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The Jacob Zuma rape trial: Power and African National Congress (ANC) masculinities*

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Introduction

My personal and political interest in writing this article relates to the impact that the trial of Jacob Zuma (formerly Deputy State President and currently ANC Deputy President) and events surrounding it have had on the entrenchment of values of democracy and gender equality in South Africa. I am also concerned about how this experience has affected the at large and the ANC as an organisation, embodying the moral aspirations of millions of people. Insofar as this trial were to pass without public debate and some attempts at discussion already having been suppressed within organisations like the South African Communist Party, the interpretation of gender violence and the culture of debate are not entrenched.¹ If the ANC and its allies fail to protect these values and to stand firm against gender violence, the possibly fragile standing of gender equality and democratic debate in the country as a whole is endangered.

The Zuma rape trial must at once be understood as a trial for sexual assault of a woman and also part of a context of political turmoil. If we restrict our gaze to the court room we fail to give adequate meaning(s) to the trial or lose much of its texture, much that is of gender significance. Insofar as a court is a type of theatre, it was only one site within which this drama was played out. (See Reddy and Potgieter's discursive reading of the trial as a 'text' read by players and the public. Reddy and Potgieter, 2006, pp. 511, 512)

It is important to locate some of the issues surrounding the trial, or the public drama within the overall and changing political context of the ANC as organisation and in the country as a whole. The ANC continues to undergo transformation as part of its adaptation to the challenges of transition from active struggle to destroy apartheid to managing government of a state. This process has led to certain disjunctures in the respective understandings/expectations of leadership and sections of the membership/following and seen a series of manifestations of resistance against the

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¹ When following an article by the South African Communist Party (SACP) General Secretary in May 2006 the author raised questions in The Johannesburg newspaper, Business Day, about the Party's failure to distance itself from sexist stereotypes manifested in Zuma's mode of defence, he was attacked as 'devious', an 'arm chair revolutionary' and similar phrases. See www.sacp.org.za, accessed 22 February 2007 and www.bday.co.za, accessed 22 February 2007.

leadership of State and ANC President Thabo Mbeki. This was depicted as a reaction to what many saw as a tendency toward centralisation within the ANC, which was connected to reducing the importance of the organisation and participation of its members, replicating a pattern found in numerous centre-left parties in Europe. (Suttner, 2007).

The first factor sparking a degree of rebellion was the dismissal of Zuma as Deputy President of the country after implication in the Shabir Shaik corruption trial². He then maintained a lower profile as ANC Deputy President, with a decision at national level limiting the scope of his duties. This was followed by the rejection by delegates of leadership-initiated 'Blairite type' changes in the ANC at the 2005 National General Council (NGC). They rejected what was interpreted as a move that would have reduced the role of the mass membership along lines similar to that which has occurred in the British Labour Party. This attempted reduction of the already limited popular role of membership, coincided with and was conflated with a perception that Zuma was the victim of a conspiracy to deny him the ANC presidency. The perceived (though in reality often uneven process of) downgrading of the role of the ANC mass membership fed into a belief that Zuma was victim of a centrally dictated conspiracy. Words like over-centralised (as with Blair) and 'dictatorial' were also in regular use, to describe Mbeki's presidency.

Even before the NGC there were instances of t shirts bearing the image of President Mbeki being burnt by groups of people and Zuma was able to feed into the state of affairs that had developed amongst groups assumed to be unhappy with leadership. It is important to note at the outset that Mr Zuma had been part of the ANC leadership when many of the changes took place within the organisation and policies were adopted for the country as a whole. Until the point of his dismissal as Deputy State President, he did not voice any objections nor indicate any discomfort with the direction the organisation or government was taking. There was also a lingering bitterness amongst sections of the ANC support base which had been involved in insurrection in the 1980s and had always had reservations about a negotiated settlement, seeing this as frustrating a potential military defeat of the apartheid regime. (Suttner, 2007). Zuma's mode of conduct or militaristic self-representation in and around the rape trial was able to feed into the residual emotion, as well as the claims of those 'militants' who had in fact never seen danger or been part of the liberation struggle.

Rape and power

The phenomenon of rape is understood here as the exercise of power against the will of another, in order to access that person's body in one of a range of manners. The notion of unequal power may be exercised violently or by potential violence, as in the actual or perceived threat of violence or by other factors of a more psychological kind, that meets a lack of consent. This failure to communicate willingness to undergo

² Shaik, a South African business person, based in KwaZulu Natal province, was Zuma's financial adviser and appears to have handed out large sums of money to him and paid for various expenses that Zuma incurred. This has led to a charge of corruption against Zuma. At the time of writing (April 2007) that charge has been dismissed on technicalities, though the prosecution are involved in various procedural hearings seeking various documents as a prelude to preparing to bring freshly formulated charges.

such an interaction is not necessarily expressed verbally. In fact, the character of the exercise of power may render it very difficult for the person to express lack of consent or cause such shock as to prevent its verbalisation. 'Power and masculinity', Reddy and Potgieter argue, 'seem to cohere in the meaning of rape as a form of violence.' (2006, p. 514).

Rape and other forms of sexual violence are at one and the same time attacks on an individual and delimitations of freedom for all women (and men- insofar as an underreported range of men are subjected to rape). An attack on a person in a dark alley signifies that that area is a no go area, and similar indications that what has happened to one person should be understood as a warning to others who do not respect the boundaries set by the aggressor and other potential rapists. (See Humm, 1995, p.234, Abbott and Wallace, 1997, 243, Clarke and Lewis, 1977, p 23). At the same time, the manner in which rape is investigated, prosecuted and adjudicated, signifies whether or not certain individuals are more or less vulnerable to prosecution and conviction due to possession of power of one or other kind. Also, media representation of the phenomenon may reverse expectations of the complainant as opposed to the accused having to explain behaviour and personal conduct prior to the case, for scrutiny by the court. (See Reddy and Potgieter, 2006). Rape is one crime where the body of the victim/survivor is also the evidence. This compounds the power dynamics in ways that must be unpacked carefully (Gasa, 2006).

