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LEARNING TO LOVE AFTER LEARNING TO HARM: POST-CONFLICT RECONSTRUCTION, GENDER EQUALITY AND CULTURAL VALUES

Penelope Andrews*

INTRODUCTION

The ANC seeks to deprive Zulu men of their manhood by taking away their cultural weapons.¹

A few months ago, South Africans were captured by a high profile criminal trial, one that involved an allegation of rape against South Africa's former Deputy-President, Jacob Zuma, who had been dismissed by President Thabo Mbeki in the wake of a corruption scandal just a few months prior to the rape allegation.² The charge of rape surfaced after a young woman, whose parents were close friends of Mr. Zuma, and whom she regarded as an uncle, visited his house as an overnight guest. She alleged that during this visit, he had sex with her against her will.³

The trial, which lasted about two months, polarized South Africans in very discomfoting ways.⁴ The fault lines were predictable at one level, but on another they were rather surprising. The predictability related to issues around ideology and in particular ethnicity, that is, Mr.

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1. Catherine Campbell, *Learning to Kill? Masculinity, the Family and Violence in Natal*, 18 J. S. AFR. STUD. (SPECIAL ISSUE) 614 (1992) (quoting King Goodwill Zwelithini, *Weekly Mail*, May 31, 1991).

2. The corruption scandal led to a charge of corruption against Mr. Zuma, and that trial will commence in South Africa later in 2006. See Jamie Jansen, *South Africa Judge Postpones Zuma Corruption Trial Until September*, JURIST, July 31, 2006, <http://jurist.law.pitt.edu/paperchase/2006/07/south-africa-judge-postpones-zuma.php>.

3. See *SA Court hears of "Rape" by Zuma*, BBC NEWS, <http://news.bbc.co.uk/2/hi/africa/4777616.stm>; see also Michael Wines, *A Highly Charged Rape Trial Shakes South Africa's Ideals*, N.Y. TIMES, Apr. 10, 2006, at A3.

4. Anna Koblanck, *South Africa Rape Trial Dashes Hope for Change*, WOMEN'S E-NEWS, Mar. 24, 2006, <http://www.womensenews.org/article.cfm/dyn/aid/2681/context/archive>.

Zuma, being a prominent Zulu politician, was supported overwhelmingly by Zulu people.⁵ But Mr. Zuma's support extended beyond ethnic allegiances. His ideological support came from those who broadly represented the more progressive elements in South African society, namely, the official trade union federation and the Communist Party.⁶ What was somewhat surprising was the support from women, again overwhelmingly Zulu women, but not entirely so.⁷ When the not-guilty verdict was pronounced, after intense speculation in the media, there were scenes of joy outside the Johannesburg High Court.⁸ I was in Johannesburg on that Monday in May, 2006 when the verdict was announced, and like my fellow South Africans, I too was struck by the responses outside of the courthouse. Thousands of Zuma supporters had gathered outside the courthouse in anticipation of the verdict, and their joy at his acquittal was reminiscent of the joy (on the part of some individuals and groups) that accompanied the acquittal of a famous American some years back.⁹ Newspaper reports indicated that there were about two thousand supporters of the Deputy-President gathered outside the court.¹⁰

During the opening phases of the trial, it was reported that some Zuma supporters attempted to stone a woman whom they thought to be the complainant, when she arrived at the courthouse.¹¹ They shouted all kinds of slurs at the young woman, suggesting that she was morally deficient. Their contempt for the complainant seemed to flow partly

5. *See Carnival Atmosphere at Zuma Rape Trial*, MAIL & GUARDIAN ONLINE, Feb. 13, 2006, http://www.mg.co.za/articlePage.aspx?articleid=264020&area=/zuma_report/zuma_news/.

6. *See Vicky Robinson et al., 23 Days that Shook Our World*, MAIL & GUARDIAN ONLINE, Apr. 28, 2006, http://www.mg.co.za/articlePage.aspx?articleid=270344&area=/zuma_report/zuma_insight/.

7. Mphutlane Wa Bofelo, *Zuma Trial – Opinion: 100% Zulu Boy, 100% Patriarchal, 100% Tribalist*, AGENDA, Mar. 3, 2006, http://www.agenda.org.za/index.php?option=com_content&task=view&id=1186&Itemid=147.

8. *Crowds Stand by Zuma in Rape Case*, BBC NEWS, Aug. 29, 2006, <http://news.bbc.co.uk/2/hi/africa/4708960.stm>. One man in the crowd compared Jacob Zuma to Bill Clinton: "Both presidents, who were accused by a woman." *Id.*

9. Referring to the O.J. Simpson trial.

10. *Rape: Ex-S'African Deputy President Escapes Jail*, DAILY SUN, May 9, 2006, <http://www.sunnewsonline.com/webpages/news/national/2006/may/09/national-9-05-2006-009.htm>.

11. *Victim of Alleged Rape by Zuma Flees to Denmark*, INKYGOBLIN, Feb. 14, 2006, <http://www.inkygoblin.org/index.php/archives/date/2006/02/>.

from her role as an HIV activist in the country, and one who disclosed her HIV-positive status.¹² Zuma supporters suggested that because she is HIV positive, she probably is a prostitute, and that her complaint was false.¹³

But this boisterous support for Mr. Zuma outside the courthouse also led to disappointment and dismay, although such reaction, more muted, came from a much smaller group of people, mostly women. They belonged to a group called "People Opposed to Women Abuse" (POWA), and they, of course, came to court in support of the complainant.¹⁴ For them the rape trial and its responses provided the occasion to highlight the devastating incidence and consequences of rape in South Africa.¹⁵

For the South African public, watching these events unfold were quite painful. The pain came not from the trial and acquittal, but from the polarization that such an issue, namely an act of sexual violence against a female, has generated. Violence against women is one of the central challenges that the post-apartheid democratic South African society faces, and it is an issue of great concern to activists and scholars.¹⁶ Despite one of the most admired constitutions in the world,¹⁷ containing a most expansive bills of rights,¹⁸ in addition to a legislature and judiciary formally committed to gender equality and the eradication of violence against women, the response to the Zuma rape trial raised some troubling questions. The trial brought the issue of violence

12. *Id.* See also Editorial, *Zuma Turmoil Twists Reality*, SUNDAY TIMES, Feb. 19, 2006, [http://www.sundaytimes.co.za/articles/article-special report.aspx?ID=ST6A171147](http://www.sundaytimes.co.za/articles/article-special%20report.aspx?ID=ST6A171147).

