



The importance of confronting a colonial, patriarchal and racist past in addressing post-apartheid sexual violence

Lucy Valerie Graham¹

Department of English, University of the Western Cape; Department of English, New York University

ABSTRACT

This commentary uses Judge Willem van der Merwe's rescripting of Rudyard Kipling's 'If' poem during the Jacob Zuma rape trial as a starting point to argue for the importance of understanding the ways in which spectres of a colonial, masculinist and racist past continue to haunt the present in South Africa. While Zuma invoked Zulu culture and his duties as a Zulu patriarch in his defence in the trial, this very idea of 'Zuluness' is a product of the same patriarchal racialism disseminated by Kipling and British colonialism. In order to address high levels of sexual violence in contemporary South Africa, the state needs to acknowledge the ways in which a colonial, white supremacist and patriarchal past has shaped responses to sexual violence. It also needs to redress problems of social and economic inequality that exist in South Africa as hangovers from this country's colonial and apartheid-era past.

Keywords: Zuma, rape, Kipling, colonialism, post-apartheid, Anene Booysen

INTRODUCTION

One of the most bizarre and contradictory incidents during the Jacob Zuma rape trial was surely the moment when Judge Willem van der Merwe, handing down his verdict that exonerated Zuma, addressed Zuma with the following words: "Had Rudyard Kipling known of this case at the time he wrote his poem, 'If', he might have added the following: 'And, if you can control your body and your sexual urges, then you are a man, my son.'" (verdict, S. v. J. Zuma, 2006). It is now seven years since the trial, and yet this weird allusion to Kipling's

¹ Please direct all correspondence to: Dr Lucy Valerie Graham, Department of English, University of Western Cape, Private Bag X17, Bellville, 7535; Email: lucy.graham@fulbrightmail.com

famous poem (voted in a BBC contest in 1995 and 2009 to be the British nation's favourite poem) has not been examined in any previous academic study. While it may not have struck gender rights and public commentators as an important part of the trial, to myself, as a literary scholar, it was particularly shocking and revealing. I aim to draw attention to the historical resonance of this literary allusion embedded in the trial, and to argue for the significance of acknowledging the ways in which a colonial, white supremacist and patriarchal past has shaped responses to sexual violence in contemporary South Africa. Referencing Zuma's comments about the rape of Anene Booysen in conclusion, I also argue that sexual violence is not a 'women's issue', nor a sudden 'epidemic', and it should not be a platform for political point scoring. Rather, high levels of sexual assault in South Africa draw attention to a continuing history of social and economic inequality that needs to be confronted by the state in order to prevent sexual violence.

THE ZUMA RAPE TRIAL

On 6 December 2005 charges of rape were brought against Jacob Zuma in the Johannesburg High Court by a complainant who was given the pseudonym 'Khwezi' in order to protect her identity, beginning a high profile trial that is now well known in South Africa and most parts of the world. By 8 May 2006 charges of violation against Zuma had been dismissed by Judge van der Merwe, who claimed in his verdict that Zuma's story, rather than the complainant's, was the one that 'should be believed' (verdict, *S. v. J. Zuma*, 2006). The months of the trial were highly charged politically. Outside the courthouse, anti-rape activists were outnumbered by Zuma supporters, many of them women dressed in 'traditional' Zulu garb who in the early days of the trial burned A4 size photographs of the complainant, printed with her name and surname, while chanting 'burn this bitch' (Evans & Wolmarans, 2006). Their actions were condemned by the Judge and the Friends of Jacob Zuma Trust, but Zuma supporters, who claimed that Zuma was the victim of a conspiracy, continued to hold militant rallies outside the courthouse, where they sang the old struggle song, '*Awuleth'umshiniwami!*' 'bring me my machine gun'. On the other hand, women's rights organisations expressed concern about public threats of violence against the complainant, as well as about the fact that the complainant's private memoirs and childhood sexual history were allowed by the judge to be used in a court of law against her, which effectively put her on trial.² After the outcome of the trial was announced, 'Khwezi' sought

