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Sexual Violence in South Africa:  
Negotiating Constitutional Rights and Cultural Discourses of Gender

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## **Abstract**

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This thesis explores sexual violence in South Africa as a product of not only apartheid's violent history, but also of cultural discourses surrounding gender and masculinity. The pervasiveness of rape in South Africa has shocked the world, yet the government has not sufficiently addressed the systematic causes of the problem, which include economic vulnerability (particularly in black and coloured populations), persistent racial tensions and inequities, and exaggerated masculinities that are attached to an illusory "African" patriarchy. South Africa's struggle with institutionalized racial oppression and subsequent success in establishing a liberal, democratic state led to the construction of a constitution that is committed to protecting the human rights of all its citizens. Despite the progressiveness of South Africa's laws, some government officials and the majority of people "on the ground" remain unattached to the ideals of the constitution, and tensions between the liberalness of the document and traditional beliefs have become increasingly prevalent in public discourse. As a result, sexual violence and women's rights in South Africa have become sites of debate for the applicability of Western human rights in a country that is pushing to reinstate traditional hegemonic masculinities.

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## Chapter I: History of South Africa and Sexual Violence

South Africa's legacy of systematic racial oppression, decades of resistance, imprisoned and martyred freedom fighters, and ultimate establishment of the most progressive, non-racial democracy in the world has functioned as the fairy tale of liberation stories since the African National Congress (ANC) took power in 1994.<sup>1</sup> Not only did the black majority achieve political control of country, but they were also under the leadership of the hero of the anti-apartheid struggle, Nelson Mandela. As soon as Mandela was elected President of South Africa in 1994, he set out on a mission to restore the nation by stressing both the need to acknowledge the injustices and atrocities that had been committed under the apartheid regime and the need to forgive and reconcile with former oppressors.<sup>2</sup> This is most exemplified by South Africa's Truth and Reconciliation Commission, which continues to be respected for its thoroughness, transparency, and recognition that no one side had truly come out victorious, yet only memory and amnesty would allow the nation to heal: "We believe... that there is another kind of justice - a restorative justice which is concerned not so much with punishment as with correcting imbalances, restoring broken relationships – with healing, harmony, and reconciliation."<sup>3</sup> The egregious human rights abuses committed in South Africa during apartheid led to the state's commitment to protect the rights of all its citizens, thus the Constitutional Assembly drafted one of the most human rights-oriented constitutions in the world.

While this constitution remains the progressive jewel of South Africa, after almost two decades it is unclear whether the rule of law has taken into effect in the context of daily life.

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<sup>1</sup> "A Brief History of the African National Congress: The ANC is Unbanned," African National Congress, <http://anc.org.za>.

<sup>2</sup> Antjie Krog, *Country of My Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa*, New York: Times, 1999, p. v-viii.

<sup>3</sup> Archbishop Desmond Tutu, *Truth and Reconciliation Commission of South Africa Report: Chairperson's Forward* 1.1, p. 9, <http://justice.gov.za>.



South Africa is one of the most violent countries in the world, where the murder rate of men is eight times the global average and 25% of all women have stated that they have been raped, yet only about one in nine of them report it to the authorities.<sup>4</sup> Though methods of recording rape rates vary throughout the world, South Africa's consistently high rates of sexual violence has deemed it the country with "higher levels of rape of women and children than anywhere else in the world not at war or embroiled in civil conflict."<sup>5</sup> The culture of rape that has developed in South Africa has created a dichotomy in which women both live in constant fear of being raped, but have also come to accept and expect the sexual violence that may await them. Similarly, males embrace their roles as rapists and masters of women's bodies, contributing to the Medical Research Council's staggering statistics that 27.6% of men in the Eastern Cape and KwaZulu-Natal provinces<sup>6</sup> and 37.4% of men in the Gauteng province have admitted to raping a woman.<sup>7</sup> The ANC, which boasts the privilege of being the party of Mandela, the party that liberated South Africa, and the dominant party since the inception of the new democracy, has done little to address the widespread sexual violence or to enforce and protect the rights outlined by the constitution.

It is impossible to address rape in South Africa without analyzing the constructions of masculinities that perpetuate the cycle of violence against women. While there are many theories surrounding South African masculinities, particularly black male masculinities, a general theory exists amongst scholars and activists that attributes the extreme rates of sexual violence to the period of apartheid and the abrupt establishment of a democratic, liberal political system.

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<sup>4</sup> Zara Nicholson and Michelle Jones, "Up to 3,600 Rapes in SA Every Day," IOL News, 8 Feb. 2013, <http://iol.co.za>

<sup>5</sup> Helen Moffett, "'These Women, They Force Us to Rape Them': Rape as a Narrative of Social Control in Post-Apartheid South Africa," *Journal of Southern African Studies* 32.1, Mar. 2006, p. 129.

<sup>6</sup> Rachel Jewkes et al, "Understanding Men's Health and Use of Violence: Interface of Rape and HIV in South Africa," Gender & Health Research Unit of the Medical Research Council, June 2009, p. 1.

<sup>7</sup> David Smith, "One in Three South African Men Admit to Rape, Survey Finds," *The Guardian*. 25 Nov. 2010, <http://guardian.co.uk>.

Although feminist activist and writer Helen Moffett has observed that “there is no avoiding the fact that the first fourteen years of the new state have seen a dramatic increase in sexual assaults on women, children, and men,”<sup>8</sup> the rampant sexual violence and tacit acceptance of its perpetuation in today’s South Africa can, in fact, be viewed as a continuation of a long history of violence established prior to 1994.

This is evident in Pamela Scully’s work on sexual politics and violence in South Africa’s Western Cape, which traces colonial incidents of rape and the use of racial categorization as a moralistic basis of judgment in the handling of these court cases. Many of the sixty-seven cases explored in the article involved black or coloured female accusers and black or coloured male defendants.<sup>9</sup> The majority of cases also involved members of the working class, which was a trend that transcended racial lines. Scully suggests that these women were particularly susceptible to assault and rape by strangers as they worked late hours and would often find themselves travelling alone.<sup>10</sup> Women whose mobility outside of the home was limited, either due to their higher socio-economic position or their location in rural areas, did not frequently report sexual violence, presumably because any type of assault they might encounter would be at the hands of a husband or acquaintance.<sup>11</sup>

Though these cases took place in the nineteenth century, the discourses and context of sexual violence in South Africa have changed little. Similar to working class women who had access to income and movement in the colonial Cape, women in townships who demonstrate independence through earning their own wages, thereby challenging patriarchal hegemony, also face backlash from their male peers. Yasmin Sooka, a prominent human rights lawyer and

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<sup>8</sup> Helen Moffett, “Sexual Violence, Civil Society, and the New Constitution,” p. 158.

<sup>9</sup> Pamela Scully, “Rape, Race, and Colonial Culture: The Sexual politics of Identity in the Nineteenth-Century Cape Colony, South Africa,” *The American Historical Review* 100.2, Apr. 2005, p. 349.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid, p. 350-351.

former member of the Truth and Reconciliation Commission of South Africa, claims that the efforts to create space for women in the legal and public spheres post-apartheid has resulted in further violence against them:

“Some black women have done well, but many black men are resentful that this government has been only about giving rights to women and as a result violence against women has intensified. It is as if the more laws there are promoting sexual equality, the greater the backlash against women. What we really need is a change of attitudes.”<sup>12</sup>

The direct relationship between levels of violence against women and the empowerment of women de jure is alarming and has obviously caught the attention of human rights activists both inside and outside of South Africa. Colonial cases of rape also perpetuated stereotypes of overly sexual black men and women, which resulted in the charging of black men for rape and the cross-examination of black women to verify their social and sexual respectability.<sup>13</sup> As we will see, these particular racial stereotypes, which presented black men as uncontrollable sexual beings and subjected black women to the experience of victim-blaming, continue to prevail in the rhetoric of sexual violence in South Africa 150 years later.

Following the colonial period, the apartheid regime institutionalized violence as a means of controlling the black population on both a state and local level. Not only did the government aggressively crush protests and manifestations of civil unrest, but white citizens on the ground also utilized violence against the general black population as a way to assert dominance. The employment of violence against black South Africans during apartheid produced an environment of fear similar to the one South African women live under today, where legal enforcement remains nonexistent as the police are themselves perpetrators of systematic violence and discrimination:

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<sup>12</sup> Interview by Claire Doole with Yasmin Sooka, “A Backlash against South African Women, InfoSud Human Rights Tribune, 8 Mar. 2008, <http://infosud.org>.

<sup>13</sup> Scully, “Rape, Race, and Colonial Culture,” p. 345.

“This was a deliberate act by the apartheid government, as they intentionally segregated races, creating townships in rural areas for black and colored citizens. Cut off from industrialization, employment, and social programs, townships became pockets of extreme poverty. In turn, these areas became overrun with acts of sexual violence due to police refusal to protect the ‘inferior’ races. Police were used to protect whites from black, not blacks from whites, and certainly not blacks from blacks.”<sup>14</sup>

Not only did sexual violence prevail amongst the black and colored populations in the impoverished townships, but also amongst white officers and female political dissidents or black women in the general.<sup>15</sup> By tacitly allowing rape to infest townships and develop into a tactic of fear exercised by black and white men alike, the apartheid regime left a legacy of sexual violence and lawlessness in segregated townships, which deliberately encouraged conflict and contributed to the social degradation of black communities.<sup>16</sup>

Despite attaining freedom and control of the state in 1994, black South Africans continue to suffer from economic hardship due to the persisting unequal distribution of land and capital. Black men who expected to regain their patriarchal authority as heads of households and primary breadwinners found that they could not provide for their families.<sup>17</sup> Though the persistence of a significant financial gap between blacks and whites has been cited as the main source of frustration for black men, ironically the concept of an egalitarian society in itself may have also contributed to this sense of threatened masculinities. For example, the primary goal of the anti-apartheid movement was to dissolve the monolithic system of racial oppression overshadowing the country, yet the spirit of liberation had infected interest groups ranging from women to

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<sup>14</sup> Roderick Brown, “Corrective Rape in South Africa: A Continuing Plight Despite an International Human Rights Response,” *Annual Survey of International & Comparative Law*, 1 Mar. 2012, p.50.

<sup>15</sup> Michelle J. Anderson, “Rape in South Africa,” *Georgetown Journal of Gender and the Law* Vol. 1, 1999-2000, p. 796.

<sup>16</sup> Lorenzo Di Silvio, “Correcting Corrective Rape: *Carmichele* and Developing South Africa’s Affirmative Obligations to Prevent Violence against Women,” *Georgetown Law Journal* 99.5, 2011, p. 1476.

<sup>17</sup> Amanda Lock Swarr, “Paradoxes of Butchness: Lesbian Masculinities and Sexual Violence in Contemporary South Africa,” *Signs*, Summer 2012, p. 965.

mineworkers to LGBT organizations, as the prospect of a new democracy became a reality.<sup>18</sup>

Incidentally, it was not only black South African men that became enfranchised in 1994, but also a number of other marginalized groups, which perhaps complicated the ideal society South Africans envisioned when the black majority finally gained freedom from white oppression.

In addition to having to share the benefits of liberation with groups that even they might have contributed to oppressing, South African men (particularly those who had participated in the anti-apartheid struggle) had invested quite a lot of themselves into the ideology of the revolution and depended on the movement to help define their masculinity. In his piece about post-apartheid masculinities, Thokozani Xaba focuses on the challenges of transforming revolutionary and militant masculinity into civil, and socially-productive masculinity. This was especially difficult for young men who had sacrificed their educations or livelihoods to join the freedom movement and whose definition of manhood relied on their identities as “comrades” and warriors, which provided them both respect and legitimacy in their communities: “Being referred to as a ‘young lion’ and a liberator’ was an intoxicating and psychologically satiating accolade.”<sup>19</sup> Xaba describes post-apartheid masculinity as a masculinity of survival, in which former male freedom fighters with no skill sets except violence remained together in the struggle to survive the transitioning political landscape, which ultimately led to their partaking in robberies, rapes, kidnappings, and vigilantism.<sup>20</sup> The human rights-orientated and reconciliatory approach of the new democratic government left little room for the types of masculinities promoted during the militant years of the ANC, and while there was a deliberate transition of

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<sup>18</sup> Steven L. Robins, *From Revolution to Rights in South Africa: Social Movements, NGOs & Popular Politics After Apartheid*, University of Kwa-Zulu Natal Press, 2008, p. vii-viii.

<sup>19</sup> Thokozani Xaba, “Masculinity and its Malcontents; The Confrontation between ‘Struggle Masculinity’ and ‘Post-Struggle Masculinity’ (1990-1997),” *Changing Men in Southern Africa*, Ed. Robert Morrell, U of Natal Press, 2001, p. 110.

<sup>20</sup> *Ibid*, p. 116-118.

state power in South Africa, there appeared to be little reintegration of young male comrades into society.

Though this analysis explains the frustrations black South African men experience as they negotiate a new democratic social order in which they continue to remain powerless, some feminist scholars have argued that the pervasiveness and persistence of sexual violence cannot be sufficiently explained by the theory of the emasculated black man. In fact, many faults and dangerous misconceptions exist around this theory; first, not only does this theory imply that impoverished and disenfranchised black men are the sole perpetrators of sexual violence, attributing this phenomenon to black men's dissatisfaction with their position in society, but it also tacitly accepts emasculation as a justification or an excuse for the level of sexual violence that is plaguing the nation.<sup>21</sup> Furthermore, this theory confines the experiences of all black men into a single narrative that neatly follows a progression from repression, liberation, disillusionment, and ultimately, backlash. As Liz Walker argues, the introduction of a liberal constitution into a previously authoritarian system actually allowed for the co-existence of multiple masculinities, ultimately constructing the "crisis of masculinity" that South African men find themselves in today: "The responses of some men to the shift in gender/power relations have been violent, ruthless, and reactionary, yet the responses of others have been embracing."<sup>22</sup> Thus, South Africa's transition into democracy led to a comprehensive and multi-dimensional redefinition of masculinity.

In her analysis of South African rape narratives, Moffett offers another explanation and argues that the simultaneous disestablishment of the racial hierarchy that existed throughout

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<sup>21</sup> Moffett, "'These Women, They Force Us to Rape Them': Rape as a Narrative of Social Control in Post-Apartheid South Africa," p. 134.

<sup>22</sup> Liz Walker, "Negotiating the Boundaries of Masculinity in Post-Apartheid South Africa," *Men Behaving Differently: South African Men Since 1994*, Ed. Graeme Reid and Liz Walker. Cape Town: Double Story, 2005. P. 161.

apartheid and the sudden equalization and protection of all citizens under the constitution left a sort of social power vacuum in South Africa. Seeing that strict hierarchies, and by extension systems of oppression, had disappeared, South African males embarked on the project of “social stabilization” by creating a hierarchy based on patriarchal customs. Thus, South African men provided the nation with a unified, though misogynistic and vindictive, social system.<sup>23</sup> Although Moffett’s idea of a nation in need of social stability and “order” in a time of mayhem seems plausible in the context immediately following the inception of the new democracy, it is unclear whether this systematic patriarchal hierarchy now serves the purpose of maintaining order or contributing to lawlessness.

Incidentally, the association of rape with the disgruntled black male population has also sparked anger and criticism from prominent black figures, who see South Africa’s dramatic rape statistics as an attack on black males and a return to apartheid-era stereotypes. The most notable example of this occurred in 2004, when President Mbeki responded to journalist and rape survivor Charlene Smith’s critique of the government’s mismanagement of HIV/AIDS transmission and sexual violence by claiming that Smith was in actuality a racist: “[Ms. Smith] was saying our cultures, traditions, and religions as Africans make every African man a potential rapist... [a] view which defines the African people as barbaric savages.”<sup>24</sup> Although Smith meant to engage the public in a discussion about sexual violence and the ineffectiveness of the government, Mbeki interpreted her comments as an attack on African culture and an accusation that black men are hyper-sexual, uncivilized creatures with an uncontrollable propensity for

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<sup>23</sup> Ibid, p. 132.

<sup>24</sup> “Mbeki Slammed in Rape Race Row,” BBC News, 5 Oct. 2004, <http://bbcnews.co.uk>

raping women. Smith's criticism, he claimed, stemmed from resentful white attitudes that aimed to hinder the progress of the non-racial democratic nation.<sup>25</sup>

Mbeki's reaction to Smith's comments is just one illustration of the cultural and racial sensitivity that surrounds the topic of sexual violence in South Africa. Unfortunately, this sensitivity makes it virtually impossible to achieve any constructive debate or discussion around rape. While attributing rape to black men's disempowerment is seen as a poor, over-used excuse by some and an offensive racial accusation by others, it is nevertheless the most popular explanation for the massive amount of sexual violence plaguing South Africa. Very few people are willing to acknowledge that patriarchy and gender inequality continue to present serious social problems in the non-racial democracy, or that these institutions play a role in the persistence of rape.

The fear of recognizing that patriarchal systems and stubborn masculine ideologies exist in South Africa has offered few solutions and many challenges in regards to rape. Mbeki, for example, obviously chose to avoid the topic of masculinity and men's contributions to the overwhelming statistics of sexual violence by defensively offering a racial perspective on the matter. Although his concern about the representation of the black male is rooted in legitimate racial legacies (where white men instilled the fear of being raped by hypersexual, "savage" black men in white women in order to regulate their own systems of patriarchy), Mbeki failed to recognize that sexual violence in South Africa has transcended race or class, and mostly occurs between acquaintances, neighbors, friends, or even family members;<sup>27</sup> rape is not limited to an emasculated black man and a "forbidden" white woman, nor is it necessarily limited to black

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<sup>25</sup> Ibid.

<sup>27</sup> Dr FM Orkin, "Quantitative Research Findings on Rape in South Africa," Statistics South Africa, Pretoria, SA, 2000, p. 12-13.



men and women residing in impoverished townships and rural areas. Though some populations are significantly more vulnerable than others, rape occurs virtually everywhere, from street corners to schools and homes, amongst black, white, and colored individuals, and amongst people of all ages.

