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GENDERED LIVED EXPERIENCES IN URBAN CAPE TOWN: URBAN INFRASTRUCTURE AS EQUAL OPPORTUNITY, SOCIAL JUSTICE, AND CRIME PREVENTION

Becky L. Jacobs*

On March 2, 2016, the body of 19-year-old Sinoxolo Mafevuka was found in a communal toilet in the Cape Town, South African urban township of Khayelitsha.¹ Sinoxolo had only recently moved to Khayelitsha so that she could be within walking distance of her school. Her sister-in-law saw Sinoxolo when she left their home around 7:45 pm on March 1 to make the approximately 650 foot walk to the toilet where her life was so violently ended; it was still daylight. When she next saw her, Sinoxolo had been viciously raped, strangled to death, and her body discarded, with her head under the toilet seat and her genitals displayed openly.²

Tragically, while Sinoxolo's murder is a particularly brutal example, using a neighborhood³ toilet in many informal settlements is an incredibly dangerous activity; "[w]omen, children and men of all ages are frequently robbed, raped, assaulted and murdered on the way to relieve themselves in a toilet, bushes or empty clearings often

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¹ Liesl Pretorius, *Dying for a Toilet*, CITY PRESS (May 29, 2016), <http://citypress.news24.com/News/dying-for-a-toilet-20160528>.

² Siyavuya Mzantsi, *Deceased Teen's Boyfriend 'Stabs Informant'*, CAPE TIMES (May 10, 2016), <http://www.iol.co.za/capetimes/news/deceased-teens-boyfriend-stabs-informant-2019575>. *See also id.*

³ This essay will use the adjectives "shared," "neighborhood," "community," "communal," and "public" interchangeably to refer to toilets that are shared by a group of households in a community. Some sources define a "household" toilet as one used by a single household; a "shared" toilet as one shared between a group of households in a single building; a "community" or "communal" toilet as one shared by a group of households in a community; and a "public" toilet as one open to use by anyone and located in public places or in residential areas. *See, e.g.*, Topic Brief 001, Water & Sanitation for the Urban Poor 1 (Feb. 2011). The distinctions between these categories often blur. For example, "household" toilets may serve extended or very large households, or they may be regularly used by neighbors. *Id.* "Community" toilets may be privately-owned by a group of households, or certain households will have keys to a so-called "communal" toilet. *Id.*

very far from their homes."⁴ In response to a 2013/14 Khayelitsha Commission of Inquiry survey, nearly 81% of residents reported feeling unsafe using communal services such as toilets at night; that figure was 67.3% even during the day.⁵

Women using community toilets in all of Cape Town's informal settlements are particularly vulnerable, with an elevated risk of rape.⁶ A study by researchers from Yale reported that, annually between 2003 and 2012, there were 635 sexual assaults on women travelling to and from toilets in Khayelitsha⁷ and that individual women are at a high risk of rape for the more than 90 hours a year attributable to this transit time.⁸ This number likely is a very low estimate; the study authors emphasized that they restricted their risk exposure calculations to time spent traveling to or from the

⁴ Tanya Farber & Aphiwe DeKlerk, *Deadly Toilet Trips for Women in Cape Town's Informal Settlements*, TIMES LIVE (May 25, 2016), <http://www.timeslive.co.za/local/2016/05/25/Deadly-toilet-trips-for-women-in-Cape-Towns-informal-settlements>. Males also encounter violence in accessing sanitation facilities, particularly those who may not conform to local norms of masculinity, as do other socially marginalized groups, such as those living with disabilities or lower castes in caste-based societies. *See, e.g.*, Marni Sommer, Suzanne Ferron, Sue Cavill, & Sarah House, *Violence, Gender and WASH: Spurring Action on a Complex, Under-Documented and Sensitive Topic*, 27 ENV'T & URB. 105, 106 (2015). While this article focuses on gender-based sanitation-related risks, I do not in any way intend to minimize or discount the risks that these groups confront. Criminals victimize the children left alone in homes while their parents are traveling to and from the toilet. Neil Overy, *The Social Justice Coalition and Access to Basic Sanitation in Informal Settlements in Cape Town, South Africa*, Study No. 11, 15-16 (Int'l Budget Partnership March 2013), <http://www.internationalbudget.org/wp-content/uploads/LP-case-study-SJC1.pdf>.

