

*After the verdict,
what next? Justice
as part of the moral
and spiritual healing
agenda*

'We need to re-evaluate our value system as a society. The highly competitive environment we have created and the resultant conflict and pressure on different sections of our society make post-apartheid black society seem like a car travelling at high speed, changing gears without any transmission oil. We need to stop for a moment and check the oil before the car breaks down completely.'

Sello wa Loate¹

Vices turned into virtues

Money cannot buy love, so they say. What money can buy is the illusion of being loved, all the while living with a hollow feeling in your heart while you keep your eye on the ball – the material prize that comes with the illusion of love.

Can money buy justice? It cannot, it can only buy a plea bargain, an acquittal or some other related technical legal outcome. Following Judge Herbert Msimang's decision to strike Jacob Zuma's corruption case off the roll, Zuma's co-accused, Pierre Moynot, a French citizen employed by Thint Holdings, a multinational company that makes a living out of selling weapons, remarked that his company had always believed in the South African justice system.

This is in stark contrast to how many young, black South African men, who are crammed like sardines into overcrowded prisons and who are convicted of or are awaiting trial for petty crimes, feel about justice in their country. Even more devastating is that many of these young men will fall prey to gruesome gang rape while in prison. There is no denying that rape, of a man or woman, erodes a person's sense of self. For a country in which the majority of the population suffers from low self-esteem as a result of colonial conquest, this is fatal for future generations.

I wrote this last chapter the morning after Judge Herbert Msimang's decision to strike Zuma's corruption case off the roll. Listening to the contrasting views of Zwelinzima Vavi of the Congress of South African Trade Unions and Makhosini Nkosi of the National Prosecuting Authority over the radio, I stopped dead in my tracks to ask the question: is it worth publishing this book? In response, a resounding 'yes' reverberated through my being.

I indicated in the first chapter that I believe Jacob Zuma's saga reflects what is going on in the country and the world. The noise surrounding his court cases is a call to examine the deeds of African leaders at a time when the continent is expected to

rise above its previous corrupt thoughts and acts. When he addressed his supporters outside the court following Judge Msimang's decision, Zuma reiterated his position – 'I said in the beginning that I did not do anything wrong, I still repeat this today.' In all his speeches, he has never said that he did the right things, only that he did nothing wrong.

Not doing wrong is relative. During apartheid, resorting to armed struggle might have been wrong but it was the right thing to do considering the life-threatening situation that faced the majority of people in South Africa. What measure do we use to define what is right or wrong today? Wrongdoing seems to be relative in a democratic society where success is determined by access to material and political power, a society whose young people look up to a local drug lord driving the latest luxury automobile as a role model.

In 1997 whilst working as a founding director of Agisanang Domestic Abuse Prevention and Training (ADAPT), I commissioned a study on violence-related deaths in the lives of young men in Alexandra Township. The study, undertaken by Sello wa Loate, was based on three critical assertions:²

- Restoring self-love and pride in young black men is essential if violence against women is to be effectively addressed.
- Identifying key and effective strategies is essential for re-orienting socially dysfunctional and misdirected young black men as opposed to the view that sees them as a lost generation.
- Reactivating the belief that young black men's place is not in prison and that they, like all of us, have a positive role to play in our society.

One of the respondents indicated how difficult it is for him not to steal, not to disrespect women and not to be violent. In his words, children are told by adults to be good while they (adults) live a life that sends the message that it is profitable not to be good.

Other voices that came out of the study were:

- 'In the past during the liberation struggle, we used to say power to the people. Nowadays, our leaders say power to the stomach.'
- 'We are used to seeing people die in our townships. That is a common feature of our lives. We no longer fear death and we also have little respect for life.'
- 'In the ghetto, all good people are poor, the criminals are successful.'
- 'The people we look up to are the ones who encourage us to steal, including our teachers.'

It is clear from the study that the government does not lead by example and that revelations of fraud and corruption show that addressing crime and corruption is a futile exercise because 'everyone is doing it'.