Another instance in which the attempt to directly address rape garnered the attention of not only the entire country, but of the world, occurred when South African actress Charlize Theron starred in a controversial anti-rape commercial in 1999. In the advertisement, Theron bluntly speaks to the audience and says, “People often ask me what the men are like in South Africa.” She follows by referencing the country’s grim sexual violence statistics and rebuking both men who contribute to rape as well as those who appear to be indifferent to the horrors women must suffer regularly, and therefore implicitly endorse this culture of rape and hegemonic masculinity.<sup>28</sup> By claiming that there are few “real men” in South Africa, Theron both shamed men for not combating rape and violence against women in a more proactive, fervent manner and held them accountable to a certain standard of masculinity that requires them to acknowledge their role in the perpetuation of rape culture and misogyny. Only several weeks after airing, the advertisement was banned by the South African Advertising Standards Authority for offending a group of men who felt that the ad discriminated against them and implied that all men in the country were rapists or potential rapists.<sup>29</sup> The organizations that sponsored the commercial, The Rape Crisis Center in Cape Town and The Trauma Center, as well as Theron herself, were shocked by the decision and appealed it immediately but had no success in screening the advertisements again.

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<sup>28</sup> “Real Men Don’t Rape,” Charlize Theron, sponsored by The Trauma Center and The Rape Crisis Center of Cape Town, 1999.

<sup>29</sup> “Africa Rape Advert Row in South Africa,” BBC News, 5 Oct. 1999, <http://news.bbc.co.uk>

In this series of educational campaigns, Theron addressed rapists and complacent men in the most direct and public way possible. Indeed, Theron's messages exposed a bitter truth that neither South Africa men in 1999 nor Thabo Mbeki in 2004 could swallow: the responsibility of preventing rape and violence against women should be the burden the perpetrators, not that of the victims. Theron, who in 2010 was named a UN Messenger of Peace for her dedication to eliminating violence against women, had experienced gender-based violence herself at the hands of her alcoholic and psychologically abusive father. As a teenager growing up in an Afrikaans-speaking, middle-class household, Theron witnessed one night as her belligerent, drunk father threaten to kill both Theron and her mother with his shotgun. After Theron's father shot around the house a few times, Theron's mother pulled out her own handgun and shot her husband in self-defense, killing him instantly.<sup>30</sup> Theron's experience with gender violence indicated that violence against women did, in fact, cross racial lines and that radical machismo was pervasive in all areas of South African life. Her commitment to ending gender-based violence in her native country prompted her to openly address the issue on national television, yet South Africa as a population was not ready to receive a message in which masculinities were confronted for their perpetuation of violence.

Although both Theron and Charlene Smith had faced some form of violence against women in their lifetimes, their position as white South African women seemed to contribute to the failure of their messages. Both Mbeki and the public reacted defensively to their critiques: the former interpreting Smith's open letter as a condemnation of black men and the latter interpreting Theron's educational advertisements as a condemnation of South African men in general. In the debate that ensued after Smith's letter, Smith claimed that President Mbeki's tendency to accuse people or ideas he disagreed with as 'racist' would eventually give the term

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<sup>30</sup> "Charlzie Theron's Family Tragedy," ABC News, 8 Jan. 2004, <http://abcnews.go.com>.

little significance.<sup>32</sup> These incidences exposed the tension that exists not only between blacks and white in South Africa, but between the government and civil society organizations that bear the responsibility of monitoring the progress and shortcomings of the government. Although the ANC “has consistently advocated that they are a party committed to anti-racism and anti-sexism,” its representatives seem to be increasingly at odds with and the subject of criticisms from gender rights organizations.<sup>33</sup>

At the center of this debate between organizations and individuals that wish to see the promises of the constitution realized and the government that is failing to fulfill these promises is the inherent discrepancy between the liberal ideals of the constitution and the realities of the evolving characters and historical legacy of the ANC. Founded in 1912, the ANC was originally not the radical, populist, and politically-involved organization for which it would be recognized during the anti-apartheid struggle; instead, its aim was to represent the interests of black Africans within the competing tensions between British and Dutch colonizers. The ANC initially consisted of educated black professionals, church officials, and tribal chiefs who hoped to transcend tribal differences among Africans. This would play an important role during apartheid’s policy of complete racial separation, which encouraged ethnic divisions between not only black, Asian, white, and colored, but also between Zulu, Pedi, Tswana, Xhosa, and other native South African tribes.<sup>35</sup>

This combination of members allowed the ANC to develop into an organization that promoted political awareness as well as a special regard for both African tradition and Christianity. Although it did not officially accept members of other races until 1969, the ANC

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<sup>32</sup> “Mbeki Slammed in Rape Race Row,” BBC News, 5 Oct. 2004, <http://bbcnews.co.uk>.

<sup>33</sup> Hannah Britton, “Organising against Gender Violence in South Africa,” *Journal of Southern African Studies*, 32.1, Jun. 2006, p. 147.

<sup>35</sup> William Beinart and Saul Dubow, *Segregation and Apartheid in Twentieth Century South Africa*, Routledge, 1995, p. 17.

did form alliances with members of the mixed-raced South African Communist Party (SACP) and successfully reached out to black communities, allowing it to shed its identity as a purely middle-class organization and take on a more populist one.<sup>36</sup> The process of political radicalization and resistance began in the 1940s with the second generation of ANC members, consisting of students such as Nelson Mandela and Oliver Tambo, who would create the ANC Youth League and push for a more militant response towards the establishment of the apartheid government in 1948.<sup>37</sup> In 1960, the apartheid regime instated a ban over the ANC and the SACP, resulting in the exile and imprisonment of thousands of activists and political dissidents, who would not return to South Africa for another thirty years, and in the use of armed struggle against the government.<sup>38</sup>

As a national liberation party that has existed for over a century, the ANC's "true" character is a subject of debate and constant reanalysis. In 2012 President Jacob Zuma, upon seeing the current moral and political degradation of the ANC, reminded the party that in order "to maintain its character, the ANC should be able to cleanse itself of alien tendencies," including corruption, abuse of power, poor discipline, and a disengagement with the party's founding principles.<sup>39</sup> He also reminded ANC members of their commitment towards the left and their responsibility as "the voice of the poor and marginalized ..."<sup>40</sup> Zuma's comments suggest that the ANC has become complacent in its position as the dominant political party of South Africa, leading to a sense of detachment between current members and the populist ideologies promoted during the anti-apartheid struggle.

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<sup>36</sup> Stephen Ellis and Tsepo Sechaba, *Comrades against Apartheid: The ANC & the South African Communist Party in Exile*, Indiana University Press, 1992, p. 16.

<sup>37</sup> Stephen Ellis, "The ANC in Exile," *African Affairs* 90, 1991, p. 441.

<sup>38</sup> *Ibid* p. 439.

<sup>39</sup> "ANC Must Cleanse Itself- Zuma," *News 24*, 6 Jun. 2012, <http://news24.com>.

<sup>40</sup> *Ibid*.

The ANC has seen a dramatic transformation over the past two decades, which has been reflected in its choice of leaders. Mandela's ANC first approved the constitution, promised equality and dignity for all, attempted to mend the wounds of apartheid through reconciliation, and promoted the idea of a rainbow nation, in which diversity would be appreciated, but would never again serve as grounds for discrimination. Many have criticized Mandela's determination to promote racial reconciliation during the transitional period for not addressing the systematic inequalities that remained between blacks and whites, yet the former revolutionary justified this as a deliberate political strategy: "[Mandela] suggested that his reconciliatory approach stemmed from a realization that the ANC had not won the military struggle and that it had to find ways to neutralize white opposition."<sup>41</sup> Mandela's desire to prevent alienation of the minority population and his caution towards power negotiations led to the implementation of the "sunset clause," which allowed civil servants and security officials from the apartheid government to retain their tenures for five years after the inauguration of the new democracy.<sup>42</sup> Some scholars and politicians still argue that the ANC and Mandela squandered the opportunity to achieve widespread societal transformation and retribution from former oppressors in the process of reconciliation and compromise, yet many also acknowledge that this was a necessary and politically sound step in peacefully transitioning from a racialized, authoritarian system into a non-racial democracy.<sup>43</sup>

While Mandela's term as President was characterized by hopeful prospects for the future, Mbeki's 1999 election to the Presidency sought to address the socio-economic challenges many South Africans were continuing to experience. Mbeki reintroduced the concept of the African

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<sup>41</sup> Xolela Mangcu, "The State of Race Relations in Post-Apartheid South Africa," *State of the Nation: South Africa, 2003-2004*, Ed. John Daniel, Adam Habib, Roger Southall, Human Sciences Research Council, 2003, p. 105.

<sup>42</sup> *Ibid*, p 106.

<sup>43</sup> Erik Doxtader, "Making Rhetorical History in a Time of Transition: The Occasion, Constitution, and Representation of South African Reconciliation," *Rhetoric and Public Affairs* 4.2, Summer 2001, p. 225.

Renaissance, which focused on the revitalization of the entire continent's economies, a new attitude of intellectual self-sufficiency and autonomy free of Western ideology, and policies that would economically and socially empower the general African population.<sup>44</sup> While the African Renaissance appeared to offer the solution to the nation's high unemployment rate, Mbeki has been criticized for expanding the wealth of the private sector, particularly businesses owned by black ANC members, and not addressing the needs of the majority of black citizens who work in the underpaid informal sectors of the country.<sup>45</sup> Mbeki was also accused of isolating some South African citizens by relying heavily on racial politics and implementing a policy of quiet diplomacy in response to human rights violations on the continent. These criticisms led to Mbeki's engaging in extensive public debates with individuals ranging from HIV/AIDS experts, to human rights activists, to the prominent anti-apartheid figure, Desmond Tutu.<sup>46</sup>

Mbeki's terms as President complicated Mandela's vision of the rainbow nation by highlighting persisting racial, economic, and social tensions in the new democracy, yet the election of his successor, Jacob Zuma, appeared to solidify the nation's trend towards more conservative politics. Zuma, who unlike his predecessors received no formal education and embodies the traditional Zulu patriarch, has gained popularity from the masses for his symbolic presence as the father of the nation, despite having faced allegations for both corruption and rape charges only several years prior to his election: "He epitomized a rejection of more thoughtful, egalitarian masculinities, rather asserting in the name of 'tradition,' a masculinity that was heterosexist, patriarchal, implicitly violent and that glorified ideas of male sexual

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<sup>44</sup> Elias K. Bongmba, "Reflections of Thabo Mbeki's African Renaissance," *Journal of Southern African Studies* 20.2, June 2004, p. 292.

<sup>45</sup> David Blair, "Mbeki Lashes out as Tutu Attacks ANC 'Favouritism'," *The Telegraph*, 27 Nov. 2004, <http://telegraph.co.uk>.

<sup>46</sup> Joanna R. Quinn, *Reconciliation(s): Transitional Justice in Postconflict Societies*, McGill-Queen's Press, April 2009, p. 245-250.

entitlement...<sup>47</sup> Zuma's particular brand of masculinity, though patriarchal and often at odds with the tenets of the constitution, appears to correspond with the overall cultural sentiment of the nation and resonates especially well with women, which contributed to his nomination for reelection.

An issue that appeared during both Mbeki's and Zuma's presidencies and remains relevant in South African political discourse today is the idea of cultural rights and relativism. Mbeki sought to build on the concept of African political and economic self-determination, an attitude summarized in the African Union's popular mantra, "African solutions to African problems."<sup>48</sup> While this phrase suggests that all African countries share similar problems, which is not the case, it also reaffirms Africa's independence and ability to properly govern its own citizens, thereby rejecting external (Western) ideals or interventions that will disrupt the process of autonomy. Zuma's comments on traditional African practices and lifestyles also tend to polarize African and Western cultures, and contentious issues about traditional systems have arisen during his time in office.

In South Africa, culture is intertwined with discourses around anti-imperialism and self-determinism. This has significant consequences on the cause of gender equality, which is championed primarily by civil society organizations that are perceived as Western and out of touch with African culture, immediately rendering them illegitimate: "... Zuma and Malema have succeeded in presenting [gender equity] as anti-African, implicitly equating it with modernity, (white) middle-class aspirations, and widespread lack of (male) economic

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<sup>47</sup> Rachel Jewkes, Graham Lindegger, Robert Morrell, "Hegemonic Masculinity/Masculinities in South Africa: Culture, Power, and Gender Politics," *Men and Masculinities* 15.2, Mar. 2012, p. 17.

<sup>48</sup> Michael Battle and Ertharin Cousin, "African Solutions for African Problems," U.S. Department of State Official Blog, 31 Aug. 2011, <http://blogs.state.gov>.

advancement.”<sup>49</sup> The impossibly high amount of sexual violence experienced by women in South Africa reveals a systematic problem that involves both cultural beliefs regarding patriarchy and women’s subordination, and the government’s inability and unwillingness to respond to rape. Even within the conglomerate of cultures that comprise South Africa’s diverse backdrop, which include not only multiple indigenous African tribes, but also Afrikaaner, British, Indian, Asian, and coloured cultures, violence against women is a phenomena that can be attributed to the multiple masculinities of South Africa.

While racially-specific masculinities resulted from distinct historical circumstances, there seems to be a general spirit of aggression in the nation that is overwhelmingly perpetuated by men. Graca Machel, human rights activist and wife of Nelson Mandela, cited police brutality, a recent gang rape and death of a coloured teenager in Cape Town, and the murder of Reeva Steenkamp by Paralympic hero Oscar Pistorious as just several examples of the dangers of growing anger, violence, and unresolved tensions in the nation.<sup>50</sup> Although the ANC, its leaders, and police enforcement claim to defend the constitution, personal attitudes towards race, sexuality, and patriarchy constantly permeate into national discourses on rape and women’s rights. The negligence on the part of the state not only leads women to feel distrustful and skeptical of the efficacy of South Africa’s law enforcement, but also emboldens men to continue partaking in the systematic discrimination of women via sexual violence.

An egregious discrepancy exists between the rights of women enshrined by the constitution, legislative documents, and international covenants, and the realities women must

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<sup>49</sup> Morrell et al, “Hegemonic Masculinity/Masculinities in South Africa: Culture, Power, and Gender Politics,” p. 18.

<sup>50</sup> Aislinn Laing, “South Africa Is an Angry Nation on the Brink, warns Nelson Mandela’s Wife,” The Telegraph, 7 Mar. 2013, <http://telegraph.co.uk>.



confront on a daily basis, in which they face what Moffett refers to as a “gender civil war.”<sup>51</sup> Unfortunately for the new democracy, the opinions of both the general population and many political leaders regarding gender issues and violence suggests a detachment from, if not an outright rejection of, the venerated constitution, which has attempted and failed to impose a highly progressive, individualistic human rights framework in a land still rife with racial tension, economic inequalities, and distinct cultural perspectives. Although there is no single, essential “African” culture in South Africa, as there are indeed many South Africas, claiming that such a culture exists serves as a reactionary measure against the adoption of a culture of human rights by the ANC and the Truth and Reconciliation Commission in the early years of democracy. While human rights culture and democracy attempts to consolidate rule by the majority with legal protection for minorities, in a study of South African commitment to rule of law, South Africans were found to be largely non-accepting of political differences, which makes it nearly impossible to achieve a true democracy and has led to the country’s current dominant political party system: “Instead, it seems that intolerance, strong majoritarianism, and disregard for the rule of law go together in the minds of many South Africans.”<sup>52</sup> This has led scholars such as Steven Robins to question whether South Africa’s liberal legislation would remain if decisions over sexual politics and gender rights were put to a referendum.<sup>53</sup>

The concept of a legitimate African culture is often also used as a distraction from the failures of the state to address persistent social issues and inequities, as we have seen through conversations around rape and masculinity. African culture, therefore, takes on nationalistic

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<sup>51</sup> Helen Moffett, “‘These Women, They Force Us to Rape Them’: Rape as a Narrative of Social Control in Post-Apartheid South Africa,” p. 129.

<sup>52</sup> James L. Gibson, “Truth, Reconciliation, and the Creation of a Human Rights Culture in South Africa,” *Law & Society Review*, 38, 2004, p. 34.

<sup>53</sup> Steven Robins, “Sexual Politics and the Zuma Rape Trial,” *Journal of Southern African Studies*, 34.2, 2008, p. 412.

purposes and is constructed and continually influenced by the state. As Jyoti Mistry has noted, the state's construction of post-apartheid African culture is often contradictory to historical truths about Africa. For example, Mbeki's use of the phrase "African Renaissance" appears to completely ignore the fact that the word or concept of "renaissance" is Western-based, foreign, and inherently non-African. Furthermore, alluding to a unified South African culture belittles African differences that the constitution seeks to protect, and succumbs to apartheid-era constructions of Africanism.<sup>54</sup> That being said, it is important to acknowledge that democracy in South Africa is still quite young, the process of politically and socially transitioning into an egalitarian society is difficult for all states, and that violence towards minorities is common during these transitions; however, South Africa is distinct in that much of the violence amongst the members of the black majority is still attributed to apartheid historical policies.

In the following chapters, I will examine how the simultaneous adherence to particular models of "South African" cultures, which entail their own perspectives on what South African society should look like, and the contradicting liberal values of the constitution intersect in public discourses and contribute to the inaction and desensitization surrounding South Africa's sexual violence epidemic. I will first trace the origins of the constitution and other legislative documents that protect women's rights to reveal the social circumstances as well as the personal biases that contributed to their constructions. Then I will examine the cultural and patriarchal rhetoric that surrounded the Zuma rape trial, and how the trial contributed to the perpetuation of South Africa's rape culture by utilizing stereotypical victim-blaming rhetoric. Finally, I will look at the issue of the corrective rape of lesbians, which exemplifies how cultural biases of

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<sup>54</sup> Jyoti Mistry, "Conditions of Cultural Production in Post-Apartheid South Africa." *IWM Junior Visiting Fellows Conferences* 11, 2001, p. 13-14.

homophobia have permeated into the political and legal systems of the nation, hindering the process of justice for lesbians who are threatened with violence every day. Taking into consideration the ubiquitous feeling of animosity towards Western institutions and in the true spirit of “African solutions to African problems,” I also suggest that the solution to ending sexual violence must involve grassroots action from the townships and rural regions where rape is most prevalent and must focus on redefining masculinity for young boys and men through educational projects. In this way, community members can transform cultural norms from within and prove that culture is not a monolithic and static social force.