⁵ Liesl Pretorius, *Risk of Sexual Assault Around Public Toilets*, CITY PRESS (May 29, 2016), <http://city-press.news24.com/News/safety-in-numbers-20160528>.

⁶ Farber & DeKlerk, *supra* note 4 (language from a petition demanding improved sanitation in informal settlements). Schools are another setting in which a connection between violence against women and bathroom facilities has been documented. *See generally* Sommer, et al., *supra* note 4 at 111.

⁷ Gregg S. Gonsalves, Edward H. Kaplan & A. David Paltiel, *Reducing Sexual Violence by Increasing the Supply of Toilets in Khayelitsha, South Africa: A Mathematical Model*, 10 PLOS ONE 1, 6 (2015).

⁸ Farber & DeKlerk, *supra* note 4. *See generally* Gonsalves, *supra* note 7.

toilets. Their results likely would have been dramatically higher had they also considered time spent either waiting in line or using the facilities.⁹

The study also calculated the costs associated with these “toilet travel” sexual assaults in Khayelitsha to be approximately US\$40 million per year.¹⁰ This estimate included tangible costs such as medical expenses, lost earnings, and the cost of legal proceedings and penal institutions as well as intangible costs such as pain and suffering and the risk of homicide.¹¹ This estimate did not, however, reflect the health benefits of improved sanitation in urban areas, including reductions in morbidity and mortality associated with water-borne infectious diseases.¹²

US\$40 million per year. Think about that for just a minute. Even if you are not completely appalled at the human tragedy involved in these circumstances, consider their negative economic consequences. This number is a cost estimate for the urban settlement of Khayelitsha, which is a large and established community, but which also is one of only 437 informal settlements in Cape Town.¹³ While, in South Africa, the National Housing Code’s Emergency Housing Programme mandates that there be a minimum of one ventilated, improved pit latrine toilet (VIP toilet) provided per every five families,¹⁴ it does not appear that Cape Town has achieved this objective. City census data report that 88% of Cape Town households have access to

⁹ Gonsalves, *supra* note 7, at 9.

¹⁰ Gonsalves, *supra* note 7, at 6.

¹¹ Gonsalves, *supra* note 7, at 5.

¹² Gonsalves, *supra* note 7, at 9. The water in Khayelitsha’s standing pipes has been tested and found to be contaminated with fifty (50) times the safe level of *Escherichia coli*, more commonly known as *E. coli*, the presence of which indicates contamination by fecal matter. Alex Duval Smith, *Safe Toilets Could Prevent Sexual Assault and Sickness, say South Africa's Poor - Inadequate Sanitation Puts More Than 10 Million South Africans at Risk. Civil Society Groups are Acting to Find Solutions*, THE GUARDIAN: Global Development Poverty Matters Blog (Sept. 16, 2011), <https://www.theguardian.com/global-development/2011/sep/16/safe-toilets-prevent-sickness-assault>. The *E. coli* bacteria has many harmless strains, but there are others that cause diarrhea, urinary tract infections, respiratory illness, pneumonia, and other illnesses. *E. coli* (*Escherichia coli*), Centers for Disease Control and Prevention, [HTTPS://WWW.CDC.GOV/ECOLI/](https://www.cdc.gov/ecoli/). One of Khayelitsha’s canals had *E. coli* levels measured at 500 times that deemed regulatorily acceptable.¹² Alex Duval Smith, *Safe Toilets Could Prevent Sexual Assault and Sickness, infra*.

¹³ *Struggle for Dignity in Cape Town's Informal Settlements: The Facts*, <http://ismaps.org.za/desktop.html#>.