13. These sentiments are set against a backdrop of extreme prejudice against HIV positive individuals in South Africa. Such prejudice is very distressing in a country where the incidence of the HIV/AIDS is so high. For the deleterious consequences of the prejudice and fear of HIV/AIDS, see Tina Rosenberg, *When A Pill is Not Enough*, N.Y. TIMES MAG., Aug. 6, 2006, at 40.

14. Abraham McLaughlin, *Key Trial Forces South Africa to Confront Rape*, CHRISTIAN SCI. MONITOR, Mar. 24, 2006, available at <http://www.csmonitor.com/2006/0324/p01s04-woaf.html>.

15. *Id.*

16. See Penelope E. Andrews, *Violence Against Women in South Africa: The Role of Culture and the Limitations of the Law*, 8 TEMP. POL. & CIV. RTS. L. REV. 425 (1999); see also Christelle Terreblanche, *Women the Losers in Zuma Rape Case*, INDEPENDENT ONLINE, <http://jurist.law.pitt.edu/paperchase/2006/07/south-africa-judge-postpones-zuma.php>.

17. See S. AFR. CONST. 1996 [hereinafter THE CONSTITUTION]; see also Karl Klare, *Legal Culture and Transformative Constitutionalism*, 14 S. AFR. J. ON HUM. RTS. 146 (1998).

18. See THE CONSTITUTION, *supra* note 17, The Bill of Rights, ch. 2.

against women, and particularly the horrendous incidence of rape, out into the open.¹⁹ The trial centered another issue of enormous concern to South Africans, namely, the spread of the HIV virus. Mr. Zuma's admission, that after he had unprotected sex with the complainant, he had a shower to protect himself against being infected, was a spectacular testimony to the cavalier manner with which the spread of the virus has been treated by some prominent politicians.²⁰ These twin concerns of South Africans, violence against women, and the HIV/AIDS epidemic, were exposed to public evaluation and scrutiny by the trial, and for the most part allowed a national debate to occur.

But another issue surfaced during the trial, namely, how gender relations, particularly sexual relations, are mediated through cultural norms. Mr. Zuma had raised a cultural defense to claim that the sex engaged in between him and the complainant was not coerced, but consensual.²¹ He alleged that his response, namely initiating and engaging in sexual intercourse with the complainant was demanded by his status as a Zulu male, and that it would be regarded as culturally inappropriate not to satisfy a sexually aroused woman.²² In Mr. Zuma's testimony he stated that "in the Zulu culture, you cannot just leave a woman if she is ready" and that "to deny her sex, would have been tantamount to rape".²³ It is unclear whether this cultural defense was dispositive to this acquittal, but it did highlight the issue in the wider South African context.²⁴

The question that the Zuma trial and its aftermath raised was how a country with such a wonderful Constitution, such an expansive Bill of Rights, and such impressive constitutional jurisprudence, could generate such negative and retrogressive attitudes towards women? In line with this inquiry, my paper will raise three questions. The first focuses on

19. See Usha Roopnarain, *A Gendered Perspective on Violence in South Africa*, 2 FEMINISTA no. 11, <http://www.feminista.com/archives/v2n11/roopnarain.html>.

20. What made Mr. Zuma's admission so startling was that he had served as head of the South African Natural AIDS task force. Some have argued that his admission set the fight against AIDS back a few decades. See Dan Strumpf, *Testimony Pushes Back AIDS Battle*, MAIL & GUARDIAN ONLINE, Apr. 8, 2006, http://www.mg.co.za/articlePage.aspx?articleid=268801&area=/insight/insight__national/. See also Wines, *supra* note 3.

21. See Wines, *supra* note 3.

22. *Id.*

23. *Id.*

24. See *The State v. Jacob Gedleyihlekisa Zuma 2006* (S. Afr.), available at http://www.legalbrief.co.za/filemgmt_data/files/State%20v%20Jacob%20Zuma.pdf.

the legacy of apartheid violence and specifically the cultures of masculinity, the underbelly of apartheid violence. Second, I will explore the findings of the Truth and Reconciliation Commission (TRC), a vital part of the post-conflict transformation agenda, to examine the manner in which the TRC pursued violations of women's human rights. The final part of my analysis is an examination of the last twelve years of post-conflict constitutional transformation in South Africa, and particularly the incorporation of gender equality in this expansive constitutional framework. This enquiry will entail an examination of the jurisprudence of the Constitutional Court, especially the Court's embrace of a substantive equality, in addition to an unambiguously clear commitment to the eradication of violence against women.

In many ways South Africa is a microcosm for other societies, particularly those poorer countries that are embarking on democratic projects of political and legal transformation in the wake of colonial or authoritarian legacies. Many of these societies, often saddled with vast economic disparities, typically confront conflicts over the nature of gender equality, on the other hand, and respect for indigenous and religious cultural norms, on the other. Very often, the process of democratization, and legal attempts toward gender equality embrace ambiguities and complexities for women.²⁵ The realities for women reflect both the conditions of victimhood, as well as agency. This dichotomy, between women as victim or autonomous agent reflects a constant tension in feminist legal scholarship and this theme of ambiguity and complexity undergirds women's advocacy, and influences feminist legal theory.²⁶ South Africa's democracy project reflects this ambiguity in stark terms, representing a society in which the statistics of violence against women is very alarming, and where such statistics exist alongside very positive indicators, such as impressive statistics on female representations in Parliament, and women's substantial participation in public life generally.²⁷

25. See Penelope E. Andrews, *Globalization, Human Rights and Critical Race Feminism: Voices from the Margins*, 3 J. GENDER RACE & JUST. 373 (2000).

26. See generally ANN SCALES, *LEGAL FEMINISM: ACTIVISM, LAWYERING, AND LEGAL THEORY* (N.Y. Univ. Press 2006); ELIZABETH M. SCHNEIDER, *BATTERED WOMEN & FEMINIST LAWMAKING* (Yale Univ. Press 2000).