## Chapter II: South African Constitution and Women's Rights Legislation

Upon signing the Constitution of South Africa into effect in 1996, former President Nelson Mandela addressed the members of the Constitutional Assembly and proclaimed, "As one, you the representatives of the overwhelming majority of South Africans, have given voice to the yearning of millions... South Africa today undergoes her rebirth..."<sup>55</sup> This statement was loaded not only with the hopes and dreams of the aspiring non-racial democracy, but also with the confidence that this document was a reflection of the authentic South African spirit. The rainbow nation's constitution is considered to be one of the most advanced in the world in terms of protecting human rights, civil liberties, and clearly delineating a governmental system that functions at the federal, provincial, and local levels, all of which are meant to operate in conjunction towards the achievement of constitutional rights.<sup>56</sup>

Perhaps one of the most unique features of the South African constitution and subsequent legislation is its commitment towards equality and non-discrimination of all citizens, most notably women. This was best exhibited in Mandela's speech during the commencement of the first parliamentary session on May 24, 1994, in which he called for women's empowerment as a necessary step in realizing a sustainable democracy: "Freedom cannot be achieved unless the women have been emancipated from all forms of oppression."<sup>57</sup> Mandela appeared to be warning against the dangers of protecting women's rights in the public or governmental sphere, where promises of liberation and equality were enshrined within the halls of the Constitutional Court,

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<sup>55</sup> Nelson Mandela, "Address to the Constitutional Assembly on the Occasion of the Adoption of the New Constitution," African National Congress speeches, 8 May 1996, <http://anc.org.za>.

<sup>56</sup> Hassen Ebrahim, "The Soul of a Nation: Constitution-making in South Africa," Cape Town: Oxford up, 1998, Introduction.

<sup>57</sup> Nelson Mandela quoted in Mavivi Myakayaka-Manzini, "Women Empowered—Women in Parliament in South Africa," International IDEA: Women in Parliament, 2002, p. 1.

and neglecting women's rights in the private sphere, where local forms of violence and patriarchy persisted. Indeed, the first National Assembly and the Senate elected in 1994 consisted of 117 women out of 490 members; in the second national elections in 1999, female representatives made up 29.8% of elected officials, ranking South Africa among the top ten countries with the most female representation in government.<sup>58</sup> While South Africa continues to boast high levels of female representatives and some of the most progressive, women's rights-oriented legislation in the world, its incredibly high statistics of sexual violence directed towards women indicates a discrepancy whose origins can be found within the construction of the constitution itself and in the historical absence of a South African women's or feminist movement independent of supplementary agendas.

Despite Mandela's confidence in the constitution's accurate portrayal of South Africans' aspirations for the new democracy and in the Constitutional Assembly's capacity to represent South Africans as a whole, the circumstances under which the constitution was created in addition to the predispositions of its authors reveal that average South Africans had very little connection with the document. The period of 1989-1994 marked the beginning of the transition of power from the National Party, the government of apartheid, to the ANC, which was still led primarily by activists in prison or in exile since the banning of the ANC in 1960. By 1990, however, negotiations had begun and many ANC members and other political prisoners had been released or returned from exile.<sup>59</sup> In constructing the new constitution, the primary goal of the ANC was to allow South Africans to elect a constitutional assembly: "[The ANC] argued that a democratic state can only be built on a firm democratic basis; the people, through their elected

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<sup>58</sup> Mavivi Myakayaka-Manzini, "Women Empowered—Women in Parliament in South Africa," p. 1.

<sup>59</sup> "The History of the Constitution," The Constitutional Court of South Africa, <http://constitutional.court.org.za>.

representatives, must write their own constitution.”<sup>60</sup> This worried members of the NP and other minority parties, who feared their voices would be neglected due to their smaller constituencies. This eventually led to the formation of the Convention for a Democratic South Africa (CODESA), followed by the Multi-Party Negotiating Process, which included representatives from all South African political parties that would then contribute delegates to the Constitutional Assembly.<sup>61</sup>

In spite of the ANC’s determination to produce a fully-functioning, non-discriminatory, and inclusive constitution that manifested the public’s perception of rights, the creators of the constitution were obviously working within certain limitations, including having to compromise with the National Party on a political level, and grappling with the experience of homecoming and acquaintance with the political and social scene of South Africa after years of exile or imprisonment. During the period in which the ANC and other dissident political parties were banned, about 80,000 people were arrested without trial and 60,000 were forced into exile.<sup>62</sup> Even some of South Africa’s most important ANC figures, including Thabo Mbeki, Constitutional Court judge Albie Sachs, and ANC leader Oliver Tambo, went into exile in the United Kingdom, where they continued their struggle for freedom by soliciting support from foreign leaders and organizations.<sup>63</sup> Mbeki, for example, fled South Africa as a student and continued his studies in the UK during the 1960s, a period of racial, sexual, cultural, and general social revolution that would leave a great mark on the young revolutionary: ““There was a lot of debate, a lot of ideas discussed, not just about apartheid or the struggle, but a whole load of ideas

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<sup>60</sup> Catherine Barnes and Eldred de Klerk, “South Africa’s Multi-Party Constitutional Negotiation Process,” *Accord Public Participation* 13, 2002, <http://c-r.org>, p. 26.

<sup>61</sup> *Ibid.*, p. 27.

<sup>62</sup> Paul Gready, “Writing as Resistance: Life Stories of Imprisonment, Exile, and Homecoming from Apartheid South Africa,” Lexington Book, 2003, p. 1.

<sup>63</sup> Andy McSmith, “Oliver Tambo: The Exile,” *The Independent*, 15 Oct. 2007, <http://independent.co.uk>.

we hadn't ever discussed.”<sup>64</sup> This suggests that anti-apartheid activists in exile were becoming exposed to liberal ideals and notions of human rights that were starting to resound throughout the world, which perhaps did not correspond with the ideals of activists on the ground.

This discrepancy between exiled activists and activists at home is most evident in the story of how the ANC came to adopt sexual orientation as a category of identity to be protected under the constitution. LGBT rights and anti-apartheid activist and writer Peter Tatchell recalls witnessing the rampant homophobia and sexism that existed within the ANC even in the late 1980s. Fearing that the ANC's new democratic government would neglect the rights of LGBT individuals and perpetuate the system of homophobia enshrined in the apartheid regime's anti-sodomy laws, Tatchell conducted interviews with ANC leaders Solly Smith and Ruth Mompati about the ANC's attitude on LGBT rights. Both members denied the significance of LGBT rights within the larger anti-apartheid movement and characterized homosexuality as abnormal and Western. Tatchell proceeded to publish these interviews, which caused a great uproar in the LGBT, anti-apartheid community and placed the ANC in an uncomfortable and even hypocritical position.<sup>65</sup>

Tatchell was aiming for a guarantee that these rights would be protected within the ANC's Freedom Charter, and thus decided to write to a liberal, exiled ANC member, Thabo Mbeki. Mbeki assured Tatchell that LGBT rights would be included in the new constitution, and thus began a greater push from LGBT organizations to convince the ANC to take on their cause. Tatchell attributes the success of LGBT rights in South Africa not only to Mbeki, but also to Frene Ginwala, Albie Sachs, and Kader Asmal, all of whom were anti-apartheid activists who

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<sup>64</sup> ANC official Essop Pahad quoted in “Thabo Mbeki: The Great Persuader,” *The Guardian*, 29 May 1999, <http://guardian.co.uk>

<sup>65</sup> Peter Tatchell, “The Moment the ANC Embraced Gay Rights,” *Sex & Politics in South Africa*, Neville Wallace Hoad et al, Cape Town, 2005, p. 141.147.

spent significant periods of time living in Europe.<sup>66</sup> It is difficult to pinpoint exactly how much influence Western ideals of human rights had on the exiled community of South Africa, yet their ability to be exposed to large social movements outside of the context of apartheid would appear to promote discourse around issues that either were completely separate from or could be addressed in conjunction with apartheid; thus exiled leaders were establishing a certain standard of human dignity that must be included within the constitution of South Africa, despite the fact that they may have been living away from the country they were fervently trying to liberate for decades.

On the other hand, the origins of South Africa's progressive constitution and legislation is not necessarily limited to the contributions of exiled members of the ANC; the ANC's Women's League (ANCWL) has also helped in promoting the multitude of laws protecting women's rights and liberties in spite of the overall sentiment of sexism in the country. Founded officially in 1948, the ANCWL had struggled for years to find a place within the ANC and within the struggle for social equality; even after women were formally allowed to join the ANC in 1943, they found that their male peers would not recognize their concerns or opinions, and instead restricted women to traditionally feminine roles as caterers or caretakers within the movement.<sup>67</sup> Although the ANCWL is the most prominent women's group in the nation and has guided the nation in securing women's rights, its initial ties to the anti-apartheid movement and to the ANC itself has diluted its potency as a women's rights advocacy group, rendering the eloquent charters, bills, and acts superfluous in comparison to the perpetual struggle against racism in the country.

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<sup>66</sup> Peter Tatchell, "The Moment the ANC Embraced Gay Rights," *Sex & Politics in South Africa*, p. 141.147.

<sup>67</sup> "A Short History of the Women's League," African National Congress Women's League, 2010, <http://anc.org.za>.



The ANCWL has a history of promoting legislation that protects women's rights, yet appears to function within the context of patriarchy surrounding the ANC. In 1954, the ANCWL wrote the first Women's Charter, which outlines its mission to eradicate sexism, racism, and economic inequalities, but primarily makes a statement about women's position within South African society outside of race. It acknowledges that all women are universally linked by their treatment as dependent minors, despite the evident shift in gender roles and women's entry into the public sphere: "We recognize that the women are treated as minors by these marriage and property laws because of ancient and revered traditions and customs which had their origin in the antiquity of the people and no doubt served purposes of great value in bygone times,"<sup>68</sup> however, the Charter also exudes a sense of nostalgia and resentment that the security blanket provided for women by ancient patriarchal and kinship-based societies has been destroyed by European colonizers, forcing women to care for themselves and their families. Ironically, the document demands that laws be revised to reflect the position of women at that period and claims that "the law has lagged behind the development of society,"<sup>69</sup> which is unfortunately the exact opposite issue women in South Africa would be facing in their new democracy forty years later.

By the 1980s and early 1990s, it was becoming clear that apartheid was dying as a systematic form of oppression and that soon the dream of a new South African society would become a reality. This, however, meant that both the ANC and ANCWL would have to make a transition between the struggle for liberation and the establishment of a new state free from oppression; moreover, the ANCWL would now, more than ever, need to start concentrating on women's equality as a subject of analysis and debate in the construction of the new democracy.

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<sup>68</sup> "Women's Charter of 1954," African National Congress Women's League, <http://anc.org.za>.

<sup>69</sup> Ibid.

Oliver Tambo perhaps recognized this most astutely in a speech he delivered at an ANC

Women's Conference in 1981:

“The struggle to conquer oppression in our country is the weaker for the traditionalist conservative and primitive restraints imposed on women by man-dominated structures within our movement, also because of equally traditionalist attitudes of surrender and submission on the part of women.”<sup>70</sup>

He perceived that oppression was not limited to racism imposed by the apartheid government, but also included oppression that conservative men imposed on women, which would present an obstacle towards total liberation of South Africa. In addition, he also placed responsibility on women who participate in their own oppression by not resisting the traditional notions that have restrained them for generations. Although not blatantly, Tambo's message appeared to be a call for action for the women of the ANCWL; as the end of apartheid was in sight, it was time for women to understand how perhaps even their own “comrades” have contributed to their subjugation and that they would never attain full liberation unless they separated themselves from anti-apartheid rhetoric, which prioritized racial equality above all else, and started seriously discussing gender.

This call to action appeared to be well received, as the ANCWL began to demand women's participation and representation in the government and contributed a number of pieces of legislation and suggestions for the advancement of women. Perhaps the most basic one occurred at the 48<sup>th</sup> National Congress of the ANC in 1991: the request for a quota system requiring that 25% of seats in the National Executive Committee be reserved for women.<sup>71</sup> This proposition led to heated debates, exposing the animosity male ANC members felt towards

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<sup>70</sup> Oliver Tambo quoted in Robert R. Miller and Rick Wilford, Women, Ethnicity, and Nationalism: The Politics of Transition, Routledge, New York, 1998 p. 66.

<sup>71</sup> Shireen Hassim, Women's Organizations and Democracy in South Africa: Contesting Authority, U of Wisconsin, 2006, p. 126.

women's participation within the government (primarily because they had prioritized their personal affirmative action agendas over the liberation of the entire nation) and towards the idea of a quota that does not account for merit. Indeed, the ANCWL found themselves in the position of the minority within the new democracy, and recognized the need for an independent women's movement if they were to have any influence on the new constitution; however, after several years of constant internal pressure from female members and activists, in 1994 the ANC accepted a 30% voluntary quota system.<sup>72</sup>

The victory over the extensive quota debate appeared to open the door for the ANCWL to enact new legislation to protect women's rights over the next decade. In 1998, the ANCWL helped pass the Domestic Violence Act, which delineates a detailed set of rights that must be provided to domestic violence survivors and laws that are meant to lower the high incidence of domestic violence in South Africa. It also places responsibility on law enforcement to follow through with domestic violence accusations and protect victims from their partners if necessary.<sup>73</sup> In addition, the ANCWL also contributed to the creation of the Choice on Termination of Pregnancy Act of 1996, which protects women's right to abort and is considered to be one of the most progressive abortion laws in the world; this legislation permits abortion for any reason up to the twelfth week of pregnancy, from the twelfth to the twentieth for reasons varying from rape and incest to a woman's social or economic inability to care for the child, and finally for the last trimester if the baby's or the mother's lives are at risk in any way.<sup>74</sup> Both of these pieces of legislation ensure that women's rights to physical integrity and reproductive choices are

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<sup>72</sup> Hassim, *Women's Organizations and Democracy in South Africa: Contesting Authority*, p. 128.

<sup>73</sup> Lisa Vetten, "Implementing the Domestic Violence Act in Acornhoek, Mpumalanga," Tshwaranang Legal Advocacy Centre, Research Brief #2, Feb. 2009, p.1.

<sup>74</sup> Frances A. Althaus, "Work in Progress: The Expansion of Access to Abortion Services in South Africa Following Legalization," *Internationally Family Planning Perspectives* 26.2, June 2000.

protected under the law, yet domestic violence remains a significant societal issue in South Africa, as police are either slow or unwilling to respond, and women continue to partake in unsafe abortions as a result of socioeconomic circumstances that do not allow them to access clinics or pay for the procedures.

More recently, the Sexual Offences Act of 2007 was created in response to South Africa's alarmingly high rates of sexual violence. A group of women's, children, HIV/AIDS awareness, and LGBTQ rights organizations, which comprised the National Working Group on Sexual Offences, contributed significantly to the amendments proposed by the new Act.<sup>75</sup> Unlike in previous years, the ANCWL was not as active in passing this legislation, and it has become clear that civil society organizations have had to take the responsibility of continuing to defend women's rights in South Africa. The current ANCWL has been accused of ignoring women's rights in today's South Africa, and not responding to the increasingly sexist environment of the ANC. Sisonke Msimang, the chairwoman of the Sonke Gender Justice Network, wrote an editorial piece in 2011 in which she denounces the ANCWL for allowing Zuma to select a notoriously sexist and conservative judge as chief justice, which she attributes to their misplaced loyalty towards the ANC instead of women: "It is more accountable to an ANC that has increasingly chosen to ignore its stated commitment to women's rights than it is to women."<sup>76</sup> Msimang also states that this problem is the result of the prioritization of racial solidarity over gender equality that has started to overtake South African political discourse over the past decade.

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<sup>75</sup> Description of National Working Group on Sexual Offences, Aims and Objectives, 2004, <http://rapecrisis.org.za>.

<sup>76</sup> Sisonke Msimang, "Will the Real ANC Women's League Stand Up?" Business Day Live, 2 Sep. 2011, <http://bdlive.co.za>.

While the first years of South African liberation were characterized by a prominent push for women's rights within the legal context and the legislative process, the last few years have produced complex debates around the question of traditional courts and customary law in relation to South Africa's human rights constitutional framework. In 2012, the Traditional Courts Bill was once again a topic for discussion in the South African Parliament; the bill, which was introduced in 2008, would allow local courts in rural areas to settle injustices and disputes according to African customary law. The bill claims to provide a more appropriate and efficient form of legal justice for rural communities, while simultaneously respecting the rights of individuals protected under the constitution: "Traditional courts seek... to resolve disputes where they have occurred, in a manner that promotes restorative justice and reconciliation and in accordance with the norms and standards reflected in the Constitution."<sup>77</sup> There are, however, multiple constitutional problems with the bill, including the absence of legal representation, a lack of checks and balances to measure abuses and accountability, and, perhaps most flagrant, the implementation of strict and sexist patriarchal laws.<sup>78</sup>

Numerous women's rights organizations have protested against the passing of this bill, claiming that it would lead to further disenfranchisement and exclusion of women in the legal system. Famous anti-apartheid activist, doctor, and academic Mamphela Ramphele, believes that the Traditional Courts Bill would send rural South African communities back into a system of authoritarian apartheid. She recalls having a similar conversation with Mandela about the dangers of customary law and its inability to coexist with South Africa's constitutional law during the drafting of constitution:

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<sup>77</sup> National Assembly, "Traditional Courts Bill, Section 7(c)", Parliament of the Republic of South Africa, 2008, <http://justice.gov.za>.

<sup>78</sup> "South Africa: President Zuma Acknowledged Shortcomings in Traditional Courts Bill," All Africa, 2 Nov. 2012, <http://allafrica.com>.