¹⁴ South African National Housing Code, Incremental Interventions, Emergency Housing Programme, Norms & Standards § 2.5, Table 2, at 38 (Dept. of Human Settlements 2009).

a flush toilet that is connected to the public sewer system.¹⁵ However, approximately 20.5% of Cape Town's population live in some form of informal housing,¹⁶ and other research reports conflicting data. Some estimate that as many as 500 families share seven (7) communal toilets in one area of Khayelitsha.¹⁷

Cape Town has had a spotlight shining in its direction due to several high-profile cases such as that of Sinoxolo and of Soyiso Nofemele, a Khayelitsha man who was sentenced to eleven life sentences for raping eleven young girls between the ages of two and eight and murdering another after luring them into the bush.¹⁸ However, other South African cities are, and continue to be, experiencing similar problems. There are estimates that 10.5 million South Africans do not have ready access to toilets,¹⁹ and analyses by the Crime Information Analysis Centre found that

¹⁵ IHS 2016/2017 Review at23.

¹⁶ *Integrated Human Settlements Five-Year Plan*, July 2012 – June 2017, City of Cape Town 23 (2016/17 Review) (hereinafter IHS 2016/2015 Review).

¹⁷ Supporting affidavit of Thobeka Bobotyana, *Social Justice Coalition & Others v City of Cape Town*, High Court Application (2016), <http://nu.org.za/law-centre/#1460396155691-5b824c44-26cd>.

¹⁸ *W Cape Serial Rapist Gets Hefty Sentence*, SABC News (Aug. 27, 2012), <http://www.sabc.co.za/news/a/bd5426004c7fe1a5a6b2b661440c1f9d/W-Cape-serial-rapist-gets-hefty-sentence-20120827>. The Nofemele case merits its own gender-focused article. A doctor at the Thuthuzela Care Centre at Khayelitsha Hospital examined at least five girls under the age of nine who survived violent rapes that took place in bushes in Endlovini on the outskirts of the township. She was, however, not taken seriously when she brought her suspicions that a serial rapist was at work to the attention of a police superintendent and a captain. By the time that the rapist was finally caught, twenty rapes and one

murder had taken place. TOWARD A SAFE KHAYELITSHA, REPORT OF THE COMMISSION OF INQUIRY INTO ALLEGATIONS OF POLICE INEFFICIENCY AND A BREAKDOWN IN RELATIONS BETWEEN SAPS AND THE COMMUNITY OF KHAYELITSHA 173 (Aug. 2014). After calls to the Western Cape police commissioner and overt threats to alert the media, the Western Cape premier formed a Commission to investigate complaints of police inefficiency in Khayelitsha. This move was met with fierce resistance by the Police Minister, who unsuccessfully attempted to block the formation of the Commission in court. Chantall Presence, *Cop Cries at Khayelitsha SAPS Inquiry*, IOL NEWS (Mar. 27, 2014), <http://extended186.rssing.com/browser.php?indx=6805627&item=4164>.

¹⁹ Smith, *supra* note 12.

27% of the 538 rape cases reported as early as 1996 in Gauteng, the province in which Johannesburg and Pretoria are located, were perpetrated in open spaces.²⁰

Nor is South Africa an outlier. In 2014, two teenage girls were gang-raped then murdered by being hanged from a tree while going to the toilet outdoors in the northern Indian state of Uttar Pradesh, the home of the iconic Taj Mahal monument.²¹ This was not an isolated incident in India. In the state of Bihar, an 11-year-old girl was raped when she was going to the toilet in a field; a senior police official in Bihar has estimated that more than 400 rapes in that state would have been avoided if the victims had access to toilets in their homes.²² These incidents have focused national attention in India on the particular vulnerability of women to sexual violence due to the lack of access to private toilets.²³ There has been a flurry of academic research on unsafe sanitation and violence against women in both rural and urban settings in India, finding that women and girls are at a greater risk of experiencing insecurity, sexual harassment, and violence when travelling to and from open grounds for sanitation purposes, particularly at night.²⁴

In Kenyan slums, women have suffered rape and other forms of violence when traveling to and from toilet facilities.²⁵ For example, a mother of three had just exited a community toilet in Nairobi when five men dragged her to an abandoned house and sexually assaulted her, infecting her with HIV.²⁶ Horrendous accounts such as these are reported across the globe, i.e., another survey revealed that garment workers in Cambodia, many of whom have migrated from their provinces to urban areas and are living in overcrowded rental areas, are at an increased risk of violence and rape from

²⁰ Liesl Pretorius, *Risk of Sexual Assault Around Public Toilets*, CITY PRESS (May 29, 2016), <http://city-press.news24.com/News/safety-in-numbers-20160528>.