Author not 'innocent bystander'

While this is intended as a scholarly contribution towards understanding the Zuma rape trial, I do not come as an innocent bystander who knows nothing apart from what has been in the public domain. I have been an ANC cadre and have known Zuma for almost 20 years. At first I saw him as embodying an image of all that was best in the ANC, what it stood for and could develop in its leadership. I knew that Zuma had come from the rural areas and that he had been illiterate, only learning to read on Robben Island.³ I saw in him a future leader, of the type that I believed only the ANC or possibly the SACP (as evidenced in its night schools) could develop. (On development of intellectuals within the ANC-led alliance, see Suttner, 2005).

In seeing Zuma at close quarters, when elected to the national leadership, that romanticism evaporated and turned into scepticism. I still found him easy to relate to compared with the much publicised claims of coldness and the intellectual demeanour of Mbeki. Zuma, in contrast, was always jocular and outwardly friendly (whatever private thoughts he may have had).

I have had little contact with him –in fact only once or twice in the last 10 years. My sympathy for the man was revived during the Shaik trial when the news daily flashed embarrassing details of Zuma's indebtedness and his general financial position. I found this painful to watch, empathising with his humiliation and what his children must have felt. At that point no charges had been laid against him, yet he was being subjected to invasions of private life that seemed incompatible with his presumed innocent status. This sense that Zuma was being prejudiced was heightened by the

³ This may not be absolutely true in that Zuma may have achieved literacy in trade union classes or other ways, but that is what I heard when I first encountered him.

statement of Mr Bulelani Ngcuka, then Director of Public Prosecutions, in the company of the then Minister of Justice, Dr P. Maduna, after the Shaik conviction, that there was a *prima facie* case against Zuma, but that they were not pursuing that option because they believed it could not succeed. This was a strangely ambiguous statement, casting doubt on Zuma's innocence without prosecution.

Over time the sympathy was again reduced as I saw him respond to his dismissal as Deputy President through demagogic interventions, depicting himself –with SACP and Congress of South African Trade Unions (COSATU) complicity -as a people's leader, with some ambiguity that suggested he would be sympathetic to socialism. I knew that such imagery contradicted his own record not only in government, but since 1990, (when he abandoned his membership of the SACP of which he had been a Central Committee member). Consequently, as I watched this 'double speak', my level of sympathy evaporated.

I am merely stating 'where I come from'. I do not accept that it is only through the innocence of distance and absence of political involvement that one can understand highly charged political issues. In fact, experience is more likely to provide understanding of organisational dynamics and similar factors than ignorance of these or knowledge derived purely from the outside. My own personal and political background has shaped my judgment of the way in which people handle access or loss of power. The way it has happened is itself instructive in the case of Zuma and the ANC experience. My job in these immediate paragraphs has been to locate myself. It is open to readers to ask whether I have been able to step back sufficiently and provide an understanding and insight which has validity.

How do we understand the Zuma trial?

Political context

This trial has special importance. In the first place while rape *per se* or whether or not there was a rape cannot be assessed or explained by the political context, the rape trial – in all its complexities- can only be understood within this framework.

The most significant elements of those surrounding events may have been the perception and suggestion amongst many people that Zuma was the victim of a conspiracy hatched by President Thabo Mbeki. According to the proponents of this view, Mbeki may have thought that Zuma would understand that his political ambitions ended by being appointed State Deputy President. Zuma, on the other hand, may have come to believe that he should succeed Mbeki, a possibility that Mbeki and a range of other leaders may have seen as unthinkable or undesirable.

Insofar as Zuma may have cherished these ambitions, the advocates of conspiracy theories suggest that steps were taken to render him unable to contest the presidency. This is complicated by the fact that there is a perception that the Mbeki presidency has been highly selective in its treatment of irregularities. Consequently, it was seen as credible that the full force of the law was being brought to bear on Zuma precisely in order to disqualify him as a presidential candidate.

It is important to look into the allegations of conspiracy because many gender equality activists, feminists and others, who have found the trial and Zuma's conduct problematic, have either dismissed this or shied away from it. The aim here is neither to align myself with the theory nor to dispute it. In order to take up a firm position one would need access to the kind of resource base that is not available to me and beyond this particular intervention. It is, however, important to acknowledge the existence of conspiracy theories, irrespective of one's opinion, as part of the public discourse surrounding the trial. Its power goes beyond the immediate issue of rape and touches on and raises questions about the modes of deployment of state power, resources and institutions.

It is also important to note the possibility that Zuma also used intelligence sources, people still or formerly in the state service but previously under his command when head of ANC intelligence. Obviously there is the Mo Shaik connection. He is the brother of Shabir Shaik whose conviction on corruption and theft implicated Zuma. Mo Shaik is a former intelligence operative, who together with Mac Maharaj, a former ANC leader and cabinet minister, claimed that Bulelani Ngcuka, then head of the Directorate of Public Prosecution (which brought the charges against Shabir Shaik) had been a spy during the apartheid era. This led to a judicial enquiry which cleared Ngcuka. It left great bitterness, because Shaik and Maharaj were denied various documents they believed could prove their case. Also being cleared through a judicial process is not regarded by intelligence operatives as necessarily clearing one from suspicion for intelligence purposes. (Personal communications with intelligence operatives, 2005).

