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Racist Colonial Misanthropic Scepticism: Black Women in South Africa's Post-Apartheid Rape Law Reform

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Abstract

Racist colonial misanthropic scepticism is doubt about the full humanity of Black and other peoples of colour, rooted in their racialisation as inferior under Western European colonialism. In this article, I use a decolonial feminist lens to illuminate the role of racist colonial scepticism in excluding Black women from early post-apartheid rape law reform processes in South Africa, specifically those around the drafting of the Sexual Offences Act of 2007. Existing studies did not investigate the continued racial assumptions about Black women in this reform. The qualitative research design encompassed primary documentary research and original interviews, analysed through thematic and critical discourse analyses, revealing two workings of misanthropic scepticism. The first is the muting and negative portrayal of Black women in rape law reform discourses. The second is Black women's experiences of marginalisation within civil society's rape law reform agenda-setting. These observations have implications for anti-rape collaboration and peacebuilding.

Keywords: *Black women, misanthropic scepticism, rape law reform, post-apartheid, South Africa, peacebuilding*

Introduction

After South Africa transitioned to democracy in 1994, it began to reform its colonial and apartheid-inherited laws to rectify the institutionalised

and structural injustices of the past. These legal reforms included what is referred to in the Anglophone literature as "rape law reform", that is, the changing of the laws and policies on rape and sexual assault within a given national or municipal jurisdiction. Rape law reform is often a result of the advocacy and mobilisation initiatives of anti-rape activism and scholarship. Rape law reform in other African countries has also most prominently occurred in the context of regime transitions or post-conflict settings, as part of peacebuilding efforts to rebuild institutions, address and end past impunity, and eliminate or reduce violence (Medie, 2019; Mageza-Barthel, 2012; Naylor, 2008). The African post-conflict/transitional contexts of reform contrast somewhat with the rape law reform that has occurred in the well-established democracies of the White-majority Western countries in the Global North. In both African and Western States, rape law reform is one of the measures used to advance human rights like the right to equality, bodily autonomy, and freedom from violence. The focus tends to be on women's human rights, with rape being a crime predominantly targeted against women. At the same time, patriarchal gender stereotypes also render male rape victims invisible.

As in Western countries like the United States of America (USA), racial tensions and inequalities between White communities and communities of colour have played a role in how rape law reform has unfolded in South Africa (Crenshaw, 1991; Davis, 1978; Gqola, 2015; Greenbaum, 2008; Motsei, 2007). These inequalities are traced to South Africa's history of prolonged White settler colonialism (relative to other African states), mainly within four settler states that unified into a British dominion and later seceded as a White-ruled apartheid republic. It is a history that is similar to that of the USA, a settler state that emerged from a federation of multiple White settler colonies. Whereas the USA became a White majority sovereign state under White majority rule, South Africa became a sovereign state based on White minority rule over the Black majority before its democratic transition. In both countries, White feminists were historically at the forefront of rape law reform (Bridger, 2024; Davis, 1978; Meintjes, 2003; Posel, 2005). This article uses a decolonial feminist lens to examine racist colonial misanthropic scepticism and how it has resulted in the exclusion of Black women from post-apartheid rape law reform. Exclusion encompasses the leaving out, marginalisation, and opting out of Black women from law reform. Past studies have mentioned or alluded to Black women's exclusion from rape law reform (Gqola, 2015; Greenbaum, 2008; Motsei, 2007). They have

not systematically investigated exclusion as a product of Black women being disadvantaged by racial prejudice, stereotypes, discrimination, paternalism, and myopia.

In the discussion that follows, I explain my decolonial feminist framework and the meaning of racist colonial misanthropic scepticism within it. I state and motivate my qualitative research design and methods. I then interrogate the silences within rape law reform on historical racist colonial misanthropic scepticism against Black women and men, respectively, within the law, the legal fraternity, and South African society. This leads to my examination of Black women's post-apartheid experiences of racist colonial misanthropic scepticism and the subordination of their experiences by a Black anti-racist rhetoric that privileges Black males' experiences of discrimination. I end with a reflection on the effects of racist colonial misanthropic scepticism, specifically its possible exacerbation of gender antagonisms within Black communities and negative impact on the attainment of victim and community-centred anti-rape approaches.