2 As Jane Bennett has pointed out, the "One in Nine" campaign, which takes its name from estimates that only one in nine rapes are reported, was established in February 2006 at the start of the Jacob Zuma rape trial, "to ensure the expression of solidarity with the woman in that trial as well as other women who speak out about rape and sexual violence" (Bennett 2008, 6). Also during the trial a group of fifty four women activists from twenty one African countries, meeting in Johannesburg to discuss women's rights and HIV/AIDS, issued a 'Letter to Khwezi' that expressed support for her position, concern about public threats and intimidation directed at her, and condemnation of the fact that incidents of sexual abuse during her childhood, as reported in her private memoir, were being used against her (Kpetigo et al. 2006).

political asylum in the Netherlands and Zuma returned to his position as deputy-president of the ANC, becoming president of the ANC in 2007 and president of the country in 2009. In 2010 the judge who had presided over the trial was promoted by the Judicial Services Commission (JSC) to the post of Deputy Judge President of the Gauteng High Court, one of the appointments that led Pierre de Vos (Claude Leon Chair in Constitutional Governance at the University of Cape Town) to question whether 'the JSC is more comfortable with the appointment of pro-establishment white lawyers ... than with the appointment of more critical lawyers' (De Vos, 2010 para. 7). De Vos claimed that it would be unfair to describe the promotion of Van der Merwe as a reward for having exonerated Zuma, but given that gender activists had 'criticized Van der Merwe for allowing the defense in the Zuma case to question the complainant on her sexual history ... it would have been better if the members of the JSC had quizzed Van der Merwe vigorously about his commitment to gender equality' (De Vos, 2010 para. 8–10).

It seems that Khwezi's relationship with Zuma was complex. Her father and Zuma knew each other and were imprisoned together during the struggle years, Khwezi and Zuma met in exile, and after her father died in an automobile accident in 1985 Khwezi seems to have looked upon Zuma as someone who could help and advise her with family crises.³ At the time of the incident that Khwezi claimed was rape and Zuma claimed was consensual sex, Khwezi was HIV-positive, a fact known to Zuma, and she was also an AIDS activist and a self-identified lesbian. The stories of Zuma and Khwezi differed on some key points. Zuma claimed in court that the incident in question took place in his bedroom (though a policeman who took his initial statement reported that he had originally said it took place in Khwezi's room), that Khwezi was provocatively dressed in a kanga, and that she invited his sexual advances by getting into bed with him, watching him undress and asking him for a massage (*S. v. J. Zuma* [Tr.] at 905). Khwezi on the other hand claimed that the incident took place in the guest room in which she was staying and that Zuma had come into her room and offered her a massage, which she declined. She then testified that he got into bed with her and had sex with her against her will and that she 'froze' during the process (*S. v. J. Zuma* [Op.] at 17).

3 On the day that the alleged rape took place, Khwezi had sent messages to various friends and family as she was concerned about a family member who had been bitten by a snake in Swaziland. She testified that Zuma had asked her to stay over at his home before departing for Swaziland and that he greeted her as a 'daughter' when she arrived (*S. v. J. Zuma* [Op.] at 12 and 13).

THE ZULU QUESTION

Controversially and perhaps infamously, Zuma invoked Zulu culture and tradition in his defence, addressing himself to the court in Zulu (although he speaks fluent English) and claiming that he could see the complainant was aroused and that 'in the Zulu culture you do not just leave a woman in that situation because she may even have you arrested and say that you are a rapist' (*S. v. J. Zuma* [Tr.] at 907). As Elizabeth Skeen (2007) points out, it is ironic that the same man who had campaigned for a non-ethnic ANC with Mandela and who was instrumental in bringing an end to the violent Inkatha versus ANC clashes in Natal in the 1990s went on to play the tribal/ethnic card himself. Also worth commenting on is the fact that Judge van der Merwe, as Sanders (2012) has observed, unexpectedly gave some of his closing remarks in Zulu. Rather than reading this as Sanders does, that is as a gesture which suggested that 'Zuluness' is a performative role that can be adopted, I would like to offer a more pessimistic and skeptical view of the judge's change of tongue, particularly when one considers this linguistic shift alongside the Kipling allusion that was also made by the judge in his verdict.

To turn to the liberties taken by the judge with Kipling's 'If' poem, the first irony should be blatantly obvious: during a post-apartheid trial in which a black man stands before a white man for judgment, the judge invokes the spectre of the colonial and masculinist ideology that Kipling disseminated. In the subjunctive, Van der Merwe offers Zuma access from childhood to full manhood, summoning up a history in which the black man was likened to a child in intellect, though with the uncontrollable sexual impulses of a beast. Surely the implication here is that Zuma cannot control his sexuality, but that the judge is going to let him off with a warning.