On the day of Judge Msimang's decision, I received a long-distance call from a friend who was alone at home in the evening, depressed, not by the court outcome, but by her inability to live her truth. She said: 'Everyone at work was rejoicing about the court outcome and I had to pretend that I agreed with them. Now that I'm home, I'm hit by my truth and I feel very depressed. Does it mean that those of us who are loyal and law-abiding civil servants struggling to make ends meet with low salaries are fools? Is it not better to join them since we cannot beat them?' I responded by quoting yet another friend with whom I had spoken earlier in the day. He said, 'We should never lose the voice of reason' irrespective of whether Jacob Zuma becomes president or not. Failure to live up to our values and principles, he said, is tantamount to mass suicide.

Let me make it clear that this book is not intended to thwart Jacob Zuma's dreams of becoming president of this country. If he is destined to lead the country, he will. Nothing and no-one will stop him. However, 12 years after the first democratic elections

we should focus our attention on the quality of the leadership we deserve rather than the identity of the leader.

In their article about Zuma and the ANC, Karima Brown and Mdle assert that if objections to Zuma being president are about criminality, they should fall away after his acquittal from the rape trial. However, if the objections are about moral and personal wisdom, it is doubtful whether many in the ANC's leadership would make the grade.³ Brown and Mdle go on to urge citizens to hold all leaders accountable to a set of standards that include honesty, integrity in both personal and public affairs, empathy, decisiveness and the gravitas to command respect at home and abroad. These standards, they argue, must apply universally to all leaders without fear or favour.

We live in dangerous times. The world is in the hands of corrupt capitalists parading as philanthropists. Similarly, corrupt criminals leading governments and religious institutions across the world hold the will of the people at ransom using their money, popularity and their weapons to crush any voice of dissent.

Many people would say it's a sign of the times; I say it's the sign of a passing phase that is moving from an old to a new energy. This phase will pass as people will not tolerate governance that lacks truth and honesty. Leaders' shady undercover operations will be exposed for all to see and learn from.

Personally, I am not vehemently opposed to having Jacob Zuma as my future president. Each of us has the ability to connect with our inner light and lead with truth or succumb to the trappings of our ego and lead people astray. It is for this reason that I'm interested in knowing that when Zuma is not in the company of his legal team and his loyal supporters, when he is alone with his spirit, what does his inner voice say to him? Can he hold my hand, look me in the eye as my leader and elder, and tell me the truth?

'Who does she think she is?' I hear you ask. As they say in township language, *Wie's Di? Jy's fokol. Ja, entlik wie's ek?* (Who are you? You're fuck all. Actually, who am I?) If one uses contemporary material and political power as a yardstick, I wouldn't count for much. For instance, if I were to be hit by a truck, I would probably spend hours bleeding unattended on a stretcher in a public hospital simply because I cannot afford private health care. Were I to die from the accident, the administration of my estate would be easy and speedy and my children would have little to show by way of inheritance. As far as my struggle credentials go, I have never been arrested, never been in exile.

If I was to be convicted for mismanaging NGO funds, you can bet your last cent that when I go to prison, I will not be given a send-off by the who's who in politics. The probability of being served lunch by the minister of correctional services upon my arrival in prison is as strong as a heat wave in the North Pole. So, in the material and political world, I don't count for much. However, in another world, I am someone and I count. I am someone because I come from somewhere.

Rich or poor, politically popular or not, we all come from somewhere. We, Africans living on the southern tip of the continent, have come a long way. However, in spite of the achievements of the past few years, many of us are still haunted by the dark monster of rootlessness and loss of identity. This, as we know, is a result of our interaction with foreign cultures and the people who uprooted us from our own cultures.

African personhood and justice in contemporary society
According to Odora Hoppers, culture consists of socially transmitted behavioural patterns expressed through the arts, beliefs, religion, governance and other social agencies of human thought and practice.⁴ Despite being central to our lives, culture is, unlike our DNA, not genetically transmitted. It is a learned construct passed on from one generation to another.

In contemporary South Africa, cultural knowledge is composed of cosmopolitan and traditional knowledge. However, the latter goes beyond wearing skins and feathers and dancing to the thump of a drum around a fire with a busload of tourists snapping away with their cameras. Traditional knowledge in Africa includes technologies that range from architecture, history, environmental conservation, ethno-mathematics, animal husbandry, medicinal knowledge, astronomy, governance and indigenous law.