27. See MAVIVI MANZINI MAYAKAYAKA, *Political Party—Quotas in South Africa*, in *THE IMPLEMENTATION OF QUOTAS: AFRICAN EXPERIENCES* (Julie Ballington ed., 2004), available at <http://www.idea.int/loader.cfm?url=/commonspot/security/getfile.cfm&pageid=7841>.

CULTURES OF MASCULINITY

Scholarship in South Africa has identified three components of the cultures of masculinity, and in this paper I am going to present them in a synthesized and generalized form. The first component of this culture of masculinity has its genesis in the system of apartheid, and in particular, the militarization of that system. This militarization included compulsory military service for white males, and the development and maintenance of a massive military establishment.²⁸ As the scope and the intensity of opposition to the system of apartheid grew, both within South Africa and outside its borders, this huge military apparatus, in tandem with a ubiquitous and repressive security establishment, embarked on successive systemic and vicious campaign to stifle political opposition, that involved methods of torture, banishment, detention, and targeted assassinations.²⁹ The final report of the Truth and Reconciliation Commission outlines in graphic detail the absolute extent to which the apartheid military and security establishment went to stifle the political opposition of the majority of South Africans to apartheid rule.³⁰ The features of this apartheid masculinist culture is replicated in the institutions of the dominant white culture, as illustrated in sport, in the elite professions such as medicine and law, in the media and in other aspects of South African society.³¹

The second component of this masculinist culture is what I will crudely term, the masculine culture of opposition. This culture is a by-product of some of the strategies adopted by the national liberation movements in exile, that waged a protracted and clandestine military

28. See Pumla Gobodo-Madikizela, *Women's Contributions to South Africa's Truth and Reconciliation Commission*, WOMEN WAGING PEACE POLICY COMMISSION (2005), <http://www.womenwagingpeace.net/content/articles/SouthAfricaTJFullCaseStudy.pdf>; see also Graeme Simpson, *A Brief Evaluation of South Africa's Truth and Reconciliation Commission: Some Lessons for Societies in Transition*, CENTRE FOR THE STUDY OF VIOLENCE AND RECONCILIATION (1998), <http://www.csvr.org.za/papers/paptrce2.htm>.

29. See Jacklyn Cock, *Women, The Military and Militarisation: Some Questions Raised by the South African Case*, SEMINAR AT THE UNIVERSITY OF WITWATERSRAND (Sept. 24, 1992), <http://www.csvr.org.za/papers/papcock2.htm>.

30. THE TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT, vol. 6, § 3, ch. 1, 186-92.

31. See Joanne Fedler, *Legal Education in South Africa*, 72 OR. L. REV. 999 (1993); Cock, *supra* note 29.

campaign against the apartheid government.³² The very nature of this clandestine military struggle, and the inevitable absence of transparency and accountability, despite popular rhetoric, reinforced patterns of masculinity that disadvantaged women disproportionately.³³ In addition to the military campaign conducted by South African exiles, there was the anti-apartheid campaigns carried out in the black townships of South Africa.³⁴ These campaigns entailed a certain level of myth creation referencing masculinity to quite an extraordinary extent. The politically respectable “comrade” involved a political identity that personified the identity of a brave man confronting the brutality of the apartheid military and security apparatus.³⁵

The myth of the brave comrade was steeped in the political and social reality of a brutal struggle that took tremendous courage and tenacity.³⁶ This combination of clandestine liberation movement in exile and internal political struggle, also involved a political strategy to make the townships of South Africa ungovernable. And the townships did, in fact, become ungovernable, contributing in no small part to the political events that eventually led to a negotiated settlement.³⁷ But part of the conditions of ungovernability of the black townships was excessive violence toward women, a violence that was hidden from the national

32. See Command of Umkhonto we Sizwe, Leaflet, Manifesto of Umkhonto we Sizwe (1961), <http://www.anc.org.za/ancdocs/history/manifesto-mk.html>.

33. See Tumi Makgetla, *Zuma Trial Lifts the Lid on Gender Based Violence During Exile*, MAIL & GUARDIAN ONLINE, Mar. 17, 2006, http://www.mg.co.za/articlePage.aspx?articleid=267002&area=/insight/insight_national. See also Jacklyn Cock, *Women and Militarism in South Africa*, REVIEW OF AFRICAN POLITICAL ECONOMY 45 (1989).

34. Campbell, *supra* note 1, at 624.

35. *Id.* As one “comrade” noted: *I would like to die when I am old, but now as I have devoted myself to the struggle I know that one day I will be killed by the bullet of the Boer or by their puppets. This means that I will die young. I have devoted myself to being a comrade, so there is no need to be afraid. I am not afraid of anything.* *Id.*

36. See Ari Sitas, *The Making of the ‘Comrades’ Movement in Natal, 1985-91*, 18 J. S. AFR. STUDIES 692 (1992).

37. See ALLISTER SPARKS, *TOMORROW IS ANOTHER COUNTRY: THE INSIDE STORY OF SOUTH AFRICA’S ROAD TO CHANGE* (Univ. of Chi. Press ed., 1996); see also ALLISTER SPARKS, *FROM COMRADES TO CITIZENS: THE SOUTH AFRICAN CIVICS MOVEMENT AND THE TRANSITION TO DEMOCRACY* (Glenn Adler & Johnny Steinberg eds., 2000).

discourse around liberation.³⁸ The legacy of this culture of violence lingers.

The third component of this masculinist culture in South Africa was a patriarchy rooted in some indigenous and religious institutions, and in indigenous and religious practices that subordinate and disadvantage women in a host of areas, including the custody of children, access to property, and rights to inheritance.³⁹ That culture also persists.

Indeed, a combination of these cultures in South Africa has spawned a peculiarly South African ubiquitous masculinity. In fact, Judge Albie Sachs of the Constitutional Court, has referred to patriarchy as the only "truly nonracial institution in South Africa."⁴⁰ Overcoming this complex, interweaving masculinist culture requires not only purposive legal interventions, but also the conscription of intensive extra-legal ones that may emanate from vigorous civil society campaigns, and particularly from those conducted by a vigilant women's movement.⁴¹

THE TRUTH AND RECONCILIATION COMMISSION

The Constitution as a forward-looking mechanism, sets out the values of the new democratic South Africa.⁴² Despite the lofty ideals set out in the Constitution, those who negotiated the transition to democracy

38. See Campbell, *supra* note 1, at 625. Campbell notes: "The political terrain was seen as dangerous, conflictual and violent, and demarcated as a male preserve...." *Id.* at 624-25.

