remoteness of their past. Marriage has historically been reserved for the sacred union of a man and woman to the exclusion of all others in life. It has been guided by religious and customary doctrines, which place importance on the heterosexual and procreative elements of marriage.

Although the Constitutional Court ruled for such definitions to be extended to include same-sex couples, the compensation was a separate piece of legislation that permitted these unions only. Therefore, homosexuals were excluded from the ideograph of "marriage."

The topic of same-sex marriage reveals the dissonant ideological commitments that exist between tradition and democracy, as democratic principles include the right to choose in matters of love and commitment regardless of sexual orientation.

Same-sex unions have been a major point of contention in post-Apartheid South Africa because they symbolise the breakdown of the traditional family unit, including most importantly, a loss of heterosexual male power.

A recent South African Social Attitudes Survey, which was conducted by the Human Sciences Research Council showed that 80% of South Africans felt that same-sex relationships were “always wrong.”²³ Other recent research and events indicate that violence against homosexuals, particular Lesbians, is rife.

While LGBTI rights have been enshrined in law and should reflect the communal values of South African society, it illustrates that in some cases, there is a discrepancy between national legislation and “public” morality.

Please see article below:

80% of SA Says No to Gays

Antoinette Pienaar

Pretoria - Despite the fact that South Africa's legal system recognises gay marriages and that the Constitution guarantees equal rights to all, more than 80% of the country's population regards homosexuality as wrong.

Researchers at the Human Sciences Research Council (HSRC) have conducted a Social Attitudes Survey in South Africa.

They wanted to establish whether people had become socially more tolerant of homosexuality between 2003 and 2007, as the law and the Constitution granted greater recognition of and protection to more groups.

The study, which was published in the HSRC Review, shows widespread negative attitudes towards lesbians and gay men.

Gay sex 'always wrong'

More than 80% of the population aged 16 years and above expressed the view that sex between two men or two women could be considered "always wrong".

A 1998 study ranked South Africa alongside countries such as Chile and the Philippines, where intolerance towards gays and lesbians is five times higher than in the Netherlands, and almost double that of Great Britain.

²³ Pienaar, A. “80% of SA says no to gays” In Die Beeld, 9 December 2008. Available from: http://www.news24.com/News24/South_Africa/News/0,,2-7-1442_2439300,00.html

Although international studies have shown that men tend to exhibit significantly more negative attitudes than women towards homosexuality, there is not a pronounced divergence in the South African data.

Black people are more intolerant of homosexuality than white or coloured people.

About 76% of adults with a tertiary qualification considered homosexuality to be "always wrong".

The researchers remarked that attitudinal changes did not necessarily correlate with rights, and that rights do not necessarily result in justice.

Hate crimes

Since 1996, South Africa's Bill of Rights has expressly prohibited discrimination on the grounds of sexual orientation.

November 2006 saw the legal recognition of gay marriages. South Africa was the first country in Africa to do so, and the fifth to do so internationally.

Homosexuality became more visible in the public domain, which included the growth of gay and lesbian political activism.

Yet, say the researchers, gay and lesbian identities continue to be characterised as 'un-African'.

"The assertion of 'un-Africanness' conceals a moral and cultural view that African societies are somehow unique and therefore immune to what is perceived to be a Western and European import.

"As the incidences of hate crimes against black lesbians and gay-bashing attest, the victory of Constitutional equality clearly has not guaranteed the end to social discrimination," the article states.

Published in *Die Beeld*. Available on New24: http://www.news24.com/News24/South_Africa/News/0,,2-7-1442_2439300,00.html

2.3 Case Study I: *Fourie and Bonthuys v Minister of Home Affairs and The Civil Union Bill*

The Same-Sex Marriage Debate

“We didn't uproot Apartheid to plant another tree of inequality in its stead.”

2.31 Discussion

The Civil Unions Bill, which legalised same-sex unions, was passed in 30 November 2006 in accordance with the Supreme Court of Appeal's ruling on *Fourie and Bonthuys v Minister of Home Affairs*. It may have been considered one of the greatest tests of South Africa's fledgling democracy. It revealed how deeply divided and conservative South Africa was, despite the unity and progressiveness it claimed to espouse. Public debate exposed conflicting ideological obligations to the ruling party, the ANC, and the Constitution on one hand, and to religion and culture on the other. There was an unsavoury hypocrisy that loomed over public discourse. The vitriol that was spewed, I would argue, bared the hallmarks of a national identity crisis, rather than a profound hatred towards homosexuals.

The Constitutional Argument

Key Ideographs: The Constitution, Apartheid, The African National Congress (ANC)

The denial of same-sex marriage was an issue of discrimination, which meant that it was unconstitutional and a case of double standards: It was unjustifiable that South Africa prohibited discrimination based on other grounds such as race, and not on the basis on sexual orientation. Same-sex marriage was technically a question of “bringing the country's legislation into line with the Constitution”²⁴

²⁴ “African National Congress Statement on Civil Union Bill”, 30 November 2006. Available from: <http://www.anc.org.za/show.php?doc=ancdocs/pr/2006/pr1130.html>

ANC STATEMENT ON CIVIL UNION BILL

30 November 2006

The African National Congress welcomes the signing into law of the Civil Union Bill by Deputy President Phumzile Mlambo-Ngcuka.

This brings the country's legislation into line with the Constitution, as required by last year's Constitutional Court ruling.

The ANC's approach to this matter has all along been informed by respect for human rights and opposition to any form of discrimination, as well as respect for the decisions of the judiciary.

The ANC commends all those organisations and individuals who participated in parliamentary hearings and public debate in a mature and dignified manner.

The ANC remains sensitive to, and respects, the divergent views expressed during the consideration of the Bill.

It is important for the development of our democracy that space is created for a broad range of views to be heard, even where there are sharp differences.

Within a legal framework alone, such as issue should not have even been up for debate. The conflict arose in making an actual commitment to the Constitution amidst other convictions and persuasions.

The Constitution in South Africa is associated with allegiances to the ANC. To some extent, as a doctrine, it represents "the ruling party line." The ANC expected its members to vote in favour of the bill, who were not given a free or conscience vote²⁵ (Terreblanche, C. and Quintal, A. "ANC MPs to vote on Same-Sex Union Bill.")

The ANC claimed in its statement that their decision to support the Bill was "informed by respect for human rights and opposition to any form of discrimination, as well as respect for the decisions of the judiciary."

This opposition to discrimination, a core principle enshrined in the Constitution, is of course rooted in the struggle against Apartheid. At many points in the same-sex marriage debate, treatment of homosexuals was compared to Apartheid. (Please see article entitled, "*No place for sexual Apartheid in the new dispensation*" by Eusebius Mckaiser).

The Civil Union Bill as a piece of legislation was perceived by the LGBTI community and supporters of same-sex marriage as unsettlingly reminiscent of apartheid laws. Professor Pierre de Vos argues in an article entitled, "Gay and Lesbians now 'separate but equal' published on *Mail and Guardian Online* that "one of the most popular, and ridiculous, arguments put forward to justify Apartheid, was that it provided "for separate but equal" opportunities and was therefore fair and just." Just as such

²⁵ Terreblanche, C. and Quintal, A. "ANC MPs to vote on Same-Sex Union Bill," in *Sunday Independent* on 12 November, 2006.

Apartheid laws were designed to “‘protect’ whites from being ‘contaminated’ by them [Blacks], the Civil Union Bill purports a ‘separate but equal’ marriage regime that would protect ‘real marriage’ from ‘contamination’ and ‘defilement’ by homosexuals.”²⁶

The Gay and Lesbian Equality project in its submission on the Bill, articulated its main objection to the legislation. This was that it “creates a separate marriage-like institution – a civil partnership – for same-sex couples alone, without any reasonable basis for the distinction. It groups civil partnerships and (registered and unregistered) domestic partnerships into a new separate institution known as a Civil Union. This includes the enactment, promulgation and coming into effect of a new law existing apart from – and having a lower status than that of – the Marriage Act.”²⁷

Zapiro depicts this separation in the cartoon below, which pertains to the Civil Unions Bill. He refers to this distinction in its title, “Apartheid: Grand Reopening.”



<http://www.mg.co.za/zapiro/>

The use of “Apartheid” as an ideograph in this context is a powerful argument for same-sex marriage because it represents the antithesis of the brand of morality espoused by the new South Africa and its Constitution. A denial of this marriage undoes the ideals that were fought so valiantly for and a return to a shameful past.

However, “Apartheid” was also used to justify discrimination against homosexuals by arguing that they did not play a role in the liberation struggle (Please see letter to City Press entitled, “*The Myth of*

²⁶ De Vos, P. “Gay and Lesbians Now ‘Separate but Equal,’” *Mail and Guardian Online*, 17 September 2006, Available from: <http://www.mg.co.za/article/2006-09-17-gays-and-lesbians-now-separate-but-equal>

²⁷ “Gay and Lesbian Equality Project Submission on the Civil Union Bill 2006.” Available from: <http://www.equality.org.za/attachments/Civil%20Union%20Bill%20submission%20%20final%20draft%20of%20051006.pdf>

Homosexuality” by Pan Africanist Congress of Azania MP, Dr Motsoko Pheko²⁸). Accordingly, this meant that they had not made the ideological commitment that would determine their inclusion in this community and therefore, they should not have access to the same rights as those who did.

The main “separate but equal” objection to the Bill raised by gay rights groups and advocates highlights the capacity of ideographs as signs of social inclusion and exclusion. Professor Pierre de Vos points out that “marriage” has symbolic, emotional and political power in our culture that gives it a special status. By refusing same-sex couples the right to enter into an institution called “marriage”, the Bill deprives them of the right to access the status associated with the term “marriage”²⁹.

A “union” is civil, while “marriage” is a spiritual evocation. Marriage means both equality under the law and under God. The fact that homosexuals have religious persuasions was mostly neglected throughout the debate. A column written by Shaun De Wall entitled “*When God says, ‘Yes, maybe I do’*” he comments that, “it’s clear that it is important for gay and lesbian people in this country not only to achieve equality under the law, but also to be able to perform traditional rites within the spaces of the religions that are also, under our Constitution, guaranteed their freedom.”³⁰

The opposition to Civil Union Bill among the gay lobby was in fact less about written rights and more about the symbolic rite of passage embedded in “marriage” as a rhetorical ideograph.

The same-sex marriage debate was a proxy for expressing broader political identities and allegiances to the ANC and the struggle against Apartheid. Such commitments have become the “prerequisites to belonging” in South African politics and tend to dominate most public debate. However, sexual issues highlight other persuasions and convictions that may be equally as important, such as religion and culture that pull in opposite directions.

²⁸ Available from: http://www.news24.com/City_Press/Letters/0,,186-247_1712799,00.html

²⁹ De Vos, P. “Gay and Lesbians Now ‘Separate but Equal,’” *Mail and Guardian Online*, 17 September 2006

³⁰ De Waal, S. “When God says, ‘Yes, maybe I do’”, *Mail and Guardian Online*, Available from: <http://www.mg.co.za/article/2008-03-21-when-god-says-yes-maybe-i-do>

The Religious Argument

Key Ideographs: Marriage, Procreation, Nature, Family, Morality, Majority

The religious objection to same-sex marriage was substantiated on a number of grounds. It was argued firstly that “marriage” is defined in gender terms: It is the union of a man and women. Cardinal Wilfrid Napier, President of the South African Catholic Bishop’s Conference said that “The Catholic Church does not make provision for anything other than a marriage between a man woman... Civil unions do not fall under the law of the church.”³¹

Dr Motsoko Pheko, a Pan Africanist Congress of Azania MP argued that “Homosexuality has always been frowned upon by all religions and cultures. Marriage is designed for males and females with their profound sexually different constitutions. The polarity of the two genders is inextricably locked into the meaning and practice of marriage.”³²

Therefore the ideograph of “marriage” has gender-specific connotations. From a religious perspective, heterosexuality is a prerequisite to belonging.

A second ground for objection is that same-sex marriage defies the “natural law of procreation.”³³ In a letter published in *City Press* entitled, “Most people in SA are against same-sex marriages,” William Dicks writes, “The purpose of marriage is procreation. It was designed to produce and rear children. By its very nature, a relationship between two people of the same sex is sterile and therefore not a marriage.”³⁴ He adds that homosexuals have excluded themselves from the benefits of marriage “by engaging in relationships that are clearly against nature and against the norms of marriage.”

Procreation is considered to be an integral part of the institution of marriage. Same-sex unions are therefore perceived as somehow unnatural. This is closely linked to a conclusion often drawn that because of this biology, homosexuality is behavioral rather than physiological. It is a kind of “myth” that cannot be proven and therefore, should not be entertained.

Controversial *Sunday Sun* columnist, Jon Qwelane, writes in his article “Call me names, but gay is not OK, that “You regularly see men kissing other men public, walking holding hands and shamelessly flaunting what are misleadingly termed ‘their lifestyle’ and ‘sexual preferences.’”³⁵

Motsoko Pheko argues in his same letter to *City Press*, appropriately entitled “*The Myth of Homosexuality*,” that “They [homosexuals] have spread the propaganda that homosexuality is ‘normal and natural’...however, there is no scientific proof that people are born homosexual. □Anthropology

³¹ Kuppen, I., Naidu, R. and Quintal, A. “Civil Union Bill a ‘slap in the face’”, *Daily News*, 14 November 2006. Available from: www.iol.co.za/index.php?click_id=13&set_id=1&art_id=vn20061114102125576C695511

³² Pheko, M. “The Myth of Homosexuality,” *City Press*, 28 May 2005. Available from: http://www.news24.com/City_Press/Letters/0,,186-247_1712799,00.html

³³ Misbach, N. “Gay Marriages Are ‘Ungodly’ Says Bishop”, Available from *OUT LGBT Well-Being* website: <http://www.out.org.za/ssm.asp>

³⁴ Dicks, W. “Most people in SA are against same-sex marriages” in *City Press*, 28 August, 2004. Available from: http://www.news24.com/City_Press/Letters/0,,186-247_1580081,00.html

³⁵ Qwelane, J. “Call me names but gay is not OK,” *Sunday Sun*, 20 July 2008

shows that all the cultures of the world have been heterosexual in sex and marriage.”³⁶

Motsoko Pheko’s “contribution” to the same-sex marriage debate as an MP in the context of input made by other political figures on this topic, further demonstrates the relationship between sexual issues and national politics.

A third objection to same-sex marriage is that it is immoral. This “logic” follows that it spurs the breakdown of the family unit, which leads to deviant behaviour and the eventual moral degeneration of society. Bishop Napier argued that “gay marriage undermined the traditional family unit headed by a husband and wife and affected the rights of children.”³⁷

Judy Van Aardt commented in a letter she wrote to *City Press*: “Parliament’s decision on same-sex marriages will determine the spiritual direction of our country. If it agrees, it will destroy family values and thumb its nose at the institution of marriage that has been our moral foundation and protection.”³⁸

In another letter, the writer argued that the by legalising same-sex marriage, the “ANC is turning South Africa into Sodom and Gomorrah,”³⁹ a religious evocation of sin and immorality. Both of the aforementioned letters interestingly mentioned the Abortion Bill as a significant part of this crisis of morality.

Many in the religious camp also argued that same-sex marriage was unconstitutional because it did not take into account the will of the majority, who opposed the bill – an HSRC study showed that up to 80% of South Africans objected. Religious leaders deemed the Civil Union Bill “a slap in the face of democracy.”⁴⁰ Cardinal Wilfrid Napier, president of the South African Catholic Bishop’s Conference commented that “The impression we got is that there is overwhelming opposition to this bill from people throughout South Africa. If the bill is passed then it means that the overwhelming voice of the people of the country is not being taken into account, in which case, it would be a great disappointment for our democracy.”

Kenneth Meshoe from the African Christian Democratic Party referred to the bill as “one of the most undemocratic pieces of legislation ever passed in South Africa,” and claimed that 98% of the population was opposed to it.⁴¹

These comments indicate the significance of “The Majority” as an ideograph. It connotes the injustice of Apartheid, which progressed the white minority at the expense of the non-white majority. Denying the will of the majority is perceived as tantamount to the discriminatory practices of South Africa’s past. It is an attempt to equate these homophobic views with democratic, constitutional values.

³⁶ Pheko, M. “The Myth of Homosexuality,” *City Press*, 28 May 2005

³⁷ Misbach, N. “Gay Marriages Are ‘Ungodly’ Says Bishop”, *OUT LGBT Well-Being* website

³⁸ Van Aardt, J. “South Africans must act now to prevent same-sex marriage,” *City Press*, 23 September 2006. Available from: http://www.news24.com/City_Press/Letters/0,,186-247_2002998,00.html

³⁹ Nkoana, L. “ANC is turning our country into Sodom, Gomorrah”, 13 January, 2007, *City Press*. Available from: http://www.news24.com/City_Press/Letters/0,,186-247_2054684,00.html

⁴⁰ Kuppan, I., Naidu, R. and Quintal, A. “Civil Union Bill a ‘slap in the face,’” *Daily News*, 14 November 2006

⁴¹ Du Toit, C. “Gay marriage legal from today,” in *The Citizen*, 1 December 2006

The Traditional Argument

Key Ideographs: Customary Law, Witchcraft, African, Colonialism

Traditional African leaders were particularly outspoken against same-sex marriage. In many respects their grievances overlapped with that of religious groups, which were not rooted in religious doctrines but within Customary Law. The crux of their argument was that it was against African culture.

This was for a number of reasons. First and foremost, in the African context, marriage “is a union between a man and a woman and a bond between the two families or clans (for the purpose of procreation”.⁴²

Congress of Traditional Leaders of South Africa President Chief Patekile Holomisa said, “Lobola is based on heterosexual marriage. We will not permit the custom of paying lobola to be incorporated into same-sex marriages.”⁴³

Like most religious doctrines, the definition of marriage under Customary Law is rooted in heterosexuality, procreation and patriarchy. The institution of marriage has perhaps until the introduction of the Customary Marriages Act, been based almost entirely on gender inequality.

A view that was expressed in the same-sex marriage debate was, “Who is to take the responsibilities of a makoti (or wife) as in the African society if two men are married? And who is to take the responsibilities of a husband if two women are married? It just does not fit in our way of life.”⁴⁴ In other words, how will the traditional power structures that keep women inferior to men be preserved within a framework that allows same-sex marriage? Marriage reflects and determines greater hierarchies in traditional society between sexes, clans and communities.

Because same-sex marriages opposes the values and customs of traditional African society enshrined in Customary Law, the practice is perceived as immoral. Like the Constitution, Customary Law guides the values, beliefs, ethics and actions of traditional communities. Customary Law is central to the idea of being “African” and its compliance is at the prerequisite to belonging in this society. It is on the basis of its immorality and deviance from these cultural norms, that many traditional leaders liken homosexuals to “witches and wizards” within a context of superstition where witchcraft is still practiced (Please see articles “Gay marriage is immoral, say traditional leaders” and “Traditional leaders do not support gay union”⁴⁵).

African leaders indicated the kind of social exclusion that such a status warrants, which is the denial of the right to own land in traditional communities. “Land” as an ideograph has historically indicated social stature and wealth. It is even more valuable in the African community because of the restrictions placed on black ownership throughout modern South African history. “Land” is thus a symbol of empowerment and awarded to those who cooperate in progressing that community.

⁴² Feni, L. “Gay marriage is immoral, say traditional leaders,” *Daily Dispatch*, 13 December 2006. Available from: <http://www.dispatch.co.za/2006/12/13/Easterncape/cgay.html>

⁴³ Feni, L. “Gay marriage is immoral, say traditional leaders,” *Daily Dispatch*, 13 December 2006

⁴⁴ Feni, L. “Gay marriage is immoral, say traditional leaders,” *Daily Dispatch*, 13 December 2006

⁴⁵ Nkosi, S. “Traditional leaders do not support gay union,” in *City Press*, 17 December, 2005. Available from: http://www.news24.com/City_Press/Letters/0,,186-247_1852351,00.html

The conflict lies in the fact that being “African” in South Africa includes a commitment to both Customary Law and the Constitution, which are contradictory in their very nature. Many traditional leaders and figures such as Chief Patekile Holomisa, are in fact ANC MPs. Beall, Mkhize and Vawda argue that if viewed in historical perspective, traditional authorities in Southern Africa have always engaged assertively with other sites of authority and forms of government⁴⁶

As was mentioned before, the Constitution is inextricably linked to South Africa’s emancipation and essentially, the fight against Western domination. In order to reconcile these commitments on the subject of same-sex marriage, homosexuality is often deemed as a “Western import,” which threatens “African” society as a whole. In a letter to the *City Press*, a publication whose slogan is “Distinctly African”, the writer comments that “traditional leaders have vowed to make it their mission for the coming five years to campaign against this wicked, decadent and immoral western practice [same-sex marriage]” (Please see articles “Traditional leaders do not support gay union” and “Being gay and Zulu”⁴⁷).

It is the conflict between these commitments that “culture” is frequently used to justify abstinence from constitutional practices and behaviours. In this case same-sex marriage, which is constitutionally valid, should not be supported because it goes against African culture.

ANC President Jacob Zuma has been frequently accused of using Zulu culture to excuse politically-incorrect remarks and deeds. This idea will be explored in the discussion of his rape trial.

On the topic of same-sex marriage however, at a Heritage Day celebrations in Kwazulu Natal in September 2006, Zuma announced: “When I was growing up an *ungqingili* (a gay) would not have stood in front of me. I would knock him out.”⁴⁸

Zuma is perceived as “a custodian of Zulu culture”⁴⁹. In using the Zulu word “*ungqingili*” in the context of a heritage celebration perpetuates the idea that the ideological commitment to being “African” is necessarily intertwined with homophobia. It not only entrenches discrimination and stigma, but it evokes a crisis of identity for those who consider themselves to both “gay” and “Zulu.”

Jean Meiring argues in an article entitled “Marriage for All” that Zuma should have instead “proclaimed loudly and clearly: ‘As much justification as there once was for Afrikaners to defend racism as part of their culture, just so much excuse is there today for Zulus -- or anyone else -- to flaunt homophobia as a cultural value worth championing.’”⁵⁰

⁴⁶ Beall, J., Mkhize, S. and Vawda, S. “Emergent Democracy and ‘Resurgent’ Tradition: Institutions, Chieftaincy and Transition in KwaZulu-Natal”, in *Journal of Southern African Studies*, Vol. 31, No. 4, *Fragile Stability: State and Society in Democratic South Africa*, 2005: 756

⁴⁷ Tolsin, N. “Being gay and Zulu” in *Mail and Guardian Online*, 16 October 2006. Available from: <http://www.mg.co.za/article/2006-10-16-being-gay-and-zulu>

⁴⁸ Tolsin, N. “Being gay and Zulu” in *Mail and Guardian Online*, 16 October 2006

⁴⁹ Tolsin, N. “Being gay and Zulu” in *Mail and Guardian Online*, 16 October 2006

⁵⁰ Mering, J. “Marriage for All” *Mail and Guardian Online*, 25 October 2006. Available from: <http://www.mg.co.za/article/2006-10-25-marriage-for-all>

In his apology, Jacob Zuma evoked another integral aspect of “African” identity, which is a commitment to the “The Struggle.” He says, “I respect, acknowledge and applaud the sterling contribution of many gay and lesbian compatriots in the struggle that brought about our freedom, and the role they continue to play in the building of a successful non-racial, non-discriminatory South Africa.”

The Unrepresented

Women, transgender and intersex groups appear secondary or absent from the same-sex marriage debate. An article published in *The Citizen* on the day the Civil Union Bill was passed quoted Liesl Theron, from the transgender non-profit organisation, Gender DynamiX, who said that “trans-gendered people are still left behind to some degree, but at least here we have the first step towards equality for all.”⁵¹

Theron comments in an article entitled “Transgender or detransgendered in Africa?” published on the *Gender DynamiX website* that the Civil Union Bill excludes transgenders because partners in a same-sex union have to divorce before they can register to change their sex. Referring to trans-gendered groups, she says that “a very specific proportion of people were left out, and still have to experience discrimination against themselves with regards to this.”⁵²

Heterosexual women appeared to on the whole abstain from the same-sex debate, however the signing of the bill by Deputy President, Phumzile Mlambo-Ngcuka was a significant demonstration of solidarity among gendered groups. This reticence generally shows a lack of confidence in their own empowerment and influence in public discourse.

The marginalization of trans-gendered groups and of women in this debate demonstrate a wider pattern that precludes unity among gendered groups both within the LGBTI community and between women and LGBTI groups.

⁵¹ Du Toit, C. “Gay marriage legal from today,” in *The Citizen*, 1 December 2006

⁵² Theron, L. “Transgender or Detransgendered in South Africa?” *Gender DynamiX website*, 17 April 2008. Available from: <http://www.genderdynamix.org/content/view/335/204/>

Conclusion

Same-sex marriage an ideal case study for examining the conflicting ideographs and therefore ideological commitments that comprise the gender debate in South Africa. It reveals the complex relationship between allegiances to The Constitution, the ANC, Religion, Culture and being African. The same-sex marriage debate discloses the different versions of “morality” that frequently deviate from constitutional definitions and codes of practice.

The Zapiro cartoon below aptly portrays this:



In his same controversial column which essentially compares same-sex marriage to bestiality, Jon Qwelane suggests that “some day a bunch of politicians will muster the balls to rewrite the Constitution.” This is because it does not always reflect the persuasions of “the majority.” Michael Trapido referred to Qwelane as “a superstar of the media...he keeps hitting a nerve — because he is saying what needs to be said.”⁵³

The greatest challenge to gender transformation in South Africa is that it is intertwined with struggles of power and identity which dominate public discourse. South Africa needs to recognise that it is fraught with paradoxes and contradictions, which is indeed part of the beauty of its diversity. Its success in addressing gender inequality lies within its ability to reappropriate and redefine cherished ideographs in more inclusive terms. This is a process that will involve both compromise and the refusal

⁵³ Trapido, M. “Bullard? Qwelane? I’d hire them like a shot” in *Mail and Guardian Online*. Available from: <http://www.thoughtleader.co.za/traps/2008/04/18/bullard-qwelane-id-hire-them-like-a-shot/>

to remain imprisoned by a discriminatory past.

2.32 Data

Articles

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SUNDAY SUN

Sunday 20 July 2008

Oh dear, here we go yet again. The Anglican Church is heading for a split in its ranks, and homosexuals are the reason. The church faces the first real schism since the day Henry VIII walked angrily out of the Catholic community to lead his own faction, because Rome would not sanction his marriage to Anne Boleyn, his brother's widow.

This time some leftists among the Anglican Communion want not only more homosexuals ordained as bishops, but women as well.

The real problem, as I see it, is the rapid degradation of values and traditions by the so-called liberal influences of nowadays; you regularly see men kissing other men in public, walking holding hands and shamelessly flaunting what are misleadingly termed their "lifestyle" and "sexual preferences".

There could be a few things I could take issue with Zimbabwean President Robert Mugabe, but his unflinching and unapologetic stance over homosexuals is definitely not among those.

Why, only this very month you'd better believe this - a man, in a homosexual relationship with another man, gave birth to a child!

At least the so-called husband in that relationship hit the jackpot, making me wonder what it is these people have against the natural order of things.

And by the way, please tell the Human Rights Commission that I totally refuse to withdraw or apologise for my views.

I will write no letters to the commission either, explaining my thoughts.

Trouble in the Anglican Communion began when the Episcopalian fraternity in America (where else?) decided to ordain a homosexual as bishop of the flock.

Here in South Africa we had a senior officer of the church in Cape Town parading his "gay lifestyle" openly.

The 10-yearly Lambeth Conference in England - the gathering is the world "synod" of the church - will deliberate the delicate matter of women and homosexual bishops, among other things.

Homosexuals and their backers will call me names,

Qwelane

WHAT'S JON GOT TO SAY THIS WEEK?

Call me names, but gay is NOT okay...



printable and not, for stating as I have always done my serious reservations about their "lifestyle and sexual preferences", but quite frankly I don't give a damn: wrong is wrong!

I do pray that some day a bunch of politicians with their heads affixed firmly to their necks will muster the balls to rewrite the constitution of this country, to excise those sections which give li-

cence to men "marrying" other men, and ditto women. Otherwise, at this rate, how soon before some idiot demands to "marry" an animal, and argues that this constitution "allows" it?

Some day a bunch of politicians will muster the balls to rewrite the constitution...

Now hear THIS! BRICKZ, YOU MUST FIRST SAVE YOURSELF

I want to utter a word or two about this Brickz boy. In my language we say, "Kgomgo go tsooswa yeo e itsoosago". So Brickz must first help himself, then seek further help. He is doing nothing to help himself. People like DJ Cleo tried, but still he is doing nothing. He's digging his own grave. Drugs do kill, Brickz. You can't tell people you don't have money to attend rehab when you have been making money and eating it like pea-



nuts. You will forget you were once a celebrity if you are not careful. Don't get carried away - as long as you know that you need help, and fast, then you know that you have a problem. The earlier you live like a real human being, the better. Young boys and girls look up to you as a role model. So if you do drugs, what are you teaching them? **Nchito Madutuni Cape Town**

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Gays and lesbians now 'separate but equal'

Pierre De Vos

Published on *Mail and Guardian Online*, 17 September 2006

One of the most popular, and ridiculous, arguments put forward to justify Apartheid, was that it provided "for separate but equal" opportunities and was therefore fair and just.

We know, of course, that this was never the case. Not only were opportunities and amenities unequal, but the policy was based on the assumption that black people were "inferior", "impure" or "dirty" and that segregation was necessary to "protect" whites from being "contaminated" by them.

So it is sad and surprising that an ANC Cabinet has approved legislative proposals providing for "civil unions" between same-sex partners that replicate this bankrupt logic. The Civil Unions Bill purports to give effect to a decision by the Constitutional Court ordering an extension of marriage to same-sex couples; in effect it denies them that right.

In *The Minister of Home Affairs v Fourie*, the court was asked to decide on the Constitutionality of South Africa's marriage laws. In his judgment, Judge Albie Sachs refers to the 1960 case of the *State v Pitje*, where the appellant, a black candidate attorney, occupied a place at a table in court that was reserved for "European practitioners". The Appeal Court upheld Pitje's conviction for contempt of court as it was "clear that a practitioner would in every way be as well seated at the one table as at the other, and that he could not possibly be hampered in the slightest in the conduct of his case by having to use a particular table". This approach, Sachs said, "is unthinkable in our Constitutional democracy".

But it is exactly the approach Cabinet has endorsed.

The Bill creates a separate institution for same-sex couples -- a civil partnership -- which purports to bestow the same legal rights on same-sex civil partners as on heterosexual married couples. There are, however, three ways in which the civil partnership will differ from traditional marriage: it will not be called a marriage (except at the ceremony if the partners so choose); marriage officers will have the right to refuse to solemnise it; and it will only be open to same-sex couples.

Mindful of the prejudice that many voters feel against gay men and lesbians, the drafters of the Bill attempted to create a "separate but equal" marriage regime that would protect "real marriage" from "contamination" and "defilement" by homosexuals, while pretending to provide us with equal marriage rights. This move not only fails to respect the dignity of gay men and lesbians, it contradicts the

instructions of the Constitutional Court.

In his judgement Sachs emphasised the fact that both tangible legal consequences and intangible benefits flow from the act of entering a marriage and confirmed that it would "not be sufficient for Parliament merely to deal with the practical consequences" of the exclusion of same-sex couples from marriage. Such a law, said Sachs "would also have to accord to same-sex couples a public and private status equal to that which heterosexual couples achieve from being married."

Separate but equal was not good enough because it "served as a threadbare cloak for covering distaste for or repudiation by those in power of the group subjected to discrimination".

The Bill does not heed these words. By calling the union of same-sex couples a "civil partnership", the Bill creates a second-class form of legal recognition for these relationships. The concept of marriage has symbolic, emotional and political power in our culture that gives it a special status. By refusing same-sex couples the right to enter into an institution called "marriage", the Bill deprives them of the right to access the status associated with the term "marriage".

It is also problematic that civil partnerships are created exclusively for same-sex couples. This is insulting for those of us who might want to marry a member of our own sex. The Constitutional Court warned that creating a special institution for same-sex couples would send the signal that bringing same-sex couples under the umbrella of marriage law would taint those already within its protection. The Bill effectively endorses the view that homosexuals are somehow depraved, impure and tainted and that "pure" heterosexual marriage must be protected from this abomination.

Gay men and lesbians still experience tremendous oppression, marginalisation and vilification in our society. Some are still raped, assaulted or killed because of their sexual orientation. In this context, the creation of Apartheid-style, separate civil partnerships for same-sex couples merely confirms that the state does not consider their relationships worthy of equal concern and respect. The ultimate test of this truth is to ask: if the Bill is passed how many heterosexual couples would jealously yearn to enter into civil partnerships rather than to get married?

In short, a doctrine of "separate but equal" was deeply humiliating and insulting when applied to black South Africans. It remains humiliating and insulting (and now also unconstitutional) when applied to homosexuals.