²¹ Divya Arya, *India's Long, Dark and Dangerous Walk to the Toilet*, BBC News Magazine (June 27, 2014), <http://www.bbc.com/news/magazine-28039513>.

²² Amarnath Tewary, *India Bihar Rapes 'Caused by Lack of Toilets'*, BBC NEWS (May 9, 2013), <http://www.bbc.com/news/world-asia-india-22460871>.

²³ Divya Arya, *supra* note 21. See also A.K. JAIN, *RIGHT TO TOILET: A ROADMAP FOR TOTAL SANITATION* (Readworthy Pubs. 2014).

²⁴ Tina Khanna & Madhumita Das, *Why Gender Matters in the Solution towards Safe Sanitation? Reflections from Rural India*, 11:10 GLOBAL PUB. HEALTH 1185, 1186 (2016).

²⁵ Amnesty International, *Risking Rape to Reach a Toilet: Women's Experiences in the Slums of Nairobi, Kenya* 7 (July 2010).

²⁶ Rebecca M. Coleman, Comment, *The Human Right of Sanitation for All: A Study of India*, 24 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 267, 273 (2011).

the poor lighting and distance between their rental rooms and toilets.²⁷ As one researcher concluded about the results in one of his studies, the findings were likely to be applicable to other informal settlements in the developing world “and in other settings where sexual violence is associated with women’s access to sanitation facilities, such as in refugee camps and temporary settlements established in the wake of a natural disaster.”²⁸

Sexual violence is but one of the disproportionate consequences that the lack of adequate sanitation imposes on women and girls. Poor nutrition and harmful health impacts, for example, are other potentially harmful outcomes.²⁹ In order to avoid the need to go to the toilet, girls and women will restrict their food and liquid intake or “hold” their need to go the toilet.³⁰ A lack of adequate nutrition not only can cause nutritional deficiencies, but it can be particularly dangerous for young women and pregnant women who have specific nutritional needs; restraining yourself from urinating or defecating may cause urinary tract infections, constipation, and distress among women.³¹

Girls’ educations suffer incommensurately too from a lack of sanitation as they are more frequently absent than their male counterparts.³² This can be attributed to a number of factors: they may be engaged in household-related tasks associated with sanitation, such as cleaning latrines, collecting water, or caring for family members who have sanitation-related illnesses.³³ They also may be forbidden from or unwilling to attend a school that has no, or only unisex, toilet facilities, perhaps because they are fearful of the risk of sexual assault or harassment or because of strong cultural taboos related to the hygiene requirements associated with menstruation.³⁴

²⁷ *Women and the City II: Combating Violence against Women and Girls in Urban Public Spaces - The Role of Public Services*, ActionAid Int’l 15 (Feb. 2013).

²⁸ Gonsalves, *supra* note 7, at 10.

²⁹ Khanna & Das, *supra* note 24, at 1186.

³⁰ Khanna & Das, *supra* note 24, at 1186.

³¹ Khanna & Das, *supra* note 24, at 1186, 1195.

³² Water, Sanitation and Hygiene in Schools, UNICEF, http://www.unicef.org/wash/index_schools.html.

³³ *Id.*

³⁴ Khanna & Das, *supra* note 24, at 1186.

Women with children not only must attend to their own sanitation needs, but those of their children, a timely proposition when they must travel to latrines and one that decreases the amount of time that they have for work in and out of the home.³⁵ To quote the U.N. Special Rapporteur:

Women and girls risk their health or miss out on workdays when adequate sanitation and menstrual hygiene management facilities are absent from the workplace. For example, 60 per cent of all women working in sub-Saharan Africa and South Asia work in the agriculture sector and their workplace often does not include facilities that allow them to safely go to the toilet or manage their periods. Women working in public spaces, such as markets, often have no access to facilities altogether. In the manufacturing industry and in dense urban areas, women and girls sometimes work in overcrowded spaces where privacy is limited and sanitation facilities are inadequate. This not only violates their rights to water and sanitation, but also their rights to health, to work and to living in dignity.³⁶