A range of similar factors and events fed into an overall atmosphere of inter-factional struggle which was in the background of the Zuma rape trial. Whatever the validity of the various positions, they became part of the way various people interpreted the trial. This paper is concerned with the rape trial and some of the wider issues emanating from it, both in the political sphere and in the public drama that unfolded.

Moving from the conspiracy theory, Zuma was able to mobilise support, claiming that he had been unjustly treated and this was fuelled by the mode of governance, which was depicted as typifying the period of the Mbeki Presidency. In particular, there was resentment of the treatment of COSATU and SACP leaders as 'small boys' and the practice of patronage. The resentment of patronage may have been partly mobilised for reasons of democratic rule but also by those who were angered at their exclusion from the spoils of office, or included at an earlier stage but now angered at later exclusion, as is the case with some people, who have fallen from grace after previously being Mbeki stalwarts. Again, it is important that we note that much of this has been public murmuring and on Mbeki's side, little if anything has been said in response.

As the court case and surrounding activities developed, Zuma came to present himself not only as a victim of conspiracy but as an embodiment of Zulu culture. As will be seen, it is a mistake to treat the version of Zulu culture that was depicted by Zuma as being Zulu culture *per se*. There are various interpretations of that culture. Zuma may always have been much closer to conservative cultural roots than Mbeki and many others in leadership. But this element was foregrounded in a much more pronounced way by much of Zuma's support base –using phrases like '100% Zulu boy'– and by

the actions or failure to distance on the part of Zuma himself. Over the period as a whole, including the post- acquittal phase, this came to embody some of the most disturbing and patriarchal elements, including homophobic statements.

After his corruption charges were thrown out (on technical grounds, which allow them to be brought again), Zuma made homophobic statements, saying that when he was a young man such people (gays) would not be able to stand in front of him. He later apologised for what he had said, which as it happens is contrary to the constitution, thus feeding into resentments of many of the elements of the constitution which have brought unprecedented rights to men who do not fit the supposed image of a conventional Zulu warrior.⁴

This resort to Zulu culture was also a re-embodiment of its warrior traditions, merging with ANC militaristic traditions. The emphasis on Zulu culture in general was also able to be exploited by those who allege from time to time that the ANC is dominated by Xhosa -speaking people. It is important to note that these ethnic sentiments are not necessarily exploited by people who in fact feel strongly about their ethnic identity. My experience of Zuma is that he is proud of that Zulu identity but it in no way engenders enmity towards Xhosa- or Sotho- speaking people. He spent decades working side by side with Xhosa-speaking Mbeki and the current divisions are of relatively recent origin. My earlier experience did not lead me to feel that Zuma is an ethnic chauvinist, in interactions at a personal level. But like many African dictators who have mobilised or seen their support emerge on that basis, he has done nothing to discourage it. He may in fact have encouraged such manifestations at a private level, but it is not the type of evidence that becomes known unless there is a break in the ranks of his closest supporters. Insofar as much of this is from the most conservative, if not reactionary, section of the Zulu speaking section of the population, it again also reinforces a resistance to gender equality.

The trial was consequently played out within a wider context consisting of political intrigue or perceived intrigue, division and cultural divisions. The cultural divisions, it must be stressed were depicted as Zulu against Xhosa or emphasis on Zulu identity. *In reality, the contestation was over what version of Zulu or other culture should be hegemonic* (as with other questions like male initiation, where there is not a single, authoritative view, despite the more conservative elements claiming that their understanding represents the only one).⁵

The trial happened to be a place of major focus on Zulu masculine culture and the supposed expectations this created in the face of behaviour of a woman who a man interpreted as being aroused. There is a widespread tendency amongst more conservative elements to speak of culture in the singular, when there are in fact many interpretations of practices and cultures in a range of spheres. The way things are done 'by us' tends in fact to have many interpretations amongst cultural groups,

⁴ The constitution provides for freedom of sexual orientation and recent legislation has permitted 'same sex' marriages under common law (but not other recognised legal systems, like African customary law).

⁵ See Nomboniso Gasa's unpublished work on male initiation and in the media and Open letter to Zuma (2006) during trial, at http://www.mg.co.za/printPage.aspx?area=insight/insight_commen_and_analysis/..., accessed 8 January 2007.

though more conservative elements try to depict their version as the only authorised one. These range over questions of gender but go far beyond that and defy any attempt at presenting any specific community as culturally homogeneous.

Meaning of the trial cannot be extracted from court proceedings alone

The courtroom was only one arena within which the drama was played out but the court echoed some of the idioms circulating in the crowds assembled outside, in public debate and other places of discussion and demonstration. (Reddy and Potgieter, 2006). The significance of these multiple arenas for locating the allegation of rape is a series of manifestations which contradict the spirit of gender equality, found in the Constitution and advanced by the ANC and its allies. The mode of defence mounted by Zuma, his actions publicly outside and inside the courtroom, the meeting of minds between Zuma and the judge and the complicity of the prosecution in accepting Zuma's version of Zulu culture and its implications, all combined to undermine hard-won gains in gender equality. A prosecuting team conversant with or consisting mainly of Africans, who were culturally aware, which understood the diversity within cultures and the range of potential meanings could have made the state case more meaningful in the sense, not necessarily of securing a conviction, but puncturing some of the cultural bases of defence. Likewise a judge who was an African or more conversant with African concepts of family would have been less swift in rejecting the complainant's depiction of her relationship with Zuma as that of a father/daughter. (See *S v Zuma*, pp 151-152).