A Decolonial Feminist Framework

Decolonial feminism is a collective term for feminist perspectives that seek to explain the different positionings of historically colonised men and women in interrelated, colonially introduced systems of political, economic, epistemic, and cultural domination (Lugones, 2010). Decolonial feminism is located within the broad umbrella of decolonial thought, which analyses and seeks to overcome the continuation of colonial realities in a 'postcolonial' world. Racist colonial misanthropic scepticism, also known as Manichean misanthropic scepticism in decolonial thought, is the persistent doubting of the full humanity of historically colonised or enslaved people (Maldonado-Torres, 2007; Wynter, 2003). This doubt originates from the colonisers' conceptions of the colonised as racially inferior and lacking elements that would complete their humanity, such as civilisation, thought/intelligence, maturity, morals, ethics, restraint, development, democracy, human rights and others (Grosfoguel, 2007, p. 213; Hlabangane, 2018; Maldonado-Torres, 2007; Ndlovu-Gatsheni, 2014; Zondi, 2014). Misanthropic scepticism necessitates White "civilising" interventions to "develop", "educate", "save" or "chastise" historically colonised people deemed "pathological", "passive" or "helpless" (Zondi, 2014). Often historically internalised by the colonised, racist colonial misanthropic scepticism

shaped how colonised peoples saw themselves within and across communal divides.

The racist colonial misanthropic scepticism that I am concerned with here is the product of Western European colonialism as a global enterprise that shaped the modern world. Undertaken by people who came to identify themselves as Europeans or Whites of European descent, this colonialism started with the conquest of the Americas and the Caribbean. It expanded to the conquest of, and rule over, peoples and territories across the world. It persists through *coloniality*, a foundational concept in decolonial theory, which is the continued White political, cultural-spiritual, economic, and epistemic dominance over historically colonised peoples (predominantly peoples of colour) long after the dismantling of colonial and apartheid administrations (Quijano, 2000). The varying manifestations and experiences of racist colonial misanthropic scepticism are dependent on the positioning of individuals and groups in interconnected racial and sex-gender hierarchies, subsuming it under the concept of the coloniality of gender. The *coloniality of gender,* a concept central to the decolonial feminist intervention, is the conjoined colonial construction of race and gender to subjugate people of colour and subsume them in racial and gender hierarchies wherein White people are at the apex (Lugones, 2008; Lugones, 2010). It endures in post-independence societal organisation. Racist colonial misanthropic scepticism is central to the *coloniality of being*, which is the lived experiences of historically colonised peoples, arising from being seen as less than human (Maldonado-Torres, 2007). The coloniality of being is herein reframed as the *being aspect* of the coloniality of gender. Black public personalities, collectives, and others have responded with outrage and defensiveness at blatant racial and cultural prejudice in public discourses. Some have dismissed this outrage as a distraction from confronting the "real" problem of the sexual violence pandemic (see, for example, Steward, 2016), in a country that is considered one of the rape capitals of the world (Bridger, 2024; Human Rights Watch, 2010). On the contrary, a significant obstacle to addressing the problem of rape is post-apartheid rape law reform's failure to critically confront racist colonial misanthropic scepticism in the law and society, particularly as it pertains to Black communities that the law historically discriminated against (see also Graham, 2013). This has broader implications for the realisation and building of a decolonial peace. A decolonial peace is a state wherein persons and peoples recognise each other as fully human, a starting point to "abundant life"

(Biko, 1978/2004, pp. 82, 121-122) and the significant reduction (if not elimination) of all forms of violence.