While some may discount this as a real harm, there is this loss of dignity, this shame that women feel when being heard or seen while relieving themselves at a community toilet or in a public outdoor space.³⁷

The women and girls experiencing this gendered, humiliating, and potentially life-threatening daily struggle to access a toilet are not making extravagant or unusual demands; they are simply attempting to gain non-discriminatory access to their basic human rights. And, yes, the right to sanitation *is* a basic human right that “is contained in existing human rights treaties and is therefore legally binding” under international law.³⁸ The U.N. Human Rights Council instructs that the existence of this right is an integral component of the right to an adequate standard of living and is “inextricably related to the right to the highest attainable standard of physical and

³⁵ *Id.* at 1195.

³⁶ Access Denied, Léo Heller, U.N. Special Rapporteur, Interview for World Toilet Day on the Human Rights to Safe Drinking Water and Sanitation (Nov. 16, 2016).

³⁷ Khanna & Das, *supra* note 24, at 1186, 1189, 1195-96.

³⁸ U.N. United to Make the Right to Water and Sanitation Legally Binding, Off. High Commissioner for Hum. Rts., <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=10403&LangID=E>.

mental health, as well as the right to life and human dignity.”³⁹ The U.N. General Assembly reaffirmed the human right to water and sanitation in a 2013 resolution,⁴⁰ and, in 2015, it adopted a new resolution that reflected the status of sanitation as a distinct human right, independent of the right to water, with phrasing recognizing, in the plural form, the “human rights to safe drinking water and sanitation.”⁴¹

Several international agreements acknowledge the intersectionality of the specific circumstances of particular marginalized populations, systemic patterns of exclusion and discrimination, and inadequate sanitation. For example, Article 14(2)(h) of the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) seeks to ensure the right of women “[t]o enjoy adequate living conditions, particularly in relation to . . . sanitation.”⁴² Several articles of the Convention on the Rights of the Child (“CRC”) pertain to sanitation, i.e., Article 27(1) addresses the right to an adequate standard of living, which has been interpreted to include “access to food, clean drinking water, adequate housing and latrines.”⁴³ Sanitation is also mentioned in connection with the provision of the CRC that corresponds to the highest attainable standard of health, Article 24(2)(e).⁴⁴

More relevant to, and importantly for, the girls and women in Cape Town, the South African Constitution contains several clauses that “directly or indirectly

³⁹ Human Rights Council Res. 15/9, Human Rights and Access to Safe Drinking Water and Sanitation, A/HRC/RES/15/9, at 2 (Oct. 6, 2010).

⁴⁰ G.A. Res. 68/157, The Human Right to Safe Drinking Water and Sanitation, A/RES/68/157, at 1 (Feb. 12, 2014).

⁴¹ G.A. Res. 70/169, The Human Rights to Safe Drinking Water and Sanitation, A/RES/70/169, at 1 (2015). For detailed accounts of the evolution of the legal status of the right to sanitation, see Inga T. Winkler, *The Human Right to Sanitation*, U. PA. J. INT’L L. 1331 (2016); Coleman, *supra* note 26.

⁴² Convention on the Elimination of All Forms of Discrimination Against Women, Art. 14(2)(h), Dec. 18, 1979, 1249 U.N.T.S. 20378.

⁴³ Convention on the Rights of the Child, Preamble, Nov. 20, 1989, 1577 U.N.T.S. 3; COHRE, UN-HABITAT, WaterAid, SDC, Sanitation: A Human Rights Imperative 18 (2008) (“CRC”).