“When Madiba told me that, as part of the negotiated settlement, they are going to enshrine customary law in the constitution, I said, ‘Tata, be careful not to end up in a situation where all your sacrifices as a freedom fighter are undermined by the inherent contradictions between customary law, or traditional law, or African law, and the constitutional law under which we live.’”<sup>79</sup>

Ramphela affirms that the current constitutional framework of South Africa was designed to protect all individuals and ensure equality before the law, guaranteeing that no authoritarian power could ever rule over South Africa again. She defends the progressive constitution by remarking on its uniqueness, its inextricable connection to South Africa’s history of oppression and resistance (not as a product of Western ideology), and the example it has set for the world. She also boldly claims that Africa has created a double standard in which it rejects Western authoritarianism or imposition, yet willingly accepts traditional forms of authoritarianism, namely patriarchal systems: “So an authoritarian person in the home, ‘the head of the household,’ ...the person he goes for is not his neighbor who is as big as he is—it is his wife and children.”<sup>80</sup>

While Ramphela is a controversial figure in South Africa, as a freedom fighter who has outgrown her radical roots and has recently announced her intentions to form her own political party to run in opposition to the ANC in the next presidential elections,<sup>81</sup> her speech and the debates around the Traditional Courts Bill reinforce the idea that often culture and the oppression of women are linked. Even though Zuma himself has outlined some of the issues with the Traditional Courts Bill, including its failure to ensure women’s participation in the legal system, parliament has not yet made a decision on the bill and it remains unclear whether the bill will

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<sup>79</sup> Speech at University of Cape Town, Mar. 2012. Mamphela Ramphela, “Mamphela Ramphela Takes on the Traditional Courts Bill,” Sonke Gender Justice Network eNewsletter, Issue 11.

<sup>80</sup> Ibid.

<sup>81</sup> Mmanaledi Mataboge, “Ramphela’s Political U-Turn, » Mail & Guardian, 22 Feb. 2013, <http://mg.co.za>

revised or finally withdrawn.<sup>82</sup> That being said, it is difficult to imagine how a legal system that relies solely on African customary law, which emphasizes the rights of the community over the individual, would be revised to fit the opposing South African constitutional law.

The University of Cape Town's Law, Race, and Gender Unit has expressed concerns over the bill's absence of community input and claims that the bill imposes an apartheid-era system of justice. One of the ways in which the apartheid government attempted to fully separate African ethnic groups was through the granting of centralized power to local chiefs in the Bantu Authorities Act of 1951.<sup>83</sup> Chiefs, who had previously been accountable to their communities through the constant communal reconstruction and reevaluation of customary law, now had the authority of judges over all matters in their villages and were held accountable only to the apartheid government.<sup>84</sup> The current bill proposes a similar system in which a single senior traditional leader has full authority over the legal decisions of the rural community, which neglects the participation of village members. Furthermore, since traditional courts operate under customary law, customs such as the representation of women by men in courts and the exclusion of women from sacred spaces where courts often meet would directly violate women's constitutional rights.<sup>85</sup>

While this bill represents a push for cultural respect and preservation, it is important to consider who will benefit from these localized systems of law, and even more importantly, whose voices are not being heard in the struggle between customary and constitutional law.

Although women's rights organizations and female government officials have denounced the bill

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<sup>82</sup> Debbie Schafer, "South Africa: Traditional Courts Bill? Time for ANC to Decide," All Africa, 17 Mar. 2013, <http://allafrica.com>.

<sup>83</sup> Ikene van Kessel and Barbara Oomen, "'One Chief, One Vote': The Revival of Traditional Authorities in Post-Apartheid South Africa," *African Affairs* 96, 1997, p. 563.

<sup>84</sup> "The Law, Race, and Gender Unit Takes on the 'Unconstitutionality' of the Traditional Courts Bill," documentary by the Law, Race, and Gender Unit of University of Cape Town, 2012, <http://youtube.com/uctsouthafrica>.

<sup>85</sup> "The Law, Race, and Gender Unit Takes on the 'Unconstitutionality' of the Traditional Courts Bill," UCT LRG Unit.

for perpetuating harmful patriarchal practices, the women who would submit to the will of the traditional courts have had very little say in the matter, most likely because they have not been consulted about the bill nor are they familiar with the rights guaranteed to them by the constitution.<sup>86</sup> Sindiso Mnisi Weeks, a professor from the University of Cape Town, has found that rural South African women have very distinct perceptions of rights. These women often opt to bargain with patriarchy in exchange for protection, and believe that universal human rights do not benefit them as much as their current legal systems or lifestyles: ““But then, will your rights take care of you? Take your rights then and sleep outside, on the street.””<sup>87</sup> This comment exposes not only the dependency women have built on patriarchal institutions as a form of survival, but also the distrust and even disdain they feel towards the concept of human rights.

Weeks proposes that by refusing to embrace the formal rights bestowed upon them by the South African constitution, rural women are exercising their own, somewhat unconventional, form of agency;<sup>88</sup> she also notes that some women (primarily those of the younger generations), did in fact utilize customary law in combination with state law to acquire certain rights to inheritance, bridewealth, and custody.<sup>89</sup> Often women will not seek legal recourse from the state because the process is inaccessible, expensive, and extremely foreign to them; however, even within the context of traditional systems of justice, women are at a disadvantage because their access to material rights is based on their position as wives or mothers. Indeed, some of the women Mnisi Weeks interviewed perceived Western human rights as a negative influence that

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<sup>86</sup> Ibid.

<sup>87</sup> Quoted in Sindiso Mnisi Weeks, ““Take Your Rights Then and Sleep Outside, on the Street’ Rights, Fora, and the Significance of Rural South African Women’s Choices,” *Wisconsin International Law Journal*, Sep. 2012, p. 290.

<sup>88</sup> Ibid, p. 291.

<sup>89</sup> Weeks, ““Take Your Rights Then and Sleep Outside, on the Street’,” p. 302.



would encourage young women to disrespect their husbands' authority, thereby shaking the foundations of communal landownership, family lineage, and inheritance rights.<sup>90</sup>

The question of cultural relativity within human rights discourse in South Africa is highly contentious and clearly manifests itself in Mnisi Weeks' interviews with rural women, yet the habit of rejecting rights and bargaining with patriarchy, thereby working within a patriarchal framework, implicitly strengthens patriarchy as a dominant system of oppression. Incidentally, the greatest incentive rural women named for rejecting their formal rights was to avoid the risk of isolating or angering men who have the power to both protect and harm them. Women's choice to acquiesce to patriarchy, while ensuring short-term rights and privileges such as access to income, food security, and protection (presumably from other men), could potentially lead to long-term ramifications such as the perpetuation of violence against women. While women should not be held responsible for the violence they experience at the hands of males, it is important to recognize that without acts of resistance, oppressive systems will continue to build upon themselves. Thus, the question of women's agency within the context of a culture that defends its right to practice hegemonic patriarchy presents complications in the struggle for women's rights.

South Africa's constitution and various laws protecting women's rights are indeed eloquently written and claim to recognize not only the systematic issues behind violence against women, patriarchy, and sexism, but also vow to take the necessary measures to assure that gender equality is achieved. Evidently these laws are appealing on paper, yet their absence in the context of the everyday lives of South African women is disturbing. Whether this immense disregard of women's rights is a result of foreign notions of human rights embedded within the constitution or the sudden silencing of the ANCWL, which had contested its comrades'

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<sup>90</sup> Ibid, p. 290.

patriarchal attitudes for a few decades and has now retreated into the shadows of traditional discourse, it is clear that the majority of women in South Africa today can find very little recourse in the law. Furthermore, the fact that the rights enshrined and groups protected under the constitution are under constant debate and reexamination also indicates a broken system in which some leaders and individuals are struggling to uphold its tenets, while others are working to chip away at its foundations of equality. Nevertheless, it is clear that without any type of implementation, the constitution and women's rights legislation appear to mock more than they protect.

### Chapter III: The Zuma Rape Trial

In December of 2005, Jacob Gedleyihlekisa Zuma, the current President, and then the Deputy President of South Africa (from 1999-2005), was accused of raping a 31-year-old female in his home in Johannesburg. The accuser, who chose to remain anonymous, was the daughter of a prominent ANC family; her father had been a friend of Zuma's, and after he passed away in 1985 the complainant claimed to have remained close to Zuma, whom she regarded as a father figure. Although they did not communicate for several years, Zuma nevertheless promised to help fund her studies in the United Kingdom in 2004. These funds never came to fruition, yet the complainant and Zuma began to keep in contact more regularly as she was now permanently residing in Johannesburg.<sup>91</sup> She had also been diagnosed as HIV positive in 1999, which led her to become an activist for HIV/AIDS awareness.<sup>92</sup> At the time of the incident, Zuma knew about the complainant's HIV status, a fact that would become a topic of debate surrounding the trial. The Zuma rape case was not only a scandal involving one of the most influential politicians in the nation, but it also brought attention to South Africa's attitudes on sexual violence, masculinity as an extension of tribal culture, and the desperate need for sexual education in a country with one of the highest HIV/AIDS rates in the world.

Even before the rape trial began on March 6, 2006, hundreds of supporters gathered outside the Johannesburg High Court, holding signs and shouting remarks that both insulted and threatened the accuser. Some asked "How much did they pay you, *nondindwa*?" referring to the accuser as a "bitch" and suggesting that she was bribed by Zuma's political enemies in order to ruin his career and his chances of reaching the presidency. Other Zuma supporters, primarily women, created large posters with the complainant's image and name, which had not been

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<sup>91</sup> "Zuma's Rape Accuser Questioned," *BBC NEWS*, 7 Mar. 2006, <http://news.bbc.co.uk>.

<sup>92</sup> *State v Zuma*. High Court of South Africa, Witwatersrand Local Division. 2006, p. 48.

formally disclosed by the court or media so as to protect the complainant's identity and physical wellbeing.<sup>93</sup> Others demanded that they "Burn this bitch" as Zuma's favorite war song from his days in the ANC military, "Bring Me My Machine Gun!" rang in the streets outside of the court.<sup>94</sup>

Meanwhile, dozens of anti-rape protestors also lined the streets wearing and contesting the seductiveness of the *kanga*, a traditional wrap worn by the complainant on the night of the alleged rape.<sup>95</sup> Recognizing that rape was largely underreported despite having grown to epidemic levels in South Africa, these activists defended the complainant's right to accuse her alleged rapist and defy the "one in nine" trend, which highlighted the few percentage of rape cases that were reported to the police.<sup>96</sup> The fact that this was a high-profile rape case involving a controversial and deeply traditional politician set the perfect stage for a conversation around South Africa's culture of rape, which not only permits sexual violence to go unnoticed and unpunished, but also uses rhetoric of patriarchy and misogyny to justify this violence. The massive outcry from both Zuma's supporters and anti-rape activists during the trial presented conflicting views on rape in South Africa: one that was biased towards the defendant and thus used victim-blaming and shaming rhetoric to discredit the accuser's statements, and another that recognized the large prevalence of rape in the country and wanted to ensure that the complainant was given a fair trial. Perhaps most importantly, Zuma's perpetual invocation of Zulu traditions and masculinity during the trial implicitly placed culture and the gravity of rape at odds with one another, exposing the problem with a constitution that both protects individual rights of women and cultural rights that often undermine women's rights through patriarchal rhetoric.

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<sup>93</sup> "Timeline of the Jacob Zuma Rape Trial," Mail and Guardian, 21 Mar. 2006, <http://mg.co.za>

<sup>94</sup> "Crowds Stand by Zuma in Rape Case," BBC NEWS, 13 Feb. 2006, <http://news.bbc.co.uk>

<sup>95</sup> "South Africa's Zuma Cleared of Rape," BBC NEWS, 8 May 2006, <http://news.bbc.co.uk>

<sup>96</sup> Steven Robins, "Sexual Rights and Sexual Cultures: Reflections on 'The Zuma Affair' and 'New Masculinities' in the New South Africa," *Horizontes Antropologicos*, Porto Alegre, Jul./Dec. 2006, p. 157

According to the complainant, on November 2, 2005, the evening of the alleged rape, the complainant visited Zuma at his home after hearing about the illness of a nephew in Swaziland, and had the intention of travelling to Swaziland that very night. Zuma, however, convinced her that it would be best to stay in Johannesburg, and as the evening continued, he decided that she should spend the night in the guest bedroom. Although they both acknowledged that sexual intercourse took place, Zuma claimed that it was consensual while the complainant said that it was not. She stated that prior to the incident, Zuma had badgered her about her love life and her sexual needs; feeling uncomfortable with the topic of conversation, she retired to the guest room, where Zuma allegedly followed her, gave her a massage that she refused, and proceeded to have unprotected sex with her. Left in shock, she did not cry out, and the next morning she showered, ate breakfast, and left the house for work. Later that day, she spoke to a friend and confided in her that she had been raped by Zuma.<sup>97</sup> The rape was reported to the police two days later, and on December 6, 2005, official rape charges were filed against him.

At this point Zuma's political career was already unsteady due to corruption allegations made earlier in 2005, which resulted in his removal from the position of Deputy President. In spite of this, Zuma still remained popular amongst many South Africans who had suffered vast disillusionment following the end of apartheid and the establishment of democracy, and who had also lost faith in President Thabo Mbeki: "Knowing that his days were numbered, Zuma started to consider ousting Mbeki as ANC leader as a real possibility, given the rising grassroots discontent against Mbeki's leadership..."<sup>98</sup> Prior to the allegations of rape, Zuma also had strong backing from trade unions and the South African Communist Party. Many of his supporters not

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<sup>97</sup> State v Zuma. High Court of South Africa, Witwatersrand Local Division. 2006.

<sup>98</sup> William M. Gumede, "South Africa: Jacob Zuma and the Difficulties of Consolidating South Africa's Democracy," *African Affairs* 107, p. 265.

only viewed him a champion of the ANC and the anti-apartheid movement, but also as a symbol of traditional Zulu customs who was more in touch with the populace than Mbeki. While he still remained Deputy President of the ANC, Zuma's political prospects dwindled and his secure position as next-in-line for the presidential candidacy looked uncertain. Nevertheless, Zuma confirmed his intention to run in the 2007 presidential elections in a press conference in June of 2005: "My conscience is clear. I have not committed any crime against the state or the people of South Africa."<sup>99</sup>

The trial officially began on March 6, 2006, and it took several months for the court to reach a decision. Zuma pleaded not guilty to raping the accuser, who gave her account of the incident on the first day of the trial. By the second day, permission was granted by the court to allow questions regarding her sexual past. This type of cross-examination is generally forbidden under section 227(2) of the Criminal Procedure Act of 1977, which states:

No evidence as to any previous sexual experience or conduct of any person against or in connection with whom a sexual offence is alleged to have been committed, other than evidence relating to sexual experience or conduct in respect of the offence which is being tried, shall be adduced, and no evidence or question in cross examination regarding such sexual experience or conduct, shall be put to such person, the accused or any other witness at the proceedings pending before the court unless-

- (a) the court has, on application by any party to the proceedings, granted leave to adduce such evidence or to put such question; or
- (b) such evidence has been introduced by the prosecution.<sup>100</sup>

Although the prosecution and women's rights activists contested the relevance of these questions, Judge Willem van der Merwe decided they were justifiable because of the complainant's previous rape accusations, which had not been resolved legally, and because of her insistence that she would not have consented to sex without protection due to her HIV status.

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<sup>99</sup> "Mbeki Fires Deputy over Bribe Case," The New York Times, 15 Jun. 2005, <http://nytimes.com>

<sup>100</sup> Criminal Procedure Act 51 of 1977, 22 Jul. 1977

This decision would have serious implications for rape cases at the regional level, which must obviously follow the precedence set by federal courts and which is where about 90% of rape cases are presented.<sup>101</sup> Furthermore, this type of cross-examination has been criticized for seemingly placing the rape survivor on trial and judging her based on her morals, clothing, and behavior, which not only causes further psychological trauma through victim-blaming, but also discourages women from taking legal action against their assailants in the long term.<sup>102</sup> In this particular case, the complainant's sexual history would play a large role in the court's final decision to acquit Zuma of rape.

Part of the complainant's cross-examination involved detailing not only everything that happened the day of the incident, but also going through all of her interactions with the accused and sexual encounters. The fact that she referred to Zuma as "malume," or uncle in Zulu, showed that she saw him and other ANC exiles as elders and parent figures. She was questioned about how she could regard someone as a father or an uncle when they barely had contact for a period of fifteen years; since Zuma had denied this father-child relationship with her, the defense emphasized the oddness in her perceiving him as an uncle despite not being in consistent contact with him. She was also interrogated about her attire that evening as well as her actions during the rape; since she neither cried out, fought back, nor did she explicitly say "no" or express refusal except to say that she was asleep and turn away from him, the defense concluded that the defendant would have had no way to knowing that the act was not consensual.<sup>103</sup>

Zuma's lawyer, Kemp J Kemp, proceeded to ask her about her past sexual experiences including incidents of rape and molestation; he surprised the court by producing a document

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<sup>101</sup> Jake Molol, "The Case of S v Zuma: Implications of Allowing Evidence of Sexual History in Rape Trials," SA Crime Quarterly, Institute for Security Studies, 18 Dec. 2006.

<sup>102</sup> "Zuma Case Reveals SA Rape Problem," BBC NEWS, 15 Feb. 2006, <http://news.bbc.co.uk>.