It is the finding of some anthropologists that the extent of gender violence is highest in countries where the status of women is lowest. 'Rape varies dramatically from one culture to another, and what causes the difference between rape-prone and rape-free societies is the status of women. Where women are valued and honoured, rape rates are exceptionally low. Where women are degraded and devalued, rape rates are high....' (Kimmel, 2004, p.111). At a constitutional and legal level, the status of women appears in South Africa to be amongst the highest in the world. It is clear, however, that the culture of gender equality is not deeply rooted and that the actions of Zuma supporters, especially organisational condonation by the SACP and COSATU⁶, and the mode of conducting the defence indicate a low regard for the status and understandings of the woman complainant, alleging sexual assault. (Gasa, 2006, 2006a, Ndashe, 2006, Naylor, 2006, Serumaga, 2006, Ludwig, 2006, Amicus curiae documentation found on Tshwaranang Legal advocacy centre⁷ documents on website, Reddy and Potgieter, 2006. It should be noted that Zuma's purported

⁶ This can no longer be put at the door of individual leaders like Zwelinzima Vavi and Blade Nzimande, though they may together with the ANC and SACP youth leagues have been the most vociferous and ostentatious in their support for Zuma. The leadership of neither organisation had distanced itself from anything and consequently, whatever private thoughts individuals may have had, they were complicit in this attack on gender equality and condonation of abuse of women- for the whole of 2006. Minor individual distantiatio is evident in early 2007

⁷ Tshwaranang is a legal advocacy NGO, which along with the Centre for Study of Violence and Reconciliation (CSVR), a long-standing research and advocacy centre and Centre for Applied Legal Studies (CALS) of the University of the Witwatersrand, a part of the Faculty of Law, which was established some decades back, sought, as is related below, to enter the case as amici curiae (friends of the court)

expertise on Zulu culture is not challenged by the Amicus curiae intervention or the work of Vetten, 2007. But see Gasá (2006, 2006a, Serumaga, 2006))

If the manifestations outside the court room with the use of gender stereotypes and expectations of what raped women are expected to do in the court room are taken together, they reinforce one another in tolerating a climate of abuse of women. (See, for example, *S v Zuma* at pp 157,158, 159, 160,161, 173.). Thus the judgment states:

As far as the rape itself is concerned there are a few very strange and odd features. The complainant is not in any way threatened or physically injured. Her clothes are not damaged in any manner. At no stage did the accused resort to physical violence or any threat...

A very odd feature is that the alleged rape took place within ten metres of a uniformed policeman with the accused's grown up daughter not far away.

[I]t appears to be very odd that from the time the complainant assisted in rolling onto her back and having her clothes removed, she did not utter a single 'no' throughout her vagina being touched and at least ten minutes of intercourse. At no stage was there any call for help *which was immediately available*

During the 'rape' the accused uttered words of endearment to the complainant, not a single one whereof has the connotation of dominance or abuse.

After the 'rape' the complainant was in a position to immediately phone the world and to tell them about it but she instead decided to report to her close friends in terms indicating that no rape had taken place. The complainant was in a position to leave the house immediately but she preferred to stay there for the rest of the night and not even locking the door....(pp 160-161. Emphasis inserted. See also documentation surrounding the application of amicus curiae, on Tshwaranang Legal Advocacy centre, website).

Lisa Vetten underlines the implications that such reasoning has for a rape complainant in the courtroom:

[W]hat many missed in their analyses of Zuma's cultural⁸ defence was how closely aspects of it tallied with long-standing preoccupations in Roman-Dutch law with women's dress and conduct. From the judgement it is clear that in deciding whether or not Kwezi [the name adopted by the complainant to conceal her identity] had consented, the judge also took into account her clothing and conduct on the night in question. In other words, Zuma's explanation of why he assumed consent *drew less on uniquely Zulu cultural norms than on shared cross-cultural masculine norms*. [My emphasis].

⁸ I would say 'alleged' before cultural, since whether it represents an actual defence or a warped version should, as indicated, be part of the basis of contestation of his defence.

That is true, but the Zulu chauvinist element should not be erased since it strengthened the basis for supporting patriarchal power to use and abuse. There was a common factor, but also specificity. *The commonality of patriarchy across cultures was buttressed in this case by drawing on allegedly specific Zulu norms and understandings.* Vetten continues:

Scrutiny of the complainant's clothing and conduct was far from being the only method employed in this case to discredit the complainant. In rejecting Kwezi's version of events, the judge also measured her behaviour against the behaviour that he imagined 'real' rape survivors exhibit. Thus the fact that she did not bath immediately, did not suffer from depression after the rape, was not physically threatened, did not have clothing torn, failed to scream for either Zuma's daughter or the policeman stationed outside, did not 'immediately phone the world to tell them about it' and did not leave Zuma's home immediately after the incident all made her story implausible. She was either 'a sick person who needs help'-because so traumatised in the past that she perceives 'any sexual behaviour as threatening'⁹- or a woman who changes her mind, feeling 'guilt, resentment, anger and emotional turmoil after the event'. (Vetten, 2007, p. 439)

These stereotypical expectations of how women should or should not behave in situations prior to and during a rape are part of wider international experience, recorded in much feminist literature. It has been said that the woman is 'frequently monitored for the extent to which she provoked her own demise' (Edwards, 1987, p. 141.) Pilcher and Wheeler, (2004, pp. 174-5) write:

In cases of rape...women [may be] held to be somehow responsible for their own experience. For example, through 'leading' the man on to a point where his 'sexual urge' for intercourse 'had to be satisfied', or for dressing 'provocatively'.

