

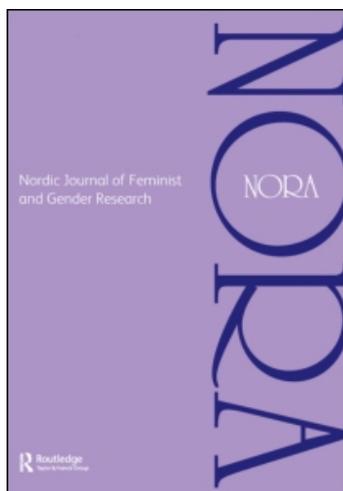
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The Jacob Zuma Rape Trial: Power and African National Congress (ANC) Masculinities

Raymond Suttner ^a

^a University of South Africa, Pretoria, South Africa

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ESSAY

The Jacob Zuma Rape Trial: Power and African National Congress (ANC) Masculinities

RAYMOND SUTTNER

University of South Africa, Pretoria, South Africa

Introduction

My personal and political interest in writing this article relates to the impact that the rape trial of Jacob Zuma and surrounding events has had on the entrenchment of values of democracy and gender equality in South Africa. For many, the transition of South Africa to democracy has evoked hope, and its constitution has been seen as an important contribution to gender equality. These are now under threat. The Zuma rape trial in 2006, where Jacob Zuma, the current President of South Africa since April 2009, but at the time Deputy President, was accused of rape of a young woman in his family home, and eventually acquitted, must be understood as a trial for sexual assault but also as part of a larger context of political turmoil concerning the leadership of the African National Congress (ANC) and ultimately the country.

It is important to locate some of the issues surrounding the trial and the public drama created by it within the overall and changing political context of the ANC as organization 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 government of a state. This process has led to certain disjunctures in the respective understandings/expectations of leadership and sections of the membership/following. There had been a series of manifestations of resistance against the leadership of State and former ANC President Thabo Mbeki, who was defeated by Zuma in ANC elections in late 2007. This was depicted as a reaction to what many saw as a tendency toward centralization within the ANC, which was connected to reducing the importance of the organization and

Correspondence Address: Raymond Suttner, Walter and Albertina Sisulu Knowledge & Heritage Unit, University of South Africa, PO Box 2224 Bedfordview, Johannesburg, South Africa.
Email: suttners@unisa.ac.za, rsuttner@worldonline.co.za

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participation of its members (Suttner 2009). Zuma himself, as the new ANC leader, also encountered resistance leading to the formation of a new opposition party, Congress of the People (COPE), drawn from participants in the liberation struggle. Their initial leadership mainly comprises Mbeki loyalists. COPE fared badly in the April 2009 elections, securing less than 8% of the vote.

The first factor sparking a degree of rebellion was the dismissal of Zuma as Deputy President of the country after he had been implicated in business person Shabir Shaik's corruption trial in 2005. Closely following was the rejection by delegates of leadership-initiated changes in the ANC at the 2005 National General Council (NGC) of what was interpreted as a reduction of the role of the mass membership. This attempted diminution of the already limited popular role coincided with and was conflated with a perception that Zuma was the victim of a conspiracy to deny him the ANC and State presidency. The perceived (though in reality often uneven process of) down-grading of the role of the ANC mass membership fed into a belief that Zuma was a victim of a centrally dictated conspiracy. Words like over-centralized and "dictatorial" were also in regular use to describe Mbeki's presidency.

There was also a lingering bitterness amongst sections of the ANC support base that 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 2009). 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 add fuel to these claims. The rape trial, thus, is part of a larger saga, including the withdrawal of charges of corruption against Zuma (amidst much controversy) and his installation as President of the country, on May 9, 2009. While events are mainly about politics and power, questions of masculinity, gender, and sexuality are central to the representation of the Zuma phenomenon as a political force.

Rape and Power

The phenomenon of rape is the exercise of power against the will of another, 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 meet a lack of consent. Unwillingness to undergo 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 verbalization.

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, in so far as an under-reported number 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 Abbott & Wallace 1997: 243). At the same time, how 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 Motsei 2007). 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).