Seen alongside the Kipling allusion, the judge's use of Zulu speaks similarly of a history of white power, the implication being that the judge has mastered Zuma's native tongue and therefore knows Zulu culture. Thus Van der Merwe's switch to Zulu is not a claim to Zuluness as a performative identity (as it could be in the case of Johnny Clegg, for instance), but a claim *to know* 'Zuluness'. Zuma speaks Zulu and uses Zulu culture to appeal in his defence, and the judge takes up the challenge by demonstrating his understanding of Zulu language, and, by inference, Zulu culture. If this seems like a reductive reading after the more playful one that Sanders suggests, let us not forget that it was not unusual for members of the white ruling class under apartheid to be familiar with an indigenous language, and that this language was usually acquired for the purpose of perpetuating exchanges that were massively unequal.

History speaks through the present, often in strange, ironic and discomfoting ways. While Zuma supporters outside the courthouse wore T-shirts emblazoned with the words '100% Zulu boy' (Van der Westhuizen, 2009), inside the court the judge invoked through Kipling the ethos of British colonialism, a patriarchal form of rule that mutated and mutilated indigenous cultures, amplifying and distorting the versions of patriarchy within them, and paving the way for the further manufacturing and ossification of separate tribal identities under apartheid. As Mamdani (1996) has pointed out, Natal under British control was a key area in the development of a system of 'indirect' colonial rule, by which 'customary law', 'native authorities' and the delineation of 'tribes' were used as agents of colonial rule. Beginning in the mid-19th century with Sir Theophilus Shepstone, Diplomatic Agent to the Native Tribes and Secretary for Native Affairs in Natal between 1845 and 1875, a 'tribal system' for Africans was encouraged and the black franchise opposed (Graham, 2012). Gradually, in the interests of sustaining white power, black patriarchy mutated under the guises of 'tribal authority' and 'customary law' during the colonial period and under apartheid. In short, there is no such thing as '100% Zulu'. Like other rigid categories instituted by our racist past, 'Zuluness', with all the authority invested in it, is a peculiar hybrid created under colonialism and apartheid, and this seems all the more poignant when one considers Zuma's claim to 'Zuluness' alongside the judge's allusion to Kipling, jingoist of Empire.

Bizarrely, another allusion to the enmeshment of the highly-militarised patriarchal British empire with 'Zuluness' came in the form of a gun made out of wood and inscribed with the words 'MSHINI WAMI: BOYSCOUT', wielded by one of Zuma's women supporters outside the courthouse during the Zuma rape trial. Echoing the 'boy' in '100% Zulu boy' (and in the judge's indirect poetic address to Zuma as 'my son' which demoted Zuma to the status of child), the gun inscribed with 'BOYSCOUT' seemingly points to Robert Baden Powell, who was a contemporary of Kipling's and a lieutenant general in the British Army as well as the founder of the Boy Scout Movement (which based its training programme for the young men of Empire on characters in Kipling's *The Jungle Book*). Yet, this pointing becomes circular, as what the gun signifies is a militarized ideal of Zulu identity – Baden Powell supposedly developed his 'scouting' skills while training with the Zulu in the 1880s, by which time legends of Zulu military prowess had gripped the British colonial imagination.⁴ Ironically, the combative power that was bestowed upon the Zulu by British colonialism is harnessed here in defence of Zuma.

4 As Dan Wyle points out in *Myth of Iron: Shaka in History*, Shaka became a mythic military figure for the British who propagated narratives about the Zulu kingdom under Shaka as an African Sparta, even though the Zulu were not necessarily more militarized than any neighbouring African tribes (Wylie, 2006). It is also possible that because the Zulu had been one of the few 'native' people to defeat a British regiment, at the Battle of Isandlwana in 1879, they acquired the status of 'noble savage' warriors in the British imagination.