Valerie Bryson writes :

The inability of a man-made and male-dominated legal system to express women's experiences is particularly clear in the case of rape trials....In rape cases, the difficulty of a female complainant in making her voice heard is particularly great: if she appears upset and distressed her evidence is dismissed as hysterical, emotional and untrustworthy; but if she is calm and composed it is thought that she cannot possibly be the victim of anything so traumatic as rape. Beliefs about 'acceptable' and 'appropriate' female behaviour also frequently mean that she is required to explain behaviour that would be unremarked in a man: it is therefore the victim rather than the accused who is called to account ... (Bryson, 1999, p. 79. See also Abbott and Wallace, 1997, pp. 245, 246, 250-252, and Reddy and Potgieter, 2006, p 514)

⁹ The judge allowed evidence to be led on the complainant's 'sexual history', in reality most of it being cases of childhood abuse. Thus the pleasurable activity of sex was implicitly equated with various forms of coercion or attempts to have sex with a minor. While this is a serious basis for criticising the judgment, it is not possible to explore the admissibility of such evidence within a paper of this length.

Many of these factors were, of course, part of the defence argument and judgment in the Zuma case.

It is public knowledge that the complainant was threatened, assault was attempted, that her name and address were held on a placard in the area outside the court. This was a clear incitement to attack her. It is known that Zizi Kodwa, spokesperson for the ANC Youth League, called on people to attack various individuals who had come out in support of the complainant and who had questioned elements of Zuma's conduct. All of these actions created a sense that it is illegitimate to lay a charge of rape, at least against a powerful individual, even before the case had been heard. Vetten adds:

On [the]...first day of the trial, stones were thrown at a woman wearing a headscarf similar to that of the complainant. Those at court also said they heard the woman described as a slut. Both the insult and the action evoke echoes of the stoning of women for adultery. The following week, a woman arrived with a placard bearing the complainant's name and the claim that she shamed all South African women. Not only were flyers with a photograph of the complainant, as well as her name and address made available for sale, but her picture was publicly burned, an action which led some journalists to draw parallels with the burning of witches. (Vetten, 2007, p. 439)

It discouraged a culture of debate, by foreclosing discussions which reflected negatively on Zuma or his mode of defence, or expressed sympathy for the plight of the complainant. No action of Zuma or the organisations supporting him indicated disapproval. There is a lot at stake here besides Zuma's innocence.

Pumla Dineo Gqola has depicted the constitution as 'aspirational' (Gqola, 2006, p. 1). Certainly if we accept that such an interpretation means that much (but *not* all) contained in that document still needs to be realised on a practical level and in public consciousness, the trial and surrounding events certainly did not advance that goal.

Zuma's public conduct and intolerance of rape

Without examining or questioning the court judgement for the moment, can one say that Zuma conducted himself in a manner that displayed intolerance of rape and the exertion of power by men over women? How did he bear himself as an accused and while on trial?

Zuma's demeanour was audacious. Even if he were merely accused of seducing a young woman half his age, one might have expected a more modest public display¹⁰. Instead his demeanour was aggressive and militaristic and he did nothing to stop the multiple violations of gender rights practised outside the court room.

¹⁰ Some older people with whom I have spoken believe that what happened, even if Zuma was not guilty of rape, has forever shattered a belief amongst many people that it is safe to allow their daughters to sleep over at family friends or houses of 'uncles'.

Every day after emerging from court Zuma would sing his 'favourite song' - *Umshini wam/ bring me my machine gun!* Singing about machine guns was itself at one level a manifestation of male power over women, a symbolic representation of the power of the gun- a phallic symbol and the firing of the gun being a well known representation of ejaculation¹¹. In effect the song was a re-enactment of a rape (that the court found did not take place). Reddy and Potgieter argue that this symbolism of potential violence is 'ironically lost in the cultural display of support for a man accused of rape.' (2006, p. 516).

Zuma's mode of defence was itself militaristic, a major assault on the complainant's credibility, in many respects based on her silence. There was a denial of the possibility of the complainant's version that her shock on seeing her alleged father-figure naked in front of her led her to freeze into silence. The meaning she gave to events was overridden by the interpretation that Zuma and the judge chose to give. African cultural experiences including the *sense of family* expressed by the complainant were not entertained by the court nor advanced by the prosecution.

Considering the court and defence's ridicule of the complainant's silence, we need to ask whether the meaning of silence is obvious and univocal. Jacques Depelchin has eloquently explained such silence. 'Silences are facts which have not been accorded the status of facts.....' (2005, p. 4) The silence of the raped victim does not mean that rape did not take place or, worse, that it was sought.... '(2005, p.19). These silences or repressed silences, he argues are the result of power relations. (2005, p. 21. See also Tshwaranang legal documentation centre, website). But the notion of a woman meaning 'no' even when she says 'no', is of course broadly disputed as being a ploy, within many societies. (Ehrlich and King, 1998, p. 164)

The assumption in this paper is that more than one meaning could be given to a number of elements of the case, some contested and others agreed between defence and prosecution. Consequently, we need to probe whether the court explored the possibility of multiple meanings of phenomena.

Instead of a reading of *silence that gave it a meaning that could accord with the power relations between Zuma and the complainant*, Zuma and the judge deployed well-worn stereotypes of what one expects a woman to do when she is raped. No credence was given to the sense of shock that the woman may have experienced at the idea of sex with a man of Zuma's age and the way in which they had encountered one another from her childhood, as a comrade and contemporary of her late father. Even if we are to accept the court's version that the complainant's use of the word *malume* (meaning uncle) did not accord with their actual relationship, one has to give some weight to the degree of deference that was likely to be shown to a much older person with a history of friendship and comradeship with her late father.