Research Methods

In interrogating the implications of racist colonial misanthropic scepticism in South Africa's rape law reform for Black women, I chose a qualitative research design. A qualitative research design is better suited than a quantitative one for an in-depth, animated, and nuanced exploration of racist colonial misanthropic scepticism. I conducted both primary documentary research and original interviews as qualitative data collection methods. Law-making processes produce texts that are available for qualitative analysis, documenting the discourses emerging from individual, governmental, and broader societal values and assumptions, as expressed by participants in those processes. The methodological requirement of a decolonial feminist approach was that interviews be used to foreground Black women's voices in their accounts of experiences, observations, and expertise (Smith, 1999). The decolonial feminist approach emphasises the recognition and treatment of the research participants from historically colonised communities as knowledge holders and sharers, rather than merely as research subjects or objects (Smith, 1999). Hence, I have referenced the participants as expert-activists (simultaneously experts and activists). I focused on the drafting and passage of the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007 (hereinafter, the Sexual Offences Act of 2007). The aforementioned processes began in the mid- to late 1990s. It was the first post-apartheid legislation providing a consolidated revision of the definition and evidentiary rules for the prosecution of rape and other sexual assaults (see Artz & Smythe, 2007; Naylor, 2008). The documentary research involved an analysis of key primary documents on the drafting and implementation of the Sexual Offences Act of 2007, which began in the mid- to late 1990s. These documents included (among others) the discussion papers and a report that the South African Law Commission or SALC (now the South African Law Reform Commission or SALRC) compiled. The SALC/SALRC is an apartheid-born advisory body that continues its mandate to investigate the need for the creation or reform of laws. The primary documentary evidence also included parliamentary deliberations documented by an observer/reporting non-governmental group called the Parliamentary Monitoring Group (PMG).

Between November 2018 and April 2019, I conducted 11 in-depth semi-structured interviews. I interviewed nine Black women as the study's central subjects. I defined "Black women" as female-born, intersex or transgender women classified within apartheid's modified colonial hierarchal racial categories as native/Bantu/Black (also frequently referred to as Africans or Black Africans), Coloureds (a specific racial category distinct from "people/s of colour" as a general term) and Indians/Asian (Biko, 1978/2004; Erasmus & Park, 2008; Posel, 2001). My working definition of "Black" is thus in alignment with the understanding of Black within the Black Consciousness and South Africa's Black economic empowerment law. The Black women interviewed had a background in activism-oriented or related work on rape and gender-based violence. Most were already involved in this work by the time the new Sexual Offences Act was passed. Many of the women were among the first to be integrated into historically White organisations or institutions. The work included grassroots awareness-raising and mobilisation, teaching, research, advocacy, and victim support services, such as counselling. Most had tertiary-level education in disciplines such as law, psychology, and information technology. Although not all necessarily identified with feminism, they generally shared with critical feminist perspectives that rape law reform had the potential of being a step towards social transformation. The semi-structured questions for the interviews were intended to explore Black women's understandings, experiences, and observations of exclusion from rape law reform – specifically the bearing of race, gender, and class on these experiences. The participants were identified and approached through snowball sampling, using an existing contact I had in the anti-gender-based-violence sector, who then referred me to her Black women former colleagues. The strategy worked better than purposive sampling, in which I identified potential participants through a literature review and the SALC's list of discussion participants. Participants were more likely to respond to invitations to participate in the research when there was a referral, rather than when there was none. I found interviewees with a wealth of experiences, but who were not fully representative of the wide spectrum of Black women and communities. Seven of the women were, like the national majority of South Africans, from Black African communities. Two were from Coloured communities. Most were from urban areas in the Gauteng and Western Cape provinces, where the executive and legislative capitals are located. The interviews were conducted mainly in English, but the participants and/or I spoke isiZulu

or isiXhosa in some of them. As an 'ethnically mixed,' heterosexual, Black African woman, I acknowledged the tensions within and between Black communities, and my limited access to communities different from my own. This had some bearing on the sample of participants. The remaining two interviews were with individuals who did not speak from the perspective of Black women, but who provided either an outsider's perspective on exclusion or confirmed factual details about the drafting of the Sexual Offences Act. Participants chose to use either their real first names or pseudonyms, the permission for which was acquired through the ethical clearance application and participants' informed consent.

I used thematic analysis as the primary data analysis method, with racist colonial misanthropic scepticism as the overarching thematic code. I used critical discourse analysis to draw out the combined racial, cultural, gender, epistemic, and economic power relations reflected in both the discourses and the contexts in which they unfolded (Fairclough, 2001; van Dijk, 1993).