Figure 1: Zuma supporter holds a wooden gun inscribed with ‘MSHINI-WAMI: BOYSCOUT’

A WORRYING PRECEDENT

Having examined the Zuma rape trial and its transcripts in her Princeton University thesis, Skeen concludes that ‘It does not seem likely that the trial marked a serious setback for HIV/AIDS or women’s rights in South Africa’ since the judge’s ‘admission of Khwezi’s past sexual history made her the face of women’s activism for stronger laws against sexual offenses and the admissibility of evidence’ and ‘Zuma’s “shower theory” moreover, generated such an enormous amount of negative publicity that it may even give way to positive impact’ (Skeen, 2007, p. 122). Her first point, that the trial was not a serious setback for women’s rights, was disputed indirectly by Jake Moloji of the Institute for Security Studies, who argued that the judge’s decision to set aside section 227(2) of the Criminal Procedure Act No. 51 of 1977 ‘has set a worrying precedent that is now binding on the lower courts’ (Moloji, 2006, p. 25). Khwezi was questioned about her sexual history extending beyond the offence being tried (namely her claim that Zuma had raped her), and according to Moloji her rights to privacy and dignity under section 36 of the South African Constitution should have been pitted against the provisions of section 227(2) in the judgment.

The admission of evidence relating to Khwezi’s previous sexual history was used to prove that she was an unreliable witness to her own rape, as the defence provided a number of witnesses who contradicted her narratives about previous rapes and attempted rapes which she claimed in her memoir and testimony had taken place in her past. While evidence should not be excluded where justified, Moloji (2005, p. 29) notes: ‘Given that rape is one of the most underreported crimes worldwide, it is difficult to see how reporting rates can be improved if there is a likelihood that the complainant’s sexual history will be paraded in an open court’.

As I have noted previously, the rate of reported rape in South Africa has been extremely high but fairly consistent since 1994 – and this challenges the widely held assumption that post-apartheid South Africa has a dramatically *increasing* rate of reported sexual violence (Graham, 2012). Disturbingly, however, I found that the rate of reported rape per 100 000 population did drop during one year between 1994 and 2008, and this was in the year following the Zuma rape trial. Given the threats made by Zuma supporters against Khwezi, and the judge's decision to admit her sexual history into the trial, which dramatically affected the outcome of the trial, it is possible that, rather than registering a reduction of sexual violence, the drop in reported rape may suggest that less women felt safe in coming forward to report rape in the year following the Zuma trial. The drop in reported rape in the year following the trial may be read as disturbing empirical evidence of how the public revictimisation and ostracisation of a complainant may serve to silence victims of sexual violence.

ACKNOWLEDGING SPECTRES FROM THE PAST

What insights about safety promotion can one draw from the analysis of the Zuma rape trial above? This is a challenging question for me, as I am a literary scholar, not a social scientist, and my book *State of Peril* deals mostly with fiction, and not with the 'reality' of rape. But the question had to be confronted in *State of Peril*: what was the relationship between literary and media representations and sociological reality? Another and even more challenging question that had to be faced was the question of the relationship between literature and history.

As my analysis of the Zuma rape trial indicates above, there are often surprising invocations of the literary in legal and political discourse that call for analyses of the interface between literature and society, between literature and the law, and of continuity and disjunction between the past and the present. Under Thabo Mbeki's presidency, J.M. Coetzee's novel *Disgrace* (1999) was referenced by Mbeki during the Human Rights Commission Hearings on Racism in the Media in order to contest a long history of representations of race and sexual violence in South Africa (Graham 2012). Unfortunately, Mbeki's obsession with a history of racism over a history of *patriarchal* racism hampered an effective state response to sexual violence. Moreover, as I point out above, the Zuma rape trial, which featured a strange literary allusion and has set worrying precedents for the treatment of sexual violence complainants in future, cannot simply be read in terms of the post-apartheid context, as it was deeply haunted by spectres from the past.

One could argue that although it had far-reaching effects, the Zuma case, which involved a high-profile politician, created a culture of spectacle around the trial that belies sexual

violence as an everyday problem in South Africa and the more ‘ordinary’ ways in which violent masculinities have been forged by South Africa’s socially, politically and economically violent past. Yet the racist and masculinist past invoked through the Judge’s allusion to Kipling and through discourse on “Zuluness” during the Zuma rape trial has resonance with more ordinary cases of sexual violence in South Africa in that the conditions for these more ordinary cases have been created by the same history of patriarchal racism that the trial invoked.