The draft Bill clearly fails to comply with the judgment and if Cabinet knew this, the decision to approve the Bill would constitute a blatant disregard for the highest court in the land. Was it misinformed about the actual requirements for new legislation as set out by the Constitutional Court?

If the Bill is not scrapped or amended by Parliament, its passing will constitute a direct challenge to the Constitutional Court. It will also send a signal that despite the provisions of the Constitution Parliament views homosexuals as less worthy of respect and dignity than other members of society. Hopefully, when Parliament is provided with the facts MPs will do the right thing and will refuse to pass this homophobic piece of legislation in its current form.

Pierre de Vos is professor of law at the University of the Western Cape. He writes in his personal capacity

Available from: <http://www.mg.co.za/article/2006-09-17-gays-and-lesbians-now-separate-but-equal>

Gay marriage is immoral, say traditional leaders

Luluamale Feni

Published in the *Daily Dispatch*

Traditional leaders are outraged at gay marriage and some have vowed not to allocate land to couples married in terms of the Civil Unions Act.

Countrywide, leaders say they are “prepared to go to court rather than allow a situation whereby African norms and values are allowed to go down the drain”.

From the outset there have been questions about how gay marriage would fit in with African tradition, which includes the custom of paying lobola for a bride.

Eastern Cape House of Traditional Leaders chairperson Chief Ngangomhlaba Matanzima and Icamagu director Dr Nokuzola Mndende agreed that in the African context, marriage “is a union between a man and a woman and a bond between the two families or clans (for the purpose of) procreation”.

“Man-to-man marriage or woman-to-woman marriage is totally un-African, not in line with our norms and values and not applicable to African society,” said Matanzima.

Mndende added: “Homosexual marriage is immoral and will destroy the nation and create an abnormal society.”

Who would be the husband and the wife – roles that are an integral part of African custom, she said.

“Such a marriage is therefore not recognisable. A marriage is supposed to involve a man and a woman,

their families, clans and the entire community,” said Mndende.

Congress of Traditional Leaders of South Africa president Chief Patekile Holomisa, and the organisation’s general secretary and provincial chairperson Chief Mwelo Nonkonyana both described gay marriages as a form of “witchcraft”.

“We cannot recognise witchcraft. Traditional leaders will revolt against this law and the government will have to bear the consequences.

“This clashes with our culture,” an angry Holomisa told the Daily Dispatch yesterday.

“Lobola is based on heterosexual marriage. We will not permit the custom of paying lobola to be incorporated into same-sex marriages.

“This will cause a big dilemma. We don’t want to be associated with this witchcraft.”

Nonkonyana was equally blunt.

“I will never allocate land to witches and wizards (gay married couples) in my area of jurisdiction. There is no place on my forefathers’ land for those who will create a society of confused people,” he said, adding that gay marriages would provoke “the wrath of the ancestors”.

Traditional leaders would also appeal to church ministers in rural areas “not to solemnise such weddings”, he said.

Both Nonkonyana and Holomisa are ANC MPs.

AmaMpondo’s Prince Mlimandlela Ndamase, who is also the national chairperson of Contralesa’s youth wing and the chairperson of the Eastern Cape Youth Commission, agreed that lobola should be protected from influences that were “un-African”.

A young royal who was educated in London, also opposes same-sex marriage.

“Who is to take the responsibilities of a makoti (or wife) as in the African society if two men are married? And who is to take the responsibilities of a husband if two women are married? It just does not fit in our way of life,” she said.

National House of Traditional Leaders deputy chairperson Moerene Mathealira Mopeli said traditional leaders would only recognise heterosexual marriages.

“We will not allocate (land) to gay couples.

“It is not that we are discriminating against gay people, they are also humans and we can give them land (as individuals), but if the application for land is based on marriage, we cannot grant it – that marriage is not part of our culture.”

South African Commission for Cultural, Religious and Linguistic Communities chairperson Dr Mongezi Guma said cultural practices evolved due to external pressure.

“The Constitution forces us to re-examine the way we have been conducting our cultural practices.”

Available from: <http://www.dispatch.co.za/2006/12/13/Easterncape/cgay.html>

ANC MPs to vote on Same-Sex Union Bill

Christelle Terreblanche and Angela Quintal □

Published in *The Sunday Independent*, 12 November, 2006

It's down to the wire on Tuesday, when ANC MPs opposed to same-sex marriage must choose between their convictions and the official party line, risking possible disciplinary action. □ □

At a caucus meeting this week, ANC leaders made it clear that the party's MPs would not be allowed a free or conscience vote when the Civil Union Bill is voted on in the national assembly. □

Not since the Termination of Pregnancy Bill, which legalised abortion on demand a decade ago, has a proposed law caused so much turmoil in ruling party ranks, with several MPs openly opposed to it but at the mercy of party discipline. □

Because South Africa does not have a constituency system, MPs are in parliament by virtue of their party. They are not directly elected by voters, so flouting official policy can cost them their seats. □

The free vote concept is foreign to ANC parliamentary culture, and MPs have been ordered to vote in support of the bill, which legalises same-sex marriages in line with last year's Constitutional court ruling. □

An ANC MP who did not wish to be named confirmed this weekend that at the party's weekly caucus its MPs were told they had to toe the line, since the national leadership had expressed itself on the matter. □ □

The ANC's national executive committee recently made it clear that it supported same-sex marriages in line with the Constitution. □ It is still not clear whether the ANC will consider exempting individual MPs from voting, to accommodate cultural diversity and conscientious objections. □

In 1996 the ANC turned a blind eye to some of its MPs who absented themselves on conscientious grounds from the vote on the abortion bill. Among them was Smangaliso Mkhathshwa, the deputy education minister and a Catholic priest. □

ANC MPs in the chamber on Tuesday will, however, not be allowed to vote against the official party line for reasons of conscience. □ □

Vytjie Mentor, the ANC's caucus chairperson, said there was "no such thing as a free vote or a vote of conscience. Come Tuesday, I expect all ANC members to vote and the ANC expects its members to vote in favour of the bill.□□

"How do you give someone permission to discriminate in the name of the ANC? How do you allow for someone to vote against the Constitution and the policies of the ANC, which is anti-discrimination? The ANC policy is, we will not discriminate against people because of their sexual orientation," Mentor said.□□

Among those vehemently opposed to same-sex marriages and calling instead for a Constitutional change are traditional leaders, some of whom are ANC MPs. They include Patekile Holomisa, the president of the Congress of Traditional Leaders of SA (Contralesa), who said voting on the bill was a real dilemma for those opposed to same-sex marriages.□

"There will be a lot of anguish in the hearts and minds of those MPs who are required to vote against their convictions," Holomisa said.□□He said he would be present for the vote, but he declined to make any further comment. Writing in Business Day in his personal capacity, he was among those who called for MPs of all parties to be given a free or conscience vote.□□

Mwelo Nonkonyana, Contralesa's general secretary, also an ANC MP, has issued a statement condemning the decision by the national assembly's home affairs committee to approve the bill.□□Expressing "disquiet, disappointment and dismay", Contralesa said the decision belied the overwhelming rejection in South Africa of same-sex marriage.□□

Nonkonyana told The Sunday Independent he was "fundamentally opposed" to the bill. "I don't see myself voting," he said. "I might rather be disciplined than vote [in favour of the bill]." But he hoped to persuade the ANC's leadership tomorrow to respect his "right to conscience", and hinted that he would not be alone.□

At one point in the stormy passage of the same-sex marriage bill the ANC acknowledged that more MPs opposed it than supported it.□□

The Constitutional court has given parliament until December 1 to bring the marriages law in line with the Constitution.□

The National Council of Provinces must still process and vote on the bill, and the president must consider whether it is Constitutional, and then sign it into law.□□

Rather than amend the marriage law, the government opted for the Civil Union Bill to manage fallout from legalising same-sex marriages. □Among the bigger parties, only the Democratic Alliance will allow individual MPs conscience votes. □

Civil Union Bill a 'slap in the face'

Irene Kuppan, Rivonia Naidu and Angela Quintal □ □

Published in *The Daily News* on 14 November, 2006

Religious leaders have slammed today's expected passing of the Civil Union Bill as a "slap in the face of democracy". □ □

They said, despite overwhelming public opposition to the bill, it was still being pushed through parliament. □

The Civil Union Bill will legalise same-sex unions in line with last year's Constitutional Court ruling which gave parliament until December 1 to bring the Marriage Act in line with the rights that the country's Constitution protects and preserves. □ □

The bill will co-exist with the Marriage Act, and allows same-sex and heterosexual couples to have a civil partnership or marry. □ □

Cardinal Wilfrid Napier, president of the South African Catholic Bishop's Conference, said that while the Catholic Church had done as much as it could to oppose the Civil Union Bill, it would be disappointed when it was passed. □ □

"The impression we got is that there is overwhelming opposition to this bill from people throughout South Africa. If the bill is passed then it means that the overwhelming voice of the people of the country is not being taken into account, in which case, it would be a great disappointment for our democracy," said Napier. □ □

Given the controversy and unhappiness from within the ruling party about same-sex marriages, the ANC has called a three line whip for the vote on Tuesday. This makes it compulsory for all cabinet ministers, deputies and ruling MPs to attend the sitting and vote in favour of the bill. □ □

Last minute efforts will be made on Tuesday by some ANC MPs, who are traditional leaders, for permission to be allowed to abstain during the vote. □ □

Unlike the ANC, the DA has allowed its MPs a free vote, while other opposition parties, including the IFP, ACDP and ID, will vote against, albeit for different reasons.

□ Napier said that Catholic priests would not preside over same-sex marriages because they were not empowered by the church to do so. □ □

"The Catholic Church does not make provision for anything other than a marriage between a man woman and even then, only under strict conditions. Civil unions do not fall under the law of the church," he said. □ □

Secretary General of the Jamiat-ul-Ulama (Council of Muslim Theologians) in KZN, Mufti Zubair Bayat, said that according to the Islamic faith, marriage is defined as a union between a man and woman. "It (same-sex unions) leads to the disintegration of family life and spawns abnormal sexual behaviour which corrupts society. It is alarming that legislation to recognise these 'marriages' is being promulgated," he said.

He said the council had lodged a protest at the time of the Constitutional Court ruling and would continue to do so. However, the Joint Working Group (JWG), a national network of 17 lesbian, gay, bisexual and transgender (LGBT) organisations, praised MPs for their commitment to ensuring that same-sex marriages would be legalised, but expressed concern that at least one aspect of the Bill was unconstitutional.

It said, unlike earlier versions of the Civil Union Bill, the proposed bill would not allow a separate category for lesbian and gay people exclusively, but rather broadened the institution of marriage to include same-sex couples. While welcoming the spirit of the proposed law, the JWG still believed that there was no need for a separate piece of legislation existing alongside the current Marriage Act. "A parallel administrative system for the two statutes only increases the burden on State machinery. In addition, it continues to reinforce the notion that there is a need to separate same-sex couples from other marriage forms." The JWG said it believed that at least one section in the Civil Union Bill was unconstitutional and vulnerable to legal challenge, namely the one allowing a civil marriage officer to object to marrying lesbian and gay people on the grounds of conscience.

"We have no objection to religious denominations only marrying people according to the dictates of their faith. "We do object strongly to allowing civil marriage officers to decide who they will marry," said Melanie Judge, programme manager of an organisation in the JWG. The JWG said the process of deliberation surrounding the Civil Union Bill had shown that many South Africans harboured deep prejudice and intolerance against lesbian and gay people.

Available from:

www.iol.co.za/index?click_id=13&set_id=1&art_id=vn20061114102125576C695511

Extract from “*Transgender or detransgendered in Africa?*” by Liesl Theron, 17 April 2008.

Civil Union Bill and the exclusion of transgenders

Another liberal landmark for South African LGBT communities is the go ahead stamp of approval for the Civil Union Bill. The LGBT organisations and individuals rejoiced and celebrated upon hearing the news, but a very specific proportion of people were left out, and still have to experience discrimination (process) to legally change their sex at the Department of Home Affairs and is still married to their partner, they have to get divorced. This small “technical” point was nowhere addressed in so careful drafting of the Civil Union Bill. Between the old Marriage act and the new civil union bill there is no provision for the transperson who was/is married under the marriage act and who is transitioning or has transitioned. Although the couple would be recognised as a same sex couple – they first have to divorce

Available from: www.genderdynamix.org/content/view/335/204/

When God says, 'Yes, maybe I do'

Shaun De Waal

Published on *Mail and Guardian Online*, 21 March, 2008

Gay and lesbian people can now get married -- and in church, *no gal*. It wasn't an easy victory; most Christian groups (not to mention Islam) are deeply opposed to same-sex couples tying the knot in the sight of God. And, given the traditional antipathy to homosexuality (in any form) expressed by so many Christians, why would gay people want to get married in a religious ceremony, anyway? The debate is still raging, as recent articles in this paper attest.

I am agnostic on the issue of marriage and atheist on the matter of God, so it has been interesting for me to work on a book that covers some of this terrain. Melanie Judge (who was involved in the campaign that finally got same-sex marriage legalised), Anthony Manion (of Gay and Lesbian Memory in Action) and I have put together *To Have and to Hold: The Making of Same-Sex Marriage in South Africa*, which will be launched in May.

Because religious views were so strongly expressed during the campaign for and parliamentary hearings on the Civil Union Bill, we made a point of commissioning essays on the issue and interviewing people who chose to make their gay or lesbian weddings religious ones.

In December 2005, the Constitutional Court ruled that the Marriage Act of 1961 was discriminatory towards gay and lesbian couples who wanted the full rights of marriage. The court gave Parliament a year to remedy the injustice, and on November 30 2006, a day before the court's deadline struck, the Civil Union Act was signed into law. Lesbian and gay couples could now marry and if their religious denomination approved (and had applied under the Act), they could marry in the sight of God too.

But the God aspect was by no means uncontentious. Inside and outside Parliament, argument raged, and much of it had to do with the relation of same-sex marriage and religion. The Reverend Kenneth Meshoe of the African Christian Democratic Party led a solemn protest against the proposed Bill, and melodramatically told Parliament that the passing of the Bill would be "the saddest day of the 12 years of our democratic Parliament".

The Southern African Catholic Bishops Conference told Parliament: "Marriage of its very nature is ordained to the begetting and rearing of children; homosexual acts divorce the sexual act from

procreation and the homosexual couple cannot cooperate with God to give new life." Procreation is a big issue (for African traditionalists, who also opposed the Bill), but is that all marriage is for?

Intersexed activist Sally Gross points out in our book that the Book of Genesis in the Bible has two accounts of God's creation of Adam and Eve, and the second (though older historically) gives God's reason for making Eve clearly the provision of companionship for Adam. "It is not good that a person should be alone," God says, and proceeds to create Eve.

But procreation wasn't the only issue in the debate. The Marriage Alliance, a grouping of conservative Christian groups, trumpeted in Parliament: "The adoption of same-sex marriage will radically redefine marriage and family, will have far-reaching social consequences for generations to come, and will contribute to the social and moral confusion and instability we already experience in our society."

They, and others, went on to call for a constitutional amendment that would "protect" marriage by defining it, in the Constitution, as an exclusively heterosexual institution.

Of religious bodies, only the South African Council of Churches (perhaps at odds with some of its members) came out in favour of same-sex marriage in the parliamentary hearings. In the year-and-a-half since the Act was signed into law, none of the large denominations have applied to conduct marriages under the Act. The Anglicans are still debating it (and may do forever), but others seem entirely uninterested. Smaller churches such as the Metropolitan Community Church group have, however, enthusiastically embraced it -- they have conducted commitment ceremonies for years, but now it's full-scale marriage. You can even wear white.

Certainly, spiritually inclined gay and lesbian people have made a point of having religious ceremonies, even if they then had to have another, legal one as well.

Hompi and Charles Januarie had two weddings, a religious and a civil one, about four years apart: they wanted to make sure they were married both in the sight of God and under the law. And, for them, the first was actually the most important and the second simply a legal confirmation -- the state had finally caught up with God.

Margaret Auerbach and Liebe Kellen had the first Jewish same-sex marriage under the Civil Union Act, and it meant a lot to them to invoke the religious and cultural tradition in which they grew up -- even if they had to change key parts of the ceremony (such as the ketubah or traditional marriage contract) to make them less sexist. Their *chupah* (canopy) was dyed in the colours of the rainbow flag.

When it came to smashing a glass underfoot, traditionally in remembrance of the destruction of the Temple in Jerusalem, said Kellen, "for us the breaking was also a reminder that in our time of joy we should still remember the gay and lesbian people who are experiencing the oppression of the closet".

Marriage is an odd mixture of personal commitment and public show; of property rights and romance; of civic obligation and religious avowal.

It's clear that it is important for gay and lesbian people in this country not only to achieve equality under the law, but also to be able to perform traditional rites within the spaces of the religions that are also, under our Constitution, guaranteed their freedom.

Pastor Janine Preesman, who conducted the first legal Christian same-sex marriage after the Act was promulgated, describes the event: "The words that I used were: 'For the very first time ever in a religious ceremony and in a church in *South Africa*, I now declare you legally married.' There was dead silence and then the congregation exploded. People were clapping, shouting, whistling, and they were laughing and hugging each other. People were crying, and I think I was one of them."

Available from: <http://www.mg.co.za/article/2008-03-21-when-god-says-yes-maybe-i-do>

Marriage for all
Jean Meiring

Published on *Mail and Guardian Online*, 25 October 2006

In a moderately conservative Afrikaans environment I unwittingly grew up with the benefit of a pair of formidable gay role models. Both senior academics at Stellenbosch, they were old friends of my grandparents and were regulars at our family soirées. Most years on New Year's Day we'd all pile into the car and visit them at their beach house in Hermanus.

They were colourful, witty and interminably jolly. And, with the wisdom of hindsight, I now realise they were quietly devoted to each other. When one of them passed away a few years ago, I couldn't attend the funeral, but through reports I got a sense of it.

It was surely the surviving partner's choice to maintain the unstated, implied nature of their union even at the 12th hour, but in my mind's eye I couldn't help conjuring up a scene where the NG dominee goes on an off-the-cuff frolic of his own, calling all those present to celebrate loudly and joyously the truly

extraordinary relationship they had shared for so many decades.

In an age where marriage is the exception and divorce the norm, it seems deeply disingenuous and cynical for Christian fundamentalists to prognosticate stridently that the proposed legalisation of gay marriage will sound the death knell for this institution. No less cynical, of course, than those Christians brandishing posters emblazoned with the slogan "Marriage = 1 Man+ 1 Woman" while marching in step with traditionalist Muslims, for whom marriage often means one man and several women.

It doesn't help to argue with that type of Christian or Muslim. In the case of the Bible-belt Christians, they're fond of firing off supposedly damning verses from the Book, entirely forgetting historical and cultural context. And, most startlingly, forgetting the values personified by the figure of Jesus Christ, who associated most closely with the outcasts of society.

But in a secular democracy such as ours, it's not the representatives of organised religion who should have the casting vote in this debate. Their own freedoms -- to worship as they wish, within the confines of the law -- are protected by our Constitution. They have no place denying gay South Africans the right to equality and dignity promised in the Constitution.

And that's, in essence, what it's all about, plain and simple: the equality of all human beings, and the right we all have to be treated with dignity.

Which makes Jacob Zuma's reported comments at a recent Zulu rally all the more distressing. Of all people, he who struggled so valiantly against the inhumanity of Apartheid should surely be in the vanguard of those speaking out for the rights of gays.

From every podium he bestrides, he should proclaim loudly and clearly: As much justification as there once was for Afrikaners to defend racism as part of their culture, just so much excuse is there today for Zulus -- or anyone else -- to flaunt homophobia as a cultural value worth championing. My people, he should be trumpeting, we didn't uproot Apartheid to plant another tree of inequality in its stead.

For the gay couple whom I knew as a kid, the right to marry never will be. It would, however, be a bitter irony if in 2006 South African gays were relegated to a second-class, discriminatory regime of civil unions.

I can already picture the park benches, sprayed with a twist on that hoary old prohibition: Straights only.

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Available from: <http://www.mg.co.za/article/2006-10-25-marriage-for-all>

Being gay and Zulu

Niren Tolsi

Published on *Mail and Guardian Online*, 16 October 2006

‘He called me over to his house on my way back from the shop and asked me: ‘Do you think you can run faster than me?’ I didn’t answer and started walking away, then he grabbed me and pulled me inside and forced himself on me.’ Khensani Mbokazi, a 23-year-old pre-op transsexual currently with a male body, was raped at 15 by her father’s friend. She was too scared to tell her parents of the rape, for fear of their response.

A year later, Khensani’s father kicked her out of the family home: “My father heard about it because the whole Umlazi community were talking about it. They were saying that I seduced [my rapist] because I was so desperate for a man. My father said that when I was born he thought his son was a real Zulu man who would one day bring a wife into his home. I didn’t want to hurt my family, so I left,” says Mbokazi.

“Messaging” on gay issues, especially from Zulu leaders, is hurting young Zulus who are both in and out of the closet, believes Nonhlanhla Mkhize, manager of the Durban Lesbian and Gay Community and Health Centre.

The centre, which counsels people who are uncertain about their sexual orientation, is the only one of its kind in KwaZulu-Natal. It sees more than 200 people a week, mainly Zulu men between the ages of 12 and 35, but some as old as 65.

Mkhize says utterances like those of ANC deputy president Jacob Zuma at Heritage Day celebrations in KwaDukuza were affecting the psychology of gay Zulu-speakers. Zuma said that when he was growing up “an unqingili [gay man] would not have stood in front of me. I would knock him out.”

Such statements fuel intolerance with sometimes violent repercussions, including hate crimes such as rape.

Between 2001 and 2003, says Mkhize, the centre identified 65 cases of rape, 23 of which were hate

crimes. In such cases “the rapist or rapists were explicit about their motives, saying the gay person was raped to cure them, to make them more of a man or a woman”.

Mbokazi believes her rape, at 15, was a hate crime. “He didn’t want to make love to me, he wanted to prove that he could change me and that I shouldn’t act like this because this sort of thing will keep happening to me,” she said.

Zuma’s homophobic sentiments follow a string of statements by Zulu leaders based on the alleged nature of Zulu culture and the idea that homosexuality is an alien practice imported by European colonialists.

In his address at the annual reed dance in Nongoma last year, King Goodwill Zwelithini referred to homosexuality as a “problem” and said: “The Zulu nation will not be this big, with millions of people, if there was the problem of gay people that we have today. This new behaviour is quickly becoming a threat in our nation because it encourages people not to have proper families that have children.

“We have a huge responsibility as a nation to teach our children to distance themselves from homosexuality.”

In 2001, eThekweni (Durban) mayor, Obed Mlaba, said in the context of tourism competition between eThekweni and Cape Town: “We should stop comparing ourselves to cities like Cape Town. In fact, Cape Town can stay with its moffies and its gays.”

Behind the Mask’s Wendy Landau, who researches human rights violations against gays and lesbians in sub-Saharan Africa, says it is “common practice” for government officials, politicians and church people in Southern Africa to voice homophobic sentiments, adding: “The homophobia spewed by the sub-Saharan media is also unbelievable.”

Vasu Reddy, chief research specialist at the Human Sciences Research Council’s gender and development unit, remarked that Zuma’s utterances were “tantamount to hate speech” and that the notion of gay identity being un-African, spouted by many political leaders, was aimed at denying the fact of homosexuality among Africans.

“Essentialising the African experience to the exclusion of other practices is really about underlying homophobia and disrespect for people’s identity,” Reddy said.

Mkhize also emphasised the assault on people's struggle to find themselves: "It becomes difficult for young people -- those who are out and those still trying to identify who they are -- to be proud of who they are.

"When the king, considered the custodian of Zulu culture, says that being gay is not part of Zulu culture, people start to ask: 'Maybe I am wrong to believe I'm gay? Am I confused? Maybe being gay is an import?' These questions can have a devastating effect on someone who believes they have settled their identity problems."

According to a survey by NGO Out and the Unisa Centre for Applied Psychology, Levels of Empowerment among Lesbian, Gay, Bisexual and Transgender People in KwaZulu-Natal, the less comfortable people are with their sexual identity, the more likely they are to suffer depression, low self-esteem, drug and alcohol abuse and suicidal thinking. It found that black gays and lesbians in KwaZulu-Natal reported the highest frequency of "always" or "often" thinking about suicide.

The survey found that religious and cultural pressures, as well as verbal, physical and sexual abuse, domestic violence and attacks on property all had an impact on how comfortable uncloseted gays were with their sexual orientation and identity.

Cindi Buthelezi (not her real name), a 29-year-old dancer who grew up in Mkwalume on the south coast, says that coming out to her Christian family was extremely difficult because of religious and cultural prejudice. "Because of our culture and our religion, a lot of people are not aware, or don't have knowledge, of what it means to be a lesbian. I am scared of my family and their reaction."

In her family of 11 siblings, only one sister and her son knew of her sexual leanings.

Said 21-year old student Mdu Ntuli, who grew up in the Durban township of Umlazi: "Zulu society doesn't want to recognise gays. We are on the margins of society and sometimes to survive we have to act straight."

Ntuli says he is openly gay, but affects being straight whenever he returns to the township. Being gay is more acceptable in Durban but he still encounters homophobia in the city. He remembers walking past a taxi rank with his lover, "wearing these really skimpy, sexy shirts", and being called "istabane -- a horrible, horrible word for gays".

Mkhize recounts how a lesbian couple tried to register an adopted child with the department of home affairs: “The response from officials was: ‘Are you crazy? How can two women be the parents of this child?’

“That is how we have been socialised and the new legal frameworks will not be enough, unless we tackle perceptions in society,” she said.

Zuma may have alienated gay voters, but Reddy is certain he has appealed to “the paranoias and anxieties” of many South Africans, especially considering the vitriol emerging from public hearings on the Civil Unions Bill.

And, while the Constitution entrenches freedom of sexual orientation, its impact on attitudes seems to have been minimal. “Rights are wonderful; we have wonderful jurisprudence and legal protection, but those amount to nothing if they don’t come with justice,” says Reddy.

The Out study found that 49% of respondents believed public perceptions of lesbian and gay people had not changed since the Constitution took effect, with 35% unsure.

Only 31% of respondents felt comfortable with being open about their sexual orientation because the Constitution protected their rights, and only 25% felt their Constitutional rights were being put into practice.

“Constitutional education hasn’t really been carried out in this country,” says Mkhize. “We’ve done work in rural KwaZulu-Natal, and you can go to places like Ulundi and talk about human rights, but there the Constitution is a government document -- the king’s rule is considered supreme,” she said.

She insisted that the problem was not Zulu culture in the narrow way it had been interpreted -- and manipulated for political purposes.

Available from: <http://www.mg.co.za/article/2006-10-16-being-gay-and-zulu>

Gay marriages are 'ungodly', says bishop

Waghied Misbach

The South African Catholic Bishops' Conference has come out against gay and lesbian marriages, saying they are ungodly and against the natural law of procreation.

Yesterday the leader of the million-strong Catholic church in South Africa, Cardinal Wilfred Napier, told parliament: "Homosexuality goes against the natural law and is intrinsically disordered.

"It undermines the foundation of society and goes against the common good."

Napier was speaking at the public hearings held in parliament



NO WAY: Wilfred Napier

on the controversial Civil Union Bill, which will allow gays and lesbians to get married.

He said that gay marriages undermined the traditional family unit headed by a husband and a wife and affected the rights of children.

Napier said the position of the Roman Catholic church on homosexuality had been sanctioned by the late pope, John Paul II, and was supported by the present pontiff, Pope Benedict XVI.

However, though the Catholic church opposed homosexuality, it did not condone the abuse and discrimination of gays and lesbians, Napier said.

20 NEWS

The Citizen Friday 1 December 2006

Gay marriage legal from today

by CHRISTELLE DU TOIT

IT'S official: gay marriages are now legal in South Africa.

Deputy President Phumzile Mlambo-Ngcuka signed into law the controversial Civil Unions Bill yesterday, in her capacity as acting President.

South Africa is the first country in Africa to allow homosexual couples to get married legally.

The new law followed an order from the Constitutional Court that marriage legislation had to be changed to recognise the rights of homosexuals.

It creates legal mechanisms for gay people to enter into legal, civil unions and enjoy the same rights and privileges as heterosexuals.

Gay-rights bodies are ecstatic. The lesbian, gay, bisexual and transgender organisation OUT's Fikile Vilakazi said they welcomed the legislation for the equality and protection it afforded.

But Vilakazi said there was a lot more work to be done.

"We are concerned that it is still a separate piece of legislation and would like to have seen its scope being broadened."

OUT was now meeting ministers, as many gays wanted to get married in December, and religious implications had to be ironed out.

Gender Dynamix's Liesl Theron said the legislation was "a great stride forward. Trans-gendered people are still left behind to some degree, but at least here we have the first step to equality for all."

The ANC's Smuts Ngonyama thanked all those who participated in the debate.

The ANC said it was important for the development of democracy

"that space is created for a broad range of views to be heard".

DA spokesman for Home Affairs Sandy Kalyan welcomed the legislation, but raised concerns over its practicality.

"The Minister has yet to tell us how registration is going to happen, and whether computer programmes have been upgraded to allow same-sex marriage registrations."

Businesses are already offering "Pink Wedding" packages for gay couples who want to tie the knot, with either two brides or two

grooms on the wedding cake.

Not everyone welcomed the move. The African Christian Democratic Party's Kenneth Meshoe was outspoken.

He called the Bill "one of the most undemocratic pieces of legislation ever passed in South Africa," and said up to 98% of the population was opposed to it.

The IFP also denounced the Bill, saying they have always advocated family values. Inka Mars, party spokesman on Home Affairs, said the IFP "rejected any notion of same-sex unions or marriages".

No place for sexual apartheid in new dispensation

PATEKILE Holomisa. We need to talk straight about same-sex marriage (September 1) is rather annoyed at our founding fathers for not clarifying that homophobia was intended to be an exception to the anti-discrimination clauses. George Bush is not alone! They both wish to tamper with national constitutions to outlaw same-sex marriage.

Holomisa selectively rides on the crest of another constitutional clause, that protecting freedom of expression, to flaunt irrational and offensive views with gay abandon. Though much of his column's hatred speaks for itself, let's consider the precise respects in which his analysis is mistaken.

First, he claims the Constitutional Assembly "never contemplated that the provision prohibiting unfair discrimination against homosexuals would ever be construed as endorsing same-sex marriage". Hence the court's judgment in favour of same-sex marriage is "undesirable and unintended".

This is patently wrong in three ways. First, at the various constitutional talks, the African National Congress dele-

gates were particularly vociferous in their support of gay people. This is what enabled ANC leaders such as Simon Nkomo to live openly as a gay person. This is a liberal tradition predating the new constitution. Only smaller parties, such as the African Christian Democratic Party, have consistently been against gay rights.

So the intention of the Constitutional Assembly was most certainly to empower the Constitutional Court to help dismantle formal and institutional forms of discrimination against gays, most obviously those still on the statute books, such as the Marriage Act. It is discriminatory not to effect these legislative changes, which Holomisa fails to recognise.

Second, the Constitutional Assembly itself agreed that the standard for evaluating the constitutionality of laws would be the founding values of the constitution, the explicit clauses within the body of the constitution and the "spirit" of the constitution. The court's judgment did not just emanate from the equality clause as Holomisa wrongly assumes. Its decision gives effect to all of the founding values of



EUSEBIUS MCKAISER

the constitution — dignity, equality and freedom — as well as the general norms of an open and democratic society. The Marriage Act offends against the heart and soul of the constitution, not just section nine which deals with equality.

Third, the Constitutional Assembly had the authority to add caveats to sections of the constitution that might result in "undesirable" and "unintended" consequences. It was obvious that gay rights to adoption and marriage would be cases that would be brought

before the new Constitutional Court. If the Constitutional Assembly wished to nip an "undesirable" consequence in the bud, it could have precluded gay persons from being able to get married. It chose not to. This is evidence of a remarkably progressive attitude during tense rounds of negotiation. It was no doubt in anticipation of remaining prejudices, like Holomisa's homophobia, coming out of the closet once new political battles are fought by the likes of him and other restless comrades.

But his analysis gets more shocking. He states, "I do not even want to begin to outline the basis on which I assert that it is wrong to legalise same-sex marriages. There are things in life which do not merit justification for them to be valid." And, "Contradictory as it may sound, I pronounce no judgment on homosexuality, because I do not understand it. At the same time, it is not something that must be promoted or encouraged." He concludes, through a leap in logic, "For the record, I am not homophobic."

HF Verwoerd, no doubt, would have taken solace in Holomisa's logic to prop up his own preferred brand of dis-

crimination, racism. We can imagine Verwoerd, like Holomisa, shouting with utter confidence, "I do not even want to begin to outline the basis on which I assert that it is wrong to educate black people. There are things in life which do not merit justification for them to be valid. Contradictory as it may sound, I pronounce no judgment on black people, because I do not understand them. At the same time, black people should not be promoted or encouraged. For the record, I am not a racist."

Now, Holomisa, ask yourself why you do not react with the same venom towards your own, internalised homophobia as you would towards such crass racism. There is no difference.