⁴⁴ CRC, art. 24(2)(e), *supra* note 43. Other regional treaties that enshrine the right to water and sanitation include: (1) The Arab Charter on Human Rights (2008); (2) The African Charter on the Rights and Welfare of the Child (1990); (3) The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (‘Protocol of San Salvador’) (1988); and (4) The African Charter on Human and People’s Rights (1981); (4) The African Charter on Human and People’s Rights (1981).

imply the right to basic sanitation.”⁴⁵ Its Section 27(1)(b) provides that “everyone has the right to have access to sufficient food and water[,]” and, pursuant to Section 27(2), that “the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.”⁴⁶ The constitutional rights to privacy and dignity also have been associated by the Constitutional Court with the right of access to sanitation.⁴⁷ Legislatively, South Africa also has a progressive framework for basic services, including a right of access to basic sanitation.⁴⁸ As one example, the right to a Free Basic Sanitation policy at the national level commits to providing at least a ventilated improved pit sanitation facility to indigent households.⁴⁹

These commitments appear to be aspirational. Indeed, the South African Constitutional Court has declared Cape Town to be in violation of, inter alia, Article 14, the constitutional right to privacy, and Article 10, the right to dignity, by not enclosing a number of open, exposed toilets in Khayelitsha.⁵⁰ These City-installed toilets had no walls or roofs and were in full view of the residents of Khayelitsha, forcing their users to cover themselves with blankets to use them.⁵¹

⁴⁵ Overy, *supra* note 4, at 2 (citations omitted).

⁴⁶ S. AFR. CONST., § 27 (1996).

⁴⁷ See e.g., *Beja et al. v. Premier of the Western Cape et al.* 2011 (21332/10) BCLR 1077 (CC) at 146 (S. Afr.).

⁴⁸ South African Human Rights Commission Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa: 2014, at 28.

⁴⁹ *Id.*

⁵⁰ *Beja et al. v. Premier of the Western Cape et al.* 2011 (21332/10) BCLR 1077 (CC) at 146 (S. Afr.). The South African Human Rights Commission (“SAHRC”) was motivated by the complaint upon which the *Beja* case was based and similar complaints to investigate sanitation issues more broadly, developing recommendations to improve access to services. South African Human Rights Commission, Investigative Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa 12-15 (2014), www.sjc.org.za/wp-content/uploads/2014/07/Investigative-Report-Western-Cape-Social-Justice-Coalition-9-July-2014.pdf, <https://perma.cc/825E-AM5Z>. Yet, even after a highly politicized “toilet election” and national media attention on the issue of sanitation, the SAHRC had to once again task Cape Town to task for its failure to fulfill its obligations pursuant to its citizenry’s constitutional rights regarding sanitation. *Social Justice Coalition v. City of Cape Town* (WC/1314/0095) It concluded that Cape Town’s sanitation program was unreasonable and discriminatory against a predominantly black population in the relevant informal settlements. *Id.* In this case, more specifically, the City’s sanitation program was based upon emergency guidelines that included the use of chemical toilets without a more long-term plan. *Id.*

⁵¹ Overy, *supra* note 4, at 19.

Equal or non-discriminatory access to constitutional rights does not appear to be the standard in Cape Town in this context. The City spent R770,000, or approximately US\$95,000, between 2011 and 2012 to upgrade a block of security-patrolled public toilets located in an affluent suburb called Sea Point despite its claims that budgetary constraints presented it from improving sanitation, and concomitantly safety, standards in its informal settlements.⁵²

If Cape Town were to live up to its constitutional promises and legislative requirements regarding access to sanitation, the result might produce an urban planning model that promotes equal opportunity, social justice and crime prevention as well as sustainable urban sanitation design. Everyone involved recognizes how difficult and challenging it will be to implement sanitation infrastructure in informal settlements that not only effectively responds to safety, health, and environmental concerns but that also effects basic human rights. However, these difficulties do not relieve governmental entities of their obligations under the law, and they cannot throw up their hands and take the attitude of this official in one published interview on the subject:

City official: And now that is for me I don't know, sometimes, for me if that is going to be insisted I'd actually say give me a break.⁵³

The 2030 Agenda for Sustainable Development encourages integrated sanitation planning that takes into consideration the many dimensions of the urban context, including physical infrastructure, environmental, social, political and economic contexts.⁵⁴ Planning efforts must involve women in sanitation design that is geographically context-specific and that incorporates and prioritizes particular gender-based experiences, vulnerabilities, and requirements. Sanitation facilities must be designed, sited, constructed, and maintained in order to provide an environment in which they can be accessed and utilized by women and girls safely, and gender-based violence must be prevented, investigated, and prosecuted vigorously.⁵⁵ Only then

⁵² “Why We Will Queue this Freedom Day,” Social Justice Coalition Media Release (April 26, 2011).