<sup>103</sup> Ibid, p. 47

written by the complainant: a book that she had been working on that detailed several sexual assault incidences as a child and adolescent. She also referred to the physical and psychological trauma that arose from her experiences with rape, which led her to become extremely ill and forced her out of seminary school. There were also numerous incidences of attempted rapes and accusations brought up by the defense, which the complainant denied recalling or having taken place. She admitted to having consensual penetrative sex with one male, the man who infected her with HIV, but referred to herself as bisexual with lesbian preferences and little experience with penetrative sex. She was informed that this was inconsistent with the findings of the doctor, who reported that the complainant's hymen ring was disappearing, which can only be an indication of frequent penetration. She was also asked about her awareness that Zuma's political enemies would rejoice at the news of this accusation, to which she replied, "What I realized was that my rape would be turned into a political issue and joined in with the conspiracy against malume Zuma at some point."<sup>104</sup>

In addition to being interrogated about her sexual history and being forced to relive harrowing experiences, the complainant was also psychoanalyzed by a trauma expert in order to help the court understand her response to the rape. Dr. Merle Friedman and the complainant had two consultations in which they spoke about the incident as well as some of the complainant's experience with sexual assault throughout her life. Dr. Friedman concluded that the complainant's response of freezing and turning her head away as she was being violated was consistent with the shock that many rape survivors experience, especially when it happens at the hands of a familiar person; her response to turn away and shut her eyes instead of fighting back was her method of escaping the situation at that moment. Indeed, freezing or a feeling of

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<sup>104</sup> Ibid, p. 58



paralysis during rape is commonly reported, yet presents problems for investigators who look for signs of resistance as proof of sexual assault; often when rape victims claim to have frozen during the attack, their narratives are rendered illegitimate and they are confronted with self and external blame: “Struggling, screaming, and other forms of active resistance by the victim become a crucial element in the handling of the crime of rape/sexual assault and in the treatment and recovery of the rape survivor.”<sup>105</sup> Dr. Friedman emphasized that trauma will not necessarily lead to rational decisions, especially since it might take a while for a victim to process and then take necessary precautions, as the complainant did later that day when she visited the doctor and reported the rape to the police. The defense, as well as Judge van der Merwe, was not quite satisfied with Dr. Friedman’s findings because her examination did not take into account tests for personality disorders or even “selective memory” disorders in which the complainant could no longer distinguish between consensual sex and assault due to previous trauma.<sup>106</sup>

Several of the complainant’s friends and family members also testified that the complainant had been very distressed during the days following the incident, and that she had been advised by her attorney to drop the charges, as it was not safe for her to anger Zuma’s support base. The complainant, however, continued with the charges in spite of recognizing that the odds were against her, especially since she would immediately be judged based on her past experiences, her choice to wear a kanga to bed that night, and her inability to fight Zuma off or cry for help. The general fears a rape victim may have while testifying in court seemed to be augmented by Zuma’s powerful position in the government and the psychological and possibly

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<sup>105</sup> Grace Galliano et al, “Victim Reactions During Rape/Sexual Assault: A preliminary Study of the Immobility Response and its Correlates, *Journal of Interpersonal Violence* 8, 1993, p. 107.

<sup>106</sup> “Timeline of the Jacob Zuma Rape Trial,” Mail and Guardian.

even physical violence that awaited her both inside and outside the doors of the Johannesburg High Court.

Women's rights activists denounced the court for participating in the "second rape" of the victim during her intensive cross-examination, in which she was portrayed as "the woman who cried rape." In fact, the complainant was assigned several different stereotypical gender roles during the course of the trial; she was accused of being a mentally unstable woman who lacked the basic social skills required to comprehend when she had tacitly consented to intercourse. She was also painted as the kanga-bearing temptress whose plan was to lure Zuma into bed and ultimately destroy his political career or somehow gain financial retribution: "Zuma's acquittal, [activists] argued, would also be interpreted by many of his followers as vindication of their patriarchal beliefs and claims that women are predisposed to fabricate rape in order to access money and power."<sup>107</sup> Considering that after Zuma's acquittal the complainant had to seek asylum in the Netherlands in order to remove herself from any backlash from the public, gender activists recognized that the outcome of this highly-publicized trial could be extremely detrimental for anti-rape endeavors and dissuade survivors of rape from identifying and pressing charges against their attackers, especially when they could now expect to be humiliated and prodded about their sexual histories.

Another important element of this trial was Zuma's account of the incident, primarily how he used his Zulu culture as a form of defense of a certain type of masculinity.<sup>108</sup> The trial was adjourned for about ten days and resumed later on in March, by which point several NGOs offered to provide expert evidence on the behavior of rape survivors and Zuma's defense team

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<sup>107</sup> Steven Robins, "Sexual Rights and Sexual Cultures: Reflections on 'The Zuma Affair' and 'New Masculinities' in the New South Africa," p. 158

<sup>108</sup> Pamela Scully, "Media Constructions of Ethnicized Masculinity in South Africa," Local Violence, Global Media: Feminist Analyses of Gendered Representations, Ed. Lisa M. Cuklanz and Sujata Moorti, 2009, p. 164.

attempted to apply for his discharge on rape charges; however, neither one of these applications is accepted and the trial resumes as normal, though it was not clear if Zuma would take the stand.<sup>109</sup> Finally, on April 3, 2006, Zuma chose to testify, but did so in a politically deliberate manner: instead of speaking English, which he is fluent in, he decided to speak in his native isiZulu and the court required a translator for its English-speaking members.<sup>110</sup> His comments during the rest of his testimony would reflect an appeal to culture and an attempt to get sympathy from his more traditional supporters, who had indeed risen in defense of the politician. The “Friends of Jacob Zuma” group vowed to protect the Zuma’s constitutional rights to a fair trial and freedom from slander: “We, the people, from across South Africa, will join hands to stop the abuse of Jacob Zuma’s rights and dignity, and the further desecration of his name.”<sup>111</sup>

Zuma would play a controversial and even contradictory role as both the victim of defamatory accusations and a standard Zulu male entitled and accustomed to certain privileges with women. He began by alluding to his time in the anti-apartheid struggle and briefly mentioned his relationship to the complainant’s father. He also emphasized his time imprisoned on Robben Island as well as the fact that he had worked tirelessly to establish and maintain democracy in South Africa. Although this political history was not entirely relevant to the case, he used it to show that rape accusations truly soiled his good name and were hindering his ability to complete his duty as Deputy President of the ANC.<sup>112</sup> More importantly, he reminded the court that he was an important figure in South Africa’s liberation movement, he would certainly

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<sup>109</sup> “Timeline of the Jacob Zuma Rape Trial,” Mail and Guardian

<sup>110</sup> Michael Wines, “A Highly Charged Rape Trial Tests South Africa’s Ideals,” The New York Times, 10 Apr. 2006.

<sup>111</sup> Friends of Jacob Zuma, home page, <http://friendsofjz.co.za>.

<sup>112</sup> State v Zuma. High Court of South Africa, Witwatersrand Local Division. 2006, p 96.

fight back any allegations placed on him, and that his culture was distinct from Western culture and dictated different gender roles which informed the events of that night.

Zuma's position as a traditional Zulu male patriarch in the courtroom led him to make shocking comments about his interactions with the complainant that night.<sup>113</sup> First he made sure to clarify that he never viewed the complainant as a daughter, but rather as an independent, outspoken woman. He also claimed that she had insisted on spending the night in the house and that consensual intercourse had taken place in his bedroom instead of in the guest bedroom where she was staying. He mentioned that she had given signs of her sexual intentions all evening, including wearing a knee-length skirt and requesting to enter his bed and be massaged; to this, Zuma responded that "in the Zulu culture, you cannot just leave a woman if she is ready," thus according to tradition, it would have been offensive to not have sex with her.<sup>114</sup>

This type of discourse is not uncommon in rape cases, where a rape survivor is told that their behavior or dress suggests that they were "asking for it," but Zuma makes a distinction from this rhetoric by attributing his actions to Zulu culture. His statement suggested not only an obligation of a man to a sexually active and excited woman, but also a sense of entitlement over a woman's body. It also seems to leave the interpretation of sexual signs and implications largely in the hands of the Zulu male; therefore he decides if she is "ready" and takes action accordingly. This appeal to culture in a largely Western-based courtroom setting was political and allowed Zuma to reaffirm his identity as a "100 percent Zuluboy" amongst his conservative supporters; in addition, it drew attention to the discrepancy between what he equated with traditional Zulu law or responsibility and South Africa's progressive constitution: "Revulsion at apartheid's brutality

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<sup>113</sup> Raymond Suttner, "The Jacob Zuma Rape Trial: Power and African National Congress Masculinities," *NORA: Nordic Journal of Women's Studies* 17.3, Sep. 2009, p. 225-226.

<sup>114</sup> Wines, "A Highly Charged Rape Trial Tests South Africa's Ideals"

led the nation's founders to write one of the world's most enlightened constitutions, making equal rights a pillar of society... But public support for that ideal has yet to undergo a test by fire of the sort Mr. Zuma could pose, at least in theory.”<sup>115</sup>

Another contentious point made during Zuma’s testimony was a statement made in regards to the complainant’s HIV status and the fact that, in spite of the risk of acquiring the virus, he nevertheless engaged in unprotected sex with the complainant. When asked whether he understood the danger of contracting HIV, Zuma claimed that since female-to-male transmission is less prevalent, he showered afterwards in order to minimize his risk.<sup>116</sup> This was particularly shocking to HIV/AIDS activists and educators because the Deputy President is responsible for heading the government’s National AIDS Council, yet Zuma had announced to a country with an HIV prevalence rate of approximately 18% that showering after unprotected sex would prevent HIV transmission.<sup>117</sup> This comment outraged activists, who claimed that these types of statements not only demonstrate poor leadership, but also undo the work that HIV/AIDS organizations have done for years. Zuma’s statement furthermore perpetuated a traditional myth regarding HIV, and as mentioned earlier, his justification for engaging in unprotected sex with the complainant was based on his Zulu masculine identity. Dumisani Rabombo, an educator from the Men as Partners Program of the organization Engender, condemned Zuma for his unwise comments: “The fact that Mr. Zuma invoked traditional culture as an excuse for not using a condom is a matter of concern. People may think there are African ways of having penetrative sex but with minimal risk of HIV. That doesn’t exist.”<sup>118</sup>

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<sup>115</sup> Wines, “A Highly Charged Rape Trial Tests South Africa’s Ideals.”

<sup>116</sup> “SA’s Zuma ‘Showered to Avoid HIV’,” BBC NEWS, 5 Apr. 2006, <http://news.bbc.co.uk>

<sup>117</sup> South Africa Country Overview 2011, UNAIDS

<sup>118</sup> “Zuma Testimony Sparks HIV Fear’,” BBC NEWS, 4 Apr. 2006, <http://news.bbc.co.uk>

Although Zuma did not contract HIV from this particular encounter, another element in this case was not only the personal risk he took in having unprotected sex with the complainant, but also the risk of infecting his wives in the process. As a Zulu patriarch, Zuma participates in polygamy and has fathered about twenty children from his wives and girlfriends.<sup>119</sup> During the trial Zuma was criticized for running the risk of transmitting the virus to his wives; while he admitted that he lamented this, he believed that the publicity had made matters worse for him and had exposed a private moment between himself and the complainant.<sup>120</sup> In order to repair his relationship with the complainant after she had laid the charge, Zuma met with her close female relatives to negotiate the possibility of a labola, a payment given by a groom to the bride's family in exchange for her hand in marriage; however, he was never able to reach the complainant and the negotiations fell through.<sup>121</sup> Although it is unlikely the marriage would have taken place given the circumstances, Zuma's marrying an HIV-infected woman would have placed his other wives and future children in a highly precarious position, especially since Zuma's patriarchal position would allow him to determine condom use and his wives and children are financially dependent on him. As a polygamist and a national leader Zuma is responsible for the wellbeing of many people, yet he did not restrain himself from engaging in sexual intercourse with the complainant despite being fully aware of the risks.

In addition to being interrogated about her previous sexual experiences and psychoanalyzed, the complainant was also confronted by a number of men she had supposedly accused of raping her. Zuma's defense team called them to the witness stand to demonstrate that

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<sup>119</sup> "Profile: Zuma Charmed Wives and Nation," *The Australian*, 19 Dec. 2007, <http://www.theaustralian.com.au>

<sup>120</sup> *State v Zuma*. High Court of South Africa, Witwatersrand Local Division. 2006, p 107

<sup>121</sup> *Ibid*, p 105

the accuser had a pattern of making false rape allegations against men in her life.<sup>122</sup> This included several pastors and members of the seminary where she studied as a teenager; one of the men claimed to be “worried about the complainant, saying that she was mixed up and needed help.”<sup>123</sup> One of the witnesses had been a close friend of the complainant’s and truly believed that her friend, whom she referred to as “the child,” had a problem after having heard her accuse multiple men of attempting to or successfully raping her.<sup>124</sup> There were also two men brought to testify against her whom the complainant claimed to never have even met.

Zuma’s defense strategically brought in people whom the defendant had either accused of raping her or with whom she had experienced uncomfortable sexual relationships. This, of course, served the purpose of ruining her credibility in the eyes of the court, and would have been impossible without the court’s approval of the section 227 application. During this process, the complainant was publicly humiliated, possibly traumatized again, and infantilized. Suddenly the court perceived the complainant as “the girl who cried rape,” who perhaps had experienced sexual violation in her lifetime, but could not distinguish between healthy, consensual sex and rape. Furthermore, she was accused of being sick and requiring urgent psychological attention in order to keep her from making more fake allegations and destroying more families.<sup>125</sup> While many of the accusations by the complainant could not be confirmed or did not reach a trial and were handled within the context of the community, the manner in which Zuma’s defense team approached these incidences was clearly meant to shame the complainant for either lying, not following through with her previous allegations in the legal sphere (therefore delegitimizing her accusations), or having sexual encounters with numerous men, regardless of consent.

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<sup>122</sup> “Timeline of the Jacob Zuma Rape Trial,” Mail and Guardian

<sup>123</sup> “State v Zuma. High Court of South Africa, Witwatersrand Local Division. 2006, p 122

<sup>124</sup> Ibid, p.122

<sup>125</sup> Ibid, p 129

In addition to calling these particular witnesses to the stand, the defense also asked the opinion of another psychologist, Dr. Louise Olivier, to contest Dr. Friedman's report. Although she did not conduct an interview or an evaluation of the complainant, she inferred from the testimonies and evidence given during the course of the trial that the complainant's cognitive functioning was being influenced by her emotional trauma. In particular, Dr. Olivier was skeptical of Dr. Friedman's assertion that the complainant had "frozen" during the incident; while she admitted that about 10% of victims freeze and are unable to fight back or shout out while being raped, she could not be sure that this is what occurred when Zuma and the accuser had intercourse.<sup>126</sup> She also wondered whether the complainant's apparent post-traumatic stress disorder could be attributed to one of her previous encounters with sexual violence, not necessarily to her interaction with Zuma. While she refused to diagnose the complainant, Dr. Olivier stated several reasons as to why an individual would make false allegations of rape; many of these reasons involved deeply-rooted psychological issues that might compel someone to believe they were raped when in reality they were not or to seek revenge as part of a hidden agenda. Following Dr. Olivier's statement, the defense closed its case and the decision to acquit Zuma was made several weeks later on May 8, 2006.<sup>127</sup>

Some of the biggest issues in this case were the nuances in the definition of rape and the idea of *mens rea*, or a guilty mind. Judge van der Merwe stated: "At present rape consists, by definition, in a male having unlawful and intentional sexual intercourse with a female without her consent... The element of intention is vital because rape can only be committed intentionally."<sup>128</sup> Zuma pled innocence on the grounds that he believed he and the accuser were

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<sup>126</sup> State v Zuma. High Court of South Africa, Witwatersrand Local Division. 2006, p 137

<sup>127</sup> "South Africa's Zuma Cleared of Rape," BBC NEWS

<sup>128</sup> State v Zuma. High Court of South Africa, Witwatersrand Local Division. 2006, p 85



engaging in consensual sex, but recognized that perhaps she had misinterpreted their interaction, thus he attempted to reconcile with her prior to the start of the trial. He also insisted that since she had not protested nor had she shouted out to get the attention of the house's police guard, he could not have known that she was opposed to the act. This definition of rape was problematic for several reasons, one of them being that it left rape open to interpretation and prioritized the interpretation or perspective of the alleged perpetrator over that of the victim. Thus, individuals accused of rape, whether guilty or not, could potentially claim that they believed they had engaged in consensual sex, as in Zuma's case. Furthermore, the question of "intention" as well as the discussion around the complainant's inability to fight back or scream during the incident suggests a particular script of rape that is violent and involves very explicit force in every circumstance, which is not always the case and may depend on the relationship between the attacker and the victim.

Since the end of Zuma's rape trial, rape and sexual violence laws in South Africa have changed drastically. The Criminal Law (Sexual Offences and Related Matters) Amendment Act came into effect in December of 2007, barely a year and a half after Zuma's acquittal, and both clarified and expanded on the limited definition of rape that had been utilized during the trial. The new law included both men and women as potential perpetrators and victims of rape, whereas the previous definition was one-dimensional and only consisted of the rape of a woman by a man; it also expanded "sexual intercourse" to include any type of sexual penetration: "Any person ('A') who unlawfully and intentionally commits an act of sexual penetration with a

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complainant ('B') without the consent of B, is guilty of the offence of rape.”<sup>129</sup> Furthermore, this new law standardized the age of consent at 16 years of age for both men and women, introduced new sexual crimes pertaining to children and mentally disabled individuals, allowed a complainant to request that her/his alleged rapist be tested for HIV, required rape victims to receive anti-retroviral treatment to prevent HIV transmission. It also clarified the circumstances under which a person is unable to consent, including when being threatened, unconscious, inebriated, under the age of twelve, or being mentally disabled. The Sexual Offences Act of 2007 was meant to address the overwhelmingly high incidence of rape and the low conviction rates for rape in South Africa and bring attention to the vast amount of sexual violence to which the public had become desensitized, yet it is clear that rape persists as one of South Africa's greatest social ills today.

As one of the most prominent leaders of the anti-apartheid movement and the ANC, Zuma represents the culmination and triumph of decades of resistance against racial oppression for many South Africans; however, Zuma has also made statements that contradict the widely-respected South African constitution and has declared that “The ANC is more important than even the constitution of the country... The constitution is only there to regulate manners.”<sup>130</sup> Zuma has made it evident, whether through statements or legislative actions, that he prioritizes the ideals of the ANC and his own traditional beliefs over the constitution of South Africa; he has even been challenged by political opponent Helen Zille, the leader of the Democratic Alliance party, to pledge his allegiance to the constitution and the rule of law of South Africa. In response to a comment Zuma made about the ANC ruling over South Africa until Jesus Christ

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<sup>129</sup> Republic of South Africa, Government Gazette: “No. 32 of 2007: Criminal Law (Sexual Offences and Related Matters Act”, 14 Dec. 2007, p. 20.