The judge –and his kindred spirit Zuma- assumed that a person who felt violated would necessarily have the capacity to act. It was also presumed that she could seek refuge by calling Zuma's daughter (who expressed hostility to the complainant in her

¹¹ Thus the Katyusha rockets developed by the former USSR (and later used by the Cubans against the South African Defence Force [SADF] of the apartheid regime), which propelled a succession of rockets at high speed were known as 'Stalin's organ'. See also Vetten, 2007, p.439)

court testimony¹²) and from a policeman outside –for whom most people feel some degree of ambiguity. It must not be assumed that the establishment of democracy has created an instantaneous confidence in the police, amongst black people, or that the culture of the police has been totally transformed. It is beyond the scope of this paper to provide examples that show continuities (as well as ruptures) with the past.

According to the judge, if the woman had been raped she could have ‘screamed the house down’. But if she was not expecting the type of attention bestowed on her by a naked and much older man, could she not have been paralysed by shock and fear? It does not seem to have been considered within the realm of possibility by the judge. There is a stereotypical pattern of behaviour which is attributed to those who experience rape. They are expected to do X and not to do Y. That the assumptions used by the court and defence fly in the face of decades of research into rape (See, for example, Bryson, 1999, Abbott and Wallace, 1998 cited above), was not adequately challenged by the prosecution, a prosecution that left Zuma’s appeal to and interpretation of Zulu culture completely unchallenged. (But see Gasa, 2006, for such a challenge in a newspaper article and Serumaga, 2006 on the web.).

A better- equipped prosecution would have challenged Zuma’s pronouncements on what is expected of a Zulu man when he perceives a woman as being ‘aroused’, whether he should have adopted that reading and how there are variations within Zulu culture over how a man of his age and in his position should have reacted. But the prosecution was content to leave Zuma as the exclusive repository of Zulu culture. The importance of that silence is that it did not challenge notions that are deeply antagonistic to the freedom of women to decide what they want and that this should not be left to be the exclusive interpretation of a man, in this case in a much more powerful position. (Gqola, 2006)

Models of masculinity drawn on within the ANC

At one point in Shakespeare’s *Macbeth*, when Macbeth appears to be hesitant about killing the king, Lady Macbeth asks, ‘Are you a man?’ This willingness to violate, to kill, to wound, to maim has often been conceived in history as part of the characteristics of manhood.

The notion of what is expected of a man was a continuous undercurrent in the trial and its surroundings. It has to be admitted that part of the Zuma rape saga, that is, the manifestations within and beyond the court room can be explained by some of the traditions that have influenced the formation of masculinities within the ANC. This is not to suggest that notions of masculinity within the ANC are uniform and unconditional. What formed masculinities within the ANC derived from more than one source and that qualified the extent to which one or other tendency would become a dominant influence. Also the models of manhood, exemplified by different leaders provided different images of what would be worthy conduct. (Suttner, 2005a, 2007a). Finally, and very importantly, the ANC and MK (the abbreviation used to describe the ANC’s guerrilla army uMkhonto we Sizwe, the Spear of the Nation) were not only male organisations and the emergence of women as a minority, but still in substantial

¹² The judgment reports that Zuma’s daughter Duduzile testified that she had taken a dislike to the complainant, believing that she was one of the people who would approach her father for money. (S v Zuma).

numbers was also a constraint on the development of violent masculinities. (Suttner, 2005a, 2007a)

Nevertheless, one of the traditions that inform MK and the ANC in general is a continuation of a warrior tradition of resistance. By definition that includes a readiness to deploy violence where necessary, a readiness to die but also a capacity to wound or kill. While that tradition, considered historically and universally, embraces a number of elements, one of the aspects of a warrior tradition is that booty is seized, that spoils of war are taken, and that rape sometimes occurs. Thus Keeley (1996), writing generally of a variety of precolonial societies, argues that the

capture of women was one of the spoils of victory-and occasionally one of the primary aims of warfare-for many tribal warriors. In many societies, if the men lost a fight, the women were subject to capture and forced incorporation into the captor's society....In situations where ransom or escape were not possible, the treatment of captive young women amounted to rape, whether actual violence was used against them to enforce cohabitation with their captors or was only implicit in their situation. (1996, p 86)

Likewise, Cynthia Cockburn writes of more recent times but nevertheless providing an element of what tends to arise universally in war:

[The rapes] were part of the generally understood rules of war, in which the women of the routed forces are historically seen as available to men of the winning side. They conveyed a message of humiliation from the winning to the losing men. They were a mechanism of control among men within the aggressive forces, exploiting negative aspects of masculine cultures. They aimed at destroying the enemy nations' culture by undermining family relationships. In this sense rape of women was all of a piece with the dynamiting of mosques and libraries. And finally, the rapes were expressions of a perennial contempt for women that gets uninhibited expression in a time of chaos. (Cockburn, 1998, pp. 222-3).

Many people in some parts of the Eastern Cape are clearly the offspring of such encounters. Historians speak of Khoi and San communities becoming absorbed into Xhosa-speaking peoples. (See, for example, Harinck, 1969, Peires, 1981, for example at p.19). Now it may well be that a description of such a relationship is that they were taken as wives. But the reality is that they were first taken captive so that the essence of anything that followed was one element of a power relationship premised on their coercion. The sexual and other relationships in such a condition were by definition, without consent, (as in slavery).