Finally, and predictably, Holomisa labels homosexuality an "oddy" and a "problem" that offends against "nature, culture, religion and common sense, let alone decency". And, of course, there is the lobola argument. The sight of two Xhosa men's families embracing their union, even by way of mutual lobola offerings, is the final straw. He suggests by way of ending, that "the afflicted" should be given a "remedy". What would such a remedy be — garlic

and beetroot while taking a cold shower, or good old aversion therapy from the heyday of the South African Defence Force? It is also vacuous to claim that homosexuality makes no "common sense". It is a sexual orientation that millions of South Africans self-identify with. Whether homosexuality is biologically innate or not is irrelevant — it is, and should be, acceptable, regardless. It is no less "natural" than Holomisa's heterosexual preferences.

Sadly, because of discrimination like that promoted by Holomisa, reinforced by the convenience of making culture immune from criticism, many black gay people are forced to live inauthentic lives as "straight" people to avoid being shunned. It is time we stopped condemning gay Africans to such miserable, secretive lives.

The legislature should build on existing gay rights by endorsing same-sex marriage with open enthusiasm.

There is no place for sexual apartheid in our new dispensation.

■ Mckaiser is a PhD philosophy candidate and Rhodes Scholar at Oxford University.

Business day 6/9/2006

Letters

Traditional leaders do not support gay union

Sibusiso Nkomo

Letter published in *City Press*, 17 December 2005

The National House of Traditional Leaders (NHTL) together with its Provincial Houses met in Hazyview, Mpumalanga, last week to try to embark on a journey of self-discovery through the African Renaissance.

While we respect the judgment of the Constitutional Court regarding same-sex marriages, traditional leaders are disappointed that this immoral practice has been given a lifeline by our courts.

Traditional leaders would like to categorically state that they do not support the legalisation of same-sex marriages. We are of the belief that, based on viewpoints of rural communities, this will cause same-sex married couples to be ostracised and might lead to victimisation and violence.

This kind of marriage does not fulfil the notion of marriage in African culture, as only a man can pay lobola for a woman.

The practice of same-sex marriages is against African beliefs, cultures, customs and traditions, and this in turn goes against the mandate of traditional leaders which is to promote and protect the customs of communities observing a system of customary law.

We are in a process of obtaining the Constitutional Court judgment to ascertain that it does respect the rights of communities observing a system of customary law and consequently we will be making our submission to the relevant authorities about this matter.

Traditional leaders have vowed to make it their mission for the coming five years to campaign against

this wicked, decadent and immoral western practice. □

Available from: http://www.news24.com/City_Press/Letters/0,,186-247_1852351,00.html

South Africans must act now to prevent same-sex marriages

Judy Van Aardt

Letter published in *City Press*, 23 September 2006

We are at a critical crossroads in South African history.

Parliament's decision on same-sex marriages will determine the spiritual direction of our country.

If it agrees, it will be ripping the heart and soul out of our society. It will destroy family values and thumb its nose at the institution of marriage that has been our moral foundation and protection.

When we have something good that has worked effectively for so long, why deliberately destroy it in the name of a politically correct democracy?

If democracy means bowing to the desires of a minority group, then it's no democracy. Parliament should reflect the will of the majority.

If you disagree with same-sex marriages, make your voice heard now before the same-sex advocates bulldoze the issue through Parliament as they did with the abortion bill that the majority rejected.

Fight for your rights like the minority do! Silence means capitulation.

Available from: http://www.news24.com/City_Press/Letters/0,,186-247_2002998,00.html

ANC is turning our country into Sodom, Gomorrah

Lucky Abraham Nkoana

Letter published in *City Press*, 13 January 2007

Beside the immoral termination of pregnancy law, it seems our ANC-led government is prepared to turn our country into Sodom and Gomorrah by also legalising sodomy.

The so-called civil unions bill is the legalising of sodomy. God destroyed Sodom and Gomorrah with fire because of the behaviour of its people and he can also destroy our country because of such laws.

The problem is that our government has fumbled, it has imposed laws against our will and that will damage our relationships and destroy God's law of a natural family.

The ANC-led government will lose supporters nationally and internationally because it passed immoral laws.

Our government should have listened to the concerns of the majority of the people and held a referendum on this highly contentious issue.

That would have been fair, but instead the government has imposed a law which has no support from the people.

South Africans must stand up against immoral laws before it's too late.

Available from: http://www.news24.com/City_Press/Letters/0,,186-247_2054684,00.html

The myth of homosexuality

Dr Motsoko Pheko, MP Pan Africanist Congress

Letter published in *City Press*, 28 May 2005

I am responding to the City Press article of May 22 by Alex Doniach - "South Africa may become one of the few countries in the world to legalise gay marriage, depending on the decision of the Constitutional Court". First of all, there are no four million homosexuals in South Africa. This is a desperate attempt by advocates of the "same-sex marriage" to have this aberration legalised. They are determined to import European values to Africa. This colonisation is planned to start in South Africa which already has the most Eurocentric Constitution in Africa.

In pursuit of their propaganda, homosexuals have inflated their numbers. In America leaders of homosexuals claimed that they were 10 percent of the population. But research found that there were only 2 percent male and 0.9 percent female who are homosexuals. This was an attempt to make the public believe that homosexuals are fighting against discrimination and violation of their minority rights.

In fact, in South Africa the rights of homosexuals are better stated in the Constitution Section 9(3) than those of African Traditional Leaders in Sections 211 and 212 of the Constitution.

Homosexuals also have more rights than former freedom fighters who are languishing in South African prisons for fighting against Apartheid. Homosexuals have more rights than the poor, the unemployed, the victims of HIV/Aids, the landless and those who cannot afford education.

The paradox is that homosexuals could not be found anywhere in this country during the liberation struggle against Apartheid and colonialism.

But today in the midst of Africans' poverty, their continued land dispossession and economic servitude; homosexuals have huge amounts of money to go to the highest courts of this land to fight for legalisation of "same sex marriages". The poor in this country cannot even fight against land evictions because they cannot afford lawyers' fees.

In order to win the sympathy of the media, the academics, the corporate world and even the church, homosexuals have spread lies such as that their sexual orientation is inborn, unchangeable and "a gift from God".

They have spread the propaganda that homosexuality is "normal and natural".

Many people in America have bought into these rights which are contradicted by scientific research.

Some African people, including church leaders, are beginning to defend the myth of homosexuality.

There is, however, no scientific proof that people are born homosexual. □ Anthropology shows that all the cultures of the world have been heterosexual in sex and marriage.

Some societies have practised polygamy - marriage of one husband to more than one wife. Or polyandry - marriage of one wife with more than one husband - but never same-sex marriage.

Homosexuality has always been frowned upon by all religions and cultures. Marriage is designed for males and females with their profound sexual different Constitutions.

Together they create something larger than themselves. The polarity of the two genders is inextricably locked into the meaning and practice of marriage.

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Most people in SA are against same-sex marriages

William Dicks

Published on *City Press*, 28 August 2004

Regarding the application of lesbian couple Marie Fourie and Cecilia Bonthuys to have their "marriage" legally recognised, it amazes me that people think that marriage should be a recognised institution between people of the same sex.

I assume most people in South Africa would be against the recognition of such marriages. □ Denying homosexuals the institution of marriage is not unfair, and it is not that homosexuals are unworthy of marriage or incapable of marriage.

The purpose of marriage is procreation. It was designed to produce and rear children.

The future of the human race relies on marriage, which is understood as the joining together of one man and one woman.

By its very nature, a relationship between two people of the same sex is sterile and therefore not a marriage. □ The legislature can no more turn same-sex unions into marriages than it can turn dogs into cats - it can only unravel the institution of marriage by sowing confusion about its purpose.

Homosexuals claim that they are not able to experience the benefits of marriage by law and so want those benefits instituted legally. □ The fact is that society does not exclude same-sex couples from the benefits of marriage.

People in same-sex relationships have excluded themselves from those benefits by engaging in relationships that are clearly against nature and against the norms of marriage. □

Available from: http://www.news24.com/City_Press/Letters/0,,186-247_1580081,00.html

Other Comments on Same-Sex Marriage

October 06 to October 12 2006

JZ abusing culture

I am proud to be a Zulu woman, and think Zulu culture, like other South African cultures, should be celebrated. But I am sick and tired of Jacob Zuma hiding behind Zulu culture whenever he shoots himself in the foot.

During his rape trial he claimed the victim had seduced him and he had to oblige because Zulu culture demanded it. Now he has attacked gay people and shown the nation that he is homophobic.

It is one thing for him to be a closet homophobe, but to publicly use such hate speech and expect the public to respect him is beyond me. I'm angry that he has again used Zulu culture to defend himself, as if he was doing a noble thing.

Zuma must realise that he cannot go around abusing our Constitutional rights and undermining the democracy so many died for.

Culture is a wonderful thing that is there to nurture and protect people, not abuse and humiliate. --
Nthombikayise Mthiya

Viva to the *Mail & Guardian* for coming out loud and clear on same-sex marriages. In a Constitutional democracy, we need a media that does not hide behind "impartiality" on matters of equality.

We also need a pride march where all South Africans, gay or straight, are united in taking up the struggles of those who continue to suffer prejudice.

We salute all those, regardless of sexual orientation, who support the just cause of lesbian and gay equality. Our leaders should follow the example of ANC Youth League president Fikile Mabalula, who has publicly endorsed lesbian and gay people's human rights. -- *Melanie Judge, OUT LGBT Well-being*

The great debate over gay marriage is no debate at all. Its opponents fail to understand that the Constitutional Court, in ordering the amendment of the Marriages Act, was merely articulating, not legislating for, inalienable rights enshrined in the Constitution: the right to equality and to be free of unfair discrimination.

The electorate has already spoken through its elected representatives in passing the Constitution of the Republic of South Africa Act.

The Bill of Rights is specifically designed to protect minorities. If there were only two gay people in the country who wished to marry, and every other citizen opposed them, gays' rights would prevail.

Ironically, the proposed Civil Unions Bill is a grave manifestation of the violation of gay rights. The very term "civil unions" instead of "marriages" exposes the Bill's sub-text: "civil" is a secular term, while "marriage" has religious connotations. The intention is to divest gay marriages of the status of "holy matrimony". -- *Laurence Berman, Pretoria*

The Constitutional Court ruling on homosexual marriage took the view that the Constitution's "sexual orientation" clause meant identical treatment in relationships rather than equal provision.

In the draft Civil Union Bill, Parliament has reflected more deeply on the implications for society and has decided to provide equal rights for homosexual partnerships, ensuring that time-honoured definition of marriage as "a sacred union between a man and a women" remains unchanged.

Four out of five South Africans call themselves Christians. Christianity has kept life-long, faithful, monogamous marriage between a man and a woman as an ideal right at the centre of society. It is ultimately a foundation for strong families, and ultimately a stable society.

Mormon polygamists in the United States have attempted to argue that they have a "sexual orientation". Sexologists have similarly argued that zoosexuals -- who practise bestiality -- have a bona fide sexual orientation. If homosexuals are given access to marriage, it sets us down a real slippery slope of all sexual minorities arguing for access to marriage. -- *Philip Cole*

Available from: <http://www.mg.co.za/article/2005-11-25-october-06-to-12-2006#comments>

2.4 Landmark Legislation: Women Empowerment

This report focuses on two seminal rulings:

The State v Jacob Zuma

Complete legislation available at:

<http://www.Constitutionalcourt.org.za/site/lawclerks/zumajudgment.pdf>

ANC Deputy President Jacob Zuma was found not guilty of raping an HIV-positive woman. The State had not been able to prove the accused's guilt without a reasonable doubt. Section 227(2) of the Criminal Procedure Act permitted the cross-examination of the complainant on her sexual history, which revealed that she had previously falsely accused other men of rape. Many argue that such a cross-examination constitutes a form of secondary victimisation and provides one explanation for the low number of rapes reported and successfully convicted in South Africa. The case cast doubt on the ability of the criminal justice system to protect women who have been victims of sexual abuse.

Section 227(2) of the Criminal Procedure Act:

Evidence as to sexual intercourse by, or any sexual experience of any female against or in connection with whom any offence of a sexual nature is alleged to have been committed, shall not be adduced, and such female shall not be questioned regarding such sexual intercourse or sexual experience, except with the leave of the court, which leave shall not be granted unless the court is satisfied that such evidence or questioning is relevant: Provided that such evidence may be adduced and such female may be so questioned in respect of the offence which is being tried.

Two things must be clear from the provisions of this subsection. Questions can be asked and evidence can be adduced regarding the complainant's sexual experience or sexual intercourse:

1. Only with the leave of the court; and
2. If the court is satisfied that the questions or evidence are relevant.

Choice on Termination of Pregnancy Amendment Bill

Copy of legislation available at: <http://www.info.gov.za/view/DownloadFileAction?id=66678>

This statute amended the Choice on Termination of Pregnancy Act of 1997, which gave access to abortion upon request during the first 12 weeks of pregnancy, and under some circumstances, allowed termination up to 20 weeks. The Choice on Termination of Pregnancy Amendment Bill of 2007 aimed to improve facilities where abortions were administered and extended the right to perform abortions to nurses and midwives. The bill also permitted minors to terminate their pregnancies without the consent of a legal guardian. The Amendment Bill was initially declared invalid after Doctors for Life International claimed that the public had not had enough time to respond. Both the Choice on Termination of Pregnancy Act of 1997 and its Amendment Bill championed women's reproductive

rights and aimed to discourage the practice of unsafe, backstreet abortions, which frequently resulted in health complications and/or death.

Other landmark legislation in women's rights

The Domestic Violence Act (1998)

Act available from: www.info.gov.za/gazette/acts/1998/a116-98.pdf

The Domestic Violence Act was passed to extend the protection provided by its predecessor, the Prevention of Family Violence Act. The legislation broadens the definition of domestic violence to include unmarried women who are involved in relationships or living with their partners, people in same-sex relationships, mothers and their sons, and other people who share a living space. It further recognises that abuse may take many different forms: domestic violence as well as sexual, economic, emotional and psychological abuse.

Recognition of Customary Marriages Act (1998)

Act available from: www.info.gov.za/gazette/acts/1998/a120-98.pdf

This Act provides for the recognition of customary marriages, specifies the requirements for a valid customary marriage and regulates the registration and dissolution of these unions. It gives spouses in a customary marriage equal status and capacity. This legislation repealed the infamous section 11(3)(b) of the Black Administration Act of 1927, the mechanism that gave married black women the legal status of minors.

The Sexual Offences Bill (2006)

This Act, among other things, extended the definition of rape as forceful penile penetration of the vagina, to include the sexual penetration of the sexual organs, the anus and the mouth.

(<http://www.rapecoutcry.co.za/resources/bill.html>)

Unedited version of the summary above is available from The Constitutional Court of South Africa website: <http://www.constitutionalcourt.org.za/text/rights/know/women.html>

Conclusion

The above information indicates crucial legal steps that have been taken in addressing discrimination against women. This legislation recognises that the violation of women occurs in both public *and* private spaces. It has also attempted to remedy gender inequalities embedded in cultural practices such as customary marriage. While this legislation is progressive, it is estimated that only one in nine instances of rape are reported and only 7% of those accused are successfully prosecuted. Despite the legal availability of abortion, thousands of women per year are choosing backstreet solutions instead.

The same HSRC Survey that researched attitudes towards homosexuals in South Africa, indicated that more than half – 56 percent – of South African adults think that abortion is “always wrong.”⁵⁴

These realities mean that women generally do not feel protected under South African law and that there is a gap between legislation and general attitudes.

⁵⁴ “South Africans disapprove of homosexuals, abortion,” *Afrol News*. Available from: <http://www.afrol.com/articles/14605>

2.5 Case Study II: *The State v Jacob Zuma*

The Jacob Zuma Rape Trial

“This case reflected the intersecting axes of stratification and power in a battleground for competing meanings about personality, culture, sex, sexuality, power, disease and conspiracy”⁵⁵



⁵⁵ Reddy, V. and Potgieter, C. “‘Real men stand up for the truth’: discursive meanings in the Jacob Zuma Rape Trial” in *Southern African Linguistics & Applied Language Studies*, Vol. 24 Issue 4, 2006: 515. Available from: <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=23770991&site=ehost-live>

2.51 Discussion

One cannot reflect meaningfully on the post-Apartheid gender debate, without mentioning the Jacob Zuma rape trial. It was a seminal moment that would reverberate in public discourse long after it ended. In his judgement, Judge Van der Merwe concurred with a statement made by a South African journalist who said, “This trial is more about sexual politics and gender relations than it is about rape.”⁵⁶

To the disillusionment of many, the trial paraded the ugly and deep-seated prejudice, misogyny, avarice, denial and doubt that divided South African society into warring factions. Those who safeguarded “The Constitution” and the rights it championed on one side squared off against those who defended “Culture” and its practices on the other. It was transformed into a sensational spectacle by the South African media that diminished the trial’s significance in women’s struggle for justice.

“It is disconcerting that some pressure groups, organisations and individuals found the accused guilty and others found him not guilty in their comments on the case, without knowing what the evidence is and long before all the evidence was presented,” said Judge Van der Merwe.⁵⁷ This case was so much more than the legalities or individual testimonies that comprised it. It was a by-proxy struggle between dissonant ideological commitments and its outcome would determine future political and social struggles.

Women, who maliciously turned against each other when they should have demonstrated solidarity against women abuse, became what one journalist called, “trading pawns to be used in the jostle for power to create male empires.”⁵⁸ This case showed that it is pervasive patriarchy and not the democratic values of liberty and equality prescribed by the Constitution that lies at the heart of public morality. Accordingly, it is the rights of women and not the measures used to keep them inferior such as rape that are banished to the margins of society. This is a process that incriminates women and exonerates men.

⁵⁶ Van der Merwe, M. J. “Judgement: State v Jacob Zuma.” 8 May 2006:3. Available from: <http://www.Constitutionalcourt.org.za/site/lawclerks/zumajudgment.pdf>

⁵⁷ Van der Merwe, M. J. “Judgement: State v Jacob Zuma.” 8 May 2006:3

⁵⁸ Ngobese. “JZ rape trial triumph perpetuates sexist violence”, *City Press*, 2 December 2006. Available from: http://www.news24.com/City_Press/Columnists/0,,186-1695_2039228,00.html

Rape: A Sign of Social Exclusion?

Rape is a complicated word riddled with many connotations and meanings. One might describe it as an ideograph because it is typically a sign of social exclusion. Violence against women is perceived as a problem that lies at the margins of the social order, a symptom of social and moral deviance rather than a more fundamental malaise warranting concerted attention.⁵⁹ Rapists have been typically profiled as anonymous, “predatory” strangers,⁶⁰ lurking somewhere outside the home and community. Although the phenomena of date rape and domestic violence are in fact more common occurrences of sexual abuse (please see POWA women abuse statistics), that archetypal image of the rapist still dominates.

In the case of the Jacob Zuma trial, the alleged rapist was a well-respected political figure, whom the complainant called *malume* (uncle). He was part and parcel of society and this made it difficult to comprehend that Zuma was in fact guilty, purely because of the social exclusion that rape as “ideograph” represents.

Because of Zuma’s stature, “rape” in this context was co-opted into the national agenda and normalised. The complainant, the alleged rape victim, as well as women’s rights groups who represented the freedom, dignity and equality enshrined in the Constitution, became symbolic “disruptions of the social order and the national interest.”⁶¹ Once again, the “moral” majority was pitted against “The Constitution.” Unlike other examples mentioned in this paper, the Jacob Zuma rape trial was, in my opinion, an instance where conservatism triumphed.

A Rape of the Second Kind: Legal Proceedings in *The State v Jacob Zuma*

The complainant in the case was incriminated and marginalized in a number of ways. The first was through the criminal justice system. Rape historically has been seen as victim-precipitated crime, linked to a commonplace understanding of rapists as mentally unstable people who were unable to control their actions. This conception of rape serves to ‘protect’ and ‘absolve’ the offender from any prosecution.⁶² It assumes that male desire is inexorable, with the result that within the context of rape, women are in fact viewed as responsible and complicit in their own violation.

The application of this in law is in Section 227(2) of the Criminal Procedure Act 51 of 1977, which allows the cross-examination of alleged rape victims on their sexual history with the court’s permission

⁵⁹ Posel, D. “The Scandal of Manhood: ‘Baby Rape’ and the Politicization of Sexual Violence in Post- Apartheid South Africa” in *Culture, Health & Sexuality, Vol. 7, No. 3, African Sexualities*, 2005: 241

⁶⁰ Posel, D. “The Scandal of Manhood: ‘Baby Rape’ and the Politicization of Sexual Violence in Post- Apartheid South Africa” in *Culture, Health & Sexuality, Vol. 7, No. 3, African Sexualities*, 2005: 241

⁶¹ Reddy, V. and Potgieter, C. “‘Real men stand up for the truth’: discursive meanings in the Jacob Zuma Rape Trial” in *Southern African Linguistics & Applied Language Studies, Vol. 24 Issue 4*, 2006: 516

⁶² Reddy, V. and Potgieter, C. “‘Real men stand up for the truth’: discursive meanings in the Jacob Zuma Rape Trial” in *Southern African Linguistics & Applied Language Studies, Vol. 24 Issue 4*, 2006: 514

and if it is perceived to be of relevance to the pending case⁶³ Evidence qualifies as relevant if it is “sufficiently close in time and circumstance for its probative value to outweigh its prejudicial effect.”⁶⁴ This definition is used leniently due to the fact that evidence is usually limited in rape cases.

Conversely, Section 197 (a) of the Criminal Procedure Act 51 of 1977 states that the accused may only be cross-examined regarding past misconducts and previous convictions if the accused “asks any questions of any witness with a view to establish his own good character or if he himself gives evidence of his good character⁶⁵” In other words, the accused, who unfortunately is most commonly male in rape cases has to open the door in order to be cross-examined, while the complainant, most often a woman, opens the door as soon as she reports the rape, leaving her vulnerable and at a great disadvantage.

Currently, the Criminal Procedure Act provides limited protection to complainants in sexual violence cases. These measures are largely inadequate and frequently implemented in a manner that further undermines the rights of complainants, rather than enhancing them⁶⁶.

The cross-examination of the complainant in the Jacob Zuma rape case was allowed by the court. It revealed that she had previously falsely accused other men of rape and the exoneration of Jacob Zuma was based almost entirely on this evidence. Judge Van der Merwe said in his judgement, “Why would a woman in her position go through all the trauma in terms of the trial and publicity when she was not really raped. It is in this respect that the reference to previous false rape allegations become of the utmost importance... At the time when I allowed the complainant to be cross-examined on her sexual history and evidence to be led in that respect, I was fully aware of what was contained in Hulley’s affidavit. I realised that there was at least a possibility that at the end of the case it could be said that a false accusation of rape was made against the accused.”⁶⁷

Many consider such a cross-examination to constitute a re-victimisation or “rape of the second kind.”⁶⁸ It often accompanied by media coverage. Because *The State v Jacob Zuma* was such a high-profile rape case, it courted an incredible amount of media attention. The “salacious details”⁶⁹ of the alleged rape were recounted step-by-step, (see article published in *The Citizen* entitled “Alleged Zuma victim describes her rape ordeal” by A. Musgrave and J. Evans as an example⁷⁰). The complainant’s testimony was reported in a manner that resembled tabloid journalism, portrayed as a titillating sex scandal rather

⁶³ Zeffert, DT., Paizes, A.P. and Skee, A St Q. “Chapter 8:Character” in *Law of Evidence*, LexisNexis Butterworths Durban, 2003: 245.

⁶⁴ Zeffert, DT., Paizes, A.P. and Skee, A St Q. “Chapter 8:Character” in *Law of Evidence*, LexisNexis Butterworths Durban, 2003: 253-4

⁶⁵ Zeffert, DT., Paizes, A.P. and Skee, A St Q. “Chapter 8:Character” in *Law of Evidence*, LexisNexis Butterworths Durban, 2003: 229

⁶⁶ Gernholtz, L. “Protecting rights of rape survivors” in *Mail and Guardian Online*, 12 December 2006. Available from: <http://www.mg.co.za/article/2006-12-12-protecting-rights-of-rape-survivors>

⁶⁷ Van der Merwe, M. J. “Judgement: State v Jacob Zuma.” 8 May 2006:171

⁶⁸ Reddy, V. and Potgieter, C. ““Real men stand up for the truth’: discursive meanings in the Jacob Zuma Rape Trial” in *Southern African Linguistics & Applied Language Studies*, Vol. 24 Issue 4, 2006: 515

⁶⁹ Kupe, T. “Media must examine its conduct in JZ trail,” *City Press*, 15 April 2006. Available from: http://www.news24.com/City_Press/Columnists/0,,186-1695_1917269,00.html

⁷⁰ Musgrave, A. and Evans, J. “Alleged Zuma victim describes her rape ordeal,” in *The Citizen*, 6 March 2006. Available from: <http://www.sapa.org.za/secure/view.cfm?id=1968053&srce=search&>

than as a sobering act of sexual violence.

The South African media, in an attempt to serve its own commercial interests, turned the trial into a “carnival”⁷¹, a comedy of errors and “a harrowing week of shockers at dock.”⁷² Such coverage failed to address the graveness of the allegations and in doing so, failed to represent rape, or women’s empowerment as a serious social issue.

The South African media was therefore indirectly complicit in perpetuating the silence and stigma that surrounds the abuse of women. (See article published in *City Press*, “SA must examine its conduct in the JZ trial” by T. Kupe on this point).

South African talk show host, Noeleen Maholwana Sangqu, remarked in her weekly column in *The Citizen*: “Now I fully understand why so many rape victims refuse to lay charges. Now I understand when rape survivors make statements like, “I felt like I was being raped again” or “the scrutiny that is placed on me, the survivor, is just too much. I guess I’m not the only South African glued to the radio and TV and reading newspapers to get more gory details of the Jacob Zuma rape trial... I cringe thinking of how this woman felt when Zuma’s lawyers probed her sexual history. Forgive me for not understanding, but why on earth would a rape victim’s previous sexual history be important? What if it is established that she has had 100 lovers before? Does it perhaps mean that if I have consented to sex with one or multiple partners that I cannot be raped? I certainly do not think so.”⁷³

It is significant that Noeleen Sangqu and other black female media personalities like Redi Direko, from Talk Radio 702, have been outspoken about sexual violence against women. They have shown that you can be both “African” and empowered.

It is the humiliation and degradation that the complainant endures in a rape trial that eight out of every nine rape cases go unreported in South Africa⁷⁴ (one in nine article). Rape has the lowest conviction rate of all criminal offences. Only 7% of rape cases are successfully prosecuted in South Africa, yet rape has one of the lowest number of false claims – less than 5% – as compared to other criminal offences.⁷⁵

Women’s rights groups referred to the complainant as “Kwezi” meaning “star” because of her courage in pressing charges against Zuma.⁷⁶ She was also referred to as an “activist” in the media because she had broken the silence. However, the complainant’s true identity could not be mentioned in public

⁷¹ “Carnival atmosphere at Zuma rape trial,” *Mail and Guardian*, 13 February 2006. Available from: <http://www.mg.co.za/article/2006-02-13-carnival-atmosphere-at-zuma-rape-trial>

⁷² “Zuma’s harrowing week of shockers in the dock,” *City Press*, 8 April 2006. Available from: http://www.news24.com/City_Press/Features/0,,186-1696_1913460.00.html

⁷³ Sangqu, N.W. “Why rape victims shy off charges”, *The Citizen*, 9 March, 2006. Available from: <http://www.citizen.co.za/index/article.aspx?pDesc=14439.1.22>

⁷⁴ Chibba, R. “One in Nine: Time to break the silence around rape”, *Mail and Guardian Online*, 8 March 2006. Available from: <http://www.mg.co.za/article/2006-03-08-one-in-nine-time-to-break-the-silence-around-rape>

⁷⁵ “One in Nine campaign statement of State v Jacob Zuma verdict – media release,” 8 May 2006. Available from: www.ncdsv.org/images/JudgmentinStatevZuma.pdf

⁷⁶ Chibba, R. “One in Nine: Time to break the silence around rape”, *Mail and Guardian Online*, 8 March 2006

discourse for fear of victimisation.

In the media, “she covered her head with a scarf while entering the building. She was accompanied by security personnel.”⁷⁷ She was greeted with posters emblazoned with the slogan “burn this bitch”⁷⁸ carried by Jacob Zuma supporters. She was taken into police custody and would go into exile after the trial “for fear for her life in South Africa”⁷⁹

The court proceedings and its accompanying media coverage reflect wider societal gender dynamics and behaviors that incriminate women and vindicate men. It perpetuated the stereotypes around rape that it is a victim-precipitated crime and that women are complicit in their own violation. An excerpt from Judge Van der Merwe’s judgement is demonstrative of this: “She [the complainant] a strong person well in control of herself knowing what she wants. She is definitely not that meek, mild and submissive person she was made out to be.”⁸⁰

“Kwezi” was victimised through the legal proceedings of this case and through the way in which her and her scarce supporters were portrayed in the media. They were depicted as outnumbered, feeble and powerless next to the angry masses of Zuma supporters, many of which were women. This war that had been waged between women was a disturbing manifestation of the pervasive patriarchy and patterns of implicating women in wrongdoing. Instead of reflecting on this, the media portrayed this conflict as an unfairly matched catfight, much to the indulgence of the South African public.

Anti-rape groups such as People Opposing Women Abuse (POWA) were cast as representatives of minority interests – the pitiful, rather than the courageous few that championed the rights of women. They were dismissed by individuals like Buti Manamela, the national secretary of the Young Communist League, who supposedly prides itself in inequality for all, as Mickey Mouse organisations whose activism was an opportunistic attempt to “elevate their status”⁸¹.

Outside the courtroom, the chasm between the Constitution and the conservatism harboured by the moral majority became palpably clear. Professor Geoff Hughes argued that there were going to be two judgements: “One legal and one popular,”⁸² as is the case with many issues in South Africa. “Kwezi” and her supporters were singled out and made an example of when they should have instead been recognised as representatives of a serious and endemic social problem: That it is women’s rights and not sexual violence that lie at the margins of society, despite the “Constitutional” protection that they enjoy.

“Kwezi” was not only a woman, but also an HIV-positive lesbian. Her and the few that supported her

⁷⁷ “Carnival atmosphere at Zuma rape trial,” *Mail and Guardian Online*, 13 February 2006

⁷⁸ Chibba, R. “One in Nine: Time to break the silence around rape”, *Mail and Guardian Online*, 8 March 2006

⁷⁹ “Zuma: Battle lines drawn outside court,” in *Mail and Guardian Online*, 8 May 2006. Available from: <http://www.mg.co.za/article/2006-05-08-zuma-battle-lines-drawn-outside-court>

⁸⁰ Van der Merwe, M. J. “Judgement: State v Jacob Zuma.” 8 May 2006:174

⁸¹ Manamela, B. “Zuma showed courage and leadership in the face of mockery and ridicule,” Friends of Jacob Zuma website, 17 May 2006. Available from: <http://www.friendsofjz.co.za/showarticle.asp?id=127>

⁸² Hughes, G. “Zuma ‘theatre’ mocks law,” *The Star*, 16 March 2006

were an amalgam of all that is stigmatised suppressed and denied in South Africa. Their recognition and empowerment symbolised the absolute disruption and deviance from the social order.



Deeply Divided: A One-in-Nine campaigner (pictured left) squares up against a Zuma supporter (pictured right). The One-in-Nine Campaign was launched at the commencement of the trial to break the silence regarding violence against women. The campaign’s name was taken from a Medical Research Council survey, which reported that only one in nine rapes are reported to the police. The woman on the left represents the complainant – voiceless, shamed and without a distinguishable identity. The woman on the right wears her support for Zuma, the alleged rapist, with pride, although she is equally as disempowered. Both women represent the oppression that South African women face in the public sphere, despite the values of liberty and equality that are enshrined in the Constitution.

“But she was wearing a kanga, m’lud”⁸³ – Dress as a Marker of Blame

The central question in *The State v Jacob Zuma* trial was whether or not the sex between the complainant and the accused was consensual. The defence set out to provide evidence of her sexual intent. Such evidence was embedded in African cultural understandings and expressions of sexuality that once again positioned the complainant as complicit in her own violation. “Culture” was used as a crutch by the defence to substantiate the promulgation of misogynist, unconstitutional utterances and behaviour.

The accused argued that the complainant had sent out a number of suggestive “signals” that showed she wanted sex. These were that she was wearing a knee-length skirt, known as a kanga without “a panty”, and when she sat on his couch, she did not sit like other women would with their legs together. Zuma added that in his culture, he was raised to believe that when a woman is aroused, you don’t leave

⁸³ Johnston, N. “The Kanga – the new cigar?” *Mail and Guardian Online*, 5 May 2006. Available from: <http://www.mg.co.za/article/2006-05-05-jday-the-judge-who-cannot-win>

her hanging - lest she has you arrested on trumped-up rape charges⁸⁴.