Rape Law Reform's Silence on the Criminal Justice System's Historical Racism against Black Women

State-led formal discussions leading to the Sexual Offences Act of 2007 highlighted the criminal justice system's promotion of patriarchy and sexist stereotypes against women. What was barely mentioned in these early documented discussions is the criminal justice system's historical reliance on and promotion of negative racist stereotypes against Black people generally and Black women in particular.

In its Discussion Paper 85 regarding the substantive law on sexual offences, the SALC cited three shortcomings of the legal system, as identified in the Department of Justice's Gender Policy Statement. Firstly, the legal system had "systemic inequalities, resulting from centuries of legalised injustice against women" (SALC, 1999, para. 1.3.17). Secondly, the legal system failed to "accommodate some of the fundamental differences in the social experiences of men and women" and imposed "rules on women that are based on men's experiences" (SALC, 1999, para. 1.3.17). Thirdly, the legal system operated on "supposed 'neutral' principles of law and criminal justice, instead of responding meaningfully to the specific justice needs of women" (SALC, 1999, para. 1.3.17).

The points articulated above reflect the SALC's recognition of the androcentrism and patriarchy that historically underpinned South Africa's legal system. This recognition is in line with historically White-

dominated radical and liberal feminist perspectives' emphasis on patriarchy as the primary source of oppression for all women (see, for example, Brownmiller, 1975; Estrich, 1986; MacKinnon, 1989). The SALC further recognised patriarchy in its mentioning and facilitation of discussions on the criminal justice system's historical misogyny and scepticism against women and children as unreliable witnesses and victims of sexual violence (SALC, 2002a, paras. 30.2.1-31.3.4.7). Contrary to how complainants in other crimes were viewed, rape complainants were treated with suspicion. This was due to social perceptions that they were motivated to lie in response to social prescriptions and proscriptions around women's sexual behaviour. Attention was given to the historical problem of sexist prejudice within the judiciary (SALC, 2002b, pp. 163, 183). The PMG recorded that a previous Deputy Minister of Justice had stated in a parliamentary portfolio committee meeting that judges were a part of specific societies and thus reflected societal values and prejudices. He also recommended that judges get training to mitigate against their personal biases:

> The problem was that it was a patriarchal society with a certain mindset, and that was difficult to change.…every judicial officer interpreted cases in terms of their own world view…but it was possible to train them to optimise their objectivity when looking at evidence in sexual offence cases. (PMG, National Assembly Justice and Correctional Services Committee, August 7, 2006).

The SALC-led and the parliamentary deliberations on sexual offences were not explicit about the anti-Black racist colonial misanthropic scepticism that has historically characterised the law and the viewpoints of judges and other officers both in the colonial territories making up South Africa and colonies elsewhere, which was otherwise documented and analysed in scholarly literature (for example: Armstrong, 1994; Crenshaw, 1989; Davis, 1978; Scully, 1995; Stoler, 1989. More recently: Gqola, 2015; Kolsky, 2010; Motsei, 2007). Consequently, there were no recommendations for sensitivity and objectivity training to mitigate against the reproduction of racial prejudice and discrimination in the post-apartheid interpretation and application of the law. Black men and Black women's respective pathologisation, criminalisation, and victimisation as innate rapists or as innately promiscuous is never acknowledged.

Official rape law reform discourses' silence on Black women and men's histories of race and sex-gender discrimination was in line with a racial reconciliation agenda first espoused within South Africa's pre-1994

peace negotiations and under Nelson Mandela's presidency (Motsemme, 2004). This symbolic step towards a non-racist society nevertheless sidestepped the deeply ingrained, institutional racism that made different kinds of violence (direct, structural, cultural, epistemic, and so forth) and unfair discrimination against Black people possible, whether perpetrated by state agents or private actors. Signs of the persistence of racist colonial misanthropic scepticism among some of those who serve within the criminal justice system are among the factors that have put the racial reconciliation project at risk.