Positionality: Author not an “Innocent Bystander”

I do not enter this discussion as an innocent bystander who knows nothing apart from what has been in the public domain but as a former ANC cadre who has known Jacob 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 heard that Zuma had come from the rural areas and that he had been illiterate, only learning to read on Robben Island during imprisonment. I saw in him a future leader of the type that I believed only the ANC or possibly the South African Communist Party (SACP), as evidenced in its night schools, could develop.

In the 1990s I saw Zuma at close quarters, and that romanticism evaporated and turned into scepticism. I still found him easy to relate to, compared with the much publicized 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 since—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, empathizing 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 his private life.

Over time my 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) leadership complicity—as a people’s leader, implying sympathy for socialism. I knew that such imagery contradicted his own record in government. Additionally, in 1990 he abandoned the SACP. Consequently, as I watched this “double-speak”, my level of sympathy evaporated and disappeared in the lead-up to the late April 2009 elections where Zuma and his acolytes incited closure of debate, embracing war talk and a religious aura around voting ANC and the person of Zuma (see Suttner 2009).

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 (or access to such experience through interviews) is more likely to provide an understanding of organizational dynamics than ignorance of these, or knowledge derived purely from the outside. My own personal and political background has shaped my judgement and my understanding of the way in which people handle access or loss of power.

The Political Context of the Zuma Trial

While rape per se, or whether or not there was a rape, cannot be assessed or explained by the political context, this 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: that Zuma was the victim of a conspiracy hatched by President Thabo Mbeki. The taped conversations between former prosecuting authorities, which later formed the reason for dropping corruption charges, appear to refer, in parts, to Mbeki. But there remains no conclusive proof of his involvement in the rape trial. Mbeki may have thought that Zuma should have understood that his political ambitions should not have extended to becoming 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.

In so far as Zuma did in fact cherish 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 to disqualify him as a presidential candidate.

It is important to consider 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 nor to dispute the theory. 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. The power of a conspiracy theory goes beyond the immediate issue of rape and touches upon and raises questions about the modes of deployment of state resources and institutions.

A range of factors and events fed into an atmosphere of inter-factional struggle which was in the background of the Zuma rape trial. Whatever the validity of the various positions, including the extensive intelligence resources that Zuma was able to command, these became part of the range of understandings of the trial. Moving from the conspiracy theory, Zuma was able to mobilize support, claiming that he had been unjustly treated, fuelled by the mode of governance which was depicted as typifying the Mbeki presidency. In particular, there was resentment of the treatment of COSATU and SACP leaders as "small boys" and the practice of patronage. In the recent election, Zuma was at pains to present himself as a "man of the people", in contrast to Mbeki.

"Zulu Chauvinism"

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. One cannot treat the version of Zulu culture that was depicted by Zuma as being Zulu

culture per se, as various interpretations of that culture are and were available. Zuma may always have been much closer to conservative cultural roots than Mbeki and many others in the leadership. But this element was now 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 distantiate—on the part of Zuma himself. Over the period as a whole, including the post-acquittal phase, the rhetoric of a certain version of "Zulu culture" came to embody elements most antagonistic to the constitutional protection of gender equality.

In a public statement after his corruption charges were initially rejected on technical grounds, Zuma made homophobic statements, saying that when he was a young man gays would not be able to "stand in front of him". Despite later apologizing, he fed into resentments of elements of the constitution which have brought unprecedented rights to men who do not fit his essentialist image of Zulu manhood.

This resort to a singular notion of "Zulu culture" was also a re-embodiment of warrior traditions, merging with ANC militaristic traditions. The emphasis on "Zulu culture" in general was also 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. 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 politicians who have mobilized or seen their support emerge on that basis, he has done nothing to discourage it. In so far as much of this is from the most conservative section of the Zulu-speaking part of the population, it also reinforces a resistance to gender equality.

The trial was consequently played out within a wider context consisting of political intrigue, or perceived intrigue, 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 cultural questions, where there is not a single, authoritative view, despite the more conservative elements claiming that their understanding represents the only one).

The trial thus became a major site of focus on Zulu culture and masculinity. A key argument in the trial was that there are expectations in Zulu culture that demand a man to fulfil the desires of a woman if a man interprets her being "aroused", as Zuma claimed to have read the behaviour (or dress) of the complainant. The way things are done in a certain "culture", however, entails many interpretations within cultural groups. These range over questions of gender but go far beyond that and defy any attempt at presenting any specific community as culturally homogeneous.