Professor Pumla Dineo Gqola argues that young men in Southern African countries live under enormous pressure to be promiscuous and young women are raised to make themselves available to men with few questions. This is couched in the language of being “real” African men who show that they pursue and are attractive to women. She comments that growing up, “playboy” was just another way of saying “*isoka*”, a compliment to those who were demonstrably promiscuous straight African men⁸⁵. Jacob Zuma would himself be considered a modern-day “*isoka*” because he practices polygamy.

Conversely, women have been historically subjected to practices like virginity testing and are not allowed to ask questions about their partners on their sexual history⁸⁶. As noted in the previous section, this double standard has been entrenched in law.

The slurs that were uttered about the complainant that she was “prostitute”⁸⁷ and a “slut” were based on a cultural intolerance for women who have multiple sexual partners, exercise their right to bodily autonomy and refuse male ownership of their sexuality.

During the trial, Zuma referred to the complainant’s vagina as *isibhaya sika bab’wakhe*, which is Zulu for “my father’s kraal”⁸⁸ – a culturally-specific signification of male possession. The implied message is “that men are entitled to sex”⁸⁹ and therefore the consent of women to engage in sexual intercourse is rendered irrelevant.

Boys growing up in the villages are taught how to wear down a girl’s resistance. They are told no girl gives up her virginity voluntarily. So this “persuasion” is perfectly permissible⁹⁰. The misappropriation of women to fulfill the needs of men can thus be seen as a culturally-cherished value, which indirectly condones acts of sexual violence.

What was most disturbing about this case, in my opinion, was the pride with which Zuma wore the rape charge. He fashioned it into some kind of coveted character trait that invoked the admiration of others.

One *Sowetan* columnist argued that a resignation from political office “would have shown evidence of moral capacity and to give a veritable signal to his misguided supporters and millions of young and

⁸⁴ “Zuma’s harrowing week of shockers in the dock,” *City Press*, 8 April 2006

⁸⁵ Gqola, P.N. “Pressure to be promiscuous,” *Mail and Guardian Online*, 11 February 2009. Available from: <http://www.mg.co.za/article/2009-02-11-pressure-to-be-promiscuous>

⁸⁶ Gqola, P.N. “Pressure to be promiscuous,” *Mail and Guardian Online*, 11 February 2009

⁸⁷ Hughes, G. “Zuma ‘theatre’ mocks law,” *The Star*, 16 March 2006

⁸⁸ Reddy, V. and Potgieter, C. “‘Real men stand up for the truth’: discursive meanings in the Jacob Zuma Rape Trial” in *Southern African Linguistics & Applied Language Studies*, Vol. 24 Issue 4, 2006: 517

⁸⁹ Gqola, P.N. “Pressure to be promiscuous,” *Mail and Guardian Online*, 11 February 2009

⁹⁰ Siadi, B. “African culture should stop pussyfooting about rape” *Sowetan*, 5 September 2008. Available from: <http://www.sowetan.co.za/Columnists/BillSaidi/Article.aspx?id=837059>

eager South Africans, that there is something of a shame associated with rape and that he is prepared to take moral responsibility, as opposed to legal culpability, for the offence for which he must stand trial⁹¹.”

Another journalist commented that “the trial and Zuma’s acquittal have made it okay for intelligent, articulate and powerful men who should know better to reiterate these notions” and has “unleashed more violence against women, not only through actions but also through the language that young men now use against women.⁹²”

Although many in the media argued that Zuma touted a misappropriated version of Zulu culture known as “Zuma culture,”⁹³ Zuma’s lack of remorse over this accusation and the overwhelming support that he garnered among the public, signalled among other things, that the abuse of women is a normative cultural value, rather than a shameful act of social deviance.

He also entrenched the stereotype that men’s sexual desire for women is uncontrollable. Therefore, women are perceived as responsible for provoking the sexual urges of men, who are absolved from blame.

“The kanga” became somewhat of a rhetorical ideograph during the course of the Jacob Zuma rape trial as it symbolically embodied and endorsed these “cultural” values of male entitlement and female culpability.

“Women’s clothing has been a focal point of discussion in the literature on gender-based violence. The emphasis has been on the role played by clothing in making women vulnerable to violence, and on the assumption that particular kinds of choices with regard to clothing can make women culpable in their own victimisation⁹⁴”

The discourse that surrounded a sexual assault at the Noord Street taxi rank in Johannesburg in 2008, resonated unsettling with the issues raised during the Jacob Zuma rape trial. It was claimed that she was raped for wearing a miniskirt, under the ostensible guise that such attire offended African culture.

The miniskirt celebrates women’s emancipation from male domination. It symbolises a women’s right to choose, which is championed by the Constitution.

The persistence of violence against women on the basis of their attire, is a war waged against the threat to masculinity that the miniskirt as an ideograph represents. These acts are attempts to undermine the tangible empowerment and equality of women in public spaces that democracy has allowed, and

⁹¹ Molef, T. “In SA, morality is not a yardstick for choosing leaders,” *Sowetan*, 29 January 2009. Available from: <http://www.sowetan.co.za/Columnists/ThembaMolefe/Article.aspx?id=927594>

⁹² Smith, G. “Uncovering the sexism at the heart of SA morality,” *City Press*, 19 January 2008. Available from: http://www.news24.com/City_Press/Columnists/0,,186-1695_2254809.00.html

⁹³ Moya, F. N. “100% Zuluboy,” *Mail and Guardian Online*, 6 April 2006. Available from: <http://www.mg.co.za/article/2006-04-06-100-zuluboy>

⁹⁴ Vincent, L. “Miniskirt-wearing women: A magnet for violence?” *Mail and Guardian Online*, 26 May 2008. Available from: <http://www.mg.co.za/article/2008-05-22-miniskirtwearing-women-a-magnet-for-violence>

reassert male dominance in society.

Umshimi Wami (bring me my machine gun) became the mantra of Jacob Zuma supporters. Nearly two years later, its reprise was sung by the taxi drivers at the Noord Street taxi rank in response to the miniskirt incident. What once was a struggle song against Apartheid has been reappropriated to fight a new battle – to hang onto the authority, respect and purpose of manhood amidst the challenges that the new South Africa brings.

Msholozzi – The Custodian of Zulu Culture

This research paper has examined the capacity of language to influence and shape communal identity. IsiZulu, the language in which Jacob Zuma testified, was described as his “weapon”⁹⁵ because it renewed the commitments of many South Africans to the Zulu nation. He was referred to as “Msholozzi”⁹⁶ – his clan name – by his supporters, who saw the trial as an opportunity to celebrate their African heritage. They wore traditional Zulu clothing and T-shirts with the slogan, “100% Zuluboy”, blew vuvuzelas and ululated outside the courtroom as the “thunder boomed across the sky and the heavens opened up”⁹⁷.

This display must be viewed within the context of democracy where tribalism and culture are constitutionally tolerated, but have been diluted in influence. Recent years have seen resurgence in traditionalism and an increased salience placed on cultural values. This has been primarily a response to the arrival of democracy, which has provided the liberty to express traditional identities, yet has simultaneously threatened to uproot cultural values. In the context of the social epidemics of poverty, inequality and disempowerment in general, this demonstration can be viewed as a nostalgic return to the former glory of the Zulu nation. The Jacob Zuma case was therefore also a battle for the preservation of “culture” within a modern framework, which contests its authority.

African cultural identity in South Africa is closely intertwined with historical commitments to the struggle against Apartheid and to the ANC. In his opening testimony, Jacob Zuma described in Zulu how he joined the African National Congress Youth League in 1958, was a member of the ANC underground military wing, UmKhonto WeSizwe (MK) and was imprisoned on Robben Island. In this introduction, Zuma outlined his credentials and therefore asserted his ethos among those he garnered support from. They shared common allegiances as “Africans” and as supporters of the ANC.

⁹⁵ Moya, F. N. “100% Zuluboy,” *Mail and Guardian Online*, 6 April 2006

⁹⁶ Carnival atmosphere at Zuma rape trial,” *Mail and Guardian Online*, 13 February 2006

⁹⁷ Msomi, S. “Zumania rules the day for JZ” *City Press*, 18 February 2006. Available from: http://www.news24.com/City_Press/Features/0,,186-1696_1884024.00.html

Extract from **“Zuma takes the stand in rape trial”**

Evans, J.

Wearing a dark suit and a wine-coloured tie he addressed Van der Merwe in the Zulu honorific "Nkosi Yenkantolo [Your Worship]" as he told of how he joined the African National Congress Youth League (ANCYL) in 1958.

He was first an ordinary branch member and a member of the South African Congress of Trade Unions.

During 1960 the ANC and other organisations were banned and he became a member of the ANC underground.

In 1962, shortly after UmKhonto WeSizwe (MK) was established, he became a member of the military wing of the party and in 1963 he was arrested for his political activities.

After being detained for 90 days in Pretoria, he was tried, convicted and sentenced to 10 years on Robben Island.

He said he knew the complainant's father from his ANC activities. They had met in 1958 in the ANCYL and had worked together for the organisation. It was only at a later meeting at the Durban train station when he realised that the father too was in the MK underground.

The complainant's father served a 90-day detention with him and they were tried together and her father was also sentenced to imprisonment on Robben Island.

After they were released from prison they again tried to revive the movement and Zuma encouraged his friend to participate in the activities of the struggle.

Kemp asked Zuma to clarify whether Intelligence Minister Ronnie Kasrils was also on Robben Island, as said by the complainant's mother during her testimony.

Zuma said that her mother was mistaken as Kasrils was not one of the people arrested in 1963.

The public in the fuller than usual court listened intently and one of the investigating officers on the case, Peter Linda, took notes of Zuma's testimony.

Published on *Mail and Guardian Online*, 3 April 2006.

Available from: <http://www.mg.co.za/article/2006-04-03-zuma-takes-the-stand-in-rape-trial>

Outside the courtroom people wore T-shirts that said, *Amadoda aqatho amela amaqiniso* (real men stand up for the truth). Pictured below was Zuma with eight celebrated heroes of the struggle: Nelson Mandela, Oliver Tambo, Alfred Nzo, Kgalema Motlanthe, Walter Sisulu, Fikile Mbalula, Chris Hani and Albert Luthuli.⁹⁸

⁹⁸ Reddy, V. and Potgieter, C. “‘Real men stand up for the truth’: discursive meanings in the Jacob Zuma Rape Trial” in *Southern African Linguistics & Applied Language Studies*, Vol. 24 Issue 4, 2006: 518

This association serves him in a number of ways. Zuma is compared with the ideals of “justice”, “equality” and “fairness” which these icons represent. This not only casts doubt on his ability to rape, but also affirms his right to the constitutional privileges he helped fight for.

Jacob Zuma has adopted the image of a beleaguered leader who, like the freedom fighters he was likened to, has been “wrongfully accused” and denied the right to defend himself. The rape case followed corruption charges that were laid against Zuma a year earlier, which led to President Thabo Mbeki firing him as the country’s Deputy President. The rape trial was framed by Zuma and his supporters as a political conspiracy against him. This was supposedly instigated by Thabo Mbeki and his camp with the supposed intention of sabotaging his ambitions for becoming President in 2009.

In an article entitled “That mama is speaking lies,” *Mail and Guardian* surveyed opinions of the public. Many of the women interviewed speculated that the complainant had been paid to press charges. This was part of a political ploy to discredit him. “I think it’s political. Some of Zuma’s colleagues in politics don’t want him to be president in the near future. President Mbeki, if this was his comrade, has the power to stop all the trials and let Zuma walk free.”⁹⁹

This trial divided ANC supporters into political factions that supported Jacob Zuma on the one hand, and President Mbeki on the other.

This discussion reveals two important things: The first is that the rape trial was dominated by greater political and ideological struggles that frequently steered public debate away from the issue of gender violence.

Secondly, it contextualises the commitments in South Africa that bind both men and women. Women played an integral role in the struggle against Apartheid and have remained prominent in politics in the post-Apartheid context. The former Deputy President of South Africa and the ANC, Phumzile Mlambo-Ngcuka is female, a number of the country’s premiers and MP’s are women and according to ANC Women’s League (ANCWL) President Nosiviwe Mapisa-Nqakula, women constitute 60% of overall ANC membership¹⁰⁰

⁹⁹ Tolsi, N., Sosibo, K., Makgetla, T. and Dibetle, M. “The mama is speaking lies,” *Mail and Guardian Online*, 26 March 2006. Available from: <http://www.mg.co.za/article/2006-03-24-this-mama-is-speaking-lies>

¹⁰⁰ Kgosana, C. “ANC Women’s League has taken women’s rights 100 steps backwards,” *City Press*, 5 July 2008. Available from: http://www.news24.com/City_Press/Home/

Many South African women feel a deep historical obligation to the ruling party for the role it played in establishing their Constitutional rights. This loyalty frequently supersedes their identity as women, even though the ANC has in fact failed to integrate women successfully into the transformation agenda. African women too want to take pride in the cultural heritage, albeit patriarchal, because of its relationship with the ANC, the Struggle and being “African.”

It is perhaps these commitments that have motivated controversial decisions such as the endorsement of Jacob Zuma by the ANCWL as their presidential candidate. The organisation’s compliance with the “ruling party line” may also reflect deeply-entrenched feelings of subservience and guilt as women, which are embedded in cultural practices.



Zapiro, “The Mice Girls,” *Mail and Guardian Online*, 6 December 2007

Conclusion

The Jacob Zuma rape trial was a contest between conflicting personalities and ideologies. It showed that South Africa is under a symbolic siege waged by warring identities, where sexuality is a transmission belt for wider social anxieties. A *Mail and Guardian* columnist argued that Jacob Zuma himself “could just be South Africa right now”¹⁰¹ because he embodies the social struggles based on sexuality, class and culture that this country is currently facing.

The trial’s social and political implications shrouded its significance in fighting gender-based violence. The One-in-Nine campaign commented in their response to the trial that “women fail to openly ask pertinent questions about the meaning of violence against women because these matters can no longer be discussed as neutral topics without one wondering how they will be interpreted in the larger political sphere where these issues now decide which “camp” one supports.”¹⁰²

This case was even more significant because there is a unanimously accepted obligation to respect the Constitution. The fact that this incidence of sexual violence was tried in a court of law and condoned made this decision seem even more binding. It was perceived as a reflection of the country’s future direction.

¹⁰¹ “Polygamy revived, but to what end?” Thought Leader, *Mail and Guardian Online*, 2 February 2009. Available from: www.thoughtleader.co.za/thesumo/2009/02/02/polygamy---revived-but-to-what-end/

¹⁰² “One in Nine campaign statement of State v Jacob Zuma verdict – media release,” 8 May 2006

2.52 Data

People Opposed to Women Abuse (POWA) Rape Statistics, South Africa

Women

- (i) 1 in 2 women have a chance of being raped in their lifetime
- (II) A woman is raped every 26 seconds in South Africa
- (III) More than 40% of perpetrators are known to the rape survivor.
- (IV) Less than 2% of reported rapes are false
- (V) Most rapes occur within the rapists' community
- (VI) 1 in 4 women are in an abusive relationship
- (VII) A woman is killed every 6 days by her intimate male partner in South Africa.
- (VIII) Women are more likely to be attacked by someone they know than by a stranger

The Rapist

1. A Jhb survey revealed that: 1 in 4 men had raped a woman.
2. 85% of rapists were armed (usually with a knife)
3. 85 of rapes are gang rapes: A woman is more likely to be raped by 3 to 30 men than a single rapist
4. For every 400 rapes reported last year- 17 became official cases, 1 perpetrator was convicted and for every perpetrator convicted, 1 case docket was lost/sold.
5. In 1998 just under 7% of reported rapes were prosecuted.

Available from: <http://www.powa.co.za/Display.asp?ID=2>

Judgements and Statements

Extract of ruling by High Court Judge Van der Merwe

Before starting with this judgment I want to make a few general comments.

This matter was not originally allocated to me. Three judges were for different reasons not available to hear the matter and it therefore became my responsibility as the next most senior available judge. I want to express my appreciation to the two legal teams, the media in general as well as the public in court for the courtesy shown to me.

It must have been clear from the beginning that I would not allow myself to be influenced or distracted by anything or anybody. A judicial approach cannot be anything else than impartial, objective, fair and totally dedicated to the task lying ahead.

Whatever my conclusion at the end of this judgment may be, the outcome will not satisfy everybody. At no stage whatsoever did I intend satisfying anybody and I will certainly not do it now. As will be seen later herein criticism was at certain stages levelled at certain rulings I had made. I hope it will be seen from the reasons that are to follow that the criticism was unfounded. I hope that all concerned will carefully listen to the reasons for my rulings and findings and I sincerely hope that they understand the reasons.

This trial created an unknown interest among the public at large and received enormous media coverage, printed as well as electronic. It was difficult not to see and hear some of the comments in spite of the fact that I try not to read, look or listen to news concerning a matter I am busy with in court. Some matters unfortunately did not escape my attention.

Different groups of people and organisations apparently tried to gain some mileage out of this trial. For example had I to deal with the application by three organisations who asked to be allowed as amici curiae in this matter. The organisations were represented by highly respected legal representatives and I therefore accept without hesitation that the application was genuine and serious and without any ulterior motive.

The application was, however, doomed from the beginning and unnecessarily side-tracked everyone's attention at a time when it was not needed. The organisations, however, succeeded in informing the entire world of their existence and what they stand for. No doubt they do excellent work and may, when asked for, be of great assistance.

Pressure groups, non-governmental organisations, governmental organisations, politicians and in some instances some of the media, breached the sub judice rule. I have no problem with fair comment and the media's duty to keep the public informed of important matters, especially the case we are dealing with at present. The decision of Duduzile Ncobo to testify is an example of the benefits of reporting by the media. What, however, is disconcerting, is the fact that some pressure groups, organisations and individuals found the accused guilty and others found him not guilty in their comments on the case, without knowing what the evidence is and long before all the evidence was presented.

The pressure on a court in a matter like the present is big enough. It is not acceptable that a court be bombarded with political, personal or group agendas and comments. As one contributor to a daily newspaper very correctly put the matter in the following perspective: "This trial is more about sexual politics and gender relations than it is about rape." Wise words indeed but what a pity that it had to be said.

Radio and television approached me with a request that the judgment be broadcasted live. I discussed the request with a number of my colleagues. In spite of my repugnance against any form of publicity I had to realise and accept that times have changed. I hope that this live broadcast (which will unfortunately take long) will serve as an educational tool. I hope that the public will now realise what enormous effort goes into a trial like this and with what objectivity and dedication it is approached...

From the foregoing it should be clear that I find that consensual sex took place between the complainant and the accused in the main bedroom. It is therefore not necessary for me to deal with the question of the absence of mens rea which was again raised by Mr Kemp.

It may be asked why the complainant who is inclined to lesbianism would have had consensual sex with the accused. The answer lies in the complainant's history. The complainant regards herself as being bisexual but inclined to lesbianism. She was prepared to have penetrative sex with men on various occasions but also as late as 1996, 1997 and 1998 according to the evidence of Mpontshani.

According to the complainant herself she had sex with a male in July 2004. The question can also be asked why would the complainant allege that she was raped by the accused when it was in fact consensual sex that took place. Why would a woman in her position go through all the trauma in terms of the trial and publicity when she was not really raped. It is in this respect that the reference to previous false rape allegations become of the utmost importance. This case is in my judgment a good illustration why pressure groups and individuals should not jump to conclusions and express criticism before having heard all the evidence. At the time when I allowed the complainant to be cross-examined on her sexual history and evidence to be led in that respect I was fully aware of what was contained in Hulley's affidavit. I realised that there was at least a possibility that at the end of the case it could be said that a false accusation of rape was made against the accused. Instead of waiting some people stated categorically that rape victims will as a result of this case be hesitant to report an incident of

rape because of the treatment the complainant received, apparently also by the court. Much was also said about the protection the proposed new Sexual Offences Act will afford to rape complainants. I have referred to that Act and if it is necessary for the defence of an accused the same process will have to be followed in the future.

In many respects this is a unique case with unique features. Instead of scaring off unfortunate rape victims it should have been pointed out and emphasised that unfortunate victims of rape will be treated differently because they are different from the complainant in this matter.

A further question that can be asked is why will the complainant deny that she knows any of the men who alleged that she had falsely accused them of rape or attempted rape. The answer must be obvious. That is that she cannot admit that she had done so in the past because then it will be found out that she has done it again. The evidence of Duduzile Ncobo and Mahlabe should not be forgotten. Both these witnesses in all earnesty said that the complainant is a sick person who needs help.

A vital question is why would the complainant shout "rape" when she was a willing participant in sexual intercourse? I have referred to the statement of Ncube and of Mahlabe. I have also earlier herein referred to what Dr Olivier advanced as possible reasons why a complainant would make a false allegation of rape. It is quite clear that the complainant has experienced previous trauma and it is quite possible that she perceives any sexual behaviour as threatening. It is quite possible that after intercourse had taken place there was the feeling of guilt, resentment, anger and emotional turmoil.

This trial was unfortunate in many respects. It had a damaging effect on both the complainant and the accused. In my view both of them are to be blamed for the fact that it affected them. The accused should not have had sexual intercourse with a person so many years younger than himself and furthermore being the child of an old comrade and a woman plus minus his age. The complainant said that in spite of her own attitude that she would not have unprotected sex, it still remains the choice of a person to have unprotected sex. In my judgment that is exactly what she and the accused did that night of 2 November 2005.

Having heard the evidence of Prof Martins it is inexcusable that the accused did so. It is totally unacceptable that a man should have unprotected sex with any person other than his regular partner and definitely not with a person who to his knowledge is HIV positive. I do not even want to comment on the effect of a shower after having had unprotected sex. Had Rudyard Kipling known of this case at the time he wrote his poem "If" he might have added the following: "And if you can control your body and your sexual urges, then you are a man my son."

From the foregoing it is clear that the probabilities show that the complainant's evidence cannot be accepted. She is a strong person well in control of herself knowing what she wants. She is definitely not that meek, mild and submissive person she was made out to be.

On the evidence as a whole it is clear that the accused's version should be believed and accepted. The accused's evidence was also clear and convincing in spite of media efforts to discredit him. At least one cannot say that the accused's evidence is not reasonably possibly true.

The state applied that the court order, exhibit "B", be further amended to protect the complainant's identity and that the kanga be handed back to her. I am prepared to do so. I therefore make the following orders:

1. The order of court, exhibit "B", is amended by adding the following at the end thereof: "The complainant's name and photograph may not be published without her and the Director for Public Prosecutions for the Witwatersrand Local Division's written permission."

2. The kanga, exhibit "I", may be handed back to the complainant.

In my judgment the state has not proved the accused's guilt beyond reasonable doubt. The accused is found not guilty and is discharged.

W J VAN DER MERWE
JUDGE OF THE HIGH COURT

Complete judgement available at:
<http://www.constitutionalcourt.org.za/site/lawclerks/zumajudgment.pdf>

One in Nine Campaign Statement of State v Zuma Verdict – Media Release

8 May, 2006

Judgment in *State v. Zuma* Rape Case

The One in Nine Campaign is disappointed but not surprised by the verdict handed down by Judge Willem Van der Merwe today in the *State v. Zuma* rape case. The handing down of the judgment comes some three months after the first court appearance and six months since the alleged rape took place.

We have since the start of the case stated that we respect the rule of law and following from this we accept the judgment handed down in this case.

The One In Nine Campaign salutes the complainant for her courage and resilience in seeing this case through to the end despite tremendous pressure to do otherwise. Since the time of the rape charge being made public, Khwezi has had to endure hate speech, defamation of character, and media speculation by Zuma supporters and others.

She has had her freedom of movement curtailed as a consequence of being placed in protective custody. She has been kept out of the public domain and the court as a result of fears for her safety.

Inside the court, Kemp J. Kemp subjected Khwezi to a relentless and invasive cross-examination aimed at discrediting her as a witness and cast doubt on her ability to distinguish between consensual and non-consensual sex. Her personal writings and sexual history were deemed relevant to the case.

Not only was she placed on trial to defend her allegation, behaviour and dress code for this case but also for previous experiences of sexual violence. Despite this, she has remained steadfast in her account and in her pursuit of justice.

Rape has one of the lowest conviction rates of all criminal offences. A report issued by the South African Law Reform Commission (Research Paper 18) stated only 7% of rape cases are successfully prosecuted in South Africa. This certainly should not be interpreted as meaning that the other 93% of cases that are unsuccessfully prosecuted are false claims.

Research also suggests that rape has one of the lowest number of false claims – less than 5% – as compared to other criminal offences. Some of the reasons for cases not being successfully prosecuted include poor quality / insufficient evidence; withdrawal of cases (often due to intimidation of complainants or fear of secondary victimization); state officials not complying with protocols of treatment of survivors; prejudice and victim-blaming attitude of judicial officials and other service provider; insufficient knowledge of social context and emotional impact of sexual violence; legal definitions and provision relating to sexual violence as contained in the Criminal Procedures Act and Sexual Offences Act.

The above factors combine to not only further victimize rape complainants but also result in acquittals.

It is these verdicts and fear of experiencing secondary victimization and social stigmatization that often deter rape survivors from reporting their experiences. Only 11% of all rape survivors do speak out indicative of the impact these negative attitudes and practices; low conviction rates and fear for safety have on levels of reporting.

The One in Nine Campaign remains steadfast in actively supporting and demonstrating our solidarity with rape survivors who do speak out. We recognize the need for women survivors to be affirmed, their experiences acknowledged and to receive specialized gender-sensitive services. The One in Nine Campaign will continue to fulfill its mandate through lobbying for appropriate provisions within the Sexual Offences Act and through showing solidarity with women survivors of sexual violence. Public awareness and education on changing beliefs and challenging the myths and misconceptions about sexual violence is a critical area of intervention for the Campaign.

In the *Zuma* case we have witnessed many of these myths and misconceptions being used as part of the defense's strategy. We have heard these echoed outside the court and even in the media. It is critical that if we are to reduce levels of secondary victimization and violence and increase reporting and conviction rates that we challenge these myths and misconceptions. We need to remind South Africa a

victim of a crime is never responsible for the actions of the perpetrator.

This case underlines the need for us as South Africans to interrogate our understanding of good leadership and the kind of accountability we expect from them. We pride ourselves on having structures – such as the South African National AIDS Council – to what extent do we interrogate the views of those we elect / appoint to those positions?

The One in Nine Campaign welcomes the decision from Cabinet to approve the Sexual Offences Bill for tabling before parliament. The move is long overdue. The improved protections and provisions of the new Sexual Offences Bill come too late for thousands of men, women and children who have had to deal with a less than fair legal system and with a law that was never adequate in protecting them or ensuring that justice was served. The One in Nine Campaign urges Parliament to ensure that it be enacted and implemented before the end of the year.

The One in Nine Campaign urges women who have experienced rape to continue to report cases of rape, to contact specialized gender violence organizations and remember that a acquittal does not mean that the rape didn't happen and that the accused is innocent.

Written for the One in Nine Campaign by Carrie Shelver.

Available from: www.ncdsv.org/images/JudgmentinStatevZuma.pdf

Zuma showed courage and leadership in the face of mockery and ridicule

Buti Manamela, National Secretary of the Young Communist League, 17 May 2006

Available on The Friends of Jacob Zuma website:

The acquittal of Jacob Zuma trial rings a million bells for the future of the country, including as we deepen our campaign against women and child abuse, and as we confront an alarming rate of HIV infection, particularly among the youth.□□

The various pointers that emerged from Zuma's rape trial need not be avoided or swept under the carpet. Already Zuma has publicly and unconditionally apologised for having had a lapse, but said that there are lessons to be drawn from this battle. The Young Communist League welcomes this and applauds his exemplary stance in this regard.□□

He has shown courage and leadership in the face of mockery, ridicule and venom displayed against him. He has further committed himself to the struggle against women and children abuse, and HIV/AIDS.□□ We should avoid repeating some of the errors that he has committed in the process of defending himself, and ensure that we join in the struggle.□□

Jacob Zuma has never been the composite unit in the struggle against HIV/AIDS and women abuse, but one of the many committed cadres fighting this battle. What he said in his defence does not amount to a reversal of this. □ □ The manner in which some have appropriated the comments made by Judge Willem Van der Merwe to serve their own interests should be condemned. Throughout the trial, Zuma has been called many names. He has been referred to as morally bankrupt and chauvinist, while others even went further to proclaim his guilt. □ □ The rape trial also exposed other things that need to be condemned rather than condoned. The scale with which some people have been prepared to break the sub judice rule in the name of the struggle against women abuse is one. Organisations such as POWA and One in Nine continued to display a high level of opportunism through this case and were prepared to insult the judge and Zuma without even hearing reasons why certain decisions were taken by the judge. □ □

Although there are many rape cases reported daily, many women abused and many HIV infections, these Mickey Mouse organisations decided to use the Zuma trial to elevate their status. For them, this was a populist opportunistic contest. □ □

Those who hold a longstanding view that Zuma should not be the president are using what transpired in court. Already people are advancing a "moral" cause to ensure that their views and opinions on who should lead the ANC and the country will prevail. □ □

We would like to caution against any tendency that uses selective morality and undemocratic discriminatory criteria to determine leadership within the liberation movement and society in general. □ □

The fact that Zuma is not guilty means he is entitled to any position in society. □ □ The media should desist from perpetuating the distortions around the deputy president's testimony in court, including the issue of a shower after sex. □

Through a collective struggle, women abuse and HIV/AIDS will be defeated. □ □

Available from: <http://www.friendsofjz.co.za/showarticle.asp?id=127>

Articles

100% Zuluboy

Moya, F.N.

Published on *Mail and Guardian Online*, 6 April 2006

A story is told about how, in the early 1990s, a recently released African National Congress leader addressing a crowd at a Durban township was laughed at and teased. It was not out of disrespect. "He

sounded like Inkatha," was the explanation for the banter.

Decoded, sounding like Inkatha meant that his Zulu betrayed his rural upbringing and probable revisionist tendencies.

This week, the second-most-senior ANC leader, Jacob Gedleyihlekisa Zuma, cast the potential ignominy of "sounding like Inkatha" aside to deliver his testimony in Zulu. It was the type of language that would have had him laughed at by the KwaMashu youth.

Having being declared by his foes according to the disputed hoax e-mails to be "the Zulu boy", but embraced by his supporters as "100% Zuluboy", Zuma has gone back to his KwaNxamalala village roots.

Language was not to be Zuma's only weapon in the Johannesburg High Court, where he is fighting charges that he raped a 31-year-old family friend. He invoked the culture and spoke in an idiom that would make language activists proud.

He told Judge Willem Van der Merwe that the very charge of rape was a result of having acted in accordance with what he had been taught as a youngster growing up in Nkandla, in northern KwaZulu-Natal.

Zuma, who has denied the rape charge, saying the sex was consensual, this week told the court that he had been taught that "leaving a woman in that state [of sexual arousal]" was the worst thing a man could do.

"She could even have you arrested and charged with rape." It has proven to be one lesson he might have to revisit because he was charged with rape regardless of having taken the "precaution".

Zuma doggedly stuck to his version of events despite being on the witness stand for four days. He insisted that the sex had happened in his bedroom and not, as per his accuser's version, in the guest bedroom.

Unlike his accuser, who appeared to crack under cross-examination, Zuma remained collected and affable throughout.

Zuma's Zulu at times had the court interpreter finding himself having to be corrected for having missed

the nuance or the correct meaning of a word. Addressing the judge as '*nkos'*-*yenkantolo* (king of the court), Zuma waited for even the most mundane English phrases to be translated into isiZulu before responding.

By the time the state had finished its cross-examination on Thursday, Zuma had done his bit for the language of his ancestors.

He referred to his accuser's private parts as *isibhaya sika bab'wakhe* -her father's kraal. And admitted to entering this kraal without *ijazi ka mkhwenyana* -the groom/husband's coat, known to non-Zulu speakers as a condom.

Asked by a doubtful prosecutor, Charin de Beer, how he could have wanted to pay lobola for a woman with whom he did not have a love relationship, Zuma again invoked isiZulu.

"There are times in isiZulu culture that you could pay lobola for a woman you have never seen even *ka Madala ejudeni* [at Madala, the Jew's corner shop]," he said, using a Zulu phrase to emphasise never having laid eyes on a person before.

Zuma's daughter, Duduzile, took the stand on Thursday and testified in English, mentioning that her father normally conversed with her in English.

She told the court that she had been suspicious of Zuma's accuser from the onset. "Woman's intuition," she gave as the reason for her uneasiness.

She said that when her father introduced the complainant as an old comrade's daughter, she knew that the complainant was at the Zuma home "to sponge off my dad. Old comrades' children are always looking for help," she said.

Duduzile added that she suspected that the complainant was out to "seduce" her father.

Under cross-examination, she said she did not warn her father of her suspicions because in Zulu culture, it was not the done thing to discuss sex-related matters with one's parents.

Duduzile told the court that the complainant was "practically half naked" when she went to Zuma's study. This, though the complainant wore a sarong covering her breasts and knees.

"I thought it was inappropriate for her to dress like that when she was a guest at someone else's house," she said.