The Misanthropic Barrier to Black Women Realising Constitutional Rights and Anti-Rape Activism

The post-apartheid South African Constitution's Bill of Rights recognises the inherent humanity of all people within South Africa's borders by affirming human rights for citizens and non-citizens. The Constitution's logic seems to be that compelling people to treat each other as fellow human beings might result in people seeing each other as such (see also Hassim, 2018, p. 347). Constitutional rights such as the right to equality, human dignity, culture, and freedom from violence are principles underpinning the rape law reform processes and the Sexual Offences Act of 2007. This section considers racist colonial misanthropic scepticism as an impediment to Black women realising their constitutional rights to equality and freedom from unfair discrimination, human dignity, and culture. Post-apartheid racist colonial misanthropic scepticism has manifested most notably in the continued racist sexual stereotyping of Black men as being inherently prone to rape and the viewing of Black women as being complicit in the violence perpetrated against them, all framed by disparaging conceptions of Black cultures as being innately harmful. When Black communities are viewed in ways that undermine their rights to dignity and equality, it fails to foster confidence in the rape law processes. It reinforces their historic distrust of the criminal justice system. The resultant community defensiveness makes it difficult for communities to have constructive dialogues about what rape is and what needs to be done to end it.

Section 9 of the Constitution of the Republic of South Africa (1996) states that everyone has a right to equality before the law and to be free from unfair discrimination based on race, sex, gender, culture, or other grounds. Section 10 states that "everyone has inherent dignity and the right to have their dignity respected and protected" (Constitution of the Republic of South Africa, 1996). Section 30 gives everyone the right to

"participate in the cultural life of their choice" (Constitution of the Republic of South Africa, 1996). The Constitution broadly states that cultural and religious rights and freedoms are to be practised in ways that do not violate other constitutional rights or infringe on the rights of others.

The SALC's formulation of guiding principles for persons involved in sexual offences management draws on the aforementioned constitutional rights. The right to equality is echoed in guiding principle 5, which states: "victims may not be discriminated against, either directly or indirectly, on the grounds of race, colour, gender, ethnic or social origin, sexual orientation, age and developmental level, physical or mental disability, religion, conscience, belief, culture or language" (SALC, 2002a, para. 2.2.3). Guiding principle 15 echoes the constitutional right to dignity in affirming that "victims should be treated with compassion and respect for their dignity" (SALC, 2002a, para. 2.2.3). Guiding principle 12 calls for "awareness of, respect for, and cognizance taken for the needs, values and beliefs of particular cultural and ethnic groups applicable to the victim, the offender and to their communities" (SALC, 2002a, para. 2.2.3). The Preamble of the Sexual Offences of 2007 lists the constitutional rights to equality, dignity and freedom and security of the person.

Even though the constitutional right to non-discrimination was (and is) foundational to post-apartheid rape law reform, the failure (by government, the SALC and later parliament) to explicitly acknowledge past racial discrimination against Black peoples in specific relation to rape means that the groundwork for sensitising rape law reform participants to conscious and unconscious often-converging racial, cultural, sex-gender, class and other biases was not properly laid. This is not to say that issues of racial and cultural bias did not come up at all in the rape law reform submissions and deliberations. A submission to the SALC made by a law academic identified as Mr Neil van Dokkum, for example, is a rare example of acknowledgement within the formal rape law reform processes of racial and other prejudices perpetuated in post-apartheid society, social welfare, and the criminal justice system. Dokkum reportedly contended that mandatory reporting of child sexual abuse, combined with "vague and judgemental" definitions of abuse, may "reinforce existing prejudices against different race groups, alternative lifestyles, single parents and low-income groups" (SALC, 2002a, para. 6.8.2). Dokkum's note could have been a great entry point for conversations about what these "existing prejudices" entail, both