While the warrior tradition, embraced on a daily basis in broadcasts of The ANC's Radio Freedom invoked heroic images of Makhanda¹³ and others, these traditions spoke not only of military valour. Even in the case of Makhanda, the surrounding conflict between Ndlambe and Ngqika was articulated in relation to Ndlambe's followers not being prepared to serve a person who they regarded as a 'woman'. (See Suttner, 2005a, pp. 88-89. See also Reddy and Potgieter on depiction of Mbeki as counterposed to male heroes, 2006, p 518). Consequently there is no denying that the warrior tradition, the militaristic tradition entailed not only heroic acts but also many cases of abuse and power over women including forced marriage to a member of a more powerful group or outright rape, without such a marriage. While the latter case is named as rape, the case of marriage amounted to the same thing where it resulted from victory in war. The object here is not to foreground rape or abuse within the notion of being a warrior, but merely to indicate that it is one of the potential outcomes of the phenomenon and one of the traits that may in certain circumstances be manifested when a person acted as a warrior or as a soldier (as is the case in many parts of the world at this very moment. See e.g. Cockburn, 1998).

While Chris Hani introduced regulations to prevent power of rank overriding the innocence of young female recruits, some commanders did still use their power to access women. (See Suttner, 2005, 2007a, Mashike, 2007, p. 367.). Thus Mashike records an interview with a former MK female soldier:

When I remember my first three years in exile, I feel like crying because I had sexual intercourse with more than 20 MK commanders. I also saw this happening to other young female comrades who joined MK in the 1970s and 1980s. The female comrades were used as sex slaves, but if a young male comrade was found having an affair with a female comrade, he was punished, in some cases killed. The killing would be justified by arguing that the comrade was an enemy agent. All these affect me now because every time I see those young girls who work in offices they bring back bad memories. I always think that they found their jobs by exposing themselves to sexual abuse by those in authority. (Mashike, 2007, p.367)

The experiences were therefore both affirming of women's rights, as recorded in some women's recollections of their experiences and the interventions of leaders like Hani, but also abusive. The power element tends to relate to hierarchy. There is no possibility of assessing this quantitatively. But it is only necessary for present purposes to record that being a soldier and inheriting a warrior tradition is to inherit a legacy that allows for both noble deeds and also the *potentiality* of sexual abuse. They are both part of the warrior tradition, in South Africa and worldwide.

¹³ Makhanda, a warrior-prophet, is a heroic figure in liberation history having led an attack on the British garrison in Grahamstown, which almost succeeded in 1819. He was later being banished to Robben Island, from where he attempted an escape, but drowned in the sea.

Radio Freedom was the illegal radio station of the ANC broadcast from various independent African states, listened to within South Africa at 7 p.m. by many supporters.

This tradition is part of wider notions of power and hierarchy and corresponding deference to which the more powerful were entitled¹⁴. This is one way of reading the overriding of silence by an interpretation of what is expected of a 'Zulu man' in relation to a woman who he claims to see as being 'aroused'.

The militaristic model of manhood continues to have considerable resonance because, as indicated many cadres felt a sense of betrayal when the ANC embarked on negotiations. It was a sense that a mission could not be completed. Given that this trial took place some 16 or more years after negotiations had started, militarism was both anachronistic and even more likely to embrace both the heroic and the warped versions of what is entailed in being a soldier or a warrior, traditions which counterbalance one another within the ANC's legacies. In fact, many of Zuma's supporters outside the court room, who reacted so enthusiastically to militaristic symbolism, may themselves have been nowhere near the battlefield nor have had any role in the liberation struggle. This is not surprising in that it may well be that the more disciplined, well-trained soldiers are less likely to be swept up by such emotions in situations of high mobilisation.

Modes of solidarity with complainant/expressions of outrage

Many observers with a feminist inclination were shocked at the conduct of the trial. (See Gasa, 2006, Gqola, 2006, Vetten, 2007, Ludwig, 2006, Serumaga, 2006, Ndashe, 2006, Naylor, 2006). That it was a court case set limits on what could be said and done, given the *sub judice* and other rules (although many appear to have ignored these in media contributions). Even beyond that, a court case has to make findings within a limited parameter, called the 'facts in issue.' There is no place in a court case to fully explore violations within violations, for example, how the defence acquired an unpublished manuscript of the complainant, detailing childhood abuse, who the women were who intervened on Zuma's behalf prior to the trial to try to have charges dropped and precisely how they were connected with him, and similar matters.

Given that it was a case where a person claimed to have been raped it also required great sensitivity and actions that did nothing to increase her sense of disempowerment or violation, a belief that was compounded by the military type offensive launched by the defence and the type of evidence that was led. (Gasa, 2006)

Three organisations concerned with abuse of women sought to enter the trial as *amici curiae*-friends of the court, in order to highlight some of the problems raised by a criminal law that disadvantaged the complainant. At one level and considered abstractly, the motivation for such action was clearly in the interest of preventing gender violence through highlighting the impact of archaic elements of the law. The organisations, through their intervention, were aiming to remedy certain deficiencies, which they correctly identified in the mode of prosecution and its failure to rebut the basis of Zuma's defence. One cannot object to that. In fact, if it had been possible to strengthen the prosecution, to provide it with the type of skills and understandings that

¹⁴ Events surrounding the current trial of the Israeli president for rape and other forms of sexual abuse suggest a sense of entitlement amongst senior military men and others.

were needed, a different judgment may have been hard to resist, or at least the picture before the court would have been more complex than that which was presented.