All these disciplines recognise the importance of a connection between physical, social, psychological and economic paradigms and the body, mind and soul.⁵ Unlike modern empirical paradigms that view life as a composition of disparate and disconnected entities, indigenous knowledge and culture view life as a holistic and interdependent relationship between the individual, family, community, nation and broader cosmos.

Sadly, African traditional knowledge is often reduced to singing and dancing and its significance is glossed over because some people feel it has no relevance to modern life. Indigenous economic thought should be integrated with economic empowerment in Africa but the ideas of indigenous people are disregarded as we continue to witness their displacement from their land to make room for national parks, military zones, mining companies and dam constructions.

From the Batwa of Uganda and Rwanda to the Baka of the Central African Republic, the San in Botswana to the Masai in Kenya, many people are evicted from their lands to make way for exploration and exploitation of their natural resources.⁶ Over centuries, colonisers have perfected the art of territorial, intellectual and mental colonisation of the indigenous peoples of the world.

Uhuru Hotep argues that the colonisation process started with the invasion of Kemet (Egypt) by the Hebrews long after the pyramids were built.⁷ Over time, the Assyrians, Persians,

Greeks, Romans, Arabs, Portuguese, Spanish, French, British, Dutch, Germans and Italians conquered Africa in what is referred to as the scramble for Africa, which reached its peak during the time of the infamous Berlin conference in 1886. By 1915, five minute European states – Britain, Holland, Germany, Portugal and France – had conquered the whole of Africa except for Ethiopia.⁸

Employing a process of miseducation, colonisers established schools that used a 'pedagogy and curriculum that deliberately omits, distorts or trivializes the role of African people in and their seminal contributions to world history and culture.'⁹ It is through such education that Africans have come to identify with European history and culture while they remain ambivalent about or indifferent to their own. To this day, a view of African personhood is trapped in a cultural paradox that upholds the superiority of the European way of life.

It is in this light that Ayi Kwei Armah calls for African intellectuals to think independently and creatively instead of planning for a future that is based solely on imitating foreign empirical thinking.¹⁰ Armah also warns against political agitation that is not preceded by a strong cultural education, which is in turn based on positive self-knowledge. Expecting politicians to solve deep-seated African cultural identity problems is, according to him, rather short-sighted.

Politics being the living art of the possible, good politicians are professionally partial to visions short enough to be realizable within a few years. This is not because politicians are just congenitally myopic. They are in a problem-solving occupation with short deadlines, and they rise or fall according to the strength of their base constituency. Constituencies of men and women living in the here and now normally want solutions to problems of the here and now, and the

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*nature of their occupation places politicians under a pressing obligation to solve just those types of problems. Short term.*¹¹

With their focus on the here and now, Armah argues that politicians are not concerned with the unborn or with ancestors who lived many years ago because babies and dead people do not vote. Because they are concerned with winning the next election and purchasing the latest presidential plane, politicians have no time or regard for anyone who will have not have an active and visible role to play in making sure that they are voted into power. Armah calls for an active and visible cultural and intellectual contribution from cultural workers and intellectuals across Africa so that the long-term goal of liberating African minds is not tied to a specific presidential term.

A robust contribution of indigenous knowledge is needed in all intellectual disciplines, including the legal system. Legislation in any country is built on the supreme law of the country, the constitution. However, in many African countries, the constitution emphasises national unity instead of recognising the diverse cultural and linguistic realities of the population.¹² In South Africa, however, even though the Constitution recognises the cultural, religious and linguistic realities of diverse communities, indigenous people's cultural beliefs and their role in crime prevention do not yet play a big enough role in policy-making in the country.

Because it is based on the superiority of European law, the South African legal system does not take into account the role that indigenous justice could play in addressing the moral breakdown and high levels of crime in the country. To illustrate, while it was commendable that Zuma testified in his native language followed by Judge Van der Merwe's attempts to address him in Zulu at the beginning of the judgment, the outcome of the trial itself was largely influenced by technical evidence provided

by Western-trained experts – legal and medical practitioners, scientists, technicians and psychologists.