between White and Black racial groups as well as between and within Black communities who have seen each other as the "criminal other." The SALC also addressed, at least once, assumptions about the inherent harmfulness of Black cultures within its Discussion Paper 102. The SALC recorded that Senior Public Protector Ms W.L. Clark urged the SALC to be cautious in its application of Principle 12, which considers cultural diversity. Clark reported that she had worked on serious cases of child abuse where the (Black) mother had approached her to "withdraw the matter as the mother had received a goat as damages from the perpetrator or his family" (SALC, 2002a, para. 2.3.8.1). These mothers "were convinced that everything was all right and were happy with the 'compensation' [source's emphasis] they received" (SALC, 2002a, para. 2.3.8.1). Clark further stated that she was aware that this practice had "cultural roots but takes no cognizance of the anguish suffered by the child who has been raped, nor his or her need to be protected against further abuse in the future" (SALC, 2002a, para. 2.3.8.1). Clark reportedly went on to state that "traditional cultures tend to be paternalistic and male-dominated", thus further disadvantaging the victim, who is usually a young female (SALC, 2002a, para. 2.3.8.1). Traditional cultures could arguably include European cultures. However, the practice that Clark mentioned as problematic is from Black African traditional cultures, implying that Black African cultures in particular are harmful to the rights of women and children.

Clark's statements expressed a concern about the harmfulness of (Black) "traditional" or indigenous justice mechanisms to victims' wellbeing, without seeming to countenance that negative aspects of "traditional" justice can be changed. Clark's statements also frame Black mothers as being complicit in the apparent trivialisation of Black children's sexual abuse, without exploring varying reasons why Black mothers might be willing or compelled to accept payment in lieu of a perpetrator's punishment through the criminal justice system. Clark seemed not to have contemplated longstanding feminist arguments about the hostile, adversarial nature of the Western criminal justice system and the system's subjection of rape victims to secondary victimisation (Bumiller, 1987; Estrich, 1986; Finley, 1989; MacKinnon, 1993; Posel, 2005). Although customary or cultural routes to justice may subordinate the needs of the victim to the needs of the family and community, they may also sometimes be a less traumatising alternative to the criminal justice system. The SALC (2002a, para. 2.3.8.2) acknowledged Clark's concerns about the possible harmfulness of "traditional cultures"

regarding sexual violence against children and young women. However, the SALC rejected any insinuation that everything about such cultures was necessarily harmful and stated that "acknowledging cultural diversity may also be to the benefit of the victim," particularly for the victim's "re-integration into and a sense of belonging to a community" (2002a, para. 2.3.8.2).

Racist colonial misanthropic scepticism about Black cultures came to the forefront of public discourses outside of rape law reform processes, following statements made by specific public figures. The first statement was then South African President Thabo Mbeki, who, in 2004, criticised an "unnamed expert's" (presumably journalist Charlene Smith) claim that South Africa had the highest rape rate in the world. Mbeki asserted that the "expert" had insinuated that "our cultures, traditions and religions as Africans inherently make every African man a potential rapist" (quoted in Carroll, 2004, paras. 5-6). The paradox of Mbeki's outrage is that the deliberations on and passage of the Sexual Offences Act of 2007 occurred during his administration. He, therefore, bore some of the responsibility for not ensuring that issues around racist colonial misanthropic scepticism were constructively engaged with. These issues around racist colonial misanthropic scepticism included what Gauteng-based lawyer Sibongile (real name) described as a perception by some in the Black-majority government of "*an underlying White narrative within rape and crime commentary that Blacks can't rule*" (Expert-Activist Interview, January 15, 2019). While Mbeki's criticism of the "unnamed expert" may not have been warranted in that instance, the reality of the existence of such disparaging views was confirmed when, in 2013, South African philosopher Louise Mabille claimed that South Africa's Black people generally condoned baby rape (Hosken & Mouton, 2013; Salo, 2013; Schutte, 2013). Then, in 2016, Judge Mabel Jansen also made racist, misanthropic statements about Black cultures condoning rape, raising questions about the extent of anti-racist transformation in the courts (Moffet, 2016). In a series of Facebook conversations with filmmaker Gillian Schutte, Jansen is quoted as having stated:

> In their culture (black men) a woman is there to pleasure them. Period. It is seen as an absolute right and a woman's consent is not required… [m]others are so brain washed [sic] that they tell the children that it is the fathers' birth right to be the first ... And gang rapes of baby, daughter and mother a pleasurable pass time [sic]. (quoted in BLA, 2016, para. 2)