By seeking to enter a legal contest, which is uneven, by trying to present expertise of a kind that was not being heard, a public service, a contribution to democracy and against gender violence would be performed. The principles that motivated the three organisations cannot be questioned. In fact they were praiseworthy and held exciting possibilities. But the organisations were not entering the Constitutional Court where there was no affected individual present or person who would see herself potentially or actually prejudiced by their actions. There was an individual who already testified to a violation of her rights, to actions taken without her consent. The praiseworthy contribution towards protecting *rape survivors in general*, had to interact with the wishes of the *person who was immediately affected by the way such cases and this case in particular was conducted*. And the complainant made it clear that *she did not want this intervention and the organisations concerned were well aware of this*. Liesl Gertholtz, Director of Tshwaranang Legal Advocacy Centre, in her founding Affidavit admits:

I have attempted to contact the complainant by sms in order to ascertain her position regarding this application. It appears (from information conveyed to me via an intermediary) that she does not support this application, despite her having previously personally conveyed her support of the application to me. (Paragraph 23, Founding Affidavit, reprinted on Tshwaranang website)

Gertholtz says no more on this failure of the complainant to agree. There is no indication that it was necessary to be swayed by the opposition of the complainant or to even explain why that should be brushed aside. The organisations went ahead on the basis that there was a larger picture that should not have been lost. Given that they were acting in a case of a person who claimed that she had been forced to have sex against her will, one might have thought it necessary to give more thought to her wishes, her desire not to have her own feelings overridden, albeit for an important cause. It is possible to see, in practice, a perpetuation of a similar principle of overriding what this individual wanted for what were in an abstract sense, praiseworthy intentions. These intentions had to be implemented against the will of the person most affected at that point in time. Should one not ask whether the organisations concerned could not have respected the wishes of the human being who complained of being violated and raised their completely valid arguments on another occasion? Then the complainant would not have been undermined and overridden again (or allegedly so if one accepts the verdict in the Zuma case judgment), thus further disempowering her as a human being.

The intervention is reviewed some time later, but is still seen purely as one where activists questioned the law applicable and challenged the idea of objective justice. (Vetten Interview, 2006, on Tshwaranang legal action centre, website.). One may ask whether the individual complainant and her wishes were of no concern, and whether ignoring these does not constitute a violation. The intervention appears to require some introspection and some consideration of the conflicting choices which they decided to ignore and the person whose wishes they erased. It needs to be asked

whether concern for an overriding principle can be expressed while ignoring a concrete individual meant to be protected. Clearly that has consciously been ignored as a factor necessary to consider.

Certainly the three organisations possessed expertise which would have been valuable to air in the court, but overriding the complainant leaves the impression that her understanding/feelings were considered of limited value. She appears to have been considered ignorant of the wider picture and consequently her opinions were in the final analysis not decisive. This appears to be the meaning that must be given to their not reflecting on what it meant to override what the complainant wanted.

It is important that our valid concerns for a problem in general do not lead to action that may be experienced by the person who has undergone battering as a further violation. Insensitivity to this is another form of erasure, silencing the voice of an individual for whose interests the intervention is said to be sparked. It is another form of unequal power, in this case the supposed expertise ignoring the understandings of the survivor whose reasons for opposition are not known and need, even though the reasons are not known to us- to be an important element in deciding whether or not and what type of action to take.

Zuma trial-setback for gender equality and democratic debate

From what has been described it can be seen that the rape trial of Jacob Zuma represented a setback for gender equality. It became very clear that whatever may be in the constitution does not necessarily reside within the consciousness of very many members of the ANC/SACP and COSATU or others who came out in support of Zuma. It was their right to support Zuma, but the modes of expression of support, often undermined the rights of rape complainants' and reversed the roles of complainant and accused in the sense that it was the complainant that appeared to be on trial and the personal demeanour and other behavioural patterns of the complainant but not the accused were put under the spotlight. The argument is not for unnecessary scrutiny of the accused, beyond what is required for purposes of the case. But the way in which the complainant was scrutinised and characterised in and outside court, including within the media, created an image of a person who was unstable, who acted in a manner that signalled a willingness to have sex and therefore 'asked for it'.

What happened in the Zuma case is replicated in experiences of rape trials throughout the world, but there was an additional power dimension, in that Zuma has held positions of power and still does and has a distinguished record in the liberation struggle. He was consequently able to mobilise support in a way that an ordinary citizen could not have done and certainly was not within the powers of the complainant, who in any case was known as 'Khwezi' and could not rally support in her own name. It is uncomfortable to speculate whether or not the power that Zuma commanded could have influenced the way in which the meanings of the trial have been read and whether an impression is not created by much of the media coverage that such a person can only be charged with such a crime through ill will. (See Reddy and Potgieter, 2006).

The trial also represented a setback for democratic debate. Many of the divisions and struggles over elections in the ANC have surrounded support or otherwise for Zuma.

Attempts to question uncritical public support which implicitly condoned his conduct in the rape trial, have led to shutting down rather than engagement in debate. That this happens within or emanated from the SACP or COSATU or sections of the ANC is not purely of concern to those organisations because they represent the dominant forces in the consolidation of democracy at this point of time.

It is best that we treat this trial as a warning against complacency, though the expulsion from the organisation of Mbulelo Goniwe as Chief Whip of the ANC in parliament for sexual harassment is a possible sign of the determination of many ANC cadres to safeguard women against gender oppression.

Finally, it is important to reiterate that, while indicating that a right of access to women's bodies is part of a warrior tradition shared by ANC soldiers, this is in no sense an element of that tradition that is acted on by all who have been liberation soldiers. It is merely mentioned to explain part of the reasons for explaining how such a predisposition may be rooted within the experiences of the past and acted on by some.

At another level some of the events that unfolded in the court and afterwards dented the credibility, nationally and internationally of South Africa's democracy. Zuma's claim that he took a shower to prevent contracting HIV/Aids after having unprotected sex with a HIV positive woman, evoked ridicule and widened the circle of individuals whose utterances lend themselves to scepticism about South African political sophistication and the stabilisation of its democratic gains.

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