The trial continues, with Zuma, his family and supporters hoping that Duduzile's sentiments on hearing of the rape charges - "I thought it is another hurdle we need to go over" - are correct.

Zuma culture, not Zulu culture

Professor Silawu Ngubane University of KwaZulu-Natal academic: "Our culture is not written and there are no books that we can go back to for reference on such issues. JZ's statement on Zulu culture is new to me. I'm not aware of such a thing in Zulu culture. I'm not dismissing it but, I'm just not aware of it.

"What I know is that in Zulu culture a girl must show respect and appreciation to the elders and remain obedient."

Nomagugu Ngobese -traditional healer and cultural activist: "In Zulu culture, the complainant shouldn't have been in Zuma's bedroom at night. She shouldn't have dressed as they say she was and shouldn't have asked JZ to rub her body. Rubbing somebody's body symbolises love and I believe that these two people enjoyed each other.

"We the Zulus are very respectful and what the complainant has done is a sign of disrespect towards older people. Firstly, she invaded Zuma's privacy, and secondly she tarnished his character. How can she say JZ raped her? If I were Zuma I would file for rape against the complainant. We are tired of people who use other people's names for their own malicious gains."

Professor David Copland - University of the Witwatersrand anthropologist: "Regardless of culture, most men could have reacted as JZ did but his culture statement is of macho ideology and most Zulus are proud of it.

"People shouldn't use culture to protect their deeds because culture varies from person to person. Someone would say this about culture while the other could say the opposite.

"As human beings we should also not do things that are offensive to others because they are culturally permitted where we come from and not seen as bad things."

Father Joe Mdhlela -South African Council of Churches: "Our African cultures uphold respect. However, these cultures should not determine how we apply this respect.

"Culture should not be used to violate other people's rights as it has been used in the past to degrade women.

"No matter how scantily a woman is dressed, we need to treat them with all the respect and not use culture to oppress them.

"We should make sure not to use culture to impose ourselves on others and we also need to revise culture when it becomes offensive."

A prominent Zulu cultural activist who preferred to remain anonymous: "What Jacob Zuma and the complainant did is not Zulu culture but Zuma culture. Zulu culture tells us to respect each other and I don't think JZ showed any respect to the complainant nor to himself. At this point Zulu culture failed but Zuma culture conquered.

"I also understand that when JZ spoke about culture in court he did it in Zulu but the reports that we get are in English. Journalists should be careful not to translate false messages to us. They should not change the context of the messages because this can give people a wrong impression about JZ."

Dr Mathole Motshekga advocate of the high court/cultural expert: "He is completely correct [to base his argument on culture] because South Africa interprets human rights through Europeanised views, that's why there's a problem.

"He is correct because our cultures play an important role of informing the society about its own cultural and moral values.

"Human rights don't fall from heaven but are products of this world and need to be observed thoroughly." *Additional reporting by Monako Dibetle*

Available from: <http://www.mg.co.za/article/2006-04-06-100-zuluboy>

'This mama is speaking lies'

Tolsi, N., Sosibo, K., Makgetla, T., and Dibetle, M.

Published on *Mail and Guardian Online*, 24 March 2006

The protesters outside court vouching for embattled Jacob Zuma were largely female. Women with his photo emblazoned across their chests. Women honking vuvuzelas in his support. Selling T-shirts to raise funds for his defence. Burning images of the woman who dared lay a rape charge against him.

On the other side were activists holding vigils to support Khwezi, the name they gave the complainant, whose identity must be protected. Activists writing prose alight with anger; articles beseeching mercy on his part and that of his legal team.

The gap between activist, professional and middle-class women on the one side and ordinary, largely working-class women on the other seemed yawning. The *Mail & Guardian* took to the streets to find out where women stand.

Regina Mkhana

(48), a domestic worker in Illovo, originally from KwaZulu-Natal: "[Thabo] Mbeki is Xhosa and [Jacob] Zuma is Zulu like me; they're trying to spoil the name of Zuma so that he's never chief. Why bring up this story now? That woman went to Zuma to ask for money, you can't do that with someone you don't like. I hear everybody talk, they can see this story is a lie. I support the Inkatha Freedom Party but I support Zuma. He is very good because he helped suffering children -- when he was taken out of office, children were crying on TV. If he knew that a child's mother was dead, he used to pay for their uniforms, school fees, everything."

A domestic worker in Rosebank

(54) and African National Congress member, who asked not to be named: "I think it's political. Some of Zuma's colleagues in politics don't want him to be president in the near future. President Mbeki, if this was his comrade, has the power to stop all the trials and let Zuma walk free. But he's quiet about all that. I do not support rapists, I don't want any woman to be raped. But her story! Firstly, she was invited, then she agreed to cook. Third, she agreed to stay with Zuma for the night and fourth, she didn't lock the door. There was no rape, her and Zuma are lovers or something. I think this whole thing

is very unfair, but I don't see that Zuma has any future in South Africa. We know that all men have girlfriends but his secret came into the open. They caught him in his corner because they know he likes women. [Laughs.] We don't want someone like him, it doesn't send the right message, especially sleeping with a woman without a condom -- what message does it tell our youth?"

Nombuyiselo Nxako

(51), a hawker in Rosebank: "I see Zuma the same way. I think the outcome of the trial is still not clear but I think he's innocent. The aim was to drag his name through the mud. The two of them were in love. He should carry on to be president."

Noluthando Mase

(26), unemployed: "There was an agreement between the two. He did not rape her. Zuma understands the dangers of being infected with HIV and I don't see an intelligent person like him raping an infected person. Women in this country should change their attitudes; they should stop crying rape whenever their boyfriends disappoint them. No matter how hard the ANC government tries to bring Zuma down; we the people of South Africa still support him because he's a good man who loves his country."

Nana Zajiji

(24), camera operator visiting Johannesburg from Durban: "My idea of Zuma changed after the Schabir Shaik trial but not much since the rape trial. I think he is a corrupt person who can rape. I don't think he can still be president because politics is about perceptions and perceptions of him are negative. He is too busy with his cases and has been out of politics for a long time."

Pretty Ngcobo

(42), a street hairdresser from Umlazi: "It's nice that they burnt that picture [of the alleged rape victim]. Somebody who doesn't like Zuma has paid something to her. I want Zuma to be the next president. This rape trial is not right because somebody raped this girl before Zuma, so why does she not bring him to court before Zuma? Why does she want to destroy Zuma?"

Sthembile Ndwandwe

(24), a single mother from Lamontville who distributes flyers for a doctor's surgery: "This mama is speaking lies because she was in Zuma's room with that [kanga] on and he could see everything. After that Zuma slept with this mama and then she put the case against him. Zuma will win this case because this mama is speaking lies and all the people know it's wrong. She's got too much money and she didn't really work, where's this money coming from? This woman is a isigebengu [criminal], she is

Zuma's girlfriend, otherwise why would she sleep with him without a condom? Why would she sleep with him four times? There's nothing wrong!"

Hloniphile Maphalala

(18), a high school student from Ntuzuma near KwaMashu: "Ja, I still support Zuma because I like him and I want him to be president. Things will change if he is president, there will be more jobs. [His supporters outside the court] are doing it because they don't think Zuma is guilty; it's fine. She allowed Zuma, Zuma didn't force her. Women's rights are not affected."

Duduzile Buthelezi

(24), a doctor's receptionist from Nkandla: "We are not sure, because only Zuma knows what happened. We Zulus want him to take the chair when Mbeki leaves and we feel the Xhosas don't want that. I don't think [the behaviour outside the court] is good because no one knows if he did it or not, they must wait until the end of the case. The amount of women raped in this country is really bad. The people down here, we look up to Zuma and the Cabinet -- if he did it, then people at the bottom will start to believe it is okay to rape. I like Zuma, even the IFP follow the trial and they like Zuma, but I can't say he is good or bad until the trial is over."

Mbongiwe Mthembu

(26), an informal trader on the beachfront who lives in Ndwedwe, north of Durban. "I know about the trial, but I don't have time to go to the meetings at the station or to the court, because I am here trying to make a living. The woman is lying, I know she is lying. I think she has done a bad thing. If I had that problem with Zuma I can talk to him, but not go to the court. She wants more money from Zuma and that's not good."

Mandisa Haram

(24), unemployed Soweto resident: "Zuma used to warn people about the dangers of HIV/Aids but he failed to practise what he preached by raping his niece, sies! People say they want him as president and that makes me crazy. Even if he is found innocent of rape, he has proven that he is immoral. He can't be trusted. How can a man who fails to control his feelings be given the responsibility of becoming our president? That's stupid."

Philiwa Lekau

(24), unemployed Soweto resident: "Zuma is still a good man, rape or no rape. We still want him as president no matter what the ANC is saying against him. This government is trying everything to drag

him down but they will not succeed. We love him and will support him to the very end. What has been shown in court so far indicates that the lady is an opportunist. She's framing poor Zuma for nothing. Those Powa [People Opposing Women Abuse] people are only making noise. They should stay at home and address real rape issues that are occurring in squatter camps."

Jean Chamane

(22), fashion designer: "I don't want Zuma to become president because he has shown that he can't be trusted."

Portia Mekhise

(31), photographer at the Johannesburg offices of the Department of Home Affairs: "We don't need Zuma as anything because he's a disgrace to the society. Whether the lady consented to sex or was raped, Zuma acted immorally and something should be done with him. That woman could not just wake up and come up with such a big story about a big person as Zuma if the rape didn't happen. Zuma took advantage of the girl seeing she is a family friend. It's unfair because everybody is talking about her HIV status but nobody is saying anything about Zuma's. I bet he's also infected. He must go to jail just like everybody else if he's found guilty of rape."

Anna Mashele

(51), cleaner at the Bus Factory in Newtown, Johannesburg: "Zuma for president, no matter what. This young girl is crazy and does not respect older people. She has insulted all women in this country, even those supporting her. She's a bitch and deserves to be jailed for dragging Zuma's name in the mud. All people supporting her are rotten, like her. She has shown the whole world that she can do anything for money."

Rejoice Maluleke

(60), street vendor at Chris Hani-Baragwanath hospital: "I haven't heard that name before. I don't know who Jacob Zuma is."

Available from: <http://www.mg.co.za/article/2006-03-24-this-mama-is-speaking-lies>

Protecting rights of rape survivors

Gerntholtz, L.

Published on *Mail and Guardian Online*, 12 December 2006 L

For many of us working in the gender-based violence sector, the defining images of 2006 will be those from the Jacob Zuma rape trial: headlines in newspapers promising details of the "15 minutes of

delicious sex"; Zuma supporters burning pictures of the complainant outside the court; and the gruelling, humiliating cross-examination of the complainant about her sexual history in a packed courtroom. In many ways, the trial represents the worst of the criminal justice system, highlighting how easy it is to undermine the Constitutional rights of a rape survivor to dignity and privacy, under the guise of protecting the rights of the accused to a fair trial.

Many survivors who have gone through a criminal trial will identify with these issues, and those contemplating laying charges of rape will remember them and may hesitate to proceed. Unfortunately, these issues are not new – there is much research, local and international, that documents the trauma experienced by rape survivors at the hands of the system that is meant to protect them.

In a criminal trial, the complainant is a witness for the prosecution, and she has no independent rights – she cannot be represented by an attorney or advocate during the trial and, unlike an accused, she herself has no right to a "fair" trial. In many cases, the complainant only meets the prosecutor on the morning of the trial and she is unable to influence trial strategy on which witnesses are called, what evidence is led and what arguments are made on her behalf. One complainant described herself as a "mere spectator".

Currently, the Criminal Procedure Act, which regulates how criminal trials are conducted, provides limited protection to complainants in sexual violence cases. These measures are largely inadequate and frequently implemented in a manner that further undermines the rights of complainants, rather than enhancing them. An example of this relates to the right of a complainant to give her evidence in a closed court, an exception to the general rule that trials are conducted in open court.

The purpose of section 153 is to spare her the humiliating and degrading experience of having to recount the sexual details of the assault before a room full of strangers, many of whom may be sympathetic to the accused. A practice that has emerged illustrates how the courts fail to use this provision to protect complainants from unnecessary violations of their rights to privacy and dignity. Many courts allow a complainant to nominate members of her family or friends to remain in court to support her during her evidence. This is a good thing, but the accused is allowed to choose an equal number of people to remain in court to support him while the complainant is testifying. This often has the effect of revictimising the complainant, as the accused frequently chooses those in his entourage who are openly hostile to the complainant, and she is still forced to give her evidence in front of strangers. It is notable that there is no provision made in section 153 compelling this – the section

simply states that the court can order any person "whose presence is not necessary at criminal proceedings" to vacate the court.

The courts also frequently allow the press to remain in court, merely enjoining them not to report the name of the complainant, or any details that would reveal her identity. In the Zuma trial, despite the ruling of the court that the complainant give her evidence in a closed court, the courtroom was so full that it was often difficult to get a seat.

In its comprehensively researched paper on reforming the law of sexual offences, the South African Law Reform Commission recognises the inherent difficulties in the current system and the need to do more to protect the rights to dignity and privacy of complainants. It has made extensive recommendations to the department of justice, suggesting that all complainants in sexual offences trials be declared vulnerable witnesses, and have access to protective measures. Prosecutors would have a duty to inform complainants about the existence of these measures and the court would be obliged to use at least one. These measures, which included allowing complainants to testify via CCTV, preventing an unrepresented accused from directly cross-examining a complainant and allowing a complainant to have a support person present with her in court at the state's expense, have been removed from the Sexual Offences Bill and will therefore not become law when the Bill is passed next year.

The question therefore remains: How do we better protect the rights of complainants during sexual violence trials? I offer three suggestions: first, reinstate the protective measures for vulnerable witnesses in the Sexual Offences Bill; second, ensure that complainants have adequate access to psycho-social support during and after the trial (provisions making such support available at state expense were also excised from the Sexual Offences Bill by the department of justice); and finally, perhaps more radically, allow complainants to have access to legal advice and representation. Many will argue against such a right, particularly on the grounds that it may "stack the deck" against an accused. But, considering the extraordinary low rates of convictions in rape cases and the continued re-traumatisation of complainants, the time has come for more drastic action.

Liesl Gertholtz is the director of the Tshwaranang Legal Advocacy Centre

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Pressure to be promiscuous

Pumla Dineo Gqola

Published on *Mail and Guardian Online*, 11 February 2009

In frustration we often ask: how can HIV/Aids infections continue to rise at such levels given the many efforts to educate people on how to protect themselves? Who has not heard that HIV causes Aids? How many times should we be invited to "condomise", practise the ABCs, "choose life", stay away from sugar daddies or "turn HIV into HIVictory" before we take the message to heart? How can people choose to have multiple sex partners in such risky times?

It all sounds simple. But Nthabiseng Motsemme's work, *Loving in a Time of Hopelessness: On Township Women's Subjectivities in a Time of HIV/Aids*, reminds us that love in the time of Aids is complicated. So, although people know how they are exposed to HIV/Aids, something about the way we live prevents us from being able to translate this. When I hear that 40% of all infected people live in Southern Africa, I want to know what makes us more susceptible to this disease.

My former partner, then in a much-loved career that exposed him to sensitive information daily, once remarked: "People say knowledge is power. What they don't want to understand is that too much information is oppressive." Although we were not discussing HIV/Aids at the time, his comment often pops into my head when colleagues, friends and public figures strut out "awareness raising" or "public education" as the sole ways to intervene and turn the tide against HIV. Equally important is understanding how information works or fails in our lives.

Sex with multiple partners is so entrenched in Southern Africa that it is a religion, a basic moral philosophy for most people here. It is often simply called culture or, specifically, African culture. Political leaders who marry an increasing number of wives and royalty that flaunts an equal number of wives and concubines are highly visible.

Often such men conflate their multiple partners with culture, making it harder for us to confront them without being seen as uncultured or, worse, unAfrican. Consequently, even those who do not have multiple partners overlook this practice as part of our collective psychological DNA. Like the genetic DNA we carry in our cells, we pass it on.

We raise children who want to fit in rather than people who espouse principle, even when in the minority. Young men in Southern African countries live under enormous pressure to be promiscuous, young women are raised to make themselves available to men with few questions as a way to keep them away from others, albeit temporarily. This is couched in the language of being "real" African men who show that they pursue and are attractive to women.

When I was a teenager, "playboy" was just another way of saying "isoka", a compliment to those who were demonstrably promiscuous straight African men. This pressure to be promiscuous to prove manhood is quite pervasive. Consider the myth that newly initiated men, amakrwala, need to have sexual intercourse with a woman other than their regular sexual partners upon exit from initiation school. This is ostensibly to avoid passing on misfortune to the valued girlfriend, even though the source of such misfortune is unidentified. In other words both men and women are coerced into condoning multiple sexual partnerships in the name of culture.

Those who defend virginity testing insist that this is a sanctified cultural practice. But such uses of culture make young women's bodies safer to monitor, while at the same time leaving men's libidos unchecked. There is no similar examination process or pressure applied to men to remain virgins -- women are not taught they are also entitled to virgin partners.

Indeed, in many contexts, women may not ask questions about their partners' sexual histories and concurrent sexual activities. In such situations, then, asking the man to use a condom is not viable.

We spread the message that men are entitled to sex and that men's sexual desire for women is uncontrollable. Although we are willing to live with having multiple partners among us, few of us want to own up to it and its consequences. Negotiating condom use often becomes as unwise, difficult and dangerous as engaging in unsafe sex.

To accuse an African of attacking or being disloyal to her/his culture is an effective silencing weapon because it reminds Africans of prior wounding by a series of violent systems that started with slavery and ended with Apartheid. It is the ultimate weapon. Yet, as Dr Mamisa Chabula constantly reminds us, customs are meant to heal, not to kill. Opportunistic use of culture against one another lies at the heart of what is killing us in the region.

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Available from: <http://www.mg.co.za/article/2009-02-11-pressure-to-be-promiscuous>

Polygamy revived, but to what end?

I attended a TV talk show recently where they debated the morality of polygamy. I was on the panel because I had written a piece on polygamy in January last year. The blog got tongues wagging. It was subsequently, and maybe more eloquently, covered by respected social commentators like the irrepressible Ndumiso Ngcobo, among others.

When I saw the ad for the popular SABC1 show, which airs on Sundays, I wondered why all of a sudden a man who is married to more than one, willing, wife within the institution of marriage supported and protected by our Constitution should get so much focus in the current social climate. Are people genuinely opposed to the practice or is there a deeper, darker meaning to all these developments? Let us explore this further.

There are two prominent polygamists that antagonists to this practice constantly refer to and make the target of their ridicule. These two gentlemen are traditional leaders, one is within our borders and the other is a neighbour who is usually clad in what resembles a red kanga and has a penchant for young brides. I cannot help but feel the reason there is such an outcry these days is to ridicule Jacob Zuma.

I read a funny comment in the Sunday Times (ST) yesterday. A reader said the ST should all together stop printing the name Jacob Zuma on their publication because it seems that his name appears on every single page of the ST. He proceeded to proclaim that should this name be cut out from all text printed onto paper this would result in less trees being cut down for the purposes of producing paper, thereby reducing the impact of deforestation on our planet.

I laughed, then explored this gentleman's options and felt pity on him because this is one name he will not be able to get away from in a hurry it would seem, especially since every aspect of the man's life is so closely scrutinised and publicised — then opened for ridicule whenever possible.

But my point is that the timing is just too convenient to be a coincidence and his name has been mentioned during some of these debate sessions and in the press in relation to him practising his Constitutional right to be a polygamist. It could be one of two things:

1. Zuma is such a dominant force in your life, like him or not, that anything that remotely has to do with him will affect you therefore it should be debated publicly and its merits tested resulting in it being highlighted and brought to the attention of those that can do something about it in order to

benefit the masses who might be adversely affected by this particular part of his character.

Or

2. It is another attempt to publicly humiliate and discredit him ahead of the elections in an attempt to erode his support and dominance of the ANC in South African politics or to paint him as a less desirable candidate for the presidency in and outside the ANC, placing the current president in a better position to take the top job.

These are just some of the options and no one can reduce these as being the hallucinations of one obese individual. But the latter is so boring and overdone and is really not worth exploring further since it is quite normal, in my opinion, for politicians to bad-mouth each other in public in order to gain advantage over their opponents through public ridicule. Unfortunately it works.

But the former is quite interesting. Is the man's influence, positive or not, so strong that he will dictate what it is that you talk about inside your own home, in your living room, at the dinner table and do you still believe that this man has no power, is a brute and unintelligent, unsophisticated old-fashioned leader, a well-coordinated gyrating fool who should not be president under any circumstances, a philanderer and a fraud?

Yet he resides in your home and you keep inviting him into your life every day and you insist that he stays top of your mind. You discuss the economy in relation to how most of the educated minority aka experts believe he will balls it up. You discuss the judiciary and how you hold that he has corrupted it; you discuss the National Prosecuting Authority in relation to how you think he is singularly trying to shut it up so he will be able to get away from charges leveled against him. I wouldn't be surprised if you will probably also link him in some manner to the global recession — I don't know, maybe he sang a song and people started engaging in ill-advised economic practices — you will find a way.

You even go on rants about how base polygamy is and how someone who practises it should never be allowed to hold public office if he is going to be so preoccupied with acquiring new wives and planning weddings among his normal marital responsibilities which might already leave him rather spent because of the sheer size of such responsibility.

All of these observations lead me to think that Zuma could just BE South Africa right now, or at least South African politics, the quicker we accept this, the sounder we shall all sleep at night with our one or maybe two wives and maybe some of the other party's can start actively and intensely developing their own manifestoes instead of anti-Zuma, anti-ANC rhetoric forming the foundation of our

opposition.

I rest, □ The Sumo

Available from: www.thoughtleader.co.za/thesumo/2009/02/02/polygamy---revived-but-to-what-end/

In SA, morality is not a yardstick for choosing leaders

Molefe, T.

Published in the *Sowetan*, 29 January 2009

Thou shall not get caught. That is the 11th – but not recorded – commandment. Universally, this expression refers to the question of ethics, be it in politics, religion, business or daily life.

It is the bane of morality that is the crux of how ordinary men and women should conduct themselves in the eyes of society – the greatest judge of human behaviour.

Ethics demand that politicians should be worthy, honest, helpful and answerable to the common weal. Be above suspicion like Julius Caesar's wife.

Remember she had a dream warning him of the Ides of March?

But this is not about the great Caesar for "he was an honourable man", as his trusted aide and betrayer Brutus described him at his funeral.

Indeed, many a hero has fallen to the sword of unethical and dishonourable conduct. History attests to that.

Traditionally, Republicans in the United States are prone to being caught with their hands in the till.

Didn't they loot Iraqi oil during Bush's war?

It has been chronicled that George Walker Bush turned an office at the White House into a storeroom where he kept looted Iraqi – ostensibly Saddam Hussein's – memorabilia.

It is now legendary that this room was the same office where Bill Clinton was caught with his pants at his ankles in the infamous tryst with the then 21- year-old intern Monica Lewinsky. Clinton is a Democrat.

Of course, the Democrats' downfall is sexual peccadillos, the same as the Tory Party in Britain.

Presently the great debate in South Africa evolves around the moral esteem of ANC president Jacob Zuma and his deputy Kgalema Motlanthe.

Both leaders have received a great deal of media attention for behaviour that questions their sexual morality.

Zuma himself now faces a corruption trial which questions his fitness to lead the country.

In Britain, there the Labour Party, now led by Gordon Brown, also steals.

Closer to home, theft and conviction of bigwigs is not a problem.

Several prominent figures have been caught stealing or committing fraud. And this has become neither a legal nor a traditional requirement to resign from or occupy high office.

In South Africa a sense of entitlement pervades government. There is no sense of shame. There is no regard for the 11th commandment: "Thou shall not be caught" or morality is not a basis for choosing leaders.

At the start of the much-publicised Zuma rape trial in 2006, University of South Africa vice-chancellor Barney Pityana wrote in the Mail & Guardian: "To resign would be to show evidence of moral capacity and to give a veritable signal to his misguided supporters, including (then) ANC Youth League president Fikile Mbalula and Cosatu general secretary Zwelinzima Vavi, and through them, to millions of young and eager South Africans, that there is something of a shame associated with rape and with corruption, and that he is prepared to take moral responsibility, as opposed to legal culpability, for the offences for which he must stand trial.

"Moral revulsion is not something the courts can impose on him. It is that which he must take upon himself if he is to be the moral exemplar he once aspired to be."

It is therefore expedient to opt out if entrapped by the 11th commandment.

Available from: www.sowetan.co.za/Columnists/ThembaMolefe/Article.aspx?id=927594

Why rape victims shy off charges

Noeleen Maholwana Sangqu's column appears in The Citizen every Thursday

3 September 2006

Now I fully understand why so many rape victims refuse to lay charges. Now I understand when rape survivors ask "will justice be done?" Or when they make statements like, "I felt like I was being raped again" or "the scrutiny that is placed on me, the survivor, is just too much".

I guess I'm not the only South African glued to the radio and TV and reading newspapers to get more gory details of the Jacob Zuma rape trial.

But what I am hearing is certainly not something I want to hear... who does? Yet I am aware that

someone is innocent until proven guilty. It would thus be unfair to analyse the evidence now being heard in court.

But I do want to make some points. Points which come back to the statements I made at the beginning. I put myself in the shoes of every woman who has been raped. I think of the pain she must have gone through when the rape occurred, when she laid the charge, when she faced her accuser in court and when she was cross-examined.

I cringe thinking of how this woman felt when Zuma's lawyers probed her sexual history. Forgive me for not understanding, but why on earth would a rape victim's previous sexual history be important? What if it is established that she has had 100 lovers before? What difference does that make? Does it perhaps mean that if I have consented to sex with one or multiple partners that I cannot be raped? I certainly do not think so.

Another issue of huge concern to me is the blatant disrespect Zuma supporters show towards the law and the accuser. It is one thing for supporters to sing pro-Zuma songs outside the courtroom, and an entirely different story when they start burning posters with the accuser's picture on them.

These very supporters are saying, "let justice be seen to be done", but in the same breath, they denounce the accuser and burn her poster.

What are they saying? To my mind they are saying she is not to be trusted, she is a liar and she should never have laid a charge. There is nothing wrong in supporting someone, but once that person is under suspicion, one needs to reconsider that support. Rape is a very serious problem in South Africa and it needs to be treated as such.

Available from: <http://www.citizen.co.za/index/article.aspx?pDesc=14439,1,22>

Carnival atmosphere at Zuma rape trial

Published in *Mail and Guardian*, published on 13 February, 2006

The controversial song, Msholozì -- Jacob Zuma's clan name -- kicked off a carnival atmosphere at the former deputy president's rape trial on Monday.

The song, by the group Izinganizoma, called for charges against Zuma to be dropped.

It was recently withdrawn from the South African Broadcasting Corporation's Ukhozi FM's play-lists after complaints from listeners.

A red minibus with massive speakers mounted on top played a continuous loop of the song with passers-by and Johannesburg metro police tapping their feet to the catchy tune.

Thokozani Zulu from Vosloorus said: "It is a maskanda song. I'm not used to buying this sort of thing, but because of this banning I bought it."

Mulungise Tshabalala from Zola, Soweto, was blowing a vuvuzela but took time out to tell reporters: "The ANC must know today we will support this guy."

He said many of Zuma's supporters were angry because the Gauteng Legislature was opening on the same day as the court case began.

"We are angry because everyone is going there instead of coming here," he said as people wearing T-shirts reading "100% Zuluboy" walked by.

The 31-year-old complainant in the rape matter arrived at the court around 7am.

The woman, an HIV positive Aids activist, covered her head with a scarf while entering the building. She was accompanied by security personnel.

A small group of anti-rape protesters took up station outside the court. The group, numbering about 12 women and three men, displayed placards reading "Rape is always a crime", "Solidarity with women who speak out" and "Silence does not equal consent."

People Opposed to Woman Abuse (Powa) public awareness manager Carrie Shelver said they were there in support of survivors of sexual violence -- and the complainant.

She said current legislation did not really provide for survivors of sexual violence.

"Survivors get very little support in South Africa," she said.

The protesters included members of Powa, the Gender Aids Forum, the Forum for the Empowerment of Women, a black lesbian group, and the Positive Women's Network.

A small group of Zuma supporters gathered in Smal Street next to the court and was chanting pro-Zuma slogans under the watchful eye of police.

Police vehicles lined the streets around the court in Pritchard Street with a large truck of razor wire at the ready.

About a hundred policemen were keeping watch around the building.

Emergency services were also on stand-by and a large media contingent have put up equipment in front of the court building.

Streets around the court, including Von Wielligh, Kruis and Von Brandis Streets have been closed to traffic.

The trial was expected to get under way around 10am. Zuma was charged in December with raping the woman at his Johannesburg home. The alleged rape took place in November.

This came after he was relieved of his post as deputy president in June, amid charges of corruption that emanated from the fraud and corruption conviction of his financial adviser Schabir Shaik. - Sapa

Available from: <http://www.mg.co.za/article/2006-02-13-carnival-atmosphere-at-zuma-rape-trial>

Media must examine its conduct in JZ trail

Kupe, T.

Published in *City Press*, 15 April 2006

The trial of ANC deputy president Jacob Zuma for alleged rape raises many questions about the role of the media and our society's attitudes on issues of gender-based violence.

Sections of the media in pursuit of extra sales have reported the trial as if it was a sex scandal involving a public figure. They have consistently selected and highlighted salacious and graphic details, used them in headlines and quoted them extensively in their court stories.

Media must accurately report what is said in an open court. But some media fail to frame the story as one of gender-based violence which, if proved to be true, would be shocking since Zuma is a popular struggle leader.

They also fail to frame the trial as one that would set back attempts to reduce rape if the allegations are untrue. Women who cry rape will find it difficult to be believed. Many might feel it better to be silent than to be treated as another woman who cried wolf for ulterior motives.

These sections of the media fail to frame the story as one with profound consequences for the efforts to build a society in which violence against women is eliminated. One does not get a sense that there is regret about this ugly public spectacle. Instead, there is some glee and the exploitation of the trial for a type of perverse entertainment value.

It is also true that sections of the media frame the trial in a restrained, dignified and ethical manner which - while revealing the essence of the claims of the accused and the alleged victim - does not emphasise sordid details which do not help the public understand the evidence.

Serious cases of alleged rape require the media to ask what the public interest is and not what the public might be interested in.

The public interest is that the media should - through balanced information and analysis - help the public to understand the evidence in the trial. A few people might be interested in graphic details of the alleged act to indulge their sexual fantasies.

These graphic details border on the pornographic and the images often demean those depicted and gloss over issues of violence. It is not the media's role to indulge such interests, especially if it is at the expense of a failure to focus on the core of a serious matter.

However, it is not only the media that has failed on this issue. Other institutions have also been exposed for inaction or dilatory action through this trial.

The ANC needs to ask itself why Zuma's supporters, a few of whom are party members, exhibit attitudes and prejudices inimical to the party's progressive views on gender equality and the treatment of women.

Has the party done enough to ensure that its members actually believe in gender equality and will defend it in all circumstances although they might hold a view that one of their own has been falsely accused? Are its gender-sensitisation programmes effective? It is not enough for the party to just condemn supporters who behave badly outside the high court.

The media need to be asking the ANC these questions and not focusing on "MaMkhize", the apparent leader of Zuma's supporters outside the court.

Further, the media needs to be asking questions about why women would be at the forefront of victimising an alleged victim who is also a woman.

Has the media analysed whether the Constitutional values of gender equality guide the actions of ordinary people in their everyday lives? □

Professor Tawana Kupe is head of the School of Literature, Languages & Media Studies at Wits

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Zumania rules the day for JZ

Msomi, S.

Published in *City Press*, 18 February 2006

It was a show of strength when Jacob Zuma's supporters gathered outside the Johannesburg High Court this week for his appearance on a rape charge. But, as S'THEMBISO MSOMI discovered, Zuma's support base is deteriorating into a crude, ethnically-driven lobby with little regard for women's rights

THE high court building seemed to tremble as thunder boomed across the Johannesburg sky and the menacing dark clouds above warned of an imminent downpour.

Usually, the sound would have sent people scurrying for shelter on the covered pavements in front of the shops and offices along Pritchard and nearby streets.

But not today. Instead of running for cover, the cheering crowd seemed to be spurred on by the thunder into more vociferous singing and dancing.

For some, the loud rumbling of the skies soon after Transvaal judge-president Bernard Ngoepe stunned many by recusing himself from the trial would have been proof that the "ancestors" were with them in their struggle to see their beloved ANC deputy president, Jacob Zuma, rule South Africa.

Five hours earlier, a lanky old man in traditional Zulu warrior attire and colourful braids that identified him as a sangoma, walked up and down declaring himself a prophet of "God" sent to spread King Shaka kaSenzangakhona's message to his people.

Wielding his ishoba (a trademark sangoma switch made from animal-tail hair) like a weapon, the old man weaved through the crowds searching for white faces.

On finding one, he would stop and say in a husky voice: "Do you heard what God say (sic) about Shaka?"