Reports suggested that Jansen based the aforementioned misanthropic assertions on the fact that most of the rape and child abuse cases that she had presided over were cases involving Black people, rather than on critical investigation factoring South Africa's Black-majority as a primary reason why there is a predominance of rape cases involving Black people (Bearak, 2016; Bendile & Lindeque, 2016; BLA, 2016; Gqola, 2014; Jonker, 2016). Jansen was further quoted as stating that "there are many white molesters but our culture has never been that it is perfectly in order" (Jonker, 2016, para. 10), ignoring the fact that social and legal conceptualisations of child sexual abuse have evolved over time and in different contexts, even within White or Western cultures (See for example Larson, 1997).

The anti-racist rhetoric in the public outrage expressed by mainly Black law professionals primarily emphasised how Jansen's racist views unfairly prejudiced Black male defendants. Unfair prejudice against Black women, as victims or supposed "cultural" accomplices to rape, came across as a secondary concern. The Black Lawyers Association (BLA), for example, stated in its press release:

> We have serious reservations in her [Jansen's] capacity to try criminal matters like rape and murder, involving black people either as accused persons or as victims. This is so because to her every black male is a rapist as such the principle of "innocence until the contrary is proven" has no meaning for black people. We are also doubtful if Judge Jansen is better place [sic] to protect black women who are victims of rape for she does not appreciate their pain in that to her all of them have been raped before and their mothers tell them that it is right to be raped. (BLA, 2016, para. 6)

The National Association of Democratic Lawyers (NADEL) did not even mention the implications of Jansen's statements for Black women and girls:

> From her statements it is clear that she harbours racial prejudice against black males, believing them to be rapists and therefore guilty until proving themselves innocent. (NADEL, 2016, para. 7)

Not only have Black women legal professionals been aware of anti-Black misanthropic scepticism amongst judicial officers and the legal fraternity as a whole, they have also found themselves having to work with—rather than challenge—the criminal justice system's racism, sexism, and classism. Toni (pseudonym), a Gauteng-based lawyer from the Western

Cape who participated in parliamentary submissions for the Sexual Offences Act of 2007, recounted her early experiences as a lawyer. Therein, she learned that the intersection of these different prejudices meant that lawyers were not confident that they could present certain Black women as "credible" witnesses:

> *I was like, 'Oh my God. I am being exposed to…how easy it was for the organisation to represent more middle-class White women versus representing the [Coloured/Black] farm worker in the Western Cape who is being raped by her employer'… 'This is not the ideal case to take on'… The way we looked at which facts are good versus which facts are bad. 'Oh my God, but she's also got a drinking problem. Oh my God, she's going to be a bad witness'. The notion of who is a 'good' witness and who is a 'bad' witness, which facts are 'good', and then you were briefing the senior council – which are often White men – to go and argue these cases...* (Toni, Expert-Activist Interview, February 26, 2019)

Racist colonial misanthropic scepticism renders invisible the thoughts and actions of Black women as change agents and resisters against indigenous and imported patriarchy. The marginalisation and possible erasure of Black women's narratives of resistance and protest is the end product of what Biko described as colonialism's reconfiguration of Black people's history. Biko (1978/2004, p. 76) argued that Western European colonialism "turns to the past of the oppressed people and distorts, disfigures and destroys it". The situation is such that many Black women today may not recognise or know of Black women's historical traditions of resistance or positive cultural affirmation. Some may thus not recognise, for example, Black Zulu women's tradition of singing about abuse in the home as cultural protest poetry (see Zondi, 2007). Others may not be aware that Black women Christian theologians have criticised "the patriarchal and sexist ideology upon which Western Christianity is based" and have contributed to African liberation theology (Motsei, 2007, p. 103).