<sup>130</sup> “Zuma Does Not Meet the Requirement-Zille,” IOL South Africa, 15 Feb. 2008, <http://iol.co.za>

returns, Zille said, “After all, who needs a constitution when you believe that you rule by divine right? For Jacob Zuma and the ANC, loyalty to the ruling party is prioritized over the values and principles of the constitution.”<sup>131</sup> The statements made by Zuma both before and after he was elected as President in 2009 have reflected a lack of sensitivity towards the constitution and have clearly given his opponents several opportunities to criticize his poor choice of words. Zuma’s office and spokesperson have been responsible for clarifying and recanting his comments on multiple occasions.

Zuma has also stated that being a single, childless woman is a societal problem as women are required to become mothers and caretakers;<sup>132</sup> ironically, he made this statement during South Africa’s National Women’s Month and incited the anger of gender rights organization throughout the nation. Activists were particularly concerned that Zuma prioritized marriage and childrearing for women above education and stability. Lisa Vetten, one of the nation’s prominent gender and sexual violence researchers, believed that his comments painted a limited and negative picture of single women, especially by not taking into consideration the nuances of unhealthy and abusive relationships. In these situations, she argued, women may already feel pressure to remain in a dangerous environment with an abusive partner because there is a stigma surrounding single women and single parents, an idea that Zuma implicitly reinforced in his comments.<sup>133</sup>

In addition, Zuma’s traditional views on marriage and the family generally receive heavy criticism due to his position as a polygamist with a long history of extramarital affairs. He has fathered twenty children, some of them with his wives and some with other female

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<sup>131</sup> Ibid.

<sup>132</sup> “Zuma: Women Must Have Children,” Mail and Guardian, 22 Aug. 2012, <http://mg.co.za>

<sup>133</sup> Ibid.

acquaintances. Most recently he admitted to having a child with the daughter of his friend, Irvin Khoza; in response to the overwhelming media coverage and criticism, he said, “I have done the necessary cultural imperatives in a situation of this nature, for example the formal acknowledgement of paternity and responsibility...”<sup>134</sup> While he is capable of supporting his entire family based on his salary, has recognized his illegitimate children, and indeed, takes pride in his sense of paternal responsibility and his traditional right to practice polygamy, others wonder what message Zuma, as the leader of a nation with an HIV/AIDS crisis on its hands, is sending to his public. The ANC has frequently defended Zuma’s right to privacy and claims that his actions do not reflect ANC policies on HIV/AIDS or on the nation in general. The President’s actions, however, directly contradict the ANC’s primary HIV/AIDS prevention policy that encourages couples to remain monogamous and always use condoms during intercourse.<sup>135</sup>

The discrepancy between the President’s actions and comments and the progressive message of the ANC and the constitution has resulted in a largely confused and frustrated population. In her letter to Lulame Xingwana, the Minister for Women, Children and People with Disabilities, Helen Moffett encapsulated the dissatisfaction she felt as a gender scholar and activist in a country that has one of the highest rates of rape in the world, yet cannot afford to fund NGOs that provide essential services to rape survivors (in this particular instance, she was referring to Cape Town’s Rape Crisis Center). She highlighted that the ANC does an exceptional job of fulfilling women’s quotas within the government, yet this illusion of gender equality stands in stark contrast to not only the rape epidemic that continue to plague the nation, but also to the attitudes of the President:

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<sup>134</sup> “Zuma’s Conduct ‘Undermines His Own Govt’s Message,” Mail and Guardian, 1 Feb. 2010, <http://mg.co.za>

<sup>135</sup> Ibid

“And so we have the schizophrenic situation in which women are present in our government in far greater numbers than in most Western countries – and a President who thinks that having unprotected sex with a HIV-positive woman (thereby putting all his other wives, fiancées and girlfriends at risk) is perfectly normal male behaviour, that fathering two soccer teams worth of children he couldn’t support is just one of those “guy” things... Claiming that women are equal citizens while maintaining and protecting patriarchal principles and social practices is similar to insisting that all races are equal while refusing to dismantle slavery on the grounds that it’s a “cultural” practice.”<sup>136</sup>

She argues that South Africa has become complacent and frankly indifferent towards the “gender civil war”: the rape crisis is past the point of being solved through a council on gender-based violence; instead the money that Minister Xingwana wanted to use to create this council should be directed towards NGOs that have not only conducted extensive research on social factors that lead to sexual violence, but deal with the realities of rape on a daily basis. Moffett was also clearly frustrated by the notion that patriarchy and misogynistic social practices have been appropriated under the umbrella of culture, an institution that has been deemed as unchangeable and infallible.

There are indeed dangers in having a leader who does not defend the ideals of a state’s constitution, a concern that has been expressed by the Centre for Constitutional Rights on numerous occasions: “President Zuma’s remarks regarding the justice system raise particular concern since he is sworn to uphold, defend and respect the Constitution and the justice system established in terms of the Constitution.”<sup>137</sup> One of the most recent examples of this dilemma occurred when Zuma alluded to the constitution while addressing the National House of Traditional Leaders in Parliament and suggested to its members, “Let us solve African problems the African way, not the white man’s way... Let us not be influenced by other cultures...”<sup>138</sup>

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<sup>136</sup> Helen Moffett, “Stop the Madness: No More Toothless Councils on Gender-Based Violence,” Books Live Blog, 12 Aug. 2012, <http://helenmoffett.bookslive.co.za>

<sup>137</sup> Centre for Constitutional Rights Concerned over Zuma Comments on Justice System,” South Africa Associated Press, 3 Nov. 2012, <http://timeslive.co.za>

<sup>138</sup> Ibid.

While the idea of “African solutions to African problems” has been a rallying cry for many African leaders over the past decade, Zuma is the leader of what is arguably the most progressive and diverse nation on the continent, one whose history is linked not only with extreme racial oppression and dehumanization, but also with some of the most magnanimous figures in the world who intended to leave a legacy of reconciliation for the nation. This statement, however, explicitly places Zuma at odds with the constitution and the justice system of South Africa and creates a very distinctive racial rift between “us” (true, black Africans) and “them” (false, white non-Africans). Moreover, his staunch loyalty to both the ANC and his personal traditional beliefs has made the two virtually equivalent in the public eye. The ANC and the constitution now seem to be headed in completely distinct directions.

Interestingly, Zuma’s sense of African culture, which he proudly defends as his personal right, also revolves around his masculine identity and his adherence to Zulu patriarchal practices. While the ANC has declared there to be a very clear divide between the President’s personal choices or ideals and his decisions over the country, it is nearly impossible to separate a leader’s beliefs from their governing practices. For example, Zuma’s recent appointment of chief justice Mogoeng Mogoeng, who has openly stated that rape within the context of marriage or a personal relationship “should be treated differently from the rape of one stranger by another between whom consensual intercourse was almost unthinkable,”<sup>139</sup> has outraged feminists and liberal ANC members alike. Despite Zuma’s rape and corruption trials, his countless imprudent comments, and his overall inability to improve the economic situation of many impoverished South Africans, his support base is very vocal and members of the ANC continue to defend him. Zuma has indeed been leading South Africa and the ANC in a more conservative direction,

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<sup>139</sup> “Will the Real ANC Women Please Stand Up?,” BD Live, 2 Sep. 2011, <http://bdlive.co.za>

which begs the question: do the majority of South Africans want their nation to continue on this conservative path or will they remain loyal to the ideologies of the “rainbow nation” and Mandela’s ANC?

## Chapter IV: The Corrective Rape of Lesbians

The high level of sexual violence in South Africa has rendered many groups vulnerable to not only rape, but also to horrific mutilation and murder. Amongst these vulnerable populations, the group that has most recently been the target of considerable violence and discrimination is perceived to be the lesbian community. The phenomenon of men raping lesbians as a way to “fix” their deviant sexuality and convert them into heterosexual, feminine women has become so widespread and publicized since the early 2000s that it was given a name by human rights organizations in South Africa: corrective or curative rape.<sup>140</sup> Although the media has appropriated this term, some LGBT and women’s rights activists have accused the public of utilizing it in a manner that does not convey the nuances of underlying heteronormative, class, and racial power structures.<sup>141</sup> For the purposes of this chapter I will use “corrective rape” to describe a specific form of sexual violence experienced by South African lesbians that is (or is suspected to be) a direct result of their sexual orientation and gender performance.

The increasing trend of corrective rape over the past decade reflects societal hostility toward the LGBT community, which directly contradicts the attitudes of tolerance, respect, and non-discrimination that are endorsed within the constitution; corrective rape also seeks to perpetuate a strict gender binary in which men must embrace a masculine gender identity and women must taken on a feminine identity. Women who violate these traditional gender norms by openly expressing their lesbian identity or presenting as “masculine,” whether through appearance or assertive actions, must be forcefully convinced that their sexual tendencies are inappropriate and that heterosexual relationships are preferable. This is backwards logic in many

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<sup>140</sup> “Interrogating the Notion of ‘Corrective Rape’ in Contemporary Public and Media Discourse,” SANGONeT: NGO News and Views, 23 Nov. 2011, <http://ngopulse.org>

<sup>141</sup> Ibid



ways, considering forced penetration would more likely repel than incline a lesbian to practice or enjoy heterosexual sex; however, like most forms of rape, corrective rape is viewed as the manifestation of a power struggle between men and women, yet it also functions as a disciplinary tool that seeks to maintain a certain type of gender order. Lesbians are thus being punished for claiming their constitutional right to non-discrimination and visibility in addition to transgressing rules that are propagated by a heteronormative and misogynistic culture. Furthermore, the personal, culturally-based homophobic attitudes of state officials influence the level to which they enforce laws protecting homosexual individuals and present yet another obstacle for lesbians when they attempt to report an incident of assault or bring the perpetrator to justice.

Although they have the right to openly express their sexual identities, black lesbians especially find themselves constrained within the limitations of their intersecting class, racial, and gender identities. Letitia Smuts discusses the process of black lesbians' coming out, and how lesbian identities must be constantly renegotiated to "fit in with the larger heterosexual community."<sup>142</sup> Some lesbians adapt to their environments by not explicitly identifying as lesbians, maintaining relationships with men, and pursuing their sexual orientations in secret, thereby living a double life in order to avoid stigmatization. Others choose to "adapt" by mirroring masculinities reflected within their communities. Lesbians also identify certain spaces as being "safe" and others as "unsafe;" in their interviews with lesbians in Johannesburg, Alexandra Gibson and Catriona Macleod found that black lesbians hesitated to say that their townships, rural homes, or their middle/upper-class families were less liberal than cities and predominantly white areas, possibly for fear of invoking stereotypes of black homophobia: "They... you know, rural areas, people, because of their lack of education um... not being all,

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<sup>142</sup> Letitia Smuts, "Coming Out as a Lesbian in Johannesburg, South Africa: Considering Intersecting Identities and Social Spaces," *South African Review of Sociology* 42.3, p. 26.

offensive or anything but... I've tried and tried to see beyond it.”<sup>143</sup> The multi-dimensionality of black lesbianism obviously places these women in difficult positions where they are sometimes forced to choose between their identities as black, which in South Africa obviously carries a heavy social weight, and their identities as lesbians.

As discussed earlier, the constitution of South Africa aimed to equalize all members of the population and empower those who had been previously disenfranchised. In order to achieve this, leaders included Section 9(3) of the constitution, which protects people from discrimination on any basis:

“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.”<sup>144</sup>

Although it was listed amongst many other identifying factors, the inclusion of sexual orientation in this clause represented a historic moment for not only South Africa, but also the world; at this moment, South Africa became the first nation to ever forbid discrimination based on sexual orientation.<sup>145</sup> A decade later, South Africa also became the fifth country in the world, and the first in Africa, to legalize same-sex marriage under the Civil Union Act.<sup>146</sup> It is important to note that Section 9(3) guarantees non-discrimination and protection of rights from the state, not from the public, where homophobia is deeply lodged in cultural beliefs of South Africans of every color.

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<sup>143</sup> Quoted in Alexandra Gibson and Catriona Macleod, “(Dis)allowances of Lesbians’ Sexual Identities: Lesbian Identity Construction in Racialized, Classed, Familial, and Institutional Spaces,” *Feminism & Psychology* 22, 2012, p. 469.

<sup>144</sup> Section 9(3) of the Statutes of the Republic of South Africa- Constitutional Law, Constitution of the Republic of South Africa Act, Dec. 1996

<sup>145</sup> “South Africa: New Constitution Protects Gays and Lesbians,” International Gay and Lesbian Human Rights Commission, 1 May 1996, <http://iglhrc.org>.

<sup>146</sup> Clare Nullis, “Same-Sex Marriage Law Takes Effect in South Africa,” *The Washington Post*, 1 Dec. 2006, <http://washingtonpost.com>

It is clear, however that there is often no separation between the two, as the state is composed of individuals with personal biases, who in their own journey towards maintaining political stability have formulated a national rhetoric that legitimizes heterosexuality as an essential component in demolishing the remnants of apartheid: “As a result of this country’s postcolonial historical context and years of brutally racist apartheid, many South Africans appear recommitted to what they conceive as a traditionally African heritage.”<sup>147</sup> Ironically, the apartheid state also utilized nationalism as a justification for controlling sex amongst non-whites. This included sterilizing black and coloured people for the purposes of containing their already large populations, strictly forbidding sexual relations across races (particularly between black and white individuals), and maintaining a rigid policy of homophobia.<sup>148</sup> One can assume that homosexuality presented a threat to the apartheid regime by legitimizing white fears of subversive and deviant black sexualities. In addition, white homosexuals would have been counterproductive in the obsessive efforts to expand the white population and maintain white dominance. Despite the success of the sexual liberation movement and the deregulation of sex in 1994, which allowed sex and sexuality to be openly discussed in public spheres, there is nevertheless an obvious social regulation of sexuality and gender occurring in South Africa.

Although homosexuality was banned and repressed during apartheid, by the 1980s LGBT individuals were slightly more visible, especially as many of them were invested in the struggle against apartheid. At first, LGBT culture was apolitical and disjointed. While white gay men focused on socializing, coloured people concentrated themselves on drag culture, and black gays

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<sup>147</sup> Megan E. Morrissey, “Rape as a Weapon of Hate: Discursive Constructions and Material Consequences of Black Lesbianism in South Africa,” *Women’s Studies in Communication* 36, 2013, p. 76.

<sup>148</sup> Deborah Posel, “Sex, Death, and the Fate of the Nation: Reflections on the politicization of Sexuality in Post-Apartheid South Africa,” *Africa* 75.2, May 2005, p. 128.

and lesbians were working for the general anti-apartheid movement.<sup>149</sup> Eventually, LGBT organizations began to form and joined the fight for liberation alongside the ANC, earning a place in the new democracy and protection under the constitution. It is difficult to say whether the LGBT population of South Africa would have been granted the rights they currently have had they not sacrificed some of their personal agendas and participated in the broader anti-apartheid movement. Today, many LGBT activists are still recognized by political figures and intellectuals for having contributed to the racial liberation of the nation, yet their achievements on the front of sexual liberation are not quite as recognized or praised.

In May of 2012, the National House of Traditional Leaders expressed grievances concerning the discrepancy between the statutes of the constitution and public opinion on LGBT rights. The Joint Constitutional Review Committee, which receives submissions from the public on constitutional proposals or amendments every year, received a submission from the National House of Traditional Leaders proposing to remove the “sexual orientation” phrase from Section 9(3) of the constitution. Patekile Holomisa, who is an ANC Member of Parliament, the chairperson of the committee, and the head of the Congress of Traditional Leaders, insisted that the “great majority does not want to give promotion and protection to these things,” but since the ANC had been founded on principles of equality and non-discrimination for all, then the public would have no choice unless they decided that the ANC no longer represented their personal values.

Holomisa also claimed that, while LGBT individuals should not be harassed by the general public, homosexuality is a condition that can and should be treated by traditional healers:

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<sup>149</sup> Gibson and Macleod, “(Dis)allowances of Lesbians’ Sexual Identities: Lesbian Identity Construction in Racialized, Classed, Familial, and Institutional Spaces,” p. 464.

“...when the rituals are done the person starts to behave like other people in society.”<sup>150</sup> In this quote, homosexuality is portrayed as a transient state of being, or even illness, that can easily be cured to reveal the correct and innately heteronormative individual, which is ironically the same logic that fuels corrective rape as a systematic, curative practice. Moreover, Holomisa acknowledges that this is the “cure” for black South Africans, yet does not know “how it works for people in other cultures and those who live in urban areas;”<sup>151</sup> discursively, Holomisa is creating a distinction between black South Africans and other South Africans, implying that blacks have the capability and responsibility to rid themselves of the disease of homosexuality while others will either succumb to moral degradation or find a cure that suits their culture.

The proposal to remove the LGBT clause from the constitution both worried and enraged LGBT individuals and organizations, which, despite being surrounded by homophobic cultural sentiments, could at least rely on the constitution to guarantee their rights. Cobus Fourie, a representative of South Africa’s Gay and Lesbian Alliance against Defamation (GLAAD), stated that the organization was shocked about this turn of events and even more so that constitutional rights and protections could be a subject of debate or amendment; he asked the National House of Traditional Leaders to recall Nelson Mandela’s words from his Inaugural Address in 1994, “Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another...”<sup>152</sup> In response to the outcry from LGBT individuals, the Joint Constitutional Review Committee assuaged activists’ and organizations’ concerns in a public statement. Though the proposal had reached the JCRC and involved the advocacy of some prominent political figures, the committee rejected it and maintained its stance that it would not

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<sup>150</sup> “Stop Protecting Gays, Traditional Leaders Tell ANC,” City Press, 5 May 2012, <http://citypress.co.za>

<sup>151</sup> Ibid.