There is no doubt that the professionals mentioned above have a critical role to play in helping legal practitioners solve criminal cases. They apply their skills diligently to the process and are regarded as experts upon whom the judge or magistrate relies for the verdict. Their expertise is based on the process power of Western science, which is never questioned.

Judge Van der Merwe has this to say about Dr Louise Olivier, who testified on Zuma's behalf:

'Dr Louise Olivier is a registered clinical and counselling psychologist. It is not necessary to refer to her curriculum vitae. It is an impressive curriculum vitae.'

*Dr Olivier treats patients from different culture groups in South Africa and has patients from countries such as Botswana, Uganda and Tanzania. In her doctoral thesis she inter alia worked on the development of a psychometric test regarding the evaluation of sexual functions and adaptation of adults in South Africa. This test has found acceptance and is now used in South Africa.'*¹³

In his judgment, Judge Van der Merwe rejected Dr Merle Friedman's evidence on the basis that she, according to Dr Olivier, did not make use of available psychometric tests.

*'What is, however, of some importance to me is that no psychometric tests were done to find out more about the complainant's personality.'*¹⁴

It is my view that the judge based this decision on a legal technicality without considering the manner in which psychometric

tests are constructed and applied in a gender- and race-oppressive world. Even more critical is the fact that in Africa personhood is relationally defined and cannot only be determined through isolated individual psychological attributes measured by tests based on a European world-view and life experience.

In most instances the suitability of an expert called to give evidence is based on educational qualifications that may be beyond reproach but do not take the complainant's culture into account. The expert may not speak the defendant's language or be sensitive to his or her cultural norms. It is assumed that because experts have a qualification that shows extensive educational and professional experience, they are well equipped to make pronouncements on behaviour that may have moral or cultural roots. Whether it was consensual or not, sex between Zuma and the complainant raises serious moral arguments that psychometric tests cannot resolve.

Dr Olivier's impeccable evidence based on her training as a forensic psychologist raises two concerns: the tendency of professionals to 'pathologise' behaviour and the ways in which scientific evidence can be used as a tool to oppress women. In her evidence, Dr Olivier concerned herself with the 'madness' of the female victim as opposed to the 'badness' of the male offender.

Implicit in this is a message that says to men that even though rape may be against the law, forcing yourself on a woman is not fundamentally wrong and is explained with excuses such as: 'According to my culture, I was taught never to leave a woman who is aroused otherwise I will be charged with rape' (Zuma). Satisfying a woman's sexual needs was not the issue in this case.

Zuma may have thought he was doing the complainant a favour by having sex with her. Judging from his responses to Prosecutor De Beer's questions, there is a chance that Zuma might have perceived himself as providing a 'service' to someone who he thought needed to be 'serviced'.

De Beer asked Zuma about the claim that the complainant had shown she had sexual interest in him when she came to visit him in his study while wearing only a kanga.

De Beer: 'So from all this, what did you think she was up to?'

Zuma: 'Maybe she was trying to send a certain message to me.'

De Beer: 'And what message was that?'

Zuma: 'Maybe she is lonely and I can assist her.'

De Beer: 'Lend a helping hand?'

Zuma: 'Yes.'¹⁵

When it comes to patriarchal sex, men's sexual pleasure is seen to be of greater significance than a woman's. Women's magazines frequently contain articles such as 'How to satisfy your man sexually' or 'How to make sure that your man does not stray' or 'How to survive your man's infidelity'. Zuma's statements and the articles we see in women's magazines are aimed at protecting the male sexual ego rather than enhancing a woman's sexual pleasure.

In her article 'Sexual Pleasure as Feminist Choice', Patricia McFadden highlights the suppression of women's bodies and their sexuality within a patriarchal culture. The notions of pleasure and choice are rarely mentioned except when their overall goal is satisfying a man's lust and desire.¹⁶ It is worth noting that the open discussion of sex and sexuality in contemporary society is a result of the high cost of HIV/Aids rather than a reflection of the achievements of the global feminist struggle in the arena of women's sexuality. For many women, sexuality is still treated in a manner that upholds men's superiority over women.