39. See Christina Murray & Felicity Kaganis, *Equality and Culture in South Africa's Interim Constitution*, 5 OXFORD INT'L L. REV. 17 (1994); Ronald Thandabantu Nhlapo, *International Protection of Human Rights and the Family: African Variations on a Common Theme*, 3 INT'L J. L. & FAM. 1 (1989).

40. See Albie Sachs, *Judges and Gender: The Constitutional Rights of Women in a Post-Apartheid South Africa*, 7 AGENDA 1 (1990).

41. See Sheila Meintjes, *Gender, Citizenship and Democracy in post-Apartheid South Africa*, GENDER RESEARCH PROJECT BULLETIN (1997).

42. THE CONSTITUTION, *supra* note 17, ch. 1, § 1, the Founding Provisions of the Constitution, states the following values on which the democratic South Africa is based:

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- (b) Non-racialism and non-sexism.
- (c) Supremacy of the Constitution and the rule of law.
- (d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

recognized that the immense violations of human rights under apartheid had to be addressed.⁴³ This was not just an academic question for South Africans, since those violations were evident in all aspects of South African life. Indeed, the legacy of apartheid as evidenced by the overwhelming poverty and the huge economic disparities, in addition to alarming levels of violence, will continue to plague the society for several generations.⁴⁴ The United Nations had declared apartheid a crime against humanity,⁴⁵ a declaration that could generate upwards of 40 million victims.⁴⁶ As a practical matter, however, the political negotiations that led to the drafting of the Constitution, resulted in a workable, but limited compromise mechanism, within which gross violations of human rights could be dealt with. The compromise reached was the passage of the Promotion of National Unity and Reconciliation Act, the empowering statute that set up the TRC.⁴⁷

The TRC has been heralded internationally as an impressive process and has been lauded almost universally by human rights advocates.⁴⁸ Indeed, in the literature referencing racial reconciliation and restorative justice, the TRC looms large. Whether it is the iconic image of Bishop Tutu shepherding an emotionally-laden process through difficult political and legal territory, or the comforting images of victim and perpetrator engaging in a dance of forgiveness and remorse, the TRC is mostly regarded as a pre-eminent national exercise in forgiveness.⁴⁹ Within South Africa, however, the assessment of the TRC is much more contested. Indeed the limitations of the TRC have been scrutinized in some detail, and there is some evidence about deep misgivings of the

43. See generally KADER ASMAL ET AL., *RECONCILIATION THROUGH TRUTH: A RECKONING OF APARTHEID'S GOVERNANCE* (2d ed. 1997); ALEX BORAINÉ, *A COUNTRY UNMASKED: INSIDE SOUTH AFRICA'S TRUTH AND RECONCILIATION COMMISSION* (2000).

44. See INTERNATIONAL DEFENCE AND AID FUND FOR SOUTHERN AFRICA, *APARTHEID: THE FACTS* (1983).

45. See G.A. Res. 3068 (XXVII), 75, U.N. Doc. A/3068 (Nov. 30, 1973).

46. *Id.*

47. Promotion of National Unity and Reconciliation Act 34 of 1995.

48. See, e.g., MARTHA MINTOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* (1998); ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* (1999).

49. Penelope E. Andrews, *A Grand Exercise in Forgiveness, or Justice Held Hostage to Truth? South Africa's Truth and Reconciliation Commission*, 24 MELB. U. L. REV. 236 (2000) (reviewing David Dyzenhaus, *Judging the Judges, Judging Ourselves: Truth, Reconciliation, and the Apartheid Legal Order* (1998)).

TRC, particularly from the victims.⁵⁰ In fact, a group of TRC-designated victims and others have filed a lawsuit in the United States against corporations including General Motors, IBM, and Citibank.⁵¹ This lawsuit is a direct result of their dissatisfaction with the TRC. It is ironic that the purpose of establishing the TRC was to emphasize the principles of restorative justice in lieu of the more traditional notions of punitive justice, as typified by lawsuits.⁵²

An examination of the overall success or failure of the TRC is outside the scope of this paper.⁵³ However, most commentators have concluded that South Africa could not move forward as a functioning democracy if the TRC had not been established.⁵⁴ Although a document of political compromise, it had a limited but significant role to play within the broader project of transformation. The concerns of this paper, however, are, with respect to gender equality, and in particular the manner in which the TRC gave short shrift to those women who were the victims of apartheid.

The TRC did this at the outset by the definition of "victim" which the Act established. The Act only considered victims of gross violations of human rights; in other words, those individuals who were subjected to torture, kidnapping, and other human rights violations committed by the South African security establishment.⁵⁵ This circumscribed definition in effect excluded from its ambit millions of women who daily were subjected to the degradations of apartheid, including the destruction of family life through the operation of the pass law or the migrant labor

50. See Penelope E. Andrews, *Reparations for Apartheid Victim: The Path to Reconciliation?* 53 DEPAUL L. REV. 1155 (2004); see also Catherine Jenkins, *After the Dry White Season: The Dilemma of Reparation and Reconstruction in South Africa*, 16 S. AFR. J. ON HUM. RTS. 415 (2000).

51. Andrews, *supra* note 50; see also Jenkins, *supra* note 50.

52. See DESMOND TUTU, *NO FUTURE WITHOUT FORGIVENESS* (1999). For an analysis of the principles of restorative justice, see *A RESTORATIVE JUSTICE READER* (Gerry Johnstone ed., 2003).

53. For a thorough examination of the TRC, see COMMISSIONING THE PAST: UNDERSTANDING SOUTH AFRICA'S TRUTH AND RECONCILIATION COMMISSION (Deborah Posel & Graeme Simpson eds., 2002); ANTJE KROG, *COUNTRY OF MY SKULL: GUILT, SORROW AND THE LIMITS OF FORGIVENESS IN THE NEW SOUTH AFRICA* (1998).

