

Lisa Vetten looks at the gulf between new progressive laws and their implementation

The state of our nation

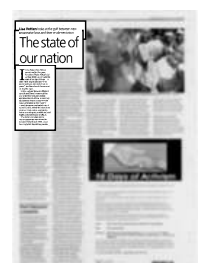
In his State of the Nation speech earlier this year, President Thabo Mbeki told us that 2006 would mark the start of an Age of Hope — a time when South Africans “shall go out with joy, and be led out in peace”. And then Jacob Zuma went on trial for rape.

In the contrast between Mbeki’s speech and Zuma’s rape trial lies one of the key tensions of post-apartheid South Africa: a visionary and sincere desire to improve the status of women in the country — and the messy contradictions of women’s lives, where freedom from violence exists not as a certainty, but as a contingent, conditional and highly contested state of affairs.

The vision is evident in the various measures introduced by the government post-1994. These have included legislating manda-

tory minimum sentences for certain rapes; tightening bail conditions for those charged with rape; and enacting the Domestic Violence Act, widely regarded as one of the more progressive examples of such legislation internationally. Policies and guidelines for dealing with sexual violence have been prepared for health workers, police officers, prosecutors and social workers. There is also a policy framework guiding the establishment of domestic violence shelters. Specialist courts and one-stop centres have been created for rape victims, while family courts have been piloted to deal with domestic violence and maintenance. Important decisions affirming the constitutional rights of women subjected to gender-based violence have also been handed down by our various courts.

These efforts not only constitute significant gains, but also create a policy framework that begins to challenge accepted norms and becomes a tool for social change. But if this framework is to function as more than a symbolic statement of intent, then policies and laws must be implemented effectively



and intention matched with action. Yet it is in the action, or implementation, that the conditional and contingent nature of the law's protections is made most obvious.

For instance, obtaining a protection order in terms of the Domestic Violence Act is dependent on whether a court has sufficient clerks and magistrates, functioning photocopiers, paper and a budget to cover the costs of the sheriff's fees for serving the protection order. If no such budget exists, then service of orders is made a police responsibility. Precisely when the order is served will depend on the extent to which individual officers consider such orders a priority, the number of other demands being made on their time, as well as the availability of police vehicles.

The quality of justice provided by criminal justice system personnel is also variable, being affected by training around and interpretation of the Act, as well as their attitude towards domestic violence. Consequently magistrates cannot always be relied on to grant the full spectrum of protections contained in the Act, rarely ordering that weapons be removed, emergency monetary relief provided, the abuser evicted from the home, or protective police escorts provided. Police officers' responses to domestic violence are similarly diverse. Further, anyone wanting to apply for a protection order needs to be literate, as well as proficient in either English or Afrikaans, the only two languages in which the forms are available.

And so, in these ways, the state undermines its own best efforts. But even though these efforts are partial, uncertain and incomplete, nonetheless they have been sufficient to generate resistance and discontent, the Zuma rape trial being but one illustration of how deeply contested these changes are.

Because the trial was so bound with the broader politics of succession in the ANC, many were only able to view it through this lens — thus missing what the trial was also saying about gender relations in the country. They therefore did not notice how some of the behaviours exhibited by Zuma supporters outside the Johannesburg High Court — stoning, burning and the use of slurs specifically reserved for “unchaste” women — have traditionally been used to keep women in their place.

Inside the court, while Zuma's pronouncements on Zulu culture were generally met with sniggers, Judge Willem van der Merwe's legal traditionalism was received with reverent awe, illustrating how few noticed the similarities between the two men's conservatism in relation to women. Such conservatism on Van der Merwe's part is hardly unique but the product of a long-standing body of traditionalist legal thinking that hoards and guards, most jealously, its protections and remedies.

The price of entry is high for rape complainants, with admittance reserved for those who dress modestly; keep their knees together while in the company of men; refrain from sexually charged con-





Jacob Zuma's supporters demonstrate outside the court during his rape trial. Photograph: Paul Botes

versations with men; scream loudly in the course of a rape; defend their modesty so valiantly that clothing is torn; phone the world immediately afterwards to tell them about the rape; bath immediately; and become depressed. Yet even if all these conditions can be met, one final barrier must still be negotiated — the cautionary approach to rape complainants' testimony, a diluted version of the cautionary rule that, in essence, treats rape complainants as mendacious, delusional, vengeful and untrustworthy.

There are a number of conclu-

sions we can draw from this year about the gendered state of the nation. One is about the double-edged nature of the law, sometimes advancing women's rights, other times trampling them. Another is about the limits of the law as a tool for changing complex human behaviour. This year made it abundantly clear that a good portion of South Africans see no need for profound changes to men and women's relations with one another. The third point arises from the vagaries of implementation, underscoring how commitment to addressing gender-

based violence is not consistently embedded in all spheres of the state, whatever the laws and policies may say to the contrary. Much then remains to be done before all women enter "their season of joy".

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