'Women's movements organizing around issues of sexuality have recorded some successes with respect to

*legal reforms and service provision in the realms of sexual health and reproductive rights, anti-violence movements, and movements against various traditional rites and practices. Yet we now find ourselves at a moment in which gains of the last decades are currently in danger of being set back by the dominant political agendas of our time. The doctrine and militaristic global politics fomented by the Bush regime are characterized by such deep sexual conservatism that the prospects for any kind of sexual democracy once again look thin.'*¹⁷

The conservative militaristic global regime has resulted in war and women's bodies have also been caught in the crossfire. We have seen a renewed policing of women's bodies under the guise of morality or religion from Somalia to Guatemala, Texas to Haiti. Women have been unjustly condemned by Sharia law in North Africa, feminists have been deported in Harare under the pretext of the erosion of family values, women have been harassed and policed on the streets of Hillbrow, subjected to virginity testing in rural KwaZulu-Natal, and young lesbians have been flogged and murdered in Khayelitsha and Mauritius.

In the context of these conservative cultural and sexual beliefs, it would be very easy for Dr Olivier to blame or pathologise the complainant's behaviour. Her diagnosis, however, overlooked healing the complainant's alleged illness and did not address the fact that when a woman refuses sex, her decision should be respected.

This tacitly endorses crimes against women and children. Despite Zuma's remarks about African culture and sex, an African elder was never consulted to verify his statements. This information was perceived to be of no relevance to the case. By raising a cultural defence within criminal law, Zuma took advantage of the cultural pluralism that exists in South Africa. His intention was to negate the unlawfulness of his act.

Almost all the witnesses, Jacob Zuma, Dr Olivier and Judge Van der Merwe agreed that the complainant was mentally ill because she may have an 'encapsulated delusion' or 'an organic pathology, which can be accompanied by hallucinatory images',¹⁸ She went further to diagnose the complainant with borderline personality disorder.

Listening to the Judge reading Dr Olivier's diagnosis took me back to the time when 'science' was conveniently used to incarcerate black people in mental hospitals. It also evoked images of black people lying naked on operating tables serving as guinea pigs for 'scientific' experiments in laboratories, hospitals and morgues across the country. Once again, I was reminded of the time when Sarah Baartman was displayed as part of a 'scientific' investigation.

Even though the court diagnosed the complainant's alleged illness, no-one was interested in healing her. The diagnosis was pronounced so as to prove that the complainant's alleged events could not be relied upon. Unlike indigenous law, Western justice does not concern itself with mending damaged personal and communal connections. Its main concern is punishment – the harsher, the better.

In a recent outcry about crime in South Africa, many called for improved salaries for police officers, improved investigation and prosecution, clamping down on bribery, etc. Criminologists say we should reclaim our streets through neighbourhood watch patrols and visible policing. While they may be necessary, these suggestions view safety and security as a means of protecting humans from external harm. We also need an internal process to build people's capacities to live their lives in the best possible economic, cultural and spiritual ways in order to render crime unnecessary.

Taking a tough stance on crime should not only be about punishment and imprisonment. We know from statistics

that most people in prison are black, and it follows that black families are most affected by the government's tough stance on crime. Surely healing the moral and spiritual wounds in our communities is as critical as sending a clear message to criminals that crime does not pay?

In an interview with Ike Phaaahla on SAFM the day after his corruption case was struck off the court's roll, Jacob Zuma was asked if he was going to take legal action against the National Prosecuting Authority for abuse of power. Zuma explained that such an action would be ill advised because the most important intervention was to right the wrongs of the past few years. Upon being asked how the country could right these wrongs, he said we could do so by making sure that the criminal justice system functions effectively.

The interview left me with unanswered questions: what role, if any, does moral justice play in ensuring effective functioning of the criminal justice system in post-apartheid society? In what ways can we inculcate and monitor moral justice? Is there room for African indigenous jurisprudence?