54. See COMMISSIONING THE PAST, *supra* note 53; KROG, *supra* note 53.

55. In terms of the Act, "victim" includes persons who suffered injury as a result of "a gross violation of human rights" or "an act associated with a political object." Promotion of National Unity and Reconciliation Act 34 of 1995, *supra* note 48, ch. 1(1)(xix).

system.⁵⁶ In addition, the lethal cocktail of apartheid masculinities exposed women to systemic violence, both in the public and private sphere.⁵⁷

The number of victims certified by the TRC was 22,000,⁵⁸ a rather tiny amount in the light of over three hundred years of colonialism, and forty plus years of apartheid. The TRC, for the most part, focused on men and the violations that they were subjected to. But it was only when women started lobbying the TRC, complaining that the abuse of women under apartheid was not being considered, that the TRC responded by organizing three days of women's hearings.⁵⁹ Until that time, women who appeared before the TRC's Human Rights Violations Committee were largely seen as "secondary victims."⁶⁰ In other words, they testified as mothers, wives, and sisters, referencing the suffering of their male relatives.⁶¹ As an observer who noted, the TRC located women in the "private realm as supporters of men," but not in the public realm as "resisters of oppression."⁶²

The women who testified before the TRC in the three-day hearings complained about a whole host of issues, including the fact that the media did not regard their testimony as noteworthy, compared to the testimony of men.⁶³ Indeed, female witnesses were labeled by the media as the "crying team" of the Commission.⁶⁴ In addition, they noted that three days of hearings were not sufficient to fully interrogate the range of human rights violations that women were subjected to.⁶⁵ Because sexual violence against women were committed both by the apartheid government and the liberation movement in exile, there was

56. See Cheryl L. Poinsette, *Black Women Under Apartheid: An Introduction*, 8 HARV. WOMEN'S L. J. 93 (1985); see also Penelope Andrews, *The Legal Underpinnings of Gender Oppression in Apartheid South Africa*, 3 AUSTL. J. L. & SOC. 1 (1986).

57. Beth Goldblatt & Sheila Meintjies, *Gender and the Truth and Reconciliation Commission: A Submission to the Truth and Reconciliation Commission* (1996), <http://www.doj.gov.za/trc/submit/gender.htm>.

58. *Id.*

59. Lynn Graybill, *The Contribution of the Truth and Reconciliation Commission Toward the Promotion of Women's Rights in South Africa*, 24 WOMEN'S STUD. INT'L F. 1, 4 (2001).

60. *Id.* at 4.

61. Goldblatt, *supra* note 57.

62. Graybill, *supra* note 59, at 4.

63. See Gobodo-Madikizela, *supra* note 28, at vii.

64. *Id.*

65. *Id.*

no doubt a measure of discomfort about these public revelations, since very senior men were in danger of being exposed.⁶⁶ In addition, in a very religious country like South Africa, the more graphic details of sexual violations would have rendered women vulnerable to ridicule and contempt.⁶⁷

In its final report, the TRC emphasizes the need for national reconciliation and the creation of a human rights culture.⁶⁸ A glaring absence of the report is its failure to address the systemic nature of violence against women in South Africa. In fact, the TRC, in final analysis, was a rather sanitized process, that did not deal sufficiently with the various ways in which women were oppressed. Several factors may have contributed to this omission, including a broad societal inability to appreciate the role of women in the popular struggle and particularly the liberation movement. In other words, there appears to be a deficiency in cognitively accepting the role of women as autonomous political agents.⁶⁹ These attitudes mirror the societal vision of women as persistent secondary partners, whether in the home or in public places, and particularly the broader anti-apartheid movement.⁷⁰ In addition, the TRC failed to sufficiently appreciate the very quantitative and qualitative nature of violence against women including sexual violence and sexual harassment.⁷¹ The failure of the TRC to address violence against women in its processes may have deprived women advocates of a valuable opportunity to confront apartheid sexualized violence in a comprehensive manner.

FROM RACISM AND AUTHORITARIANISM TO DEMOCRACY

In 1994, South Africa emerged from a racist, authoritarian state, with a minority white government, to one premised on democracy and human rights for all its citizens.⁷² Underpinning this democratic

66. Goldblatt, *supra* note 57.

67. *Id.*

68. *Id.*

69. See CHERYL WALKER, *WOMEN AND RESISTANCE IN SOUTH AFRICA* (Onyx Press 1982).

70. Graybill, *supra* note 59, at 2-3.

71. See THE TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT, *supra* note 30.

72. See Sparks, *supra* note 37; see also TOM LODGE, *POLITICS IN SOUTH AFRICA: FROM MANDELA TO MBEKI* (2002).

arrangement was a constitutional framework embracing a comprehensive Bill of Rights. For the purposes of this paper, I will concentrate on a few significant provisions that bear directly on the issue of gender equality and violence against women.⁷³ The first is the manner in which the Bill of Rights outlaws discrimination on several grounds, both directly and indirectly.⁷⁴ This includes the manner in which the Bill of Rights recognizes the concept of intersectionality discrimination; in other words, the Bill of Rights outlaws discrimination on one or several grounds. In particular the Bill of Rights provides that discrimination “on one or more grounds ... is unfair”⁷⁵ In the United States this notion of intersectionality discrimination has been difficult to pursue, since the courts appear to be reluctant to accept claims based on such a theory.⁷⁶

The second way in which the South African Bill of Rights is quite unique is the number of grounds protected; which includes race, gender, pregnancy, marital status, sexual orientation, ethnic or social origin, and a few others.⁷⁷ The grounds of discrimination covered are therefore extremely extensive. What is noteworthy about the Constitution, particularly in comparison to the universe of constitutionalism in the United States, is that affirmative action is incorporated in the Bill of Rights as consonant with equality.⁷⁸

With respect to violence against women, the Bill of Rights specifically states that “everyone has the right to bodily and physical integrity, which includes the right to make decisions concerning reproduction and

73. For a comprehensive discussion of gender equality in the South Africa Constitution, see *THE CONSTITUTION OF SOUTH AFRICA FROM A GENDER PERSPECTIVE* (Sandra Liebenberg ed., 1994). See also *GENDER AND THE NEW SOUTH AFRICAN LEGAL ORDER* (Christina Murray ed., 1994) and Penelope E. Andrews, *Striking the Rock: Confronting Gender Equality in South Africa*, 3 MICH. J. RACE & L. 307 (1998).