Beyond Court Proceedings

The court-room was only one arena within which the drama was played out. The court echoed some of the idioms circulating in the crowds assembled outside, in

public debate, and other places of discussion and demonstration. The significance of these multiple arenas for locating the allegation of rape was a series of manifestations which contradicted the spirit of gender equality, found in the constitution and previously advanced by the ANC and its allies. The mode of defence mounted by Zuma, his actions publicly outside and inside the court-room, 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 with an understanding of the diversity within cultures and the range of potential meanings could have made a difference, not necessarily 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 *State versus Zuma* 151–152).

Some scholars suggest that the extent of gender violence is highest in countries where the status of women is lowest (Kimmel 2004: 111). At a constitutional and legal level, the status of women in South Africa appears 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 organizational condonation by the ANC and its allies, and the mode of conducting the defence indicate a low regard for the status and understandings of the woman complainant alleging sexual assault (cf. *Amici curiae* documentation found on Tshwaranang Legal Advocacy Centre 2006; Gasa 2006; Motsei 2007).

The manifestations outside the court-room, with the use of gender stereotypes, on the one hand, and the expectations of what victims of rape are expected to do in a court-room, on the other, together created a climate that signals that abuse of women should be tolerated (see e.g. *State versus Zuma* 157, 158, 159, 160, 161, 173; see also discussion in Motsei 2007). Thus the judgement states that:

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*.

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. (160–1, emphasis added)

Lisa Vetten underlines the implications that such reasoning has for a rape complainant in the court-room:

From the judgement it is clear that in deciding whether or not Khwezi [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*. (Vetten 2007a: 439, emphasis added)

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.

The 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: 141; Motsei 2007). It is difficult in such cases for the complainant to have her voice heard (Bryson 1999: 79; see also Abbott & Wallace 1997: 245, 246, 250–252). The judge had allowed evidence to be led on the complainant's “sexual history”. Apart from the problems with such evidence in general, in reality most of this evidence related to “Khwezi” suffering childhood abuse. Thus the pleasurable activity of sex was implicitly equated with various forms of coercion or attempts to have sex with a minor.

Beyond the judicial/defence attack on the complainant, it is public knowledge that she was threatened, assault was attempted, and her name and address were held on a placard in the area outside the court. This was a clear incitement to attack her. Similar calls were made against those who had come out in her support. 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 2007a: 439; see also Motsei 2007).

By foreclosing discussions that would reflect negatively on Zuma or his mode of defence, or express sympathy for the plight of the complainant, a culture of debate was discouraged. No action of Zuma or the organizations supporting him indicated disapproval. There is a lot at stake here besides Zuma's innocence in terms of realizing rights at a practical level and in public consciousness (Gqola 2007: 112).

Zuma's Public Conduct during the Trial

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

other exertions 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 display. 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 that it is safe to allow their daughters to sleep over at family friends' or houses of "uncles" (see also Motsei 2007: 71). Instead of humility, his demeanour was aggressive and militaristic, and he did nothing to stop the multiple violations of gender rights practised outside the court-room.

On most days 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. The firing of the gun is a well known representation of ejaculation (see also Vetten 2007a: 439). For example, the Katyusha rockets developed by the former USSR and later used by the Cubans against the South African Defence Force of the apartheid regime were known as "Stalin's organ". In effect the song was a re-enactment of a rape (that the court found did not take place). The word *umshini* is widely used as a euphemism for penis in certain villages and townships. The motions of the dance also mimicked sexual intercourse.

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 (see Motsei 2007).

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 that "[s]ilences are facts which have not been accorded the status of facts . . ." (Depelchin 2005: 4). "The silence of the raped victim does not mean that rape did not take place or, worse, that it was sought" (2005: 19). These silences or repressed silences, he argues, are the result of power relations (2005: 21). 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 upon 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. Whatever else is said, this was undoubtedly a relationship of unequal power.

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 court testimony) and 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. There are 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 was not adequately challenged by the prosecution, a prosecution that left Zuma's appeal to and interpretation of Zulu culture completely unchallenged.

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 2007).