Bridging the cultural divide: indigenous law and transformation within the judiciary in South Africa

Like many other post-colonial nations, South Africa has inherited a dual justice system, with one part based on Western justice and the other based on an indigenous model of justice. With the advent of democracy, a new Constitution gave full recognition to customary law and guaranteed every person the right to participate in a cultural life of his or her choice. The inclusive Constitution called for a re-negotiation of old relationships and the emergence of new ones. These relationships affect every aspect of our society including education, health and the workplace.

According to Thandabantu Nhlapo, of all these negotiated relationships the ones that have ethnicity or culture at their centre are the ones that suffer most from the legacy of the past.¹⁹

In his view, African customary law remains doubly vulnerable because not only is it required to re-negotiate its content, it also has to re-negotiate the political relationship between itself and the rest of the legal system. This re-negotiation, he argues, occurs against the backdrop of a dominant legal system and a dominant culture whose relationship with African culture has been negative in the past.²⁰

Over a decade after the advent of democracy South Africa has yet to come to grips with healing the divide between the Western notion of retributive justice and the African concept of restorative justice. As far as the administration of justice is concerned, a common practice remains one that upholds ideas that reflect the classic Western approach with its sole focus on adjudication and punishment, as opposed to the African approach that concerns itself with notions of healing, forgiveness and the restoration of damaged relationships at individual, family and community levels. This means that Africans are still judged on the basis of the laws that are not in harmony with the ways in which their communities (and life philosophies) are structured.

This situation is not unique to Africa. It is a phenomenon that is experienced by First Nations of the world in Asia, the Americas and the Pacific. In her paper 'Indigenous Justice Systems and Tribal Society', Ada Pecos Melton distinguishes between the practice of indigenous and that of Western law in America.²¹ Western law, she asserts, is rooted in a European world-view that is not only hierarchical and adversarial in nature but guided by written laws that limit decision-making powers to very few people.

In this system, two parties are brought into the same room not to generate dialogue, but as adversaries to determine the defendant's guilt or innocence. To achieve this, evidence is often acquired and presented in the most raw and shocking manner. I find it interesting that Advocate Kemp J. Kemp was more than delighted to produce a private manuscript acquired through

dubious means as evidence to show that the complainant was an unreliable witness, yet he refused the State's request for permission to use the material acquired from the raids of Zumá's office and other properties. He considered it acceptable and unquestionable to use individuals named in the private unpublished manuscript as witnesses against the complainant. Of particular interest is that Kemp J. Kemp refused to view this invasion of a private emotional space in the same serious light as the invasion of a physical space.

Because the overall objective of Western justice is not to remedy the problem but to punish the offender, the truth is not reached voluntarily and willingly. A legal practitioner becomes like a dentist extracting a tooth without anaesthesia, hoping the pain will become so unbearable that the accuser will ultimately give in and the inconsistencies of his or her story will be exposed. In the event of such a slip, the defence then goes for the kill. In some cases a lawyer may advise the client that the case against them is 'rock solid' and that a guilty plea will result in a lesser sentence. However, Rupert Ross argues in his book *Returning to the Teachings* that in such circumstances an admission of guilt is not the same as accepting the wrongness of the offence and the hurt it has caused others.²²

This could explain why many people end up serving their full sentences only to be released from prison still hiding behind lies, excuses and justifications for their deeds. Surrounded by prison authorities and offenders who are also drowning in a sea of lies and deceit, individual offenders are tacitly given permission to deny their moral and spiritual dimensions. An inability to access these dimensions is a form of death.

There is a common saying in Setswana – *letsipalo le le phelelang ke modisa ma gago*, which means that an active conscience provides a basis for effective policing in our private and sacred spaces; it helps us to make life-enhancing choices. So many of us, rich or poor, are dead while we are alive; we no longer have

a conscience. Humans who are unable to feel their own pain cannot take responsibility for the pain they cause to others. Similarly, anyone who cannot feel cannot heal.

This then raises a critical question: in what ways can the justice system bring about healing of individuals, families and communities? Questions of justice in Western societies are relegated to the legal institutions while matters pertaining to morality, forgiveness and reconciliation are left to religion and philosophy. In contrast, indigenous law sees the human and holistically integrated into all sectors of society.