74. THE CONSTITUTION, *supra* note 17, § 9(3). “The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.” *Id.*

75. *Id.* § 9(5).

76. See Gowri Ramachandran, *Intersectionality as Catch 22: Why Identity Performance Demands are Neither Harmless or Reasonable*, 69 ALB. L. REV. 299 (2005).

77. See THE CONSTITUTION, *supra* note 17.

78. THE CONSTITUTION, *supra* note 17, § 9(2) provides that: “Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.”

to security and control of the person.”⁷⁹ The Bill of Rights also provides that everyone has the right to “freedom and security of the person;”⁸⁰ this includes the right “to be free from all forms of violence from either public or private sources.”⁸¹ The right to security of the person also includes a prohibition on torture and “cruel, inhuman or degrading” treatment.⁸² For victims of domestic violence, this particular aspect of the Bill of Rights has resulted in far-reaching legislation that has outlawed domestic violence.⁸³ The Preamble to the Domestic Violence Act recognizes the systemic nature of domestic violence, referring to it as “a serious social evil.”⁸⁴ The definition of domestic violence is particularly comprehensive, that includes not just physical abuse, but also economic abuse, as well as harassment, emotional and psychological abuse.⁸⁵

Another fairly unique feature of the Bill of Rights is its vertical as well as horizontal reach. In other words, the Bill of Rights has application as between government and its citizens, as well as those between citizens.⁸⁶ This provision renders the South African Constitution a far more potent force regarding its capacity to eradicate the more egregious aspects of violence against women. Indeed, women’s advocates have long argued that in order to pursue gender equality and eradicate violence against women, attention must be paid to the myriad ways that

79. *Id.* § 12(2).

80. *Id.* § 12(1).

81. *Id.* § 12(1)(c).

82. *Id.* §§ 12(1)(d) and (e). Some feminist legal scholars have argued that systemic domestic battery could be considered a form of torture. See Rhonda Copelon, *Intimate Terror: Understanding Domestic Violence as Torture*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 116 (Rebecca Cook ed., 1994).

83. See Domestic Violence Act 116 of 1998.

84. *Id.* The Preamble notes:

“Recognizing that domestic violence is a serious social evil; that there is a high incidence of domestic violence within South African society; that victims of domestic violence are among the most vulnerable members of society; that domestic violence takes on many forms; that acts of domestic violence may be committed in a wide range of domestic relationships” *Id.*

85. *Id.* § 1.

86. THE CONSTITUTION, *supra* note 17, § 9(4) provides that: “No person may unfairly discriminate directly or indirectly against anyone on one more more grounds” For a discussion of the horizontal application of human rights in South Africa, see Johan Van der Walt, *Horizontal Application of Fundamental Rights and the Threshold of the Law in View of the Carmichele Saga*, 19 S. AFR. J. ON HUM. RTS. 517 (2003).

private discrimination and private forms of violence reflect the daily realities of many women, who experience such discrimination and violence regularly, and systematically.⁸⁷ The state therefore has the obligation to aggressively intervene to protect women from both public and private violence.

Another striking feature of the South African Constitution is the mandate to consider foreign and international law in judicial deliberations.⁸⁸ In the United States, the courts tend to be more self-referential and introspective, even though many scholars have been advocating for the consideration of foreign and international law in federal case law.⁸⁹

But South Africa has also been a beneficiary of the American civil rights struggle and the global human rights struggles. The gains of the American civil rights struggle were apparent to South Africans decades before apartheid was abolished, and South African public interest lawyers utilized strategies adopted by American civil rights lawyers to pursue challenges to the apartheid government.⁹⁰ In addition, the anti-apartheid movement became a global struggle, and the vast incorporation of international human rights principles in the South African Constitution is a testament to the victory of that struggle.⁹¹ As Makau wa Mutua, the Kenyan human rights scholar notes:

The construction of the post-apartheid state represents the first deliberate and calculated effort in history to craft a human rights state—a polity that is primarily animated by human rights norms. South Africa was the first state to be reborn after the universal acceptance (at least rhetorically) of human rights ideals by states of all the major cultural and political traditions.⁹²

At the end of the 20th century, the South African Constitution became one of the most significant human rights documents, highly

87. See CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989); see also FARANDA BANDA, *WOMEN, LAW AND HUMAN RIGHTS: AN AFRICAN PERSPECTIVE* (2005).

88. THE CONSTITUTION, *supra* note 17, § 39(1) provides that “when interpreting the Bill of Rights, a court ... must consider international law.”

89. See Rhonda Copelon, *The Indivisible Framework of International Human Rights: A Source of Social Justice in the U.S.*, 3 N.Y. CITY L. REV. 59 (1998-2000).

90. See Penelope E. Andrews, *Perspectives on Brown: The South African Experience*, 49 N.Y.L. SCH. L. REV. 1155 (2004-05).

91. Makau wa Mutua, *Hope and Despair for a New South Africa: The Limits of Rights Discourse*, 10 HARV. HUM. RTS. J. 63 (1997).

92. *Id.* at 65.

applauded and constantly referenced.⁹³ In the final analysis South Africa had the benefit of looking north towards the continent of Africa, at looking across the ocean at the United States, and looking at many places where human rights activism led to democratic transformation, including the passage of human rights legislation. These observations and lessons learnt meant that South Africans could realistically assess and appreciate what is essential to transform the lives of its citizen, and in particular its black citizens, and women.

THE CONSTITUTIONAL COURT AND VIOLENCE AGAINST WOMEN

The South African Constitutional Court has attempted very purposively to contextualize gender discrimination in South Africa, and in particular violence against women. For example, Justice Sachs, in assessing the constitutionality of a domestic violence statute, noted:

All crime has harsh effects on society. What distinguishes domestic violence is its hidden repetitive character and its immeasurable ripple effects on our society and in particular, on family life. It cuts across class, race, culture and geography, and is all the more pernicious because it is so often concealed and so frequently goes unpunished.⁹⁴

The jurisprudence of the Constitutional Court illustrates a vigorous approach to pursuing gender equality, and the Court's decisions reflect a broad consensus of the judges regarding these equality issues. Indeed, in almost all of the gender equality judgments, the Court has attempted to embrace a comprehensive substantive equality, eschewing a mere formal approach to equality.⁹⁵ For example, one of the first equality cases that the Court considered, involved a challenge to the provisions of the Child Care Act, that permitted separate, and outwardly discriminating criteria, for adoption of children born in and out of

93. See Craig Scott & Philip Alston, *Adjudicating Constitutional Priorities in a Transnational Context: A Comment on Soobramoney's Legacy and Grootboom's Promise*, 16 S. AFR. J. ON HUM. RTS. 206 (2000).