<sup>152</sup> Melanie Nathan, “South Africa’s Constitutional Review of Its Sexual Orientation Rights Is Shocking,” LGBTQ Nation, 4 May 2012, <http://lgbtqnation.com>

“entertain efforts to remove or weaken any of these critical human rights...”<sup>153</sup> The proposal of this amendment by the House of Traditional Leaders occurred sixteen years after the constitution was signed into effect, indicating that conservative perspectives that aspire to dictate who is and is not allowed rights and the protection of the law are still prominent and actively resisting the liberalism of the constitution today.

While there are several factors that contribute to the perpetuation of corrective rape, one of the most difficult to resolve is the basic sentiment of homophobia throughout the nation. This is further exacerbated by the fact that many conservative leaders continue to publicize the notion that homosexuality is “unAfrican” in order to justify discrimination as well as create an illusion that homosexuality was imported into Africa by Europeans.<sup>154</sup> In South Africa especially, the rhetoric of nationalism, anti-colonialism, and African cultural pride serves as a powerful tool for mobilizing people who recall the extensive oppression they suffered under apartheid and, in reaction, vehemently reject Western ideologies. Vasu Reddy, however, has observed that European colonialism sought to control African sexuality and repress homosexuality in ways that ironically mirror the homophobic arguments made by African leaders today; this suggests that it was homophobia, not homosexuality that was actually imported into the continent.<sup>155</sup>

South Africa, like many other African societies, places a lot of weight on family ties and kinship; families were large and often included entire communities in which all individuals served specific roles. Marriage was particularly important as it was the means by which children were produced, which assured the continuation of family lineages and provided more hands to

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<sup>153</sup> “Joint Constitutional Review Committee Sets Record Straight,” South African Government Information, 7 Sep. 2012

<sup>154</sup> Mikki van Zyl, “Are Same-Sex Marriages UnAfrican? Same-Sex Relationships and Belonging in Post-Apartheid South Africa,” *Journal of Social Issues* 67.2, 2011, p. 335.

<sup>155</sup> Vasu Reddy, “Homophobia, Human Rights and Gay and Lesbian Equality in Africa,” *Agenda Feminist Media* 50, African Feminisms One, 2011, p. 84.

help with household labor.<sup>156</sup> Sexuality outside of reproductive purposes “often had no name or was not considered ‘sexual’ and consequently not policed,”<sup>157</sup> and therefore afforded both men and women the ability to engage in extra-marital affairs with partners of their choosing. That being said, marriages always reflected patriarchal gender roles and prioritized the continuation of the family lineage; even when they involved the marriage of two men, one would take on the role of the female and the more dominant male would also have female wives to ensure that the reproductive responsibilities of the family were fulfilled.<sup>158</sup> Historical accounts from sixteenth century Angola describe the disdain colonizers felt when they witnessed men dressed as women, and the ignominy of patriarchs for keeping such men amongst their wives, evidently because the European mindset saw gender and sex as inextricably linked, while Africans seemed to place greater import on the complementariness of masculinity and femininity.<sup>159</sup> For many African civilizations, sexuality was not an institution that required regulation as long as sufficient offspring were being produced. In this sense, there was no stigma associated with non-heterosexual relationships because they were not linked to a particular identity nor did they disrupt the patriarchal processes that sustained kinship ties.

The period of colonialism, however, brought Christian missionaries to Africa who promoted the doctrine of monogamy, sex for reproductive purposes only, nuclear families, and strict rules against the homosexuality that was practiced in the region, a fact that many modern-day Christians on the continent are not aware of or simply do not acknowledge:

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<sup>156</sup> Roderick Brown, “Corrective Rape in South Africa: A Continuing Plight Despite an International Human Rights Response,” p.52.

<sup>157</sup> van Zyl, “Are Same-Sex Marriages UnAfrican? Same-Sex Relationships and Belonging in Post-Apartheid South Africa,” p. 338.

<sup>158</sup> Ibid.

<sup>159</sup> Marc Epprecht, “The Ethnography of African Straightness,” Heterosexual Africa? The History of an Idea from the Age of Exploration to the Age of AIDS, U of KwaZulu-Natal Press, 2008, p. 37.

“An absence of formal sexual education and a social stigma of sexual discourse perpetuate the idea that homosexuality did not exist before colonialism. Though historical research shows that homosexuality was around long before colonialism, many Africans understand their ignorance of homosexuality as evidence that it is a social import of the West.”<sup>160</sup>

The misconception that homosexuality did not exist in Africa prior to the arrival of European colonialists is a result of the limited contemporary discussions around sexuality; since awareness and education about homosexuality is now primarily provided by Western-based, liberal civil society organizations, people believe that homosexuality, in fact, originated in the West and now exists as a sin in Africa.

Today, the LGBT community is particularly vulnerable in South Africa’s patriarchal society because it defies numerous traditional beliefs that revolve around gender roles, religion, and masculinity. Marc Epprecht, in attempting to trace the origins of the myth of the “unAfricanness” of homosexuality, speaks about the construction of African “traditions” during recent history. While Christianity is the dominant religion of South Africa and has contributed to the persistence of homophobic attitudes, some black South Africans (recognizing that Christianity was also imported into Africa from the West) have placed even greater weight on the idea of pre-colonial black masculinity and polygamy as proof of an inherent South African heterosexual identity.<sup>161</sup> Thus, the concept of traditional black masculinity is inflated and mythologized in the contemporary South African psyche, which seems to present even greater complications for LGBT individuals and women who are supposedly contesting and challenging a particular type of African masculinity that only exists in theory.

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<sup>160</sup> Ibid.

<sup>161</sup> Epprecht, *Heterosexual Africa? The History of an Idea from the Age of Exploration to the Age of AIDS*, p. 161.



Taking into account that homophobia is present even within the government and sexual violence is rampant across South Africa, it is not surprising that these two social ills have combined to create a trend of corrective rape. This issue has plagued the country since the early 2000s, yet it was not until the rape and murder of Eudy Simelane in April of 2008 that it garnered significant attention from the public. Simelane made headline news and haunted the conscience of the nation not only because her murder was so terribly gruesome, but also because she had been the star of South Africa's national women's soccer team, Banyana Banyana, a prominent LGBT rights activist, embraced her lesbian identity openly, and was well-loved in her township of Kwa Thema, Gauteng.<sup>162</sup> She was found lying dead in a drainage ditch, only partially-clothed, with bruises in between her legs that suggested rape, and having suffered from multiple stab wounds all over her body and face.

Initially five men were arrested for Simelane's murder, all of whom were in their early twenties. By February of 2009 one of the attackers pled guilty and nine months later another suspect, whose pants had been stained with Simelane's blood, received a life sentence for her murder, leaving the courtroom with a smile and telling reporters, "I'm not sorry."<sup>163</sup> The first defendant claimed that the motive for the crime was robbery that had escalated to rape when Simelane was found to have no money, which then led to murder once Simelane recognized one of her attackers; the attack had nothing to do with her identity as a lesbian. Simelane's best friend, Pretty Makhalya, challenged the attacker's claim and attributed the murder to her sexual orientation. As a lesbian herself, Makhalya recalled defining moments in her and Simelane's adolescence when they decided they preferred to play soccer, dress butch, and date feminine

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<sup>162</sup> Annie Kelly, "Raped and Killed for Being a Lesbian: South Africa Ignores "Corrective" Attacks," *The Guardian*, 12 Mar. 2009, <http://guardian.co.uk>

<sup>163</sup> Barry Bearak, "Mixed Verdict in S. African Lesbian's Murder Trial," *The New York Times*, 22 Sep. 2009, <http://nytimes.com>

girls. Although Kwa Thema was generally tolerant of lesbians, which is uncommon among small townships, Makhalya, Simelane, and other lesbians occasionally encountered animosity from their male counterparts: "... there were also guys who'd say, 'C'mon, we'll teach you how to be a girl.' They looked at us like we were crazy people, defying nature. Things would heat up. There'd be fights."<sup>164</sup> Though she had grown accustomed to the insults, Makhalya never imagined that these threats and smaller quarrels with homophobic men in their community would result in the gruesome murder of her best friend.

NGOs and gender rights activists immediately classified Simelane's brutal murder and sexual assault as corrective rape and a hate crime; however, the South African criminal justice system does not recognize hate crimes as a discrete category and therefore fails to acknowledge the social patterns behind certain types of violence.<sup>165</sup> Without recognition of the larger power structures that contribute to corrective rape, such as homophobia, hegemonic patriarchy, and a culture that tacitly endorses misogyny, it is virtually impossible for the courts and police force to properly convict the perpetrators or to offer prevention strategies. Taking into consideration that Simelane was famous for her success as a professional soccer player, Makhalya found it difficult to believe that her attackers did not recognize her or that the level of brutality shown in the murder was not somehow rooted in personal hatred of Simelane's lesbian identity. Judge Ratha Mokgoathleng however, believed Simelane's sexual orientation had "no significance" in her murder, and thus refused to label it as a hate crime. Coincidentally, even he showed his personal prejudice and discomfort with the subject of homosexuality when he asked the prosecutor if he could use another word to replace "lesbian."<sup>166</sup>

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<sup>164</sup> Ibid.

<sup>165</sup> Annie Kelly, "Raped and Killed for Being a Lesbian: South Africa Ignores "Corrective" Attacks"

<sup>166</sup> Ibid

The fact that the word lesbian was forbidden in the context of a court case where a self-identifying lesbian was killed potentially due to her sexual orientation is problematic for several reasons. First, it denies South African lesbians the visibility that their constitution grants them, which is particularly out of place in a courtroom that is responsible for upholding the laws of the land. In addition, denying the use of this word reinforces the cultural stigma attached to homosexuality, thereby undoing the human rights work of the constitution and of civil society organizations alike. Similar to the repercussions of aggressively and extensively cross-examining the victim in the Zuma rape trial, the judge's request to not use the term lesbian would also risk discouraging survivors of corrective rape from seeking legal recourse or trusting the local authorities.

Judge Mokgoathleng's statement may have been inappropriate in the context of the Simelane's murder trial, yet his perspective on homosexuality is shared by not only a significant portion of the public, but also by other political figures. In September of 2006, Jacob Zuma offended the LGBT community when he said, "When I was growing up an ungqinglili [homosexual] would not have stood in front of me. I would knock him out," and that same-sex marriages are "a disgrace to the nation and to God."<sup>167</sup> Although he later issued an apology in which he claimed that his statements were made "in the context of the traditional way of raising children" and weren't meant to condemn the LGBT community, LGBT organizations could not accept what they saw as a half-hearted apology;<sup>168</sup> Zuma's comments were clearly homophobic hate speech and suggested that gay and lesbian individuals were somehow inferior to him. Zuma's apology reaffirmed that as a leader of the ANC he would protect the LGBT rights that were guaranteed by the constitution; he also recognized his gay and lesbian "compatriots" for

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<sup>167</sup> South African Press Association, "Zuma Invokes Gay Wrath," News 24, 26 Sep. 2006.

<sup>168</sup> "Mixed Reaction to Zuma Apology," Mail & Guardian, 26 Sep. 2006

their efforts in liberating South Africa from oppression and discrimination. This was one of the numerous occasions where Zuma made comments that offended and isolated groups that are already marginalized by society despite being “protected” by the constitution.

This type of behavior from public officials presents a significant impediment for LGBT activists who are working to convince the legal system to categorize corrective rape as a hate crime, which would both allow lesbian survivors and victims to obtain proper recognition, visibility, and justice as well as help NGOs access accurate statistics and develop appropriate responses to this crime. Though South Africa passed the Promotion of Equality and Prevention of Unfair Discrimination Act in 2000, which prohibits hate speech, hate crimes, and discrimination from private organizations and individuals, sexual orientation has yet to be regarded as a basis for a hate crime. Indeed, South Africa’s National Prosecuting Authority released a statement in January of 2009 that thoroughly trivialized violence against women and lesbians and demonstrated the little effort that the government is putting into resolving this issue: “Whilst we are mindful of the fact that hate crimes—especially of a sexual nature—are rife, it is not something that the South African government has prioritized as a specific project.”<sup>169</sup>

As a result of the state’s inaction, hate crimes are a form of violence that often goes undetected and unrecorded in South Africa; furthermore, the negligence of the government translates into poor legal and police enforcement on the ground. Pierre de Vos, a South African constitutional academic and the Deputy Dean of the Law Faculty at the University of Cape Town, expressed his concern with the law enforcement’s lack of respect for LGBT rights: “... I am shocked to hear from lesbian women and gay men that when they go to the police they are told to ‘voetsek’ [get lost] because they are just lesbians or ‘moffies’ [gays] and don’t have any

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<sup>169</sup> “Hate Crimes: The Rise of ‘Corrective’ Rape in South Africa,” ActionAID, Mar. 2009, p. 8

rights.”<sup>170</sup> He also regrets that in almost twenty years of democracy, the government has yet to take the initiative to educate its representatives and law enforcers to be tolerant and respectful of diversity. This lack of sympathy and education is the reason behind the growing number of corrective rapes in South Africa and why Luleki Sizwe, a charity that helps victims of corrective rape, and Triangle, an LGBT rights organization located in Cape Town, claimed to be receiving ten new cases of corrective rape per week and found that 86% of black lesbians in the Western Cape lived in fear of being raped or tortured because of their sexual orientation.<sup>171</sup>

This feeling of insecurity haunts lesbians all across South Africa, even in Cape Town, which is widely considered to be Africa’s most gay-friendly city. A couple that moved from their dangerous township in Johannesburg to the “shelter” of Cape Town soon found that they were not completely safe anywhere: “We feel like criminals and cowards because we have run away but I don’t think we’d be alive now if we’d stayed there.”<sup>172</sup> Both of the partners in this relationship had experienced extreme sexual violence at the hands of spiteful men. One of the women, Tshidi, had been beaten and raped by a man who was interested in her girlfriend; while they were brutally assaulting her, he and his friends made a point of telling her that “this is what happens when a woman pretends to be a man.”<sup>173</sup> Indeed, many corrective rape survivors recall being told that they needed to be taught a lesson, that they are not men, but women, and should start acting as such, or that they would become straight after a sexual encounter with a man. These comments all serve the purpose of terrorizing lesbians by threatening to violently dislodge them from their own sexual and gender identity.

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<sup>170</sup> Quoted in Mandy de Waal, “Traditional Leaders and the Fuel That Fires Homophobia,” *Daily Maverick South Africa*, 25 May 2012.

<sup>171</sup> “Hate Crimes: The Rise of ‘Corrective’ Rape in South Africa,” *ActionAID*, p. 8.

<sup>172</sup> *Ibid.*, p. 13

<sup>173</sup> *Ibid.*, p. 12

Corrective rape is characterized by excessive machismo because it represents a struggle to reclaim masculinity by combating and punishing deviant gender behaviors. One Johannesburg man described the offense and emasculation he felt in the presence of lesbians: “When someone is a lesbian, it’s like saying to us men that we are not good enough.”<sup>174</sup> This comment encapsulates the hurt pride and fears some men experience when they encounter lesbians or women who have achieved financial independence, and therefore do not require men to fulfill their traditional role as breadwinners. Dominant patriarchal systems have placed males in a position of authority, where they were bestowed entitlement over women and were the sole possessors of sexual pleasure, which naturally revolved around the phallus. The absence of a phallus in a sexual relationship not only confounds some males, but also threatens the sense of indispensability and self-worth to which they are accustomed within the context of sex, and by extension, society: “When this heterosexist focus dominates, pleasurable sexual encounters that do not involve a penis are difficult to imagine.”<sup>175</sup> The idea of rejection or defiance from any woman, whether lesbian or heterosexual, appears to serve as just cause for violent attacks.

Men fear that lesbians are stealing their potential girlfriends, especially since butch lesbians commonly form relationships with women who identify as straight and often take on the more dominant or masculine role in the relationship.<sup>176</sup> Butch lesbians tend to perform masculinities that they see men in their communities perform, thus South African butch identity is extremely localized. For example, in the Johannesburg township of Soweto, masculinity includes not only dressing or appearing masculine, but also entails mannerisms and activities that are specific to men, such as playing soccer or smoking marijuana and tobacco in rolled up

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<sup>174</sup> Pumza Fihlani, “South Africa’s Lesbians Fear ‘Corrective Rape,’” BBC NEWS, 29 Jun. 2011.

<sup>175</sup> Amanda Lock Swarr, “‘Stabane,’ Intersexuality, and Same-Sex Relationships in South Africa,” *Feminist Studies* 35.3, Fall 2009, p. 533.

<sup>176</sup> Swarr, “Paradoxes of Butchness: Lesbian Masculinities and Sexual Violence in Contemporary South Africa,” p. 970.

newspaper.<sup>177</sup> By performing the types of masculinities that surround them, butch lesbians dismantle the connection between gender identity and the body, leading to curiosity, confusion, and eventually violence from their communities.

One component of Amanda Lock Swarr's research involves the concept of *stabane*, a Zulu word that describes an intersex condition in which an individual has both a penis and a vagina. Although it is rare to find a person who is truly *stabane*, gay and lesbians often fall under this category because of their nonconforming gender and sexual preferences, and are sometimes subjected to examinations by village elders to confirm the "diagnosis". One lesbian activist recalls the experience of being accused of being a *stabane* and then examined against her will: "They assumed that because I had proposed to the girl I must be a *stabane*... When they discovered I was "normal" the chief ordered that I be lashed."<sup>178</sup> While the idea of *stabane* or a third category of sex allows for some deviation from the strict sex and gender binary, this category is attached to certain sexual behaviors (i.e. same-sex relationships) that are not permissible for non-*stabane* individuals; *stabane* is also used as a derogatory term to describe gays and lesbians in communities that view them as pathological anomalies. Thus, gays and lesbians continue to be chastised for not fitting into any gender, sexual, or corporal category and experience constant humiliation at the hands of community members who regard them as the "other," an identity that justifies their mistreatment, invasion of privacy, and violation of their bodily integrity: "It's funny how everyone feels that they have the liberty—it's okay to say whatever they want, because you're deviant anyway."<sup>179</sup>

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<sup>177</sup> Richa Nagar and Amanda Lock Swarr, "Dismantling Assumptions: Interrogating "Lesbian" Struggles for Identity and Survival in India and South Africa," *Signs: Journal of Women in Culture and Society* 29.2: 2003, p. 507.