Invariably, the white journalist would stop to listen to the "prophet's message" but somehow the "divine wisdom" would forsake the old man and he would have nothing intelligent to say.

The journalist would lose interest and walk away, leaving the prophet to re-start his search for another white face.

Black journalists were invisible to the "prophet". Unless, of course, they were carrying cameras. When he saw one

pointed at him, the old man would break out into a traditional Zulu dance.

Competing with him for the cameras' attention was a middle-aged woman in black, green and gold traditional Zulu headgear (isicholo), a matching traditional Zulu skirt (isidwaba), a South African Communist Party golf shirt and a pair of white sneakers.

The woman, who said she had travelled from rural northern KwaZulu-Natal to support the "innocent" Zuma, would break away from her comrades every now and then to run towards the small group of protesters from People Opposed to Women Abuse (Powa) who were there to support Zuma's accuser.

Dressed in the colours of a party that prides itself in having done more than most to uplift women, she gestured threateningly and sometimes hurled insults at the gender activists.

Meanwhile, there was pandemonium on the other side of the street as Zuma supporters shoved past one another to get their hands on the black pro-Zuma T-shirts that were dumped in the centre of the road by activists of the Friends of Jacob Zuma Trust Fund.

The T-shirts with the face of the ANC deputy president said "100% Zuluboy" on the front. On the back, they read, "Conspiracy", "count 1: corruption, count 2: corruption, count 3: rape. What's next???"

Zuluboy, the insulting township slang term used by botsotsi to refer to "farm boys", "moegoes van die plaas" - amabhari.

How ironic that it has now been appropriated by the Zuma lobby in its struggle for political power.

But Zuma supporters say they did not invent the term.

Referring to the ANC leader, it was first used in the infamous e-mails and chatroom communication purported to have been between ANC National Executive Committee member Saki Macozoma, Phumzile Mlambo-Ngcuka and other ANC and government personalities accused of being part of an anti-Zuma conspiracy.

The e-mails may be widely regarded as a hoax, but that does not seem to have dampened the belief of Zuma supporters that they are genuine and true. Then there are those who believe the e-mails were "created" to serve this purpose.

No matter what the reason might be for believing that the controversial e-mails were authentic, the use of the "100% Zuluboy" slogan on the T-shirts would feed the suspicions that at least a section of Zuma's supporters want to turn his fallout with other ANC leaders into an ethnic issue.

To his credit, Zuma has publicly denied that ethnicity has any thing to do with his political woes.

But this week, the seasoned national liberation movement leader failed to condemn those who openly played the ethnic card in his name.

The second most-powerful leader in the ANC also said nothing about threatening posters like the one that read, "SANDEF/SAPS be ready for civil war if Cde Zuma . . . AK-47" and Miles Bhudu's offensive publicity stunt:

"Zuma Was Raped!"

Zuma's failure to call these to order prompted ANC national chairperson Mosiuoa Lekota to issue a statement calling on party "members and supporters to lead by example".

Listening to many of the people who had gathered outside the high court on Monday and Tuesday to support Zuma, one got a sense of the characters in the English novelist George Orwell's book, *Animal Farm*.

Zuma is portrayed as a modern-day Snowball - a committed and principled revolutionary who is being hounded by the new elite who have betrayed the objectives of the revolution.

President Thabo Mbeki and those in the ANC leadership who back him are characterised as Napoleon and his cohorts. They are described as power-hungry, self-centred and the type of politicians who are not averse to abusing state power to fulfil their political ambitions.

The 31-year-old HIV-positive woman accusing Zuma of rape is regarded as nothing more than a pawn in this political intrigue. Although most in the crowd have never laid eyes on her, they had strong views about her.

Don't tell me about that bitch, she has been bought," said Mpilo Thabethe of Hillbrow when asked his opinion.

"She is a dog. How can you destroy a people's leader for money. We will stand by Msholozzi. . ." said Sibongile Ngobese.

It is often said that the revolution devours its own children.

Only time will tell if the child of the revolution being devoured is Zuma or his alleged rape victim.

Brought up in the broad ANC family-in-exile, the woman is as much a product of the liberation struggle as the popular ANC deputy president.

Her close friends say that before the alleged rape, she would have been among the many ANC members and supporters who feel Zuma is being "mistreated".

Soon after Mbeki expelled Zuma from the Cabinet after Judge Hillary Squires' ruling in Schabir Shaik's corruption trial, the woman was among the former deputy president's "children" who organised a party for him in Killarney, Johannesburg, "to cheer him up".

But now , said a childhood friend who was in court this week, the woman finds herself at the receiving end of the anger of Zuma's supporters.

She said: "What is most hurtful is to hear some of the songs they sing outside the building. We used to sing uMshini Wami in exile longing for the day (ANC president) Oliver Tambo would lead us back home to free our country. Now it is being sung in this rape case."

Due to the debacle over the selection of the case's presiding officer and the request by Zuma's legal team for the matter to be postponed for three weeks while it studies all the evidence, Zuma did not get a chance to meet his

accuser in court this week.

For much of the two days in court, the charismatic politician looked relaxed and confident - as if he was convinced that it would all soon come to pass.

At the end of the first day's proceedings, Msholozhi and his supporters belted out uMshini Wami and danced triumphantly like warriors returning from a successful battle.

But the dark clouds continued to hang over the Johannesburg High Court and its surrounds.

Ten minutes after Zuma had been whisked away and the crowds had disappeared into the concrete jungle that is the Johannesburg CBD, the heavens opened up - and Zuma's battle with the law continues.

Available from: http://www.news24.com/City_Press/Features/0,,186-1696_1884024,00.html

Zuma 'theatre' mocks law

Hughes, G.

Published in *The Star*, 16 March, 2006

When Jacob Zuma first appeared outside the Durban High Court to face corruption charges, it was clear that there were going to be two judgments, one legal and one "popular", shown in the aggressive behaviour of his supporters.

The Zuma rape trial has generated a similar split screen, namely the court proceedings according to the rules of evidence and the law, and the street theatre outside.

But the "theatre" has prejudged the issue, naming the complainant, calling her a mercenary and a prostitute, and even resorting to incitement ("Burn the bitch"), all of which amounts to contempt of court.

Zuma's role has been largely similar in both cases, singing the struggle song *Awu leth' umshini wami*, translated as "Bring me my machine gun."

This can, of course, be interpreted in different ways, most obviously as a reminder of his role as a struggle warrior.

Alternatively, as the vice chancellor of UCT has asked: "Was he knowingly and defiantly inviting me to make horrible connections between the AK-47 and the invasive penis?"

The "connections" are not new. One of the meanings of "weapon", even in Anglo-Saxon, was "penis".

Geoff Hughes is Professor Emeritus of Wits University.

Uncovering the sexism at the heart of SA morality

Smith, G.

Published in *City Press*, 19 January 2008

Tonight author and journalist Fred Khumalo launches Encounters, his SABC2 TV show dealing with ethics and morality.

He and his guests will grapple with questions such as whether South Africans share a moral code or a common understanding of what “doing the right thing” entails, and who sets the benchmarks for right and wrong.

The Zuma era has reawakened our capacity for robust debate and blown apart illusions of unanimous adherence to the ethics that prop up our Constitution such as non-sexism, women’s equality and the right to bodily integrity.

The Zuma rape trial, its secondary victimisation of the accuser by the inclusion of her sexual history, the odious behaviour of Zuma’s supporters bearing banners saying “burn the bitch” and Zuma’s -recourse to spurious notions of Zulu culture have legitimised a particularly reactionary discourse around women, rape and culture.

In the pre-Zuma rape trial era, men were generally -inclined to err on the side of political correctness. The trial and Zuma’s acquittal have made it okay for intelligent, articulate and powerful men who should know better to reiterate these notions. And it has given grist to the mill of those who seek refuge in that convenient hidey-hole called “culture” when challenged on sexism.

Zuma was at the helm of the movement to revive our collective morality. His rape trial has revealed that when it comes to morality, we are deeply divided.

The problem with morality is that it is a personal issue dictated by socialisation, custom and class; and that it is a minefield for women.

Apartheid divided black and white but the roots of sexism run deep in both communities.

Sexism continues to inform the values of the moral majority and its antipathy for abortion, prostitution, feminism and women’s equality. Its post-Apartheid manifestation is evidenced by the misogyny that is rife today and which is obscured by the benign epithet, “gender-based violence”. Here, men don’t just rape women. The levels of brutality and violence that accompany rape speak of deep hatred of women.

South African morality is weighed down with expectations of women’s sexuality and social position and is closely entwined with “family values” of the “man-is-the-head-woman-is-the-neck” variety.

My morality (informed by feminism), makes me wary of being corralled into a moral kraal with hetero-

patriarchs, misogynists, sexists or virginity testers. I see not the vaguest possibility of common purpose with this bunch or with the bourgeoisie, for that matter.

By my moral compass, the greed and avarice that has gripped SA since '94 is immoral. Cupidity has supplanted that soft spot we once had, where “an injury to one is an injury to all” was a guiding slogan that gave us direction.

It is immoral that fat cat executives drive cars that cost more than most secretaries earn in a lifetime of doing the dreary support work that allows them the freedom to be corporate knights.

It is immoral that companies fork out millions in car allowances, laptops, cellphones and other cutting edge widgets for executives but don't provide childcare facilities for (usually underpaid) working mothers or give a toss about whether the women who lug vacuum cleaners through their executive suites in the dead of the night will get home safely.

The moral majority are -often unable to distinguish between custom and culture, to embrace the idea that culture is not set in stone; that society should not be held hostage by outmoded customs and attitudes to abortion, gays or prostitutes – the three primary bugaboos of morality.

If I had a rand for every time some hidebound sexist sought to justify his reactionary views by saying: “In my culture...” I'd be very rich indeed.

It will be interesting to see how many times this little gem is trotted out on Encounters.

Smith is editor of City Pulse

Available from: http://www.news24.com/City_Press/Columnists/0,,186-1695_2254809,00.html

Alleged Zuma victim describes her rape ordeal

Musgrave, A. and Evans, J.

6 March 2006

JOHANNESBURG – The woman at the centre of the Jacob Zuma rape trial has told the Johannesburg High Court about her ordeal.

The complainant in the State v Zuma said she was already asleep when the former deputy president entered her room. (It is against the law to name a rape victim, unless she gives consent.)

He offered to tuck her in and massage her.

She said to him: “I'm already asleep, I'll see you tomorrow.”

Zuma replied that he could massage her while she was sleeping.

She again said she was sleeping.

Zuma then removed the blanket she was sleeping under.

“I was lying on my side. He started to massage my shoulders. He then held me on my shoulders and turned me around facing upwards. I then felt his knees on both sides of my legs.

He once again started massaging her shoulders, “and I said ‘no’.

“After I said this, he didn’t stop massaging me. At that point I opened my eyes and saw that he was naked.”

The bedroom light was on.

“I immediately closed my eyes again and turned my head the other way.”

Asked by prosecutor Charin de Beer what she was thinking at the time, the complainant responded: “I thought ‘Oh, no! It can’t be, he is on top of me, he is naked, I’m in his house.’ I was just confused. I actually thought it can’t be happening. At that point I faced reality. He was just about to rape me.”

The complainant said Zuma then opened her kanga (a wrap), and pushed her legs apart with one knee. He then used both his hands to hold her hands down.

“Then he took his one hand and put it on my vagina and just opened my vagina with his hand. His legs were between my legs and then he penetrated me with his penis. He had both his hands on my hands.”

The complainant said Zuma started “pushing and thrusting”.

Zuma then said to her: “I told you I’d take care of you. He said “sweetheart”. He then said “You are a real girl”.

At some point Zuma “pecked” her on the lips and cheek.

“He started thrusting harder and harder and asked if he should ejaculate inside of me. He pushed and thrust harder and when he was done, he got up and left.”

The complainant said at first she lay on the bed, and did nothing. Eventually she gathered her strength, found her kanga and drew it over her.

“I then took my hand and put it on top of my vagina and that is when I felt his semen and that he had ejaculated.”

She said Zuma had not used a condom.

Earlier, Zuma, 63, had pleaded not guilty to raping her at his Johannesburg home on November 2 last year.

One in Nine: Time to break the silence around rape

Chibba, R.

Published on *Mail and Guardian Online*, 8 March 2006

This week saw two groups of activists square-up outside the Johannesburg High Court, where Jacob Zuma is on trial for allegedly raping an HIV-positive Aids activist.

Some of Zuma's supporters set fire to posters of Zuma's accuser, saying "burn this bitch".

Around the corner, at least 10 anti-rape organisations had gathered in support of the woman, whom they dubbed "Khwezi, meaning "star" because she cannot be identified. They felt provoked by Zuma supporters who sang defamatory songs directed at them.

The organisations chose this week to launch their One in Nine campaign, which refers to a Medical Research Council report that eight out of every nine rape cases go unreported in South Africa.

The purpose of the campaign "is to ensure that the courage and action" of the woman who filed a rape charge against former deputy president Jacob Zuma, "is affirmed and supported through direct action", according to the campaign website.

The campaign was launched to strengthen the level of "debate and analysis in society of the gender dimensions of the case", said the website.

Mohau Pheko, co-ordinator of the Gender and Trade Network in Africa, told the *M&G Online* that the incidence of rape in South Africa was high and she often asked herself, "Why does it happen and why is nobody speaking about it?"

The One in Nine campaign is "asking women to break their silence", she said.

"We want to publicise that eight out of nine women are not talking about rape".

She believes that the South African government can't distinguish between intimacy and rape.

"They treat rape as a private matter. It is not a private issue, it is a public matter," said Pheko.

"To me it's taking away dignity. It strips me of the things that I believe of myself and turns me into somebody else's idea of what I am. Something that they can use and discard. And there are no consequences for that person. I have to live with that consequence and it shatters everything that I believe in," said Pheko.

Rape is "of the body, mind and spirit," she said.

She calls the Zuma's alleged rape court case a landmark and said, "We [NGO's] have very little budget to do the work that we really want to do" and that the campaign is using Zuma's accuser because "she's the greatest vehicle" and an example for people who are still silent.

"She's a young woman and she is an active woman. By using her, we are showing an example [of someone] who is going up against a very powerful man. We are saying, 'You don't have to be afraid'.

"She's going up against an entire system called the ANC. That takes a lot of guts. People must speak out," she said.

Pheko said women have to battle with many gatekeepers when they want to speak out because "there's a culture that has developed", and to unlock that gate and find the key "is a huge battle for women in this country".

Available from: <http://www.mg.co.za/article/2006-03-08-one-in-nine-time-to-break-the-silence-around-rape>

Zuma's harrowing week of shockers in the dock

Published in *City Press*, 8 April 2006

HE said when she walked into his room dressed only in a kanga, it confirmed his suspicion that "it was clear she wanted sex".

Moments later, he stood up, removed his clothes and put on his pyjamas in full view of the complainant. In his mind, he said, she would have objected if she did not want sex - but she just watched.

Another sex-need indicator was when she allegedly said she felt cold and asked if she could get underneath the duvet. And then she, according to his version, asked him for a massage.

He fetched baby oil from his bathroom, and came back to rub her back.

When he saw she was not wearing a panty, he was surprised. "I said, 'Hawu, she is not even wearing a panty'," he told Judge Willem Van der Merwe. □De Beer: "What did that say to you?" □Zuma: "It confirmed she came for sex."

The rape case followed corruption charges that were laid against Zuma last year after a scandal that saw Mbeki fire him as deputy president, a move which many analysts said had all but ended his hopes of succeeding Mbeki as the ANC's presidential choice in 2009.

While declining to say on record whether he still sees himself as a candidate for president, Zuma told Reuters that he believes both cases against him are politically motivated and that he will survive with his popularity -- and his leadership role -- intact.

"I see myself as part of the ANC leadership," he said, adding that he is not worried that his widespread support among the ANC rank and file has been damaged.

"Not at all. I think it is almost five years now [that] attempts have been made to do so. It has been a long time. Down throughout the state organs by investigating me. Down throughout the media -- a very hostile media. And by some politicians. I don't think it has worked," Zuma said.

"Fortunately the South African public is very advanced and they are able to see through [this]."

Available from: http://www.news24.com/City_Press/Features/0,,186-1696_1913460,00.html

Zuma: Battle lines drawn outside court

Published on *Mail and Guardian Online*, 8 May 2008

The song *Awulethu umshini wam (Bring Me My Machine [Gun])* echoed through Pritchard Street on Monday morning as policemen unpacked riot shields ahead of Jacob Zuma's Johannesburg High Court rape judgement.

Supporters held aloft handmade model rifles and sang the controversial song in the cold morning air.

One, made of wood, bore the lettering "umshini wam" -- boy scout. The bearer shouted out: "Thabo Mbeki the gat".

Another replica of a rifle was an AK-47 made from cardboard.

Most of the Zuma supporters were reluctant to talk to the media.

Bhabha Kwela from Durban arrived in Johannesburg early on Monday morning. He had travelled with a group of Zuma supporters in three buses.

He said he was at the court to pledge his support for the ANC deputy president.

"I need him to be released so that he can continue serving the people."

A woman carried a placard reading: "Rape is reported at SAPS, why NIA now? Conspiracy."

Stressing their Zulu culture, dressmakers Emma Nkosi and Nozizwe Mpangane, wore homemade clothes made of fabric in African National Congress colours which they proudly said they had made themselves.

"This is about our culture," said Nkosi.

The two had spent the night at the vigil at the Central Methodist Church adjacent to the Johannesburg High Court. They were from KwaThema, near Springs.

Both wore traditional Zulu isicholo headgear, also homemade. Among the singers who marched back and forth in front of the court, like swimmers doing repeated laps in a pool, were others draped in blankets and towels.

T-shirts bore pro-Zuma messages. Some were the legacy of Sunday's concert where they were sold for R75 each to raise money for Zuma's legal costs.

Another T-shirt bore a picture of former Mozambican President Samora Machel.

By 7am, the crowd had been restricted to the opposite side of Pritchard Street where they had earlier exchanged heated words with the police, singing a song which translated "Shit, shit, none of this stuff".

A heavy police presence remained outside the court.

Meanwhile, the Oneinnine campaign to raise awareness about rape started setting up its posters outside the court on Monday morning.

Spokesperson Delphine Serumaga said the campaign would shift its focus to the conviction rate for rape, which is between six and seven percent.

Tied to the poles outside the court in Pritchard Street were red boards bearing the words "not guilty" with only two bearing the word "guilty".

"Today will let us know how far we have gone," said Serumaga.

"I believe there has been success because it proves nobody's above the law."

A 31-year-old HIV-positive woman, who considers herself a lesbian, alleges that on November 2 last year, the former deputy president raped her in the guest room of his Johannesburg home while she was staying overnight during a family crisis.

New life in exile

Meanwhile, the *Sunday Times* reported that security bosses are preparing Zuma's rape accuser for a life in exile in another country, out of fear for her life in South Africa.

The decision to move the woman abroad followed a "high-level" security assessment undertaken by police officials, intelligence services and the witness protection programme.

Security around the alleged rape victim has been so tight that she was not placed in the witness protection programme out of fear for her safety, the newspaper reported. - Sapa “

Available from: <http://www.mg.co.za/article/2006-05-08-zuma-battle-lines-drawn-outside-court>

The kanga -- the new cigar?

Johnston, N.

Published on *Mail and Guardian Online*, 5 May 2006

For generations in villages across the sub-continent, the humble kanga has been the hallmark of female modesty and respectability.

Kangas are handed out at political rallies emblazoned with slogans and the faces of political leaders, and used as slings to carry everything from babies to food. In many countries to the north, any woman attending a funeral without one would be deemed disrespectful to the bereaved family.

Our northern neighbours would be flummoxed that the Zuma rape trial has seen the humble wrap-around elevated to a watchword for seduction. "But she was wearing a kanga, m'lud" has been the scandalised refrain throughout the trial, as if the mere mention was a self-evident indictment of the rape complainant.

For most of the continent, the kanga has been right up there in the sexiness stakes with the Voortrekker kappie and the Zionist Christian Church's manyanyatha boots.

Not since the Lewinsky/Clinton scandal, when a cigar ceased to be a cigar, has such a mundane object achieved such a transformation in the public mind, from everyday household object to a cue for lifted eyebrows and nudged ribs.

Just as a generation of American rappers has reclaimed the N-word, last week a group of South African women braved Jo'burg's arctic temperatures to reclaim the K-word.

Dressed in what is essentially a thin length of cotton cloth, the members of People Opposing Women Abuse braved the chilly weather and the jeers of Zuma's supporters to re-appropriate their right to wear the kanga -- anywhere, any time. -- *Nicole Johnston*.

Available from: <http://www.mg.co.za/article/2006-05-05-jday-the-judge-who-cannot-win>

African culture should stop pussyfooting about rape

Saidi, B.

Published in the *Sowetan*, 5 September 2008

South Africa has one of the highest rates of rape in the world.

It is rated among the most violent countries, rape being a most violent crime. Other statistics suggest “rape” in such cases has been taken out of context.

There are cases in which a woman ends up alone with a man in his flat, hotel room or house after a night out. There is no argument about alcohol consumption by both parties.

Even if she were stone sober, the question asked of her is: “Weren’t you asking for it?”

“Good grief!” you can hear women’s rights advocates exploding.

“How in heaven’s name does a woman ask to be raped?”

The male chauvinists of old used to suggest that a woman who dressed “suggestively” was asking for it. That held water only until logic gurus said this was like saying a bank that didn’t have armed guards was asking to be robbed.

Would a court acquit an armed robbery on those grounds alone?

Now there is a debate about date rape, sparked by Helen Mirren, an actress to whom I first reacted in a film with the late Peter Sellers.

She said “date rape” was, under certain circumstances, not an issue for the courts but one that needed to be “worked through as part of the subtle negotiations of modern gender manners”, according to reports.

“Dame Helen’s contention was that a woman who voluntarily ended up in a man’s bedroom and engaged in sexual activity – but then said no to sexual intercourse – could not seriously expect to take that man to court on a charge of rape if he ignored her last-minute insistence that she did not want full sex.”

Jacob Zuma is still remembered for something like that. He is standing for president in the next election, I am sure. Is this something right up his street as a campaign strategy?

In urban Africa statues will be erected in honour of Mirren – by men. Africa’s regard for its women is pregnant – pardon the pun – with inconsistencies. On the one hand they are placed high on a pedestal as mothers to whom the popular jazz standard I am A Woman ought to be sung night and day.

On the other hand their mission is to marry the highest bidder and bear him many children.

Those who escape this persecution have enlightened parents who let them choose their careers, marry men of their choice and decide how many children they want and when.

In nations where Islam is the religion of the majority there is Sharia law, in terms of which women can be stoned to death for adultery, among other “crimes”.

But it is “date rape” that fascinates me as a city-bred man. I never came across such women in the ghetto. You could say we both knew what the score was.

One problem I came across in researching for a feature article years ago was related to culture.

Boys growing up in the village are tutored in a form of wooing that includes how to wear down a girl’s resistance. Some of the techniques are pure violence.

The boys are told no girl gives up her virginity voluntarily. So this “persuasion” is perfectly permissible. Even worse, for the girls, is that boys are told when the girls say NO they are actually saying YES.

They play so hard to get, getting them is hard work. All this is steeped in the latent male chauvinism of African culture.

Someone ought to do something – the African Union or Jacob Zuma?

The rape case has managed to shut us up even during this period of 16 Days of Activism Against Violence on Women and Children. Many good women are at a loss as to what to make of this event in their lives because they know its implications.

They seem to have lost the language and courage to stand up against the wrongs of our society because it would be difficult not to mention rape as one of them. They even fail to openly ask pertinent questions about the meaning of violence against women because these matters can no longer be discussed as neutral topics without one wondering how they will be interpreted in the larger political sphere where these issues now decide which “camp” one supports.

The women who stood up against the Apartheid regime in 1956 never thought that we would find ourselves, 50 years down the line, unable to stand up against the violence and the shame brought upon womenfolk by those who are meant to protect them.

The power derived from winning the rape case for a person of Zuma’s stature has unleashed more violence against women, not only through actions but also through the language that young men now use against women.

We have seen formations of “men only” forums calling for the scrapping or revision of the equality clauses supporting women as rightful citizens of the country.

We have also seen Mbulelo Goniwe with the same attitude towards women in Parliament, giving himself permission to grab whoever he wants to intimidate at will. In his support, we have also seen cultural institutions standing alongside him to silence the women who refuse to be cowed by cultural dictates.

During this 16 Days of Activism, nobody is asking what happened to Zuma's accuser. We don't know how many other women have chosen to keep silent after being raped or to walk away into oblivion because of the shame it has brought them.

Most women are afraid that they would shame their families and communities if they were to be involved in such discussions. So some choose to simply "disappear".

Most men think of us as their daughters, wives, girlfriends, sisters and mothers because of the beliefs and practices reinforced at home.

To them, women are simple trading pawns and trophies to use when they jostle for power against one another. As if counting their cows, they'll be heard bragging: "Mina nginabafazi abangaka" (I have so many wives). That is why, in the name of culture, it is easy to barter women in exchange for cows because we are seen as commodities for exchange to augment male empires.

We are still forced to deal with the issues of morality and what values the society chooses for itself. It is at this point that one hoped that a few good women would come in to debate the matter.

Their silence is understandable. They are under siege. I'm not sure if Albert Luthuli and other departed ANC leaders of his time, who fought to ensure that women were protected and given equal space to contribute to the greater good of our society, would be expecting this nation to be arguing over these matters with ANC leaders almost 50 years after they started this debate.

But how can anyone ever see herself winning this battle when the community has all but been destroyed and cowed into submission?

Is this what power is about?)

Ngobese is deputy director-general of special programmes in the KwaZulu-Natal premier's office. She writes in her personal capacity

Available from: <http://www.sowetan.co.za/Columnists/BillSaidi/Article.aspx?id=837059>

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Miniskirt-wearing women: A magnet for violence?

Vincent, L.

Published on *Mail and Guardian Online*, 22 May 2006

A woman on a city street is assaulted, stripped naked, doused with alcohol and sexually abused. The attackers say she must be "punished" for wearing a miniskirt. A crowd of more than 100 onlookers jeers and chants in agreement.

Police say they have information suggesting this type of assault has been going on at Johannesburg taxi ranks for more than eight years. An outpouring of personal testimony speaks of a much longer history of South African women being groped and humiliated by men at taxi ranks and in crowded taxis. Until February this year, when Nwabisa Ngcukana reported her attack to police, not a single formal complaint had been laid.

Women's bodies have long been singled out for scapegoating in times of social unease. Single mothers, pregnant teenagers, welfare mothers and sexually expressive women have all, at different times, been marked as the source of moral decline, disease and disorder. But what does the miniskirted woman "mean" that she should be a magnet for mob violence? What is it about her that suggests to strange men that they have social permission to tear off her clothing and insert their fingers into her vagina?

The miniskirt has, after all, been a ubiquitous fashion accoutrement for close on 50 years. In 1962, when the mini appeared in Mary Quant's London boutique on the King's Road, she was credited with democratising fashion for the masses. The mini, she claimed, was designed for women "to dance, to move, to be".

The miniskirt became an emblem of social change in the 1960s, so much so that when major designers introduced "midi" and "maxi" skirts around 1967, in London, New York and Paris men and women demonstrated, calling for the return of the mini. Mid-length skirts were cast as "anti-woman" and, in Britain, a "Society for the Preservation of Miniskirts" was established in response to the House of Dior's 1968 ankle-length skirts and coats.

That was then. What does the mini signal when it is worn at Noord Street taxi rank in Johannesburg in 2008? One answer is that it is an emblem of women's empowerment in a context (mass unemployment, social inequality) where men feel emasculated. In order to reassert a sense of agency, power and

control, so the argument goes, men beat, rape, humiliate and kill women. Violence against women is an attempt to control women. An upsurge of violence against women might be taken to mean, then, that women are perceived as being particularly unruly or out of control and in need of being brought back into line.

Women's clothing has been a focal point of discussion in the literature on gender-based violence. The emphasis has been on the role played by clothing in making women vulnerable to violence, and on the assumption that particular kinds of choices with regard to clothing can make women culpable in their own victimisation.

Less developed is a literature on women's clothing as resistance to domination, as a visual discourse that serves to subvert accepted mores. For some women at least, to wear a mini is an expression of power, a celebration of sexuality rather than an indication of sexual availability. To wear a miniskirt as a mechanism for attracting men's desire would be to signal acceptance of the view that being desirable to men is what gives women their validity as social actors.

The outpouring of vitriol against miniskirt-wearers on the part of the hawkers and taxi drivers suggests their awareness that this is not the case. To say that "they are provoking us" is to indicate the realisation that women are precisely not signalling their availability when they wear micro-minis. What makes the sign particularly disturbing is that, as these men are well aware, it has to be read in an overarching context in which a discourse of women's rights and empowerment is politically dominant. In one sense, then, the wearing of a mini can be read as emphasising a new set of rules of the game that is not as overtly favourable to men as the terms of the old gender order.

The miniskirt is well placed to play this role precisely because of its inherent association with whoring and because the control of women's sexuality is central to patriarchy. There is no doubt that the miniskirt is inescapably a sexually charged sign. But rather than this fact foreclosing the possibilities for what the wearer might signal by clothing herself in it, it is precisely the fact of this inherent meaning that opens up the possibilities for subversion.

Because the inherent dominant meaning of the sign is widely recognisable, to disrupt this meaning is to communicate an equally readily understood message. The disruption here, moreover, is an important and fundamental one. It refuses the reduction of women's sexuality to the virgin/whore dichotomy, suggesting as it does that it is possible for women to celebrate, express (flaunt, even) and enjoy their sexuality while refusing the "whore" approbation. It also insists on women's ownership over their own

bodies in the public as well as the private sphere, refusing the insistence so central to patriarchal domination that women's bodies are men's property, to be handled, touched and appraised like any other consumer good.

Women in minis who do not wish to be touched and leered at seem to be insisting that a distinction be drawn between their bodies and consumer merchandise. Unlike the latter, the body on display, along with its sexuality, is -- these women seem to be saying -- not to be read as being advertised or to indicate saleability or availability. It is a refusal to take responsibility for the male gaze by "covering up" and an insistence that the gaze itself be seen as problematic; a rejection of the familiar complaint that it is women's bodies that are problematic: leaky, provoking, unruly, the cause of male immorality.

For the most part, the message that the mini is intended to communicate is not part of a conscious or articulate political or feminist strategy. But occasionally it is, of course, as was the case with those who deliberately and consciously clothed themselves in what the media described as "revealing" clothing in order to demonstrate the right of women to dress as they wish when boarding a taxi in central Johannesburg.

There the miniskirt was donned as a form of battle insignia, a deliberate sign of how the wearer wished to be positioned socially and politically, and in full knowledge of the fact that this would be viewed as controversial and provocative. The deliberate collective wearing of miniskirts as a message of protest contests the isolation of the victim, which is the hallmark of gendered violence.

To use the miniskirt as a signal of protest against gendered violence subverts what is usually encoded in "feminine clothing", namely the weakness, dismemberment and sexualisation of women's bodies. This is an important political moment because it articulates as a collective injustice what many of the participants had previously processed as an individualised experience.

The disruptive power of the miniskirt-wearing woman in urban spaces might go beyond the conscious intention of the wearer herself, however. Part of why the image is often read as so disquieting arises from the fact that the city is conceived as a masculine place -- the place of work and business from which women, the feminine, the decorative, the pleasurable, the frivolous are ritually excluded. The figure of the miniskirt-wearing woman disrupts the comfortable binaries of work/pleasure; masculine/feminine; public/private.

The title of the popular television show *Sex and the City* is attention-grabbing for the same reason. The

contrast between the symmetrical, hard lines of the city's architecture and the soft curvaceousness of women's bodies serves to accentuate the disparity. Ritualised masculine violence against this highly visible emblem of feminine intrusion into urban working city spaces is part of a continuum of male practices including "girl watching", wolf-whistling and cat-calling, which act as a mechanism for the attempted re-establishment of the orderliness of masculine control of these spaces.

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Short shrift

Mhlana, Z.

Published on *Mail and Guardian Online*, 12 March 2008

Nwabisa Ngcukana was back at Johannesburg's Noord Street taxi rank last week, the scene of her assault by taxi drivers. Three weeks before, they stripped and beat her for wearing a miniskirt. Last week, she marched at the head of an army of women.

Defiantly dressed in miniskirts, hundreds of women toyi-toyed to the taxi rank where Ngcukana was sexually assaulted and had alcohol poured over her head.

This was the second march in a week by women's groups, angered by male aggression in public spaces and who say "enough is enough". Carrying placards reading "Humiliating a woman is a sin before God" and "*So gcoka izigcebhe masifuna* [We will wear miniskirts when we want]" they sang freedom songs with words such as "*Thina solwela amalungelo ethu* [We will fight for our rights]" .

Fundi Ndaba (34), one of the marchers, was angry. "I'm a mother of two beautiful girls, who love wearing miniskirts," she said. "Drivers must be aware that we are going to dress as we please, we need to be able to say no! We are not going to be victimised by taxi drivers whose own daughters [in the rural areas] wear traditional attire that shows the body."