94. *S v. Baloyi* 2000 (1) BCLR 86 (CC) at ¶ 11 (S. Afr.); see also *Omar v. The Government of the Republic of South Africa & Others* 2006 (2) BCLR 253 (CC) (S. Afr.).

95. But note critiques of the Court's approach to equality. See Cathi Albertyn & Beth Goldblatt, *Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality*, 14 S. AFR. J. ON HUM. RTS. 248 (1998); Dennis Davis, *The Majesty of Legoland Jurisprudence*, 116 S. AFR. L. J. 398 (1999).

wedlock.⁹⁶ With respect to the former, the consent of the father for adoption was required, but dispensed with in the latter situation.⁹⁷ A father, whose child was born out of wedlock and who was adopted without his consent, challenged the constitutionality of the statute, claiming it violated his equality rights under the Constitution.⁹⁸ His challenge was successful, although the Court, citing the best interests of the child, declined further appeals to set aside the adoption.⁹⁹ In its analysis, the Court focused on the distinction between “legitimate” and “illegitimate” children, finding the distinction spurious.¹⁰⁰ In addition, the Court noted the many systems of marriage in South Africa, including those conducted under the auspices of religious or indigenous legal systems.¹⁰¹ These forms of marriage were historically not recognized under the South African legal system, and consequently left fathers in a vulnerable position regarding the adoption of their children.¹⁰²

Another case, one that pursued a comprehensive analysis of the equality provisions, involved a challenge by a convicted male prisoner to the constitutionality of a Presidential pardon, issued by Presidential Nelson Mandela to mark his inauguration.¹⁰³ The pardon included certain categories of prisoners, including women who had children under the age of twelve at the time of South Africa’s first election.¹⁰⁴ The prisoner claimed that the Presidential pardon violated his rights to equality and that it discriminated against him on the basis of sex.¹⁰⁵ The Court, although finding the discrimination unfair, found that such discrimination was justified in the context of the realities of child-rearing in South Africa, in which women were disproportionately burdened.¹⁰⁶ Recognizing that women, the most disadvantaged group

96. *Fraser v. Naude & Another* 1998 (11) BCLR 1 (CC) at 3 (S. Afr.).

97. *Id.*

98. *Id.*

99. *Id.* at 7.

100. *Id.*

101. *Id.*

102. The Court had occasion to consider the validity of a marriage conducted according to Muslim law, involving the issue of inheritance, and found for all intents and purposes that it was a valid one. *See Davis, supra* note 95.

103. *President of the Republic of South Africa & Another v. Hugo* 1997 (6) BCLR 1 (CC) at 8 (S. Afr.).

104. *Id.* at 34-35.

105. *Id.* at 35.

106. *Id.* at 46-48.

in South African society, would benefit substantially from the pardon, the Court did not allow the challenge to succeed.¹⁰⁷ The Court drew a distinction between the situation pertaining to the pardon, namely one that provided a benefit to women, and to the historical disadvantages that women labored under on the basis of their gender.¹⁰⁸ The Court acknowledged that mothers are the primary caregivers of children, but it also pointed out that this reinforced a stereotype about women, particularly in relation to child rearing and child bearing.¹⁰⁹ Despite this, the Court adopted a pragmatic approach, locating this issue in the realities of the South African context, and found that the discrimination was justified.¹¹⁰

The judgments of the Constitutional Court with respect to violence against women also reflect such a holistic, comprehensive engagement, and the Court has interpreted the constitutional mandate to eradicate violence vigorously. The Court has embraced international documents, like the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)¹¹¹ and the Vienna Declaration on Violence Against Women¹¹² in its judgments, and in the process has forcefully given its imprimatur in stemming violence against women.

In a 1999 judgment, the Court had to consider the constitutionality of a domestic violence statute¹¹³ that had been declared invalid by a lower court and that had referred its finding to the Constitutional Court for confirmation.¹¹⁴ The lower court's declaration of invalidity was based on three findings: that the subsection under review "places a reverse

107. *Id.* at 49-50.

108. *Id.* at 41.

109. *Id.*

110. The dissent forcefully challenged the stereotypes that the majority opinion appeared to perpetuate. It stated very clearly that the Constitution was meant to be transformative, that required a vision of rejecting stereotypes, especially one that did not allow greater capacity for fathers as care givers of children. See *President of the Republic of South Africa & Another v. Hugo*, *supra* note 103, at 73 (Kriegler, J., *dissenting*).

111. Adopted and opened for signature, ratification and accession at the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), G.A. Res. 34/180, U.N. Doc. 34/180 (Dec. 18 1979).

112. G.A. Res. 157/23, U.N. Doc. A/CONF/157/23 (June 25, 1993), available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument).

113. The Prevention of Family Violence Act 133 of 1993. For a discussion of the statute, see Joanna Fedler, *Lawyering Domestic Violence Through the Prevention of Family Violence Act 1993 – An Evaluation After a Year in Operation*, 12 S. AFRICAN L. J. 231 (1995).