<sup>178</sup> Swarr, "'Stabane,' Intersexuality, and Same-Sex Relationships in South Africa," p. 531.

<sup>179</sup> Sandile (gay student at University of Cape Town), quoted in Lopes et al, "Living Our Lives on the Edge: Power, Space, and Sexual Orientation in Cape Town Townships, South Africa," *Sexuality Research and Social Policy* 7.4. Dec. 2010, p. 298.

The existence of stabane as a category of analysis for understanding sex, gender, and sexuality in Soweto informs lesbian identities and experiences with their partners. When a woman self-identifies as a lesbian she is often expected to have a penis because the concept of same-sex desire does not exist in local discourse.<sup>180</sup> Some lesbians who have sex with self-identified straight women also face challenges in satisfying straight women because performed gender identities, which in the case of butch lesbians is masculine, are automatically associated with a certain type of body, the male body. Thus, lesbians feel physically and sexually inadequate in relationships with women, because despite performing and internalizing masculinity, they are not able to provide penetration straight women often expect.<sup>181</sup> In addition, many lesbians do not want to embody masculinity, merely express it in the context of their female bodies: “Whereas butches may facilitate the illusion that they are men, ultimately many want to be accepted and known for who they are in relationships.”<sup>182</sup> While lesbian identity in townships such as Soweto is actually quite complex and involves multi-faceted identity categories, the concept of stabane limits the dialogue around sex and gender and encourages the abnormalization of non-heterosexual orientations.

The threats and physical abuse lesbians frequently experience as a result of their sexual orientation often goes unreported and unpunished because there is sometimes more to lose than there is to gain from reporting. Unfortunately, while some activists are pushing for discriminatory crimes such as corrective rape and stabane examinations to be legally recognized as hate crimes, the process can potentially be most arduous for the victims themselves. In order for a crime to acquire the formal label of a hate crime, victims must go into detail about how

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<sup>180</sup> Swarr, “‘Stabane,’ Intersexuality, and Same-Sex Relationships in South Africa,” p. 532.

<sup>181</sup> Ibid, p. 535.

<sup>182</sup> Ibid, p. 536.



their experience with assault or discrimination was linked to their identity and why this caused them emotional or physical distress:

“It is difficult to quantify how often homophobia translates into violent acts against those regarded as transgressors. This is because hate crimes do not form part of South African official statistics. Exposing this form of violence requires that victims publicly bear witness about their humiliation, pain and betrayal, possibly exposing themselves to further humiliation, rejection and discrimination.”<sup>183</sup>

Swarr had conducted numerous interviews on butch lesbians’ experiences with sexual violence in South Africa, but decided to stop because she “feared they could replicate trauma and endemic objectification.”<sup>184</sup> For lesbians who have suffered corrective rape, recounting their story in a courtroom or for a researcher who is attempting to analyze the social and cultural circumstances around this type of violence could result in additional trauma, including the possibility of experiencing a “second rape” if questions are presented in an insensitive and accusing manner. Not only are survivors placed in this vulnerable position before the law, but also before their entire communities, where they could face further social repercussions and even further backlash from their initial attackers. For this reason, 66% of lesbians who experienced homophobic hate crimes said they did not report them to the police, and only about 4% of reported cases result in a conviction.<sup>185</sup>

A report by ActionAID UK supported by the South African Human Rights Commission was published in March of 2009 to address the practice of corrective rape as a systematic form of oppression against lesbian women.<sup>186</sup> As part of this report, ActionAID interviewed fifteen women who had experienced corrective rape as well as several non-profit organizations that

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<sup>183</sup> N Mkhize et al, “The Country We Want to Live in: Hate Crimes and Homophobia in the lives of Black Lesbian South Africans,” Mar. 2012.

<sup>184</sup> Swarr, “Paradoxes of Butchness: Lesbian Masculinities and Sexual Violence in Contemporary South Africa,” p. 963.

<sup>185</sup> “Hate Crimes: The Rise of ‘Corrective’ Rape in South Africa,” ActionAID, p. 13.

<sup>186</sup> *Ibid*, p. 8.

work with survivors of this type of violence in order to present evidence showing that corrective rape is not an isolated incident of rape, but part of a trend of men who feel the need to repossess their masculinity by violently attacking lesbians. Despite experiencing discrimination and violence on a regular basis, all of the women interviewed for the ActionAID report recognized that their identities, lifestyles, and sexual preferences could not be altered or concealed to suit their patriarchal and heterosexist environments; thus, many of them choose to find solidarity with their partners, other lesbians, and LGBT organizations as a form of defiance and survival: “So I have decided to fight them in other ways. The work I am doing with the Gender Equality Project is trying to help lesbian and gay people in communities, make sure....they feel free to be themselves.”<sup>187</sup>

Recently, there have also been global efforts and international attention devoted to resolving corrective rape. In March of 2011, approximately 171,000 people from 175 countries signed a petition calling the South African government to take action on corrective rape, which led to the formation of a task force “charged with developing a legislative intervention plan, a public awareness strategy, and LGBTI sensitive shelters.”<sup>188</sup> Although the creation of this group should finally facilitate the recognition of corrective rape as a hate crime, activists nevertheless believe that this “solution” has arrived a decade too late. While legislators were neglecting this egregious issue, whether as a result of their indifference or their inability to properly address the general violence occurring in the country, the culture of homophobia, rape, and exaggerated masculinity in South Africa has festered and has taken the lives and sense of security of hundreds of lesbians.

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<sup>187</sup> Pretty (Eudy Simelane’s best friend) quoted in *ibid*, p. 10.

<sup>188</sup> Dana Hughes, “South Africa Task Force to Fight ‘Corrective Rape’ of Lesbians,” ABC News, 4 May 2011, <http://abcnews.go.com>.

## Chapter V: Conclusion

In June of 2005, South African doctor Sonnet Ehlers unveiled what she considered to be her life's work and a potential solution for South Africa's overwhelmingly high incidence of rape: Rape-aXe, the female condom with "teeth."<sup>189</sup> Dr. Ehlers claimed to have received inspiration for the anti-rape device forty years ago, when she was confronted by a rape victim who regretfully said to her, "If only I had teeth down there."<sup>190</sup> The condom is designed to sit comfortably inside a woman's vagina and insert jagged hooks onto a man's penis during penetration, which can only be removed surgically. Although this would not prevent the rape itself, Ehlers believes that it would provide women with enough time to flee from their attackers and result in higher rates of conviction if hospitals and authorities work in unison to immediately arrest rapists. Criticisms of the condom have varied from complaints that it does not offer a long-term solution for the endemic rates of sexual violence, to concerns about inciting a rapist's anger, and even an accusation that this condom represents a type of enslavement of women, perpetuating the narrative of female victimhood by imprisoning their bodies with this device: "The fears surrounding the victim, the act of wearing the condom in anticipation of being assaulted all represent enslavement that no woman should be subjected to."<sup>191</sup>

While attending the funeral of a police officer in 2011, former South African chief of police Bheki Cele told his officers, "A policeman should not die with his gun in his hand."<sup>192</sup> Two years earlier he had also advocated for a change in the law that would allow police officers to "shoot to kill" when confronting criminals, in order to create an environment "where people

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<sup>189</sup> "Anti-Rape Condom Unveiled," The Sydney Herald, Sep. 2005, <http://smh.com.au>.

<sup>190</sup> Quoted in Faith Karimi, "South African Doctor Invents Female Condoms with 'Teeth' to Fight Rape," CNN World, 21 Jun. 2010, <http://cnn.com>.

<sup>191</sup> Victoria Kajja (researcher at the Center for Disease Control and Prevention in Uganda), quoted in Karimi.

<sup>192</sup> "Kill and Be Killed," The Economist, 27 Aug. 2011, <http://economist.com>.

aren't told they're safe, but actually feel safe."<sup>193</sup> When considering South Africa's high homicide, crime, and rape rates, as well as the large number of police officers lost every year as a result of criminal violence, Cele's demands for the dramatic reform of the police system were unsettling, yet not surprising.

Although Ehlers and Cele share very little in terms of occupation or background, they both have devised extreme solutions to curtail the rampant violence in South Africa. Both Ehlers and Cele were obviously criticized for their suggestions on how to manage rape and murder: the former admonished for inventing what many see as a medieval device (to which she has retorted that medieval deeds require medieval responses),<sup>194</sup> and the latter for promoting further police violence in a country that is already plagued by police brutality.<sup>195</sup> In spite of criticisms, it is important to understand that the extremity of Ehlers' and Cele's positions are, in fact, colored by sentiments of desperation and urgency towards these issues. Ehlers' Rape aXe especially carries the weight of being the "last resort" in ending sexual violence, and requires women to prepare for the possibility of being raped at almost any moment. It is a device that empowers women by offering a form of self-defense and a greater chance of achieving justice, yet also succumbs to the realities of a patriarchal system in which societal transformation is unfortunately still not within reach.

On the other hand, there are individuals and organizations that believe in the transformative power of education and open dialogue as a way to promote gender equality and mutual respect. Sonke Gender Justice, for example, is an organization that works primarily with boys and men to reduce rates of domestic violence, rape, and HIV/AIDS through educational programs such as One Man Can, MenEngage, and Brothers for Life. These programs focus on

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<sup>193</sup> "South Africa: Police Must Shoot to Kill, Worry Later- Cele," AllAfrica, 1 Aug. 2009, <http://allafrica.com>.

<sup>194</sup> Karimi, "South African Doctor Invents Female Condoms with 'Teeth' to Fight Rape."

<sup>195</sup> "Kill and Be Killed," The Economist.

redefining masculinity by teaching men about women's rights and human rights, encouraging habits that will increase male psychological and physical health (i.e. condom use, regular HIV testing, avoidance of alcohol and drug abuse, etc.), and stressing the importance of the institution of the family without relying on discourses of patriarchal norms that isolate or oppress women and children.<sup>196</sup> Although efforts to promote women's empowerment have traditionally been limited to women's rights organizations and women's spaces, the World Health Organization has reported that one of the most effective ways to promote gender equity is by targeting ideas of masculinity that influence gender relations, which is exactly the approach Sonke takes in their efforts to end the pervasiveness of violent and self-destructive masculinities: "In sum, prevailing notions of manhood often increase men's own vulnerability to injury and other health risks and create risks and vulnerability for women and girls."<sup>197</sup>

Though Sonke has grown into an extensive organization with offices throughout South Africa and around the world, the organization continues to use local rhetoric to effectively reach boys and men. For example, the use of youth *indabas*, which are traditional Zulu and Xhosa spaces designated for discussing important issues, allows adolescent males to engage in dialogue about gender and sexual health issues as well as other factors that contribute to the formation of masculinity in South Africa, including poverty, gang violence, and family relationships. *Indabas* are also generally led by young black males in their twenties who can both form a bond with the boys and encourage constructive conversations.<sup>198</sup> In a country where gender equality NGOs receive criticisms for their association with Western institutions, funding, and ideologies, it is particularly important that these organizations formulate programs that allow open participation

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<sup>196</sup> Sonke Gender Justice, "Projects: Brothers for Life," <http://genderjustice.org.za>.

<sup>197</sup> Gary Barker et al, "Engaging men and Boys in Changing Gender-Based Inequity in Health: Evidence from Programme Interventions," The World Health Organization, 2007, p. 7.

<sup>198</sup> Kimberly Burge, "How Men in South Africa Are Trying to Stop Violence against Women," The Atlantic, 28 Dec, 2012, <http://theatlantic.com>.

and contributions from community members themselves, thus creating space for the subjectivities of those who will be benefitting from the educational programs the most.

As we know, the proliferation of a human rights (and women's rights) agenda in South Africa is a contentious issue despite the constitution's guarantee of said rights; thus, the strategies used to educate communities about a topic as sensitive as gender equality must be very deliberate and thoroughly planned. Sally Engle Merry, who specializes in the intersection of human rights and transnational culture, has attempted to identify the middle ground between universalist notions of human rights and cultural relativism. She argues that while local activists "translate" global human rights to fit local understandings of rights, this practice unintentionally limits the resonance of the original message of rights.<sup>199</sup> Violence against women generally complicates this process because there is no middle ground, nor should there be any negotiating or bargaining around the subject (ideally), yet discouraging it requires an outright condemnation of patriarchal norms that shape local cultures. Addressing South Africa's sexual violence, therefore, is difficult because it requires identifying hegemonic masculinities that are protected by the impregnable wall of culture, followed by the careful extraction of those particular aspects of masculinity that contribute to violence without dismantling the entire cultural institution. Recognizing the pervasiveness of patriarchy in the nation and the importance of female legal and social empowerment, former Constitutional Court judge Albie Sachs wrote in 1990:

"... To challenge patriarchy, to dispute the idea that men should be the dominant figures in the family and society, is to be seen not as fighting against male privilege but as attempting to destroy African tradition, or subvert Afrikaner ideals, or undermine civilized and decent British values."<sup>200</sup>

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<sup>199</sup> Sally Engle Merry, "Transnational Human Rights and Local Activism: Mapping the Middle," *American Anthropologist* 108.1, 2006, p. 39.

<sup>200</sup> Albie Sachs, "Judges and Gender: The Constitutional Rights of Women in a Post-Apartheid South Africa," *Agenda* 7, 1990, p. 1.

While he intended to protect women's rights to the best of his ability, that is, within the context of the law, Sachs understood that patriarchy was a social issue that needed to be addressed through education, because the law would never suffice as the sole source of women's liberation.<sup>201</sup>

Despite massive efforts to confront and prevent sexual violence, South Africa has yet to successfully create a dent in the monolithic culture of rape. Unfortunately South Africa, whose unique legacy of apartheid, struggle, and liberation has been deemed as "South African exceptionalism," has not yet evolved into the egalitarian rainbow nation Mandela hoped it would be. As Neil Lazarus notes, the expectations of the ANC, their followers, and anti-apartheid activists around the world were especially high in 1994, when South Africa's history of struggle against white oppression appeared to have culminated in a success story, one of the few on the African continent thus far:

"The assumption has been that, with *our* particular and particularly irreducible history—which is to say, our history of struggle—*our* decolonization, when it came, would not prove to be the neocolonization that it had been elsewhere; *our* nationalism really would correspond to the 'all-embracing crystallization of the innermost hopes of the whole people': it would not decompose, as it had elsewhere on the continent, into ethnic chauvinism or class rule; *our* national liberation front would not serve, once it became the party in power after decolonization, to cover over its traces and disavow both its heritage and its historic responsibility."<sup>202</sup>

The myth of exceptionalism, as Lazarus refers to it, actually depended greatly on the constitution's and the ANC's ability to fulfill their promises of empowering the marginalized majority of South Africa's population. Unlike other African states, South Africa was not supposed to yield to neoliberal institutions that would perpetuate the vast socio-economic inequalities that existed during apartheid. Nor was South Africa meant to submit to forms of

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<sup>201</sup> Sachs, "Judges and Gender: The Constitutional Rights of Women in a Post-Apartheid South Africa," p. 4.

<sup>202</sup> Neil Lazarus, "The South African Ideology: The Myth of Exceptionalism, the Idea of Resistance," *The South Atlantic Quarterly* 103.4, Fall 2004, p. 611.

nationalism or racial discourse that would divide the new democracy into constantly warring factions. Furthermore, the tenets and laws of the nation would always serve as a direct reflection of the aspirations and ideologies of the South African people.

Retrospectively, the expectation of ANC intellectuals and leaders to witness a completely transformed South Africa in which social attitudes would quickly catch up to the constitution, and wealth and land ownership would immediately be redistributed was somewhat unrealistic without the active participation of the government in negotiating these processes. Today, it would appear that if the issues of LGBT rights, abortion, and the death penalty were put to a referendum and relied solely on public opinion, South Africa's laws would be quite different. For example, the South African Social Attitudes Survey taken in 2003 showed that 84% of respondents were opposed to 'sexual relations between two adults of the same sex' and 80% of South Africans disapproved the 2005 legalization of gay marriage in public opinion polls.<sup>203</sup> South African liberals, especially, now perceive an imminent danger in which, instead of building on South Africa's strong constitution, people are demanding to strip rights enshrined within it.

Ultimately, South Africa has yet to reconcile the laws of the land with the laws of the people. As seen in Zuma's rape trial, the prevalence of corrective rape, and legislative measures such as the Traditional Courts Bill, the public has begun to utilize cultural discourses to justify their actions and entitlement to engage in sex with women (whether consensual or nonconsensual), to abuse LGBT individuals, and to neglect rural women in traditional legal spheres. Meanwhile, some South African feminists, particularly black feminists, continue to struggle with balancing the concept of women's rights and their loyalties to racial and cultural

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<sup>203</sup> Ryan Richard Thoreson, "Somewhere over the Rainbow Nation: Gay, Lesbian, and Bisexual Activism in South Africa," *Southern African Studies* 34.3, 2008, p. 683.



institutions that are historically embedded in patriarchy: “Third-world feminists have argued that African feminism has sought to support more benign patriarchy that builds on existing family and community rather than seeking a more radical reconfiguration of domestic forms of social organization.”<sup>204</sup> On the other hand, there are also many black and white South African gender activists who have taken the risk of being labeled as racists or Western-washed in order to fully address the endemic sexual violence and dangerous forms of masculinities that have consumed the nation. The fact that several prominent political leaders tend to express contradictory views in which they claim to uphold the rights of the constitution while simultaneously making offensive declarations fueled by “African cultural” pride, as can be observed in Mbeki’s and Zuma’s comments regarding rape and Zulu masculinity, respectively, also hinders the process of law enforcement and has handed the responsibility of social transformation over to NGOs. Needless to say, these NGOs cannot possibly have enough resources to educate the entirety of the South African population, yet the burden of addressing social ills falls on them. While many would like to believe that South Africa’s history with oppression ended in 1994, the stories of thousands of rape survivors poignantly demonstrate that the struggle is far from over.

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<sup>204</sup> Morrell et al, “Hegemonic Masculinity/Masculinities in South Africa: Culture, Power, and Gender Politics,” p. 19.

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