Models of Masculinity Drawn on within the ANC

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 another tendency would become dominant. Also the models of manhood, exemplified by different leaders, provided different images of what would be worthy conduct. Finally, and very importantly, the ANC and MK (the abbreviation used to describe the ANC's guerrilla army *mKhonto we Sizwe*, the Spear of the Nation) were not only male organizations. The emergence of women as a minority, but still in substantial numbers, was also a constraint on the development of violent masculinities (Suttner 2008: 104–132).

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, and a capacity to wound or kill. The heroic readiness to die is captured in notes made by Nelson Mandela, in preparing for the death penalty to be imposed in the Rivonia trial, where he stated that he should be known to have died like “a man” (Sampson 1999: 196). While that tradition, when considered historically and universally, embraces a number of elements, one of the aspects of a warrior tradition is that booty is seized, spoils of war are taken, and rape sometimes occurs. Keeley, writing generally of a variety of pre-colonial societies, argues that:

... capture of women was one of the spoils of victory—and occasionally one of the primary aims of warfare—for many tribal warriors [...] 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. (Keeley 1996: 86)

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 e.g. Harinck 1969; Peires 1981: 19). Now it may well be that a description of such a relationship is that they were “absorbed” as wives. But as they were first taken captive the essence of anything that followed was one element of a power relationship premised on coercion. The sexual and other relationships in such a condition were by definition without consent, as in slavery. Motsei shows how the Bible, a major influence on many South Africans, indicates approval of taking of women as booty (Motsei 2007: 104 ff.). Mazrui argues of pre-colonial Somali society that by definition almost any weapon of war became a phallic symbol, as there was an intimate association between combat and sexual conquest. War dances acquired both sexual and martial suggestiveness (Mazrui 1977: 74).

While the warrior tradition, embraced on a daily basis in broadcasts of the ANC’s Radio Freedom before 1990, invoked among others heroic images of Makhanda, a famous warrior/prophet who led an attack on the Grahamstown garrison in 1819, these traditions spoke not only of military valour. In the case of Makhanda, the conflict against Ngqika who collaborated with the British was also articulated in relation to his lack of manliness, an unwillingness of the Rarabe councillors (a segment of the Xhosa-speaking people, loyal to Ndlambe formally regent prior to Ngqika assuming the chieftaincy) to serve a person regarded as a “woman” (see Suttner 2008: 117–118; see also Waetjen 2004: 23–24, 26, 103–104).

Consequently there is no denying that the warrior 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 and outright rape without such a marriage. While the latter case is named as rape, the case of marriage amounted to the same when it resulted from a 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.

While ANC military and SACP martyr Chris Hani introduced regulations to prevent power of rank over young female recruits, some commanders did still use their power to access women (Mashike 2007: 367; Suttner 2008: 84–147). 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” (Mashike 2007: 367; see also Motsei 2007).

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 (Suttner 2008: 126–132). 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.

This tradition is part of wider notions of power and hierarchy and corresponding deference which the more powerful tend to see as part of their entitlement. 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. 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 warped versions of what being a soldier or a warrior entailed, 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 battle-field nor have had any role in the liberation struggle. This has developed into a wider threat with the Zuma leadership representing violent masculinities, engaging in war talk and threats. This comes mainly from the youth, but is condoned by the leadership.

Robins (2008), also indicates a depiction of Zuma as representing a specific model of masculinity opposed to that of Mbeki. What we have is the counterposition of the militaristic tradition and Mbeki, who may be seen as representing an ANC intellectual tradition, those who devote themselves to strategic analysis, a model also primarily seen as represented by men.

Modes of Solidarity, Expressions of Outrage

Many observers with a feminist inclination were shocked at the conduct of the trial (e.g. Gasa 2006; Gqola 2007; Motsei 2007; Vetten 2007a). That it was a court case, however, set limits to what could be said and done. 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.

Given that it was a case where a person claimed to have been raped it also required great sensitivity so that her sense of disempowerment or violation would not increase, something that was not acknowledged by the military-type offensive launched by the defence and the type of evidence that was led (Gasa 2006).