If we hand over our entire lives to the practice of law in Western courts as we are currently doing, how do we envisage reconnecting with other dimensions in our existence? Does the justice system have the orientation, willingness and capacity to practise justice in healing? What role, if any, can indigenous justice play in healing a country ravaged by moral and spiritual breakdown?

Indigenous justice is based on a holistic philosophy founded on a circle of healing for which the main goal is connecting those affected by a specific crime. Unlike in the Western justice system, law is a way of life and justice is an important part of that life. This means that the process of law-making and the administration of justice are an integral part of a socialisation where the young are introduced to the socio-cultural, religious, economic and philosophical realms of life in a village by their elders. The process of law-making and the administration of justice are not guided by written rules but passed on orally from one generation to the other by a council of elders, in which every man in the community has the right to participate. While this process excluded women in the past, the new dispensation has brought with it opportunities for women to provide leadership not only in the home but in the broader community.

In his book *The Healing Wisdom of Africa*, Malidoma Patrice Somé points out that an elder is one whom the village acknowledges as having reached old age as well as an age of maturity and wisdom.

*Elders are repositories of tribal knowledge and life experience, essential resources for the survival of the village, anchoring it firmly to the living foundation of tradition. The old and the elder are the most revered members of the village community and its greatest preservers and nurturers... The elder is as important in the community as the newborn, in that they both share a proximity with the Other world, the ancestors' world.*²³

In their role as preservers of the community, elders perform functions that include attending to emotional situations in the village, making sure that the laws of the ancestors are not broken, and leading rituals and healing ceremonies. An elder entrusted with these responsibilities is essentially a keeper of a shrine that, like an altar, is a place where one goes to enter into communication with the Other world. Elders play critical roles in ensuring balance and harmony in the community, and the recognition of each elder is carefully debated because it is believed that power in the hands of those who are old but unwise can be lethal.²⁴

The involvement of elders in the administration of justice is documented in legal reports from countries such as Australia and Canada. The Murri Court falls within the jurisdiction of the Queensland Magistrate's Court and serves offenders of Aboriginal or Torres Strait Island descent. The Murri Court has a dedicated slot in the court's list of proceedings and its proceedings are held in an inclusive manner for non-English-speaking participants. Often, the magistrate may choose not to wear his or her robes and may sit on the floor at a custom-made oval table that represents a healing circle.²⁵

The court comprises community justice groups, which are partially funded by the state and whose members are taken from the local community, the elders' committee and the Community

Corrections Office. According to Magistrate Hennessy, the positive interaction between the participants represents a holistic approach to an historically difficult problem characterised by the representation of Aboriginal people as offenders and white Australians as those who decide on the fate of the offenders.²⁶

The aim of the elders in the Murri Court, and in many other indigenous justice systems, is to condemn the offending behaviour in the strongest terms and to teach the community about indigenous philosophies and justice. The acknowledgment of the elders' authority as moral guardians over society is critical for the healing of a community suffering from years of racial oppression and cultural repression. The court's work is not just about finalising a case. It encompasses the reintegration of restorative ideas into existing Western justice procedures.

From the above it is clear that in the indigenous realm, law cannot be separated from morality and spirituality. Cleansing your soul is seen as one of the key elements of ensuring justice and balance. In the court described above, symbols such as indigenous paintings, a message stick and conch shell are displayed prominently in the courtroom to serve as a means of non-verbal communication and to instil a sense of pride and belonging for participants from affected communities. It is believed that people who are not in touch with their life-force are prone to committing atrocities against themselves and others. Efforts aimed at addressing widespread spiritual disconnection are critical in a crime prevention strategy. Crime is also perceived as a human error that requires corrective intervention from families, the community and elders. To correct such wrongs, the offender is expected to show remorse by making a public apology as well as by engaging in public and private acts that demonstrate a commitment to making things right. This means that within indigenous law the offender is given a chance to heal and change.

By giving an offender a chance to heal, the indigenous

system shames the act and not the person.²⁷ In the case of Jacob Zuma, respect for him as an individual who has contributed significantly to the liberation of the country would be preserved in this system. However, he would still be expected to take full responsibility for his actions.