⁵³ SM Pan, NP Armitage & MB Van Ryneveld, *Sustainable and Equitable Sanitation in Informal Settlements of Cape Town: A Common Vision?*, 41/2 WATER SA 222, 227 (2015).

⁵⁴ Kim Andersson, Sarah Dickin & Arno Rosemarin, *Towards “Sustainable” Sanitation: Challenges and Opportunities in Urban Areas*, 8 Sustainability 1289 (2016).

⁵⁵ Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, U.N. Human Rights Council 21 (July 2016).

might the disproportionate burden that women and girls suffer due to poor sanitation infrastructure be alleviated; their fear of sexual violence relieved.

Their fears are very real: the statistics on rape in South Africa generally are truly shocking. It is estimated that 28-37% of men have perpetrated rape⁵⁶ and that over 40% of women in one study in a Cape Town township reported that they had been sexually assaulted.⁵⁷ Researchers attribute these high rates, in part at least, to rape myths and stereotypes that “triviali[ze] the harm of sexual victimi[zation] and blame victims for its occurrence.”⁵⁸ Rape myths and hostile sexist beliefs that women are aggressive, inferior, selfish and seek to assume men’s “rightful place” contribute to a culture of male sexual entitlement and to the normalization of rape, which, in South Africa, appear to be associated with its very high levels of rape.⁵⁹

These rape stereotypes may also contribute to the persistently “unsympathetic, disbelieving and inappropriate responses to these victims by society in general, as well as at each stage of the criminal justice process.”⁶⁰ Both medical and legal professionals in South Africa still exhibit suspicious, ““unsympathetic, judgemental [sic] and impatient attitude”” towards rape complainants.⁶¹ Not surprisingly, it is estimated that only one in nine South African women even report being raped,⁶² and, of those, only 4.1% resulted in convictions for rape.⁶³

These statistics, and many of these embedded themes, are illustrated by the acquittal of current South African president, Jacob Zuma, who was accused of raping

⁵⁶ Elizabeth Dartnall & Rachel Jewkes, *Sexual Violence against Women: The Scope of the Problem*, 27 BEST PRAC. & RES. CLINICAL OBSTETRICS & GYN. 3, 3, 6 (2013).

⁵⁷ Seth C. Kalichman, et al., *Gender Attitudes, Sexual Violence, and HIV/AIDS Risks Among Men and Women in Cape Town, South Africa*, 42/4 J. SEX RES. 299, 302 (2005).

⁵⁸ Lisa Vetten, Policy Brief 72, *Rape and Other Forms of Sexual Violence in South Africa* 5-6 (Institute for Security Studies Nov. 2014), <https://issafrica.org/research/policy-brief/rape-and-other-forms-of-sexual-violence-in-south-africa>.

⁵⁹ Vetten, Policy Brief 72, *supra* note 58, at 5-6 (citations omitted).

⁶⁰ Vetten, Policy Brief 72, *supra* note 58, at 5-6 (citations omitted).

⁶¹ Vetten, Policy Brief 72, *supra* note 58, at 5-6 (citations omitted).

⁶² Zinhle Mapumulo, *Rape is Down? No Way, say Experts*,

⁶³ Vetten, Policy Brief 72, *supra* note 58, at 5-6 (citations omitted).

an HIV-positive family friend before his election to the presidency.⁶⁴ In a highly-publicized trial, the 31-year-old woman accused then-64-year-old Zuma of rape after they had unprotected sex at his home.⁶⁵ Zuma alleged that his accuser had encouraged him with flirtatious behavior and text messages and by wearing “revealing clothes,” in this case, a kanga, a traditional, and traditionally respectable, African cloth that is worn throughout Africa.⁶⁶ Zuma also testified that he did not wear a condom because he calculated that the risk of HIV infection was low and that he had showered after the sexual encounter to reduce the risk of infection.⁶⁷

The trial was high drama. According to one scholar: “South Africans witnessed a televised 'postmodern' spectacle in which a tribal elder-cum-liberation struggle icon performed 'Zulu