Three organizations 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, 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 organizations, through their intervention, were aiming to remedy certain deficiencies, which they correctly identified in the mode of prosecution and its failure to rebut 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 were needed, a different judgement may have been possible, 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 in a case that is so uneven by trying to present expertise of a kind that otherwise was not being heard, a public service, a contribution to democracy and against gender violence was to be performed. The principles that motivated the three organizations cannot be questioned. In fact they were praiseworthy and held exciting possibilities. But the organizations were not entering the Constitutional Court where there was no affected individual present. In this case there was an individual who already testified to a violation of her rights, to actions taken without her consent. The praiseworthy contribution by the organizations 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. Of crucial importance here is that the complainant made it clear that she did not want this intervention. The organizations concerned were well aware of this (Gertholtz, Director of Tshwaranang Legal Advocacy Centre, Paragraph 23, Founding Affidavit, Tshwaranang Legal Advocacy Centre 2006).

Yet, the organizations 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, albeit for an important cause. It is possible to see here a perpetuation of a similar principle of overruling 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, who, if the *amici curiae* had succeeded, would have had to face the ordeal of cross-examination yet again. Should one not ask whether the organizations 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 judgement).

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 2007b). Even if demonstrating lack of "objective justice" would have been revelatory, were the wishes of the individual complainant of no concern? Was it not

a violation to ignore these? The intervention appears to require some introspection and some consideration of the conflicting choices which they decided to ignore and the person whose expressed needs they erased.

Certainly the three organizations possessed expertise which would have been valuable to air in the court, but ignoring the wishes of 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 and feelings were in the final analysis not decisive and could be overridden.

This insensitivity is another form of erasure. It is another form of unequal power, in this case the supposed expertise (knowledge/power) possessed mainly by white professionals ignoring the understandings of the survivor (in this case an African) whose reasons for opposition are not known and need, even though these are not known to us, to be an important element in deciding whether or not and what type of action to take.

The Zuma Trial: A Set-Back for Gender Equality and Democratic Debate

From what has been described it can be seen that the rape trial of Jacob Zuma represented a set-back 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 him, but the modes deployed often undermined the rights of rape complainants and reversed the roles of complainant and accused. The way in which the complainant was scrutinized and characterized 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”. While not accepting the alleged mental instability of the complainant, Motsei asks when Zuma knew this, and, if he knew, why he then had “consensual sex” (Motsei 2007: 149).

What happened in the Zuma case is replicated in experiences of rape trials throughout the world, but there was an additional power dimension as Zuma has held positions of power, still does, and had a distinguished record in the liberation struggle. In a sense, whatever aberrations there may be in his conduct, he still falls within the category of those who undertook a “heroic masculine project” and were consequently widely admired. It should be noted that the zone of heroism is usually one of seclusion, isolation, and danger, often open to both virtuous and abusive conduct (Suttner 2008: 116 ff.). He was consequently able to mobilize support in a way that an ordinary citizen could not have done and which 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; but, more importantly, the way the trial played out and the defence was conducted clearly represented a set-back for democratic debate.

Many of the divisions and struggles in the ANC have surrounded support for Zuma and the removal of Mbeki. 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 ANC and its allies is not purely of concern to those organizations because they represent the dominant forces in the consolidation of democracy at this point of time. The trial needs to be treated as a warning against complacency. This appears even more necessary in the intimidatory climate that characterized the campaign leading to Zuma's election as ANC and State President. Of great significance is that the question of gender and gender violence were hardly mentioned in campaigns, despite their continued salience.

This is part of a wider reason for concern that the crisis within the ANC may become a systemic crisis. If constitutional rights to free speech, free organization, protection against gender abuse, and advocacy against violence are challenged, the constitutional rights of the people of South Africa are seriously undermined.

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Raymond Suttner is Research Professor and Head of the Walter and Albertina Sisulu Knowledge and Heritage Unit at the University of South Africa. He holds an interdisciplinary doctorate in sociology, history and politics from the University of the Witwatersrand (Johannesburg, South Africa). His most recent publications are (2008) *The ANC Underground* (Jacana, Johannesburg & Nordic Africa Institute: Uppsala) and (2009) “Periodisation, Cultural Construction and Representation of ANC Masculinities through Dress, Gesture and Indian Nationalist Influence”, *Historia*, 54(1), pp. 51–91. Suttner was an underground operative for the ANC and served 10 years’ imprisonment. He was a political leader but is currently uninvolved. He has been commissioned to write a work on the Zuma era.