114. See *S. v. Baloyi*, *supra* note 94.

onus of proving absence of guilt on a person charged with breach of a family violence interdict,” conflicting with the constitutionally protected presumption of innocence, without compelling constitutional justification.¹¹⁵ The case presented the opportunity for the Constitutional Court to confront the vexed issue of domestic violence, and to balance the need to eradicate domestic violence with the constitutional rights of accused persons to a fair trial.¹¹⁶

The Court referenced the Constitution’s requirement that the problem of domestic violence be dealt with effectively and comprehensively.¹¹⁷ Writing for the majority, Sachs J. described the “hidden and repetitive character” of domestic violence and its ubiquity in cutting across the categories of class, race, culture, and geography.¹¹⁸ Moreover, because domestic violence is so gender specific, it mirrors and mimics patriarchal domination in a particularly abhorrent way.¹¹⁹ In a purposively victim-centered opinion, the Court referenced South Africa’s obligations under international law to stem violence against women, particularly those under CEDAW and the African Charter on Human and People’s Rights.¹²⁰ Referring to the “strange alchemy of violence within intimacy,” the Court emphasized that this issue needs to be dealt with through the use of innovative legal methods.¹²¹

The Court therefore found that the Act passed constitutional muster in light of the severity of the problem of violence against women, and that judicial officers are to be accorded some latitude in dealing with procedural imperatives.¹²²

But the one area that could potentially raise significant contestation relates to the issue of the status and role of indigenous institutions and laws. It is arguable that there is some consensus in the country regarding the eradication of the cultures of masculinity, no matter their genesis, and the inappropriateness of the existence of such cultural

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.* ¶ 11.

119. *Id.* ¶ 12. Although men can also be victims of domestic violence, their numbers compared to women are miniscule.

120. AFRICAN CHARTER ON HUMAN AND PEOPLE’S RIGHTS (June 27, 1981), <http://www.hrcr.org/docs/Banjul/afrhr.html>.

121. *S. v. Baloyi*, *supra* note 94, ¶ 16.

122. *Id.* ¶ 30.

norms in South Africa today has been questioned persistently. However, with respect to indigenous institutions and laws, the conversation has a somewhat different flavor. This is so because the process of democratization in South Africa was at the core a process of

Africanization. South Africa had to transform itself from a European country in Africa, to one that was a member of the community of African states. This Africanization process carries with it an imperative to embrace indigenous laws, traditions as part of the democratic project.¹²³ But in a situation of conflict between gender equality and indigenous institutions, what principle prevails?

The Constitution attempts to answer this question in a careful balancing act: the Bill of Rights renders equality as the pre-eminent principle, while recognizing the legitimacy of cultural institutions.¹²⁴ In addition, the Constitutional Court, in an early case confronting this issues squarely, namely, the conflict between an indigenous law and the principle of gender equality, the Court provided a definitive statement that respect for indigenous institutions does not have to entail condonation of gender discrimination.¹²⁵ In that case the Court had to evaluate a constitutional challenge to the rule of male primogeniture applicable under the African customary of succession.¹²⁶ In terms of the rule, females were prevented from inheriting from the deceased estates of their late fathers; this rule also applied to boys when their parents were not legally married.¹²⁷ Holding that such a rule discriminates against women and illegitimate children, the majority held that rule to

123. See Martin Chanock, *Neither Customary nor Legal: African Customary Law in an Era of Family Law Reform*, INT'L J. L. & FAM. 72 (1989); see also Iain Curry, *The Future of Customary Law: Lessons from the Lobolo Debate*, ACTA JURIDICA 146 (1994).

124. THE CONSTITUTION, *supra* note 17, § 31 provides that:

- (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community,
 - (a) to enjoy their culture, practice their religion and use their language; and
 - (b) to form, join and maintain cultural ... associations and other organs of civil society.
- (2) The rights may not be exercised in a manner inconsistent with any provisions of the Bill of Rights.

125. *Bhe & Others v. Magistrate, Khayelitsha & Others* 2005 (1) BCLR 1 (CC) at 109 (S. Afr.).

126. *Id.* at 3.

127. *Id.* at 49.

be unconstitutional.¹²⁸ Writing for the majority, Chief Justice Langa stated:

The exclusion of women from inheritance on the grounds of gender is a clear violation of the Constitution. It is a form of discrimination that entrenches past patterns of disadvantage among a vulnerable group, exacerbated by old notions of patriarchy and male domination incompatible with the guarantee of equality¹²⁹

The Court also found that the rule violated a woman's right to dignity under the Constitution.¹³⁰ The majority opinion therefore indicates an appreciation by the Court of the need to entrench gender equality while at the same time recognizing the importance of indigenous institutions and laws to a large number of South Africans.

The pursuit of gender equality and elimination of cultural attitudes that lead to violence against women in South Africa is one of the most trying issues confronting South Africans. It is particularly difficult because the eradication of gender discrimination was for a long time marginal to the eradication of race discrimination.¹³¹ Several reasons account for this, but an obvious was strategic, that is, the elimination of apartheid was seen as an attainable goal, both within South Africa and internationally. The elimination of sex-discrimination, both within South Africa and globally, still remains an evolving aspiration with limited consensus. In addition, although women participated fully in the anti-apartheid struggle, they did so as anti-apartheid activists first, and only secondarily as activists for women's rights.¹³² In summary, feminism in South Africa constantly has to compete with other liberatory discourses, in particular nationalism, and often is relegated a lesser status in this struggle.¹³³

128. *Id.* at 57.

129. *Id.* at 56.

130. *Id.*

131. See Penelope E. Andrews, *The Stepchild of National Liberation: Women and Rights in the New South Africa*, in *THE POST-APARTHEID CONSTITUTIONS: PERSPECTIVES ON SOUTH AFRICA'S BASIC LAW 326* (Penelope E. Andrews & Stephen Ellmann eds., 2001).

132. This is reflected in the major texts written by prominent women in South Africa during the anti-apartheid struggle. See, e.g., WINNIE MANDELA, *PART OF MY SOUL* (1985); ELLEN KUZWAYO, *CALL ME WOMAN* (1985); FATIMA MEER, *PRISON DIARY* (2002).

133. See Thenjiwe Mtsintso, *Women in MK*, 80 *WORK IN PROGRESS* 18 (1992), <http://disa.nu.ac.za/articledisplaypage.asp?articletitle=Umkhonto+we+Sizwe+-+Women+in+MK&filename=WPJan92>.

CONCLUSION

In the final analysis the quest for gender equality is substantially dependent on a legal framework that not only signifies clearly the primacy of the principle of gender equality through the substance of the laws, but also one that contains within it solid implementation and enforcement processes. But even such a legal framework is quite limited in light of the durability of the cultures of masculinity mentioned early on in this paper. In addition, although not covered in this paper, the commitment of all levels of the South African government to eradicating poverty, in light of the distressing levels of economic inequality, and the socio-economic jurisprudence of the Constitutional Court, will go some ways in attaining gender equality and eliminating violence against women.