Unfortunately, when politicians have addressed sexual violence in post-apartheid South Africa this has not been to acknowledge the social, political and economic causes of sexual violence, but either taken the form of paranoia, suspicion and denial, or of obligatory lip service and political point scoring. Under the Mbeki presidency, rape statistics were questioned and denied, with opposition parties then using this to call into question the ANC government (Graham, 2012). Understandably, perhaps, given his own rape trial, Zuma was more reticent on the subject of sexual violence, until he was forced to say something following the horrific rape and murder of Anene Booysen in Bredasdorp, a small town in the Western Cape, in February 2013. In a statement issued by the Presidency on 7 February 2013, Zuma stated that: ‘This act is shocking, cruel and most inhumane. *It has no place in our country.* We must never allow ourselves to get used to these acts of base criminality to our women and children’ (Zuma, 2013, my emphasis). Contrary to Zuma, I would like to argue that the rape and murder of Anene Booysen has a profound ‘place’ in South Africa – like the Zuma trial it speaks to us precisely about the state of the South African nation and its haunted present.

ANENE BOOYSEN’S ‘PLACE’ IN SOUTH AFRICA

The rape and murder of Booysen followed shortly after a similar case had shaken the international community. In late December 2012, India was rocked by massive public demonstrations (and government crackdowns on these demonstrations) following the brutal gang-rape and murder of a young woman in New Delhi. Barely a month later, on 2 February 2013, Booysen was found mutilated and severely injured on a construction site in South Africa. She had been raped and died from her injuries in hospital six hours after being found. Transnational links between the two women were made instantly in the media. In South Africa, the response to Booysen’s rape and murder was public outrage, but news stories about Booysen, who came from a desperately poor and deprived background, played second fiddle to the killing of the glamorous Reeva Steenkamp by Paralympic athlete Oscar Pistorius. Booysen’s funeral, moreover, became an arena for political rivalry (Gouws, 2013).

It is important to realize that Booyesen's story was not given attention in the media simply because of the spectacular and horrific nature of the injuries perpetrated upon her. In fact, a very similar case – the gruesome rape and murder of Letty Wapad – went virtually unremarked and unreported in the media three years previously (Evans, 2013). It is more likely that the similarities of Booyesen's case to the New Delhi case – which received massive international attention – occasioned media reports on the Booyesen case. What the cases of Letty Wapad, the New Delhi victim and Anene Booyesen have in common however, is that both victims and perpetrators came from the under-privileged underclasses (the New Delhi victim was from a similar socio-economic background to the men to killed her, but was studying to become a physiotherapist), and that the victims were attacked *en route* to their homes at night, in areas where the state has failed to provide safe, well-lit public spaces, and safe, efficient and affordable public systems of transport. Obviously sexual violence can be a risk for all classes of society, yet there is no doubt that it is more widespread in public and private spaces where people have been brutalized by dire socio-economic conditions. The link between gender violence and socio-economic conditions – and particularly between gender violence and women's social and economic status – is well documented (See, for instance: Armstrong, 1994; Bourgois, 1996; Silberschmidt, 2001; Jewkes, 2002; Martin, Vieraitis, & Britto, 2006). Until the underlying causes of sexual violence are addressed – until the state recognizes the ways in which gender inequality has been forged by a violent history of patriarchal racism, and finds ways to address the socio-economic and gender inequalities that are directed related to South Africa's past – the rate of sexual assaults in South Africa will remain high.

CONCLUSION

There is no doubt that while post-apartheid South Africa boasts progressive gender rights legislation, this has not translated into a decreased incidence of sexual violence. As discussed above, the judgement handed down by Judge Willem van der Merwe in the Zuma rape trial which summoned the ghost of Kipling and masculinist colonialism in order to let Zuma off with a warning, and the treatment of the complainant in the trial – who was harassed and threatened outside the court and inside the court had her sexual history used against her – was a setback for gender rights in South Africa. Tackling problems of sexual violence in South Africa requires a complex approach from the state that acknowledges the ways in which responses to sexual violence have been shaped by colonialism and apartheid. Moreover, sexual violence cannot simply be addressed by palliative measures, but also needs to be prevented, which means addressing economic and social inequality, including gender inequality, that exist as hangovers from South Africa's patriarchal and racist past.

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