Besides overt racism, racist colonial misanthropic scepticism sometimes takes a paternalistic form that at least one participant referred to as a "White saviour model", wherein different national and international actors in the gender-based violence sector ostensibly set out *"to save us [Black women] from the world and save us from ourselves and save us from our evil men"* (Toni, Expert-Activist Interview, February 26, 2019). Nompumelelo (real name), a Gauteng-based activist and researcher who was involved in some of the protests immediately leading up to the passing of the Sexual Offences Act of 2007, further elaborated that Black

women often had to perform their "wretchedness" and "helplessness" to get assistance from donors and others:

> *The idea of liberal White people who want to help all these poor Black people … that are so helpless. So, you [the Black person] can't in any way be the powerhouse, a leader of sorts. You have to be vulnerable. I have to be that thing that needs help and not have a lot of opinions, because you [the White person] must know more. We have heard of organisations that have used the experiences of Black people, Black bodies, to get funding. The showing of poor Black people who have nothing and need saving is what gets most White people or organisations money, because a different narrative will not. Our bodies are used for reporting. The donor wants to see who are these women that you are talking about, and they cannot look like they are okay.* (Nompumelelo, Expert-Activist Interview, April 18, 2019)

Participants' experiences and observations of racist misanthropic scepticism included Black women not being listened to, because they were (and are) not taken seriously. Nonhle (pseudonym), an activist whose organisation provided support services for rape victims and people living with HIV/AIDS in marginalised Black rural and peri-urban communities in the Eastern Cape, remembered being ignored at certain civil society meetings:

> *For example, when you are in a meeting, you realise that it is mostly White people and they do not have time for you. Even if you ask a question, they would first answer each other. They would realise later that yours is important*. (Nonhle, Expert-Activist Interview, April 8, 2019)

Bulelwa (real name), a former counsellor who was responsible for the opening of a township branch of a White feminist-initiated anti-rape organisation in the Western Cape, affirmed that being unheard (as a manifestation of marginalisation) meant that she and others left the sector:

> *We've lost so much, we've lost so many, including me…. I think silently, yes, silently they left. Some, of course, it would be, like, another job. Some were swallowed by work within government, and then they became too busy. But some … wrote books, they wrote articles, but not when they were inside the sector. That is when…people started to look at them again. But so many left the sector silently. Others that I know started their own organisations and then dealing with the issues that they feel are important in their own spaces … I think there were a lot of issues of not being really heard ...* (Bulelwa, Expert-Activist Interview, April 1, 2019)

We need to think further about how racist colonial misanthropic scepticism weakens inter-racial collaboration and impedes Black women and communities' realisation of victim and community-centred

approaches to confronting rape and other violence and building peace. Firstly, while misanthropic scepticism has demonised Black people across sex and gender divides, it may have also deepened these divides. When Black communities see rape-related misanthropic scepticism as being mainly targeted against Black men and aiming to save Black women, Black women rape complainants and activists may be seen as being part of an anti-Black-male attack (see also Spivak, 1993). Black feminists and others mobilising for women's rights may be seen as being under the undue influence of external forces. Secondly, the silencing or failure to listen to Black women within a White dominated civil society means that Black women may perceive that their presence in these shared activist spaces was merely tolerated for the sake of the appearance of representativity. This appearance may have led to the assumption that Black women's views and needs were sufficiently included in the agendas drawn up in these spaces. Black women organising against rape may thus find themselves alienated from both their communities and from the dominant course of the broader post-apartheid rape law reform movement.

Conclusion

A history of Western European colonialism created a troubling link between rape, race, and the law, one which persists to this day in former White settler colonial states such as South Africa. In this analysis, I have looked at the role of racial prejudice and discrimination against Black communities in post-apartheid rape law reform. Using a decolonial feminist law, I have conceptualised this racial prejudice and discrimination as racist colonial misanthropic scepticism. Racist colonial misanthropic scepticism is targeted differently against Black individuals and as community members based on where they are positioned in the intersection of racial, cultural, sex-gender, socio-economic, and other hierarchies. Past and present racist colonial misanthropic scepticism within the law and society has created defensiveness within Black communities that disadvantages Black women and further hurts Black communities. Government and organised civil society fell short of addressing this scepticism in deliberations around the Sexual Offences Act of 2007. Strategies are required to systematically, critically, and constructively engage with this scepticism as a means to help communities to come together across inter-racial and intra-racial divides in the struggle against rape, violence against women, and other interpersonal violence.

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