Dressed in a short white miniskirt and high-heeled shoes, Kekeletso Ledimo (19) was unequivocal: "If it can happen to other people, it can happen to a member of my family. We want respect from taxi drivers and if this does not stop we will boycott taxis."

Four days previously, a march, organised by the Remmoho Women's Forum, was met with disdain by drivers at the rank. Hundreds of drivers burst into Jacob Zuma's theme tune *Umshini Wami* and shouted: "*Nifuna ukuhamba nqunu* [You still want to walk naked]." They vowed that they would continue to strip women who wore miniskirts, claiming it offended their culture.

Then, to cheers from the crowd, several men stripped naked and flashed their behinds at the marchers. "They were saying, '*Nathi siyakwazi ukukhumula zifebe ndini* [We know how to strip like these whores]' â€ they assured us that no one will enter the rank wearing miniskirts and they even threatened to shoot us," said Nosipho Twala, of the Remmoho Women's Forum.

Twala does not believe Ngcukana was attacked because she was wearing a miniskirt, but said it is about men wanting power and control over women. She pointed out the bumper stickers adorning taxis as indicative of the mentality of drivers. "If women were good, God would have one," read one.

"One of the taxi drivers said, 'Gone are the days when girls used to cook with their mothers; now they drink with their fathers,'" recounted Twala, adding that most men still believe that women belong in the kitchen.

"They were saying we were inviting them to hate women," she said. "We feel that if we do not take action now, we will never be able to do so.

"We strongly condemn the barbaric harassment of the young women but we also recognise that this is not an isolated incident. Thousands of women travel by taxi daily. Many of us are treated badly and in many cases we are sexually harassed, abused and even raped."

While the marches help raise awareness about women's rights, Ngcukana is not convinced they will be a deterrent.

"The march did raise awareness about these issues, but we are likely to see these kinds of things happening," she said. "It is a war between them and us. Those people are not scared of anyone; they do not want to see change at all. If they talk about culture, it changes with the time. Since they ran to culture, let's invite all the chiefs to address the issue."

Turn our taxi ranks into safety zones

The Remmoho Women's Forum marchers made the following demands:

That they get a public update on the police's progress in the search for Nwabisa Ngcukana's assailants.

That the perpetrators of the assault on Ngcukana be charged with rape.

That the Noord Street taxi rank be declared a crime hot spot and that a visible police presence be guaranteed.

That CCTV cameras be placed in the taxi rank and that they be checked regularly to ensure they are functioning properly.

That Noord Street be cleaned up and that the municipality regulate noise levels, cleanliness, lighting, safety and security.

That taxi associations develop a code of conduct for the treatment of passengers, particularly women, and that this code be made public.

That sexist and demeaning stickers be removed from taxis.

That the taxi associations work with women's groups to develop an education programme on women's rights for taxi drivers.

Available from: <http://www.mg.co.za/article/2008-03-12-short-shrift>

2.6 Case Study III: The Choice on Termination of Pregnancy Amendment Bill

Abortion Rights

2.61 Discussion:

Ten years after the Choice of Termination of Pregnancy Bill was passed in South Africa, Parliament amended the bill to improve facilities where abortions could be performed, increase the number of professionals who could administer abortions by including nurses and midwives and encourage young girls to seek safe, legal abortions by not insisting on parental consent. While “the principle” was not up for debate as abortion was already legal in South Africa, pro-life organisation, Doctors for Life International claimed that the South African public had not had enough time to respond to the bill.

Doctors for Life and others such as the African Christian Democratic Party argued research showed that up to “70% of medical staff don't believe in abortion but are forced to perform them against their beliefs.”¹⁰³ A national survey conducted by the HSRC revealed that 56% of South African adults think that abortion is “always wrong” in the event of it being discovered that there is a strong chance of serious defect in the unborn child. 70% find it “totally wrong” to go through with abortion due to poverty reasons¹⁰⁴

The objection to the bill resided within the discrepancy between the opinion of the “moral” majority and national legislation, which proposes the same scenario that has been discussed throughout this research paper. This conflict is governed by a similar dissonance between culture, religion and democracy. A decade after the Abortion Bill was passed, many South Africans still harbour the “original objections”¹⁰⁵ and reservations that they did before, in which case, public opinion has still not “caught up” with the Constitution. South Africa is the only country other than Tunisia in Africa to allow abortion on demand.¹⁰⁶ Its legalisation upholds South Africa’s vanguard reputation in promoting democratic, progressive ideals.

The importance of abortion in this context lies within its implications for the social and economic justice of women. The legalisation of abortion espouses women’s rights to bodily and reproductive autonomy. It attempts to remove the stigma and shame associated with pregnancy termination that

¹⁰³ “10, 000 abortions done in SA a week,” *Saturday Argus*, 3 February, 2007. Available from: www.ippf.org/NR/exeres/AC472D3D-F9C9-4961-8CC3-D31D9C6DF9C6.htm

¹⁰⁴ “South Africans disapprove of homosexuals, abortion,” *Afrol News*. Available from: <http://www.afrol.com/articles/14605>

¹⁰⁵ Misbach, W. “Abortion law passed again,” *Sowetan*, 18 January 2008. Available from: <http://www.sowetan.co.za/News/Article.aspx?id=684382>

¹⁰⁶ De Lange, D. and Sapa, “Abortion Bill: lobbyists unhappy,” *Cape Argus*, 3 October, 2007. Available from: www.iol.co.za/index.php?set_id=1&click_id=125&art_id=vn20071003112418892C515204

cause women and girls to seek dangerous backstreet abortions: “A need for anonymity is central to many young women’s decision to turn to fly-by-night abortionists... they don't ask too many questions and they don’t work in a community clinic where everyone will know what the women did.”¹⁰⁷

This shows that “abortion” is intertwined with the basically patriarchal notion that women’s bodies belong to men and they do not have the authority to choose to terminate the pregnancy. The act of asserting women’s autonomy is perceived as shameful. This perpetuates a pattern where women are culpable in their own pregnancy and men are exonerated, although many pregnancies are the product of “coercive circumstances” such as rape, which Mosotho Gabriel, Director of women’s health organisation, Ipas South Africa, argues contradicts the “idyllic vision of the family” put forward by some lobbyists¹⁰⁸. The right to abortion is thus related to the fight against women abuse and oppression in South African society.

The right to abortion is also an issue of equality. It gives women access to health care, and protects particularly unmarried and poor women who perceive childbirth as “a deepening of their economic hardships.”¹⁰⁹ Research has shown that most of the women who die from complications from backstreet abortions are black, which Gabriel argues means that only certain sections of society (white and/or affluent people) may have access to safe abortion. She says it’s the state’s duty to provide women with services to actualise the choice over their bodies, “whether they are rich or poor, black or white.”¹¹⁰

Public discourse on abortion revolves around ideographs of “Choice” and “Equality”, which are championed by the Constitution, yet contradicted by cultural norms, poverty and violence against women.

¹⁰⁷ Tshabalala, T., Burbidge, M. and Ndlovu, N. “Backstreet Solution,” *Mail and Guardian Online*, 6 March 2008. Available from: <http://www.mg.co.za/article/2008-03-06-backstreet-solution>

¹⁰⁸ Gabriel, M. “Women die when the right to abortion is restricted,” *Mail and Guardian Online*, 25 February 2008. Available from: <http://www.mg.co.za/article/2008-02-25-women-die-when-abortions-restricted>

¹⁰⁹ Gabriel, M. “Women die when the right to abortion is restricted,” *Mail and Guardian Online*, 25 February 2008

¹¹⁰ Gabriel, M. “Women die when the right to abortion is restricted,” *Mail and Guardian Online*, 25 February 2008

2.62 Data

10, 000 abortions done in SA a week

Published in the *Saturday Argus*, 3 February 2007

For South Africa's anti-abortion campaigners, Thursday was a day of sadness and mourning. But for the government and women's rights groups, it was a day for victory and celebration. □ □ Ten years ago, on February 1 1997, the Choice on Termination of Pregnancy Act came into effect, becoming one of the most liberal abortion laws in the world. □ □ It ordered that abortion services be made available on request to a woman during her first trimester, or 12 weeks of pregnancy, and also if it was a case of emergency. □ □ Most important, according to rights groups, thousands of women could now access safe and legal abortions and would no longer be forced to resort to clandestine and dangerous backstreets for abortions that left many injured and dead.

Judi Merckel, of the Reproductive Rights Alliance, which helped to lobby the government for the legislation, says the fact that around 530 000 women had legal abortions up to June 2006, demonstrates a steady access to services nationally and progress towards greater service provision.

Mosotho Gabriel, the country director for Ipas, a reproductive health NGO, says the access of women to safe abortions, performed by trained medical staff, has significantly cut abortion deaths.

She cites a 1994 unsafe abortion survey, which estimated that 425 women - almost all black - died each year. Up to 45 000 women were admitted to public health facilities each year with complications from incomplete abortions.

A 1998-2001 mortality study by the Medical Research Council (MRC) found there was a reduction of up to 91 percent in deaths from unsafe abortions.

Rachel Jewkes, director of the MRC's gender and health research unit, hails the act as the "most amazing victory" for women. "It's a celebration of women's access to healthcare in a very tangible way, where they can realise their reproductive rights."

But detractors such as Doctors for Life and the Christian Action Network continue to decry its existence and have mounted one legal challenge after the next to have it scrapped.

They challenge the provision that minors are able to have abortions without the consent of their parents, and claim young girls are using abortion as a means of contraception.

Jewkes discounts this "myth propagated by anti-abortion groups to denigrate the act".

Gabriel says the minor provision clause was included in the act primarily to protect young victims of incest and abuse from unsafe abortions. Girls under 18 constitute just 11 percent of all those using the service.

Experts believe access to contraceptives needs to be emphasised, and the attitudes of hostile health workers need to change towards girls seeking abortions and contraceptives.

"The act is about protecting young women's health and lives and serves to reduce the overwhelming and negative social and economic impact of child-bearing on their lives," says Merckel.

Cheryllyn Dudley, of the African Christian Democratic Party, says: "People are encouraged to think life does not matter... The convenient thing for the government is to make sure there's a butcher shop on every corner to kill innocent children... We salute those doctors who have exercised their rights to conscientious objection."

Monika Molatlhegi, of Doctors for Life, says up to 70 percent of medical staff don't believe in abortion but are forced to perform them against their beliefs.

Siyani Marima, the deputy director for women's health at the national Health Department, says it is expanding "values clarification" workshops with health workers and communities.

"Someone resists termination because of their religious values. But it's not about them - it's about the patient. If someone is admitted, you need to give them care, and don't have to discriminate against them," she says.

Problems with implementing the law persist. Access to services depends on which province you live in. Gauteng, at 208 602, and the Western Cape, at 80 118, account for the bulk of the 530 000 terminations from February 1997 to June 2006.

"Most provinces have found that physical resources do not exist in primary health clinics and this may have been underestimated when drafting the law," says Merckel.

Of the 350 state facilities designated to perform the service, 60 percent - mostly hospitals - were functioning.

"Efforts are in place to get more community health centres to provide the service," says Marima. "Currently about 20 percent do."

Other barriers include long waiting lists, negative staff attitudes, and lack of information and services in rural areas. "We need to reach the unreachable, like rural, young girls.

"In most homes, talking about sex is a taboo. We need to strengthen service delivery and the availability of resources," says Gabriel.

Kowie Theron, of the Marie Stopes Clinic group, says GPs are selling tablets to induce terminations. "This creates problems for government hospitals because most of the women trying this end up at a hospital bleeding."

Available from: www.ippf.org/NR/exeres/AC472D3D-F9C9-4961-8CC3-D31D9C6DF9C6.Htm

Abortion law passed again

Misbach, W.

Published in the *Sowetan*, 18 January 2008

ANC lawmakers pushed through the controversial abortion law in Parliament yesterday in the face of heated criticism from opposition parties.

The law had been referred back to Parliament by the Constitutional Court because it ruled there had not been enough consultation.

Yesterday, ANC health committee chairman James Ngculu said widespread consultation had taken place and the law was now being passed with minor changes that included improvements at health facilities.

But there was heated debate in Parliament yesterday, with opposition party MPs repeating their original objections to the law, which was passed in 1996.

Ngculu lashed out at the African Christian Democratic Party (ACDP) and the DA for raising objections. He said it would save the lives of women from the dangers of backstreet abortions and allow them the choice over their bodies.

He said it was "disingenuous" to claim that the law did not allow for mandatory counselling. Counselling was contained in the law, but was not mandatory because this again allowed women choice.

He also slammed criticism that the law did not allow doctors and midwives to refuse to take part in the procedure because of their consciences.

He said medical professionals had a choice whether to make medicine their career.

The ACDP's Cheryllyn Dudley said the law was like "having the blood of innocent babies on your hands". She also called for compulsory counselling because this would prevent the government from being sued for problems arising from abortion.

Corne Mulder of the Freedom Front Plus said it did not make sense that an 18-year-old woman was not allowed to buy liquor, but the law allowed 12-year-old girls to have abortions without the permission of their parents.

A total of 266 MPs voted for the law, with 52 against and 12 abstentions.

It was supposed to have been passed last year, but there were not enough MPs present to form a quorum.

Available from: <http://www.sowetan.co.za/News/Article.aspx?id=684382>

Abortion Bill: lobbyists unhappy

De Lange, D. and Sapa □

Published in *Cape Argus*, 3 October, 2007

Pressure groups are threatening to take the government to court over a controversial abortion law recently approved by the National Council of Provinces (NCOP). □ □ The Choice on Termination of Pregnancy Amendment Bill which allows children as young as 12 to terminate a pregnancy without the consent of a legal guardian is expected to be signed into law soon by President Thabo Mbeki. □ □ In August 2006 the bill's original adoption by the NCOP was declared invalid by the Constitutional Court after Doctors for Life International successfully challenged it. □ □ The court found that insufficient public participation had taken place before the bill was approved.

The court said the bill had generated great public interest, but "neither the NCOP nor a majority of the provinces" had held public hearings on it.

The order of invalidity was suspended for 18 months, giving the legislatures time to remedy the omission.

Public hearings have since been held across the country, but critics argue that the bill does not take complaints and criticisms raised during these hearings into account.

Several provincial reports show some communities are vehemently opposed to aspects of the bill, among them its failure to provide for health practitioners to refuse to perform abortions on moral or religious grounds.

Also, the bill provides for trained nurses and registered midwives to perform abortions, although the nurses union, Denosa, opposes this.

Opponents of the bill also argue that it provides scant guidance on the type of counselling girls and women should be given before and after a pregnancy is terminated. Many more are opposed to the idea

that a 12-year-old could make an "informed" choice.

Doctors for Life International was looking into the possibility of challenging the new bill as it had come to light that the Mpumalanga legislature had not followed the correct procedure in mandating the province's NCOP members to support the bill, said Martus de Wet, of the organisation's legal department.

According to the DA's provincial leader, Anthony Benadie - who serves on the provincial health portfolio committee - the bill was not referred to a full sitting of the legislature.

"Accordingly, the Speaker conferred a mandate on the province's NCOP delegates that was not authorised by a full sitting of the house."

De Wet said that, this time round, the bill could be challenged on procedural and substantive grounds.

"The constitution emphasises the need for a 'participatory democracy' as apposed to a 'representative democracy'," he said.

"Simply going through the motions of holding public hearings is not enough. To what extent were the views raised at these hearings taken into account? Which, if any, of these concerns were incorporated into the bill?"

Benadie points out that there is little the Mpumalanga legislature can do to correct the procedural error, since the NCOP has approved the bill.

The legislature may resolve to authorise a mandate retroactively.

South Africa and Tunisia are the only two African countries that offer abortion on request.

The number of women under the age of 18 who had abortions at state medical facilities increased from 4 423 in 2001 to 9 895 last year, Health Minister Manto Tshabalala-Msimang has said. The number of women over 18 who had abortions increased from 32 679 to 71 856.

Available from:

www.iol.co.za/index.php?set_id=1&click_id=125&art_id=vn20071003112418892C515204

“Women die when abortion’s restricted

Mosotho Gabriel

Published on *Mail and Guardian Online*, 25 February 2008

Women's right to choose an abortion, or not, is one of the main issues of concern on which the current leadership contest in the United States could turn.

There we have seen concerted efforts by anti-abortion groups to chip away at the right by finding gaps in practice or law.

In South Africa the anti-abortion lobby is following the same strategy. We had to pass the Choice on Termination of Pregnancy Amendment Act a second time last month. This came after Doctors For Life secured a Constitutional Court ruling that the consultation process running up to the adoption of the law in 2004 was incomplete.

At the public hearings at the end of last year, anti-choice lobbyists again questioned why women should have access to safe and legal abortion -- even though the principal 1996 Act was not under discussion.

Some lobbyists put forward an idyllic vision of the family. This is contradicted by the realities of the lives of particularly young, poor and rural women whose bodily autonomy is frequently denied. Many women are in violent relationships or are confronted with unplanned pregnancy as a result of coercive circumstances such as rape.

Even where people practise family planning, no contraceptive method is completely effective. With extreme levels of poverty continuing, many women simply cannot afford another child. I have heard women say things like “I would rather lose my life than continue with this pregnancy” because they foresee the deepening of their economic hardships.

These are some of the reasons why abortion statistics remain the same in most countries, whether it is legal or not, according to the World Health Organisation. But where abortion is legal, it is safe and women survive -- where it is illegal, it is unsafe and women die or suffer complications.

Also, women do not have equal access to the right. Most of those dying today from abortion-related

causes are black. Thus, some 66 400 preventable deaths occurred in poor countries in 2003 compared with about 100 in wealthy countries.

Furthermore, how committed is our continent to women's rights, given that Africa is the only region that recorded an increase in maternal deaths from 29 800 in 2000 to 36 000 in 2003? Where abortion laws are restrictive, women die.

The apartheid era Abortion and Sterilisation Act No 2 of 1975 was repealed because it denied most women access to safe and legal termination of pregnancy (TOP).

A Medical Research Council (MRC) study showed that of the 44 686 women who presented with incomplete abortions at public health facilities in 1994, 34% had serious complications such as sepsis and 425 died. Again, almost 100% of these women were black.

Are those who oppose abortion suggesting that only certain sections of society (white and/or affluent people) may have access to safe abortion?

Backstreet Solution

Tshabalala, T., Burbidge, M. and Ndlovu, N.

Published on *Mail and Guardian Online*, 6 March 2008

In Johannesburg, getting rid of an unwanted pregnancy is as easy as ordering a chicken burger.

A "Dr Maria" is advertising her services on street poles in the inner city, promising: "Quick Same Day Abortions 100% Guarantee [sic] Safe & Pain Free".

When the *Mail & Guardian* posed as a prospective client, Dr Maria suggested we meet her at the Nando's chicken restaurant in Braamfontein.

This comes against the backdrop of a police raid in January on what was termed a "makeshift hospital of horrors" in an old office block in the inner city. City officials and metro police found an assortment of medical equipment, including gynaecological tools, drugs to induce labour, used condoms and blood-stained gloves. Other tenants in the building said they had found a foetus next to a dustbin.

Eleven people were arrested for carrying out illegal abortions. A single person appeared in court, but the charges were dropped due to insufficient evidence.

Now the abortionists are back in business, and posters with phone-number tear strips are appearing on walls and poles in the inner city.

There is silence, secrets and obfuscation around abortions. A prospective client may be referred to as someone who is "sick", or who has "a problem". Even at the Marie Stopes clinics, staff speak of the "Products of Conception" (their capitals) being "expelled".

Women who opt for illegal abortions say the "doctors" don't ask questions and they can't risk running into someone they know at a legitimate clinic.

Mosotho Gabriel, director for international women's health NGO Ipas in South Africa, says: "The reality is that a woman will do anything she can once she has decided that she doesn't want to continue with the pregnancy."

She feels many women still don't know their sexual reproductive rights. "Women don't know that they have a constitutional right to choose not to have babies that they are not willing to have, and as a result they go to backstreet abortionist to have their pregnancies terminated."

"There is also the element to confidentiality in the backstreet abortions. The 'doctors' don't ask too many questions and they don't work in a community clinic where everyone will know what the women did. This is, unfortunately, still the best option for many women," says Gabriel.

Appointment

Dr Maria instructs us: "Call me when you get to Nando's. I will come fetch you from there." Upon arrival, a woman with hard eyes approaches us: "Are you the ones who called the doctor? You don't want a baby, heh?"

She says the doctor is still busy at her surgery and we'll need to wait for her. She takes us to the Metro Hotel around the block, where we take the dingy stairs to room number four, on the third floor.

Feeling nervous, we ask to use the toilet, and the assistant says she can't leave one of us alone in the room. She takes us to the toilet and we pass a woman with a baby on her back. This woman, it turns out, is Dr Maria.

"Who is the sick one? I prefer dealing with the person who has the problem. It's fine if you don't mind

but this is usually a secret," says the "doctor", a chubby woman in her 30s. "Like I told you on the phone, I am Maria from Kenya and I can help you. I see that you are scared but it's OK because I will not force you to do this. It's your choice. It's not painful at all, the pill is natural."

She says she has been performing abortions "for long now", and that she has "seven years' experience from Kenya and I have been doing it for three years in South Africa", adding: "I see that you are scared, but I promise you nothing will happen to you. You just take the pill and wait for it to work. After eight hours blood will come out, a lot like when you have your period."

"I am qualified in what I do. I studied in this field in Kenya and I specialise only in it, but I have a lot of contacts where I refer my clients for family planning and other things. If I were to specialise in another field, I would have to go and learn."

"You won't die from mine, I promise you, you won't. I have helped many people and nothing has happened since. As we speak now, there are six girls sitting in my surgery waiting for their eight hours and then they will go. I even have some of them sending me messages ... let me show you," she says, handing us her cellphone. "Thank you very, very much. You have saved my future," reads an SMS.

Dr Maria continues: "I don't only have young people coming here. I also have old people coming to have abortions here because they are too scared to go to the hospitals. This thing is for strong people. I had an abortion myself when I was 18. I wasn't scared because I am a strong person."

"It is better because you are only a month pregnant because some people come here when they are, like, five months pregnant and the pill still works, because it is naturally made for women who can't push during labour. From six months I don't do abortions because a fully developed baby might come out. What will I do with a crying baby?"

A matter of money

Dr Maria charges R450 for the pill and says her clients are welcome to sit in her office and wait for it to take effect -- after an estimated eight hours. Others, such as students, however, swallow the pill and then go to their classes.

By contrast, a medical abortion costs about R1 600 at any of the 21 Marie Stopes clinics in South Africa. In 2007, Marie Stopes carried out on average 2 680 abortions every month, of which just more than 100 were girls younger than 18. The Department of Health says a total of 81 900 legal abortions

were carried out in 2006, and there were almost 90 000 undertaken in 2005. Statistics on illegal abortions, though, seem non-existent.

On clients' first visit to a Marie Stopes clinic, they undergo a scan to determine the foetus's age. They are then given counselling on termination options, which includes a medical and a surgical option.

The medical procedure involves taking a single tablet orally. The drug, Mifepristone, makes the foetus "non-viable". After 48 hours, another four tablets are taken orally, and this drug, Misoprostol, encourages expulsion of the foetus. According to Jock Strachan, Marie Stopes spokesperson, "the Products of Conception should [then] be expelled and the termination complete".

The surgical procedure involves "manual vacuum aspiration", which costs about R460, depending on where you live. "Our policy is to provide a service to as many people as possible, so we increase the price for more affluent areas to decrease the price in the other areas," says Strachan.

In the manual aspiration, a pump creates a gentle vacuum that empties the contents of the uterus.

According to Ipas, many healthcare centres still use the sharp curettage (or dilatation and curettage) method.

Its website describes this as "dilating the cervix and using a sharp metal instrument to scrape the uterine walls. During the procedure, the woman usually receives general or regional anaesthesia or heavy to light sedation. Because of increased risk of complications, sharp curettage should only be used when neither vacuum aspiration nor medication abortion is available."

'They cleaned me inside'

A young woman who we will call Sibongile woke up at 4.30am on a winter's morning in 2005 so she could get to the Chiawelo Termination of Pregnancy Clinic before 8am to abort what would have been her third child.

Being a mother to a three- and a five-year-old was hard enough for her at the time. "I had to abort that baby. There was no other way, I mean, I didn't have a job and I had to rely on my mother for financial support and I didn't want to add an extra burden to her," she said.

At 6.45am, she joined the queue of about 10 other girls at the clinic's maternity ward. "I couldn't

afford to be scared of having the abortion. The thought of bringing another child on to this Earth scared me more, so I went ahead with it with that thought in my head," she says.

"I remember seeing girls younger than me there. A lot of teenagers go to Chiawelo to have their abortions done because it's free and their boyfriends don't have money. There was no question about whether I would have an abortion or not; the question was whether I would do it at Marie Stopes or Chiawelo TOP Clinic because I had no money."

She adds: "The nurse gave me an injection and about after 45 minutes I was taken to a room where some round thing was put in my vagina and the I felt like my womb was being removed from my body. It was worse than labour."

A need for anonymity is central to many young women's decision to turn to fly-by-night abortionists.

Nokwazi, a teenage student at the University of the Witwatersrand, says while she knew she could get an abortion done legally at the campus clinic or at a hospital, she couldn't run the risk of being seen by fellow students, or anyone else she or her parents knew.

"I paid R450, as I wanted an anaesthetic. However, they said the doctor had left with the key to the cupboard where the anaesthetic was kept and they could not open the cupboard, so I felt everything they did to me as they cleaned me inside.

"I jumped and they told me I should stop or they might scrape my womb and I wouldn't be able to have kids again."

Available from: <http://www.mg.co.za/article/2008-03-06-backstreet-solution>

2.7 Additional Materials (Corrective Rape and Prostitution)

2.71 Discussion

I have included the following material on additional incidents that have happened recently that I believe to be relevant in the discussion of gendered groups in South Africa.

The first is a supposed crime wave of what is termed “corrective” or “curative” rape spurred by the victimisation and murders of Sizakele Sigasa, Salome Masooa and Banyana Banyana player, Eudy Simelane among others. Corrective rape is an issue that affects both women and LGBTI groups, because it involves the sexual assault of lesbians by men as an attempt to “fix” their sexual orientation. It is a practice where women are positioned as complicit in their own violation because they chose lesbianism.

Corrective rape is a phenomenon that has occurred primarily in the townships in and around urban centres in South Africa. It highlights the stigma that surrounds being lesbian particularly in black South African communities, which are informed by the “cultural” norms of heterosexuality and a “men-are-the-head-women-are-the-neck” philosophy. Lesbianism is seen as an “un-African” practice. These communities face the realities of high unemployment rates and limited economic opportunities that have disempowered men, rendering them unable to perform their traditional roles at the helm of the family unit.

The second is the decriminalisation of prostitution. Specifically, there is information on the proposal to South African Parliament made by ANC MP George Lekgetho to legalise prostitution for the 2010 World Cup. “It is one of the things that would make it [the tournament] a success because we hear of many rapes, because people don’t have access to them [women],” he said. While this comment failed to address the underlying causes of rape and the motivation for his proposal was the potential financial gain that such a reform would bring, the legalisation of prostitution has immense implication for women’s rights.

Because sex workers, who are mostly women, are not legally permitted to ply their trade, they are accordingly not protected by law. This means that they are a particularly vulnerable demographic, who are subjected to high levels of abuse, without retribution. Prostitutes are often forced to seek the protection of “pimps,” who are associated with illicit industries such as drug and human trafficking. The introduction of the Sexual Offences Bill further disadvantages sex workers because it criminalises the client, which prostitutes argue is deterrence for decent men who cannot risk getting into trouble with the law.

The legalisation of prostitution is a women’s rights issue. It would give sex workers, who typically come from poorer parts of the population, access to health care, financial stability and independence

and legal protection. It would also mean the introduction of more effective measures to monitor the spread of HIV/AIDS.

However, prostitution is associated with the moral degeneration of society and goes against the religious and cultural persuasions of many. This once again incriminates women who are to take responsibility for provoking the uncontrollable sexual impulses of men.

2.72 Data

Corrective Rape

'Corrective rape makes you an African woman'

Mufweba, Y.

7 November, 2003

Lesbians are being raped, assaulted and victimised "every day" in the townships, in an attempt to force a change in their sexual orientation. Since January this year, 33 black lesbians have come forward with their stories of rape, assault, sexual assault and verbal abuse to organisations fighting hate crimes in Johannesburg townships. □□ Zanele Muholi, a reporter for the lesbian and gay publication Behind the Mask, has documented 12 rapes, four attempted rapes, six verbal abuse cases, three assaults with a deadly weapon, and two abductions. □□ "Since we started on this project (The Rose has Thorns) we've realised that this kind of thing happens every day, everywhere. As we are speaking, there are two people waiting for me to take their details," she said.

The age group of the victims ranges from 16 to 35 years, and two of the rape survivors are teenagers. Muholi added that 24 of the 33 women who were subjected to hate crimes were "butch" women who had been victimised in townships including Sharpeville, Tembisa, White City, Kagiso, Pimville, Alexandra and Kwa Thema among others. □□ "Eight of the perpetrators were friends and neighbours, two - family, seven - familiar to the survivors, two - ex-boyfriends, seven - strangers, and five - attacked by gang members," she said. □□ Kekeletso Khena fled from Soweto after being raped three times before she turned 19. □□ "It's a practice called "corrective rape", where men try to "turn you into a real African woman". □□ "I was raped because I was a butch child. I was 13 years old the first time it happened. My mother walked into the room soon afterwards and said to me 'this is what happens to girls like you'.

"It didn't occur to me then what she meant, but looking back now, that's not the kind of thing you expect from a mother," she said. □□ Khena had boyfriends but she never became sexually intimate with them. □□ "I was raped by my ex-boyfriend because I refused him sex. The last time I was raped, I was 18 years old, it was a family friend who said to me that I had to be taught how to be a black woman.

My family reacted differently this time. There was a lot more sensitivity and support because they knew the perpetrator," she said.□

Khena left Soweto and hardly goes back to the township.□□"I hate going back to Soweto, people stare at you as if you are an abomination. The minute I walk into the township, this alarm bell goes off in my head. I feel even worse when I look at my mother and you can see in her eyes she's thinking 'this is my child'. I left the township because I refuse to feel threatened on a daily basis," she said.□□Years later, she and her mother have come to terms with her daughter's behaviour.□□"Most black families know, but they don't talk about it," she said.□□Denne (as she likes to be called) from Alexandra, is 30 years old and has had to defend herself physically since her days at school.□□"I have been in many fights. It's very rough here in Alex. Everyone has a problem - calling me faggot. But you earn respect if you discipline them. If you're a lesbian in Alex, you don't go out after dark, you must be able to fight or else you get raped or beaten up," she said.□

She has also left home, but still stays in Alexandra with her daughter.□□"I was just tired of fighting with my parents, my family. They don't understand, so I left," she said.□□Yusoof Abdullah, veteran co-founder of the Pride March, agreed that at township level many gay women were still facing heavy prejudice from communities.□□"We rarely hear of people being beaten up on campus anymore. But in townships, gay women are not accepted. The mentality is still that all they need is a penis to set them straight," he said.□

Just last month, a lesbian was stabbed outside her home in Khayelitsha, Cape Town. The stabbing pierced her lung and she had to have five stitches.□□Media reports also stated that she had been stabbed 11 times in a previous attack. She has subsequently died and will be buried this weekend.□

The Forum for the Empowerment of Women and Behind the Mask have, since 2001, tackled hate crimes happening in townships around Johannesburg through workshops and empowerment programmes.□

The Rose has Thorns campaign is trying to raise awareness of hate crimes directed at lesbians. □□Khena, who has joined the campaign as manager, said the most common form of hate crimes was "corrective rape".□□

"It's the most disturbing. It boils down to the fact that you as a woman have a role to be a wife, mother and subordinate to your husband. If you are lesbian you are not fulfilling those roles," she said.□□

"There are many issues that lesbians have to deal with besides being marginalised as women. There is intolerance at all levels - the media, health officials, education, the police, family. That is why there is such a high rate of suicide and drug abuse," she said.□□

Pamphlets issued by the organisation advise lesbians on the best ways to prevent themselves from being seriously injured during these attacks.□□

"We hand these out at workshops and we run self-defence classes every week. We also have training workshops in computer courses for those out of work," she said. □

"The organisation has hosted workshops for communities to discuss issues faced by lesbians and how the community can assist in fighting prejudice. □ □

"We need to get rid of the belief that it is unnatural and that it is a white thing, or un-African," she said. □

The head of the police Family Violence, Child Protection and Sexual Offences Unit, Superintendent Andre Neethling, said the victims needed to trust police with information. □

"We get reports on rape cases but the motive behind the attacks is not given. If it's a case of gay-bashing we would be able to successfully link cases and do profiles for arrests. We need to work together to put an end to this," he said.

Available from:

www.iol.co.za/index.php?click_id=139&art_id=ct20031107212728265P430805&set_id=1

Soweto's female gays live in constant fear

Maphumulo, S.