The day after his acquittal, Zuma apologised for not using a condom in what he termed consensual sex. He did not apologise for being unfaithful to his wives. Because Western law focuses on the offence and not on the broader impact of an offender's acts on his family and community, we will never know how his wives suffered during the rape trial. They will not speak out because 'culture does not allow it'. Inspired by Margaret Singana's 'Stand by your man' and the societal notion of how a married woman should behave, Zuma's wives will be expected to stand firm behind their man, carrying their burdens in silence like good women. After all, *lebilla la mosadi ke bogadi* (once married, a woman must not return to her original family until death, she belongs to her in-laws and must be buried by them).

Within the indigenous justice system, respect is extended not only to the offender but to everyone who has been affected by the conflict. This means that respect for Jacob Zuma would translate into equal respect for President Mbeki who did not deserve to be at the receiving end of acts of disrespect from Zuma's supporters who, among other things, hurled profanities at Mbeki, turning our mother tongue into a traditional weapon of mass destruction. Similarly, others who took a principled stand against Zuma's actions – Barney Pitso, Njabulo Ndebele and Archbishop Tutu – would also be extended respect in terms of this rule.

Finally, one critical element of the system is focusing on the victim to encourage healing at physical, emotional, mental and spiritual levels. Apart from the support offered by women and men outside the court, the complainant was essentially alone. Her voice is almost erased in our hearts as we become like the

citizens of Hamelin following the piper from one rendition of *Umshini wam* to another.

In conclusion, allow me to ask a question that continues to haunt me: what lessons, if any, have we learnt from Jacob Zuma's rape trial other than the fact that the abuse of sexual power does not seem to have any serious consequences in South Africa?

The drama of Zuma's rape trial happened in a country ravaged by violent crime, inhumane levels of poverty, an alarming prevalence of HIV/Aids, an ever-increasing number of orphans raising themselves, poor black matric results, poor service delivery from government departments, alcohol, drugs and other addictions, an increasing prevalence of cancer, the emergence of a new drug-resistant strain of TB, high divorce rates and tension in intimate relationships, teenage pregnancies, mothers dying during childbirth, young women seduced by the commercial power of prostitution, middle-class parents leaving their children to be raised by DSTV while they chase deals and deadlines, white farmers killed with impunity... I could go on and on. However, I refuse to be buried in a heap of apathy and hopelessness.

In the past decade South Africa had made incredible progress against immense odds. If we focus our undivided attention on ongoing collective political and socio-economic challenges, we cannot be held hostage by one man's inability to act appropriately as an elder and leader.

It is very clear that the justice system as it is currently applied has had no impact on awakening the nation from its moral and spiritual stupor. Despite tough sentences and a prison system bursting at the seams, our hearts and minds are numb to rage and pain. It has therefore become critical at this point in our evolution as a democracy that we counter the cruelty of our times by honouring a spiritual connection between one human being and another. An African elder, Eskia Mphahlele, has this to say:

After the v...

*'When we track down and kill another person or persons, we ourselves individually die some. We place the best in ourselves – the human spirit, otherwise called God – in unspeakable jeopardy.'*²⁸

For me, the Zuma rape trial did not help relieve the fear that I will not be able to protect myself and my daughter or her daughter from rape. Since I started working in the area of gender-based violence, I have carried a fear of being raped. When I lie awake at night after watching a news bulletin riddled with bullets and blood, rage and rape, I long for a place where women and children are cherished and loved by equally loved and self-loving men.

Speaking of love, Leco Buscaglia defines it as the only word which is big enough to engulf all of life. If we miss out on love, he says, we die a little and miss out on life.²⁹ How, then, do we learn to love and to live?

As we set out in search of our shrines, allow me to end this journey with an excerpt from Mazisi Kunene's poem 'The Ancestors and the Sacred Mountain', quoted by Eskia Mphahlele in his address at the opening of an exhibition at the Local History Museum in Durban.³⁰

*'People must move without fear
Nor should they raise their voices to the hurricanes
But must with their power command them to silence.
It is us, the descendants of the lions
Who must rule, without us the earth itself would end.'*