Published in *The Star*, 30 June, 2008

The township around her bustles. Men and women stand around cars, drinking from containers in car boots. □ □ Kwaito, house beats and HHP's Music and Lights reverberate. □ □ Zakhe Macala, head bowed and hands stuffed in her jeans pockets, quickens her step. The light fades. Macala's fears increase. □ □ She has been chased several times. Been attacked. She knows the dangers too well. □ □ Her friends do too. □ □ Macala and others like her - lesbians - live in fear in Soweto's townships. With good reason. □ □ Almost a year ago, two of Macala's close friends, lovers Sizakele Sigasa and Salome Masooa, were gunned down, and their bodies were dumped in a field in Meadowlands. Sigasa's hands were bound with her underwear, her ankles with the shoelaces of her new takkies.

Their killers... unknown.

Then in April, former Banyana-Banyana star and lesbian, Eudy Simelane, was repeatedly raped and then stabbed 20 times.

Her killers dumped her half-naked bloodied body near KwaThema Hostel on the East Rand.

Five men were arrested. Their trial is yet to begin.

Macala sighs when she thinks of her friends.

They were brave. They were fighters. So was Macala. But still they killed her friends.

Now Macala goes out only at night in a group. And even then they are threatened.

She can't remember how many times men have threatened to "teach her a lesson". On one occasion she beat up a man, knocking him unconscious.

"I was tired of the ridicule. I did it for myself and others like me," she says, her coarse voice rising.

Men in the township are hell-bent on "converting" lesbians. They believe if a lesbian has sex with a man once she will change. So they force themselves on them.

It didn't change Sizakele Dlamini.

At 16 she was held captive by a man who repeatedly raped and assaulted her - all the while saying: "You are a woman. A woman must go out with a man, not another woman."

The rape left her pregnant. Her daughter is now six.

Dlamini ran away from her Meadowlands home last year after the killing of Sigasa and Masooa.

"I knew Sizakele. She was not the type you could scare off easily, but they killed her. What would stop them from killing me?"

Dlamini and Macala spend most of their time together at Sibusiso's shack - a friend and occasional bodyguard for the two.

Sibusiso Maduna and Thato Baleni are always nearby. They are boys, but they take their "job" seriously.

"I will never allow anyone to intimidate her. I will do anything to protect her," says Thato.

The girls can only wish there were more like Thato and Sibusiso.

Available from: www.iol.co.za/index.php?click_id=13&set_id=1&art_id=vn20080630060202249C682854

Eudy Simelane and the Significance of the Murder Trial

Mtetwa, P., Gay and Lesbian Equality Project, Johannesburg, South Africa.

Published on *Women's Net*, 19 Jan 2009

Trial into the murder of lesbian soccer player set for February 2009

The Delmas Circuit Court in Mpumalanga will hear the trial into the murder of lesbian soccer player Eudy Simelane from 11 to 13 February 2009. Simelane, a 31 year old, was allegedly robbed, and gang raped and tortured before being murdered on 28 April last year in her home township, Kwa-Thema, east of Johannesburg. The alleged motivation for her killing was that she was a lesbian who fought back like men.

As it has been reported previously, the murder of Simelane follows many similar ones across South Africa. These crimes, motivated by the hatred of particularly lesbians and transgender people, was covered by the media but unfortunately without drawing national attention from the ruling ANC and other parties in the country, save of the local branches in Kwa-Thema. South Africa has one of the highest rates of violence against women in the world and has suffered over the last few years more and more hate crimes resulting in the assault and/or killing of people because of their HIV status, sexual orientation, or because they are black non-South Africans.

The case of Simelane and the pending trial is of significance for various reasons. It indicates the ongoing destruction of black communities through crime in the name of tradition and male domination. Simelane comes from the second oldest township where gay sub-culture was visible and celebrated. In Kwa-Thema, from as long ago as the early 80s, visible "drag-queens" walked the streets proudly, earned respect from their assertion of their sexual identity and their visible strong ties of unity - the gay family.

Through the celebrated woman known as MaThoko to many black gays and lesbians from particularly the old Vaal area, a true community was born and MaThoko's house was its home. Ordinary members of the Kwa-Thema community would have been perceived as 'out-of-touch' if they dared to speak against gays and lesbians. Whether you liked it or not, for whatever reason, Kwa-Thema was home to be proudly black and lesbian or gay without the fears that now exist because of the killings such as that of Simelane.

Contrary to the national political ignorance of the ANC to the matter, the branches of the ANC of Ekurhuleni and in Kwa-Thema, have accompanied the juridical and community mobilisation process since the body of Simelane was discovered that Monday morning, lying on an open field with multiple stab wounds. With the now Mayor of Ekurhuleni, Ntombi Mekgwe, the ANC issued letters to the police calling for the immediate investigation and arrest of the killers. This has opened a unique

opportunity in the area for dialogue between lesbian, gay, bisexual and transgender (LGBT) people and ANC activists on a range of issues, including the challenges of service delivery, unemployment and fighting crime for active political participation of all members of society, including openly lesbians and gays. Furthermore, to challenge the wide-spread homophobia, even within the ANC, to enable to enable effective social and political participation.

The case goes to Delmas. For many of us anti-Apartheid activists and political historians, we will remember Delmas as one of the areas where activists from the East Rand were detained and questioned, and were cases of key political activists were heard. Simon Nkoli, a celebrated gay rights, anti-Apartheid and AIDS activist who died in 1998, was sentenced there for what is famously now known as the Delmas Treason Trial, along prominent ANC aligned political leaders including now Congress of the People's president Terror Lekota.

We return to Delmas in post Apartheid South Africa to seek justice for Eudy Simelane. Her killing, like with that of many others who have been victim to hate crimes based on sexual orientation [31 known cases according to a Triangle Project research], has an important significance to limits of enjoying our human rights to equality, freedom and dignity. We mourn Eudy's untimely and unacceptable death. We extend solidarity to family and all close to her. In our solidarity, it is not surprising that we, as the many Eudy's alive and openly proud about being woman, lesbian, black, young, and so on, today, are angry and scared.

This case is likely to be the first of its kind to issue judgment on an alleged hate related crime due to one's sexual orientation. It has the possibility of opening doors to challenge legislation that does not include LGBT people as vulnerable to hate crimes. It can contribute to challenging the justice system as a whole on these issues. It contributes to the many efforts by LGBT, women's rights and other organisations to raise the consciousness of everyone in our country to act against violence targeted at all women and children. Most importantly, it will also send a strong message to young men that there is no impunity, not via the state, not via the community and not via the LGBTI people who will utilize this case to build a strong movement of self defense.

If only it does one thing it would be that it gives us enough reasons to build our movement. A true movement that cannot just react, but that can be proactive to eliminate this hatred, violence and exclusion of an important and significant part of our society. Let's build a social force to be reckoned with!

Let us join others struggling against violence and hate.

Join us in our struggle!

Amandla!

Available from: www.womensnet.org.za/news/eudy-simelane-and-significance-murder-trial

'Gay rights still just a promise'

Bailey, C.

Published in the *Cape Argues*, 14 August, 2007

South Africa may have an advanced Constitution but it has a long way to go before the Constitutional promises relate into meaningful realities for its gay and lesbian citizens. □ □ Supreme Court of Appeal Judge Edwin Cameron said there was a substantial disjunct between Constitutional promises of equality for all and the realities on the ground. □ □ "We have come very far. We have much to rejoice about and we did embrace a democratic Constitution. But we have failed to relate those into meaningful realities. □ □ "There is rampant racism, rampant inequality and prejudice against gays and lesbians. We have a long way to go before the Constitutional promises are translated." □

Cameron was addressing Rainbow UCT, the university's gay and lesbian rights organisation on gay rights. His lecture comes after several murders of lesbians in July. □ □ A 23-year-old lesbian was murdered in Ezakheni, Ladysmith on July 22. Two weeks earlier, Sizakele Sigasa and Salome Masooa were raped, tortured and murdered in Meadowlands in Soweto. □ □ "We need to reach a point where everyone can feel protected in their lifestyles." □ □ Cameron, who said he was enormously proud to be gay, said the issue of sexual orientation was one that tested the commitment of putting the past in the past. □ □ He said that while people talk openly about sex, sexual orientation still made people uncomfortable. □ □ While sexual orientation was often characterised as a sin, a crime, a pathological deviation or a perverse lifestyle choice it was actually a variant of human existence.

Available from:

http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=vn20070814114126788C419851

Extract: Township Lesbians are too scared

Joseph N.

Published in the *Cape Times*, 23 April, 2008

The campaign was launched provincially in February, and consists of lesbian, gay, bisexual, transgender and intersex (LGBTI) organisations, as well as groups dealing with HIV/Aids and gender issues.

Campaign spokesperson Marlow Valentine said black lesbians who lived in Khayelitsha were "too scared" to protest outside the court during the men's trial.

"They're too afraid to be visible at court," said Valentine.

Available from:

http://www.iol.co.za/index.php?art_id=vn20080423054613387C757988&click_id=13&set_id=1

Legalisation of Prostitution

Demographic Survey (2005)

From Sex Worker Education and Advocacy Taskforce (SWEAT)

Most people have stereotyped ideas about sex workers. This fact sheet aims to provide a clearer picture of sex workers and the sex work industry.

The information in the fact sheet is based on the results of a small survey of 200 adults in the Cape Metropole area who identify themselves as sex workers. It provides a snapshot view of the diversity of the sex work industry in the Western Cape and it is not necessarily reflective of the sex work industry in South Africa generally.

Sex workers work in a variety of locations. The most visible section of the industry are those who work on the street. A less visible section of the industry are sex workers who work indoors in bars, clubs, escort agencies and massage parlours. The group surveyed was almost equally divided in terms of those working indoors (104 people) and those working on the street (96 people).

The brief survey elicited information about the demographics of those working in the sex work industry, as well as reasons people gave for entering the industry, their levels of education and some work history.

Demographics □ □ The large majority of sex workers in the sample were female (93%), 6% of the sample were male and 1% of the sample were transgender sex workers. □ □ Overall we found that the ages of persons engaged in sex work ranged between 18 and 54 years. This group of people were mostly young adults, with the average age of participants being 27 years and the majority of the participants falling between the ages of 22 and 29 years. □ □ The racial breakdown of the sample was very similar to that of the general population in the Western Cape, as recorded in the 2001 census by Statistics South Africa.

| Population group | Sex workers surveyed | 2001 Census figures – WC |
|------------------|----------------------|--------------------------|
| Black | 62 (31%) | 26% of population |
| Coloured | 108 (54%) | 54% of population |
| White | 28 (14%) | 18% of population |
| Indian | 2 (1%) | 0.9% of population |

Levels of education and training □ □ Questions about the levels of education showed that only half of the participants had completed either Std 9 or Std 10. Nearly half of the participants had completed Std 6 to 8. People working indoors seemed to have completed higher levels of schooling and training after school than those working on the street. □

| | Indoors | Street Based | | Indoors | Street Based |
|---------------------------|---------|--------------|-------------------|---------|--------------|
| Level of Schooling | | | Training | | |
| Sub A to Std 5 | 1% | 13% | None | 52% | 79% |
| Std 6 to Std 8 | 23% | 60% | Short Course | 28% | 18% |
| Std 9 to Std 10 | 76% | 23% | Degree or Diploma | 19% | 0% |

Reasons for entering the industry □□ When asked about their reason for starting to do the work half of the participants indicated that it was because they were not able to find another job (through a lack of training or available job opportunities). Overall 22% of the participants indicated that they do this work because it allows them to earn more money than they could in any other job. □□ The majority of those working on the street said that they had started doing the work because they couldn't find any other job. However those working indoors gave reasons that were split more evenly between the fact that this work allows them to earn more than any other job and that they couldn't find another job. □□ Most of the participants in the sample (78%) indicated that they had done other jobs besides sex work. The majority of people had done things like domestic work, working as a shop assistant or working in an administrative job. □

Length of time in the industry

Most of the sex workers who participated in this survey had been in the industry for between 1 and 6 years, with the average period of time spent in the industry being 4 years. It seems that people on the street spend on average longer in the industry (5 years) than those working indoors (3 years). Despite the long periods of time most people had spent in the industry, 68% of the sample indicated that they saw sex work as a temporary job. Only 20% of those interviewed indicated that they saw this as a permanent job.

Earnings in the industry

The prices sex workers charge for the services they offer differ enormously, with some sex workers earning a minimum of R80 a day, while others earn a daily income of R1700.

Those working indoors earned more on average than those working on the street. In terms of their daily earnings in the industry, calculated from the information we gathered, sex workers working indoors could earn on average R500 per day, while those working on the street could earn an average of R334 per day. Those who worked indoors seemed to work significantly longer hours than those working on the street. The majority of sex workers indoors work between 8 and 12 hours per day and on the street most people work between 3 and 8 hours per day.

The 200 people who participated in this survey financially supported a total of 405 dependants. Of these dependants 279 were children, and 126 were adults.

Available from: http://www.sweat.org.za/index.php?option=com_content&task=view&id=16&Itemid=18

Prostitution out from the underground

Li-bao, P.

Published in *People's Post*, 2 December 2008

LEGALISATION, decriminalisation, or criminalisation?

Prostitution, the large but underground economic network, was last week raised to prominence again by ANC MP George Lekgetho's proposal to Parliament that it be legalised for the 2010 Soccer World Cup. Last year National Police Commissioner Jackie Selebi suggested that the sex industry be legalised, or at least tolerated, for the duration of the 2010 Soccer World Cup. He did not, though, state as Lekgetho did last week that doing so could decrease the incidence of rape during the Soccer World Cup.

People's Post spoke to various people about the proposal. "Yes, we can talk, but you must pay," said Sam (pseudonym), a 27-year-old prostitute, when asked for an interview. "You know, you are using my time for making money."

After she was assured of R50 compensation, the mother of six started talking about her "job", which she has been doing since she was 13.

"I have worked all over Cape Town, Sea Point, Green Point, Mowbray, Claremont, Muizenberg ? since I dropped out of school," she said.

According to Sam, women on the streets can be divided into four categories: those working for local gangsters, those helping Nigerians, those assisting the police and those working for themselves ? such as her.

"Unlike the girls who work for gangsters or drug dealers, I don't need to give anyone money. Every cent I earn, I put in my own pocket."

With an average income of over R10 000 per month, Sam supports two of her children, while the other four are with their fathers.

"Although the money is all right, it is a very dangerous job," said Sam. "I was attacked by a client two days ago. After having sex with me at Wynberg Park, he didn't want to pay me and sprayed tear gas into my eyes. When I asked some security guards who saw the incident to arrest the man, they said they could do nothing about it."

Vivienne Lalu from the Sex Worker Education and Advocacy Taskforce (Sweat), a Cape Town-based NGO promoting health and safety among prostitutes, as well as conducting public awareness and advocacy work, says that many women become prostitutes because of financial difficulties.

"As they are not well educated and lack skills, it is not easy for them to find jobs in a country with such a high unemployment rate," she says.

Two hundred sex workers who participated in a Sweat survey in 2005 supported a total of 405 dependants. Of these, 279 were children and 126 adults.

Henry Trotter, an American scholar who has been studying South African port culture for five years and is currently writing a book, "Sugar Girls & Seamen: A Journey Into the World of Dockside

Prostitution in South Africa", explains that offering sex for reward was criminalised under the Sexual Offences Act of 1957. He contends that the criminalisation of prostitution made sex workers vulnerable to violence.

Jennifer Williams, director of the Women's Legal Centre in Cape Town, says that of the three approaches - legalisation, decriminalisation and criminalisation - criminalisation was shown by the South African Law Commission to result in higher levels of violence against and exploitation of prostitutes.

Lalu says: "After lobbying for the decriminalisation of prostitution for 12 years, despite the fact that we do not support the point George Lekgetho made, we sincerely welcome the opportunity he opened up to debate the issue on a national level."

Don't legalise red-light district: IFPYB

Published in *The Citizen*, 7 July 2008,

DURBAN - The eThekweni Municipality's plans to legalise red light districts in Durban before the 2010 World Cup should be condemned, the Inkatha Freedom Party Youth Brigade said on Monday.

The party's chair Pat Lebenya-Ntanzu said the government was sending mixed messages to the youth of South Africa.

"On the one hand it preaches strong family values and moral regeneration, but on the other hand they want to legalise prostitution on Durban's streets. It doesn't make sense," Lebenya-Ntanzu said in a statement.

The brigade called on all South Africans to "stand-up and oppose" the plans to legalise prostitution.

"Let's all work towards restoring the moral fibre of our nation," she said.

eThekweni city manager Mike Sutcliffe was not immediately available to comment on the matter.

Available from: <http://www.citizen.co.za/index/article.aspx?pDesc=70600,1,22>

Legalise prostitution in 2010 - MP

Published in *The Cape Times* on 30 January, 2008

An ANC MP on Tuesday proposed that prostitution be legalised during the 2010 Fifa World Cup. "It is one of the things that would make it (the tournament) a success, because we hear of many rapes because people don't have access to them, women," George Lekgetho told a meeting of the portfolio committee on arts and culture in parliament. His suggestion was met with a groan of

protest and chuckles from other MPs. "If sex working is legalised, people would not do things in the dark. That would bring us tax and would improve the lives of those who are not working," he added.

Democratic Alliance MP Sydney Opperman disagreed, saying one could not commercialise relationships. "You cannot attach a price to the deepest union between a man and a woman and link it to our tax base," he said. They were speaking following a presentation by the arts and culture department on its plans for social cohesion for 2010. Another ANC MP, Christopher Gololo, said the matter should be "thrown to the public" to debate. Arts and culture department Director-General Thembinkosi Wakashe agreed.

Turning to other matters, ANC MP Peter Maluleka expressed concern that tourists coming to SA for the soccer event would be met with a "very glaring absence of friendly, welcoming smiles" in shops and other service centres.

Wakashe proposed that a campaign to improve customer service should be linked to the Proudly South African Campaign.

He outlined the department's wide-ranging plan for 2010, which envisions promoting social cohesion, eliminating poverty and racism and creating a suitable economic environment for hosting the cup.

The plan would also address social fragmentation, as was evident in high crime levels, and building and upgrading cultural facilities.

MPs called it "very beautiful", and "a massive programme".

When asked how much this would cost, Wakashe said the plan would be compared to actual allocations in the medium-term expenditure framework. - Sapa

Available from:

http://www.iol.co.za/index.php?set_id=1&click_id=594&art_id=vn20080130032424911C629388

Why you should support decriminalisation even if you are against sex work

Sex Worker Education and Advocacy Taskforce (SWEAT)

Sex work is a crime in South Africa, as is brothel keeping, living off the earnings, as well as many other activities of the sex work industry.

The arguments to keep the sex work industry criminal are mostly a fear of moral and social collapse, a fear of the spread of STI's and the fear of a link to organised crime. An additional reason given for criminalising the industry is the harm inherent in sex work, i.e. that the women and men who sell sex are psychologically and physically damaged by the work they do.

The ultimate aim of the criminalisation of sex work is the eradication of sex work in its totality. Thus far criminalisation has failed to stop persons engaging in sex work and, after 17 years of criminalising the industry, the impact these laws have had on the eradication of sex work is minimal if non-existent.

If our current system is not effective in achieving the aims it has set, then it must be time to think beyond the standard reaction of criminalising what we do not like and hoping it will go away. We need to start considering other options if it is indeed our aim to prevent the exploitation of women and men in the industry, to contain the spread of STI's and to address concerns around "moral and social collapse".

Other countries have already started to look at a variety of options, such as criminalising the client , establishing red light districts and creating laws to specifically deal with the sex work industry .

In South Africa we currently have the opportunity to look at the history of dealing with the sex work industry, look at what has worked or not worked in other countries and then to tailor a response appropriate to the South African situation, in line with our Constitution and the rights contained within it.

The South African Law Reform Commission ("SALRC") is in the process of producing a Discussion Paper on possible changes to the legislation dealing with adult sex work, following on from the Issue Paper produced in 2002. Once this Discussion Paper is produced the public will have the opportunity to make submissions. It is important that those submissions are well informed and all factors taken into account. This article therefore analyses the motives behind the support for the criminalisation of the industry and the flaws in this argument.

Involvement in organised crime

Not all sex work is linked to organised crime. No doubt there is some overlap between the two. This is not surprising, as it is the illegal status of sex work that makes it an appropriate partner to organised crime. Persons selling sex are involved in an illegal activity. They are therefore restrained by issues such as the inability to find accommodation where their work is tolerated. Accommodation is however always available and on offer from drug dealers. The fact that this may include selling drugs overshadows by far the need for a roof over your head. Drugs are freely available and their use is encouraged. The sex worker's dependence on the drugs is of benefit to the dealers. In addition the fact that very little assistance is forthcoming from the police or at the very least there is a perception that this is the case, then protection must be obtained elsewhere. Sex workers are reluctant to approach the police when they are being arrested on a continuous basis for assistance if been beaten or raped. Protection is therefore sought in the form of pimps, boyfriends or other sex workers.

"As for criminals, hookers tend to be surrounded by felonious confederates because what they do is illegal. The enterprise attracts violent people because violence is often useful in a business that can't expect protection from the cops. The retail liquor trade used to be that way too, during Prohibition. Since repeal, it has been about as violent as the dairy industry."

Decriminalising the sex work industry would obviate the need for protection outside of the police services. It would also enable sex workers to access services, which are taken for granted by persons able to prove an income, such as opening a bank account, securing accommodation and access to loans. Decriminalisation would make them less reliant on services provided by persons involved in organised crime.□□

The spread of infectious diseases□□

Sex workers are often seen as ‘vectors of disease’. This makes them a threat to public health. Criminalisation has not deterred persons from entering the industry but its effects have serious implications in relation to addressing public health issues. □□Organisations involved in outreach work to sex workers, such as SWEAT and the Reproductive Health and Research Unit (“RHRU”) are involved in the education of sex workers regarding the prevention of the spread of STI’s, including HIV. This outreach is made more difficult by the criminalisation of sex workers and it presents huge challenges to such organisations to access sex workers. Our HIV/AIDS prevention campaigns are focused on education and this becomes increasingly difficult to implement if the target audience has to continuously hide and move in order to avoid the authorities. Some police officers have taken the amount of condoms a woman carries as evidence that she is a sex worker. Sex workers therefore tend to be fearful of carrying condoms.□□As long as the sex work industry remains illegal and operates as a largely underground activity, large sections are not being accessed nor have access to non-judgmental health services. It is therefore the criminalisation of sex work itself that is a threat to public health. □

Social and moral collapse□

If we view the existence of sex work as leading to the social and moral collapse of our society our aim should be to encourage sex workers to exit the industry, as well as to prevent them from entering the industry. □□Women and men enter the industry for a variety of reasons. Many enter the industry out of economic need. If we are serious about wanting to make sex work a less attractive choice and thereby reducing the industry we should look to poverty alleviation and educational opportunities for women rather than criminalising people making such choices.□□

South Africa currently has a very high rate of unemployment, with the trade union movement COSATU quoting percentages as high as 40%. This makes it difficult enough to find a job and any form of employment is hotly contested. A criminal record makes it even more difficult to find employment. So, although many groups claim to encourage sex workers to leave the industry, their method of doing so, criminalising the industry, in fact adds to the factors keeping women and men in sex work. □□Criminalising sex work, because we believe it to be inherently harmful to the women in the industry or morally reprehensive, is treating the symptom and not the cause. □□If sex work were to be decriminalised then those working therein would access labour rights and protections and be in a far better position to have control over their work environment, their health and their safety. Such a work climate allows persons to make decisions and choices regarding their future, including further education and skills training, and opens up opportunities to change work, if they should wish to do so.□□

A firm stand by government not to label sex workers as criminals will be a first step in breaking down this barrier to exit. The lessening of constant arrests by the police will further assist. Government’s stand will also contribute to the lessening of the stigma. □□It is interesting to note that a moral argument was made when the selling of sex was

criminalised in 1988, as opposed to the criminalisation of the rest of the industry, which occurred much earlier. One argument made was that prostitution (together with homosexuality) was characterised as ‘the first signs of a disintegrating community’. If we have abandoned criminalising homosexuality because it cannot be justified in terms of our Bill of Rights, then we need to analyse the validity of claiming morality as a reason to keep the sex work industry criminalised. In any event, it has been shown that criminalising the industry has done nothing to decrease sex work and has therefore not in any way lessened the ‘moral decline’ of society.

Exploitation or the perpetuation of women as objects

Many feminist groups have claimed that sex work is inherently exploitative and perpetuates women as objects. This argument has led some groups to claim that criminalising the industry is the best option. Again, this is an argument for the eradication of sex work in its entirety. As we have argued above, criminalisation does not prevent persons from entering the industry and in fact acts as a barrier to exiting the industry. It seems a stark contradiction to argue for the protection of women in the industry, and claim them as victims, and at the same time argue for the criminalisation of these very ‘victims’.

In response, many groups have argued that it is not the sex worker who should be criminalised, as she has much less bargaining power in the relationship, but instead we should criminalise the client. In theory this addresses the imbalances between sex workers and clients. In practice however, this approach harms the sex worker far more than it does the client and does not lead to a lessening of the industry as a whole.

Sweden has criminalised the client and decriminalised the sex worker. If it was difficult to prove that a sex worker has broken the law it is even more difficult to prosecute clients for such a breach. Very few prosecutions of clients have occurred in Sweden. In addition sex workers from Sweden and the Netherlands report that life has become more difficult since the clients have been criminalised. As in any other business the supply will follow the demand. If the demand has to hide from the police so will the supply. This means less access to sex workers.

Sex workers have also said that the criminalisation of the client may have an impact on the “good” clients and kept them away but it left only those men that sex workers would normally avoid: the clients who are potentially dangerous. Sex workers by necessity rely on their instincts when contemplating accepting a client. Some reports have said that the fact that the clients are criminalised makes them more nervous and therefore not prepared to spend time talking to the sex worker. She has to get into the car immediately. The discussion, during which sex workers evaluate their clients, has therefore been cut short and the possibility of going with a dangerous client is increased.

Criminalising the client also influences our ability to assist victims of trafficking. Where women are held against their will and controlled to such an extent that they have little or no contact with the outside world, their only hope is the client. A client who makes himself vulnerable to prosecution and is labeled a criminal is less likely to report that women are being held against their will. Criminalising the client, or the industry as a whole, is therefore not an option if the motive is to assist the women and men in the industry, to protect them from harm or to help them exit the industry.

Our personal opinions about sex work and the “inherent harm” in it should not cloud our perception in such a way

that our course of action becomes detrimental to the sex workers themselves. It is arrogant to assume that we know better than persons in the industry and to decide accordingly. If we do we are perpetuating the image of persons in the industry as victims unable to make decisions. Treating women in the industry as children makes us complicit in the perpetuation of the stereotype that women cannot think and act for themselves.

“Politicians may think prostitution is a grim, degrading life. But prostitutes think the same of politics. At any rate, arresting practitioners doesn’t exactly improve their lives. And if they see it as the best of the available options, eliminating it merely forces them into choices they see as worse.”

Conclusion □ □ Persons entering the industry do so despite the risks. Lifting these risks by decriminalising the industry simply makes some aspects of the work less dangerous. Criminalising the industry creates an environment where sex workers are more exposed to criminal acts, such as rape and assault, and advocating for its continuation makes us an accomplice to those crime perpetrated against sex workers.

“Legalizing prostitution would not be a moral endorsement of paid sex, any more than the 1st Amendment is a moral endorsement of supermarket tabloids. It would just be a recognition of the right of adults to make their own choices about sins of the flesh – and of the eternal futility of trying to stop them.” “... confusing the effects of prostitution with the effects of laws against prostitution.”

Government and civil society now have the opportunity to critically examine criminalisation and its effects and to engage with the real possibility of alternatives that can address the very concerns that strong supporters of criminalisation seek to address.

Available from: http://www.sweat.org.za/index.php?option=com_content&task=view&id=31&Itemid=19

MPs to turn tables on sex workers' clients

Hartley, W. Parliamentary Editor

Published in *Business Day*, 12 September 2006

CAPE TOWN - People who solicit and pay for sex could face criminal prosecution as a result of a late amendment to the Sexual Offences Bill to make clients as well as sex workers guilty of a crime for the first time in South African law.

The proposed changes, introduced during routine work by Parliament's justice committee, have been criticised by the Sex Worker Education and Advocacy Taskforce (Sweat) as being potentially unconstitutional as a process of public participation was not followed. Justice committee chairwoman Fatima Chohan, however, defended the move as correcting a hypocritical situation in law, which criminalised the act of selling sex but not the soliciting or paying for it.

The bill is already phrased to make it a criminal offence to engage the sexual services of someone who is younger than 18 or mentally disabled. It is proposed to extend this to those who engage the sexual services of a person of 18

or older.

Sweat said the additional clause was "a huge and sudden departure from the approach of the committee, which was to separate adult sex work from sexual offences". It said the South African Law Reform Commission was preparing a separate discussion paper on adult sex work.

"This provision has not been subject to public participation along with the rest of the bill, and Sweat, which has been working with sex workers for 11 years, is gravely concerned about the possible wide-ranging and extremely prejudicial consequences of including this provision in the current bill," said Sweat. This would affect the rights of sex workers.

"At no stage have issues pertaining to sex work been deliberated upon, nor has there been any form of open submissions or debate on this issue. It is completely irregular for this provision to have been inserted at such a late stage without any regard for due process whatsoever," Sweat said.

The Constitutional Court had found the issues complex and requiring serious legislative consideration. "For such a section to be inserted, and possibly passed, would fly in the face of the recent Constitutional Court decision in relation to the validity of certain provisions in the Choice on Termination of Pregnancy Act, and may well be unconstitutional," it said. Sweat called on the committee to remove the proposed section.

Chohan said the issue had arisen out of the committee's deliberations on the crime of sexual exploitation as it applied to children and the mentally disabled.

"While we don't deal with prostitution per se, that is people who sell sex, as it is currently the subject of an in-depth investigation by the law reform commission, we should consider the matter of their clients."

"Currently, women (mostly) who work as sex workers are arrested for the crime of prostitution. In many other countries people who solicit and pay for sex are arrested and convicted.

"We are therefore considering that soliciting and paying for sex should be a crime."

She said this would redress the current hypocritical situation in law that had evolved unfortunately to the benefit mostly of men, who with impunity solicited and paid for sex, furthering the exploitation of women and young girls.

The committee would consider submissions made by Sweat and anyone else, said Chohan.

Available from: <http://www.businessday.co.za/articles/topstories.aspx?ID=BD4A269890>

Sex Work and Human Rights in South Africa

Sex Worker Education and Advocacy Taskforce (SWEAT)

Human rights are universal. They apply equally to all persons. The Bill of Rights in our Constitution lists the fundamental or human rights we are entitled to on the basis that we are human beings.

Such rights include the right to life, the right to freedom of speech and expression, the right to equality before the law, the right to freedom and security of the person, the right to dignity, the right to privacy, the right to freedom of association, the right to freedom of movement and residence and the right to freedom of trade, occupation and profession.

Rights contained in the Bill of Rights may be limited in terms of section 36, which governs the limitation of rights.

Section 22 of the Bill of Rights in our Constitution guarantees us the right to freedom of trade, occupation and profession:

“Every citizen has the right to choose their trade, occupation or profession freely. □□The practice of a trade, occupation or profession may be regulated by law.”

Making a form of work such as sex work illegal, limits the right to freedom of trade, occupation and profession. □□The clause in the Bill of Rights dealing with limitation of rights states that a right may be limited by a law of general application if that limitation is “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”. □□Any limitation of a fundamental right must be justified in terms of the limitation clause. The factors a court must take into account in deciding whether a limitation is justifiable are the nature of the right, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the purpose and its purpose and less restrictive means to achieve the purpose. □□The extent of the limitation of the right to freedom of occupation in the case of sex work is complete. A sex worker is forbidden from practising her trade in any form or manner, whether indoors or outdoors, whether alone or in a group. □□The state has argued that the purpose of the limitation is to eradicate sex work because of its perceived association with organised crime, the exploitation of women and the moral decline of society. These are in fact exacerbated by a system which criminalises the women and men in the industry. Organisations that support criminalisation as a means of reducing exploitation of women in particular are in essence supporting further abuse and exploitation of women in the sex work industry by making them criminals.

Available from: http://www.sweat.org.za/index.php?option=com_content&task=view&id=17&Itemid=18

Conclusion

This research paper assessed gendered rhetorical ideographs of social and economic justice in South Africa. It underscored particularly the chasm that exists between ideological commitments to “The Constitution”, informed by progressive values, and to cultural and traditional allegiances, which are often embedded in patriarchy and conservatism. Accordingly, there is a dichotomy between the “moral” majority and the brand of morality espoused in national legislation.

This paper demonstrated how these discrepancies are most apparent on the subject of gender, which acts as a “transmission belt” for wider social anxieties and power struggles. The empowerment of gendered groups poses a threat to the social order and constructed versions of masculinity which means that their rights are often banished to the margins of society as signs of social deviance, despite their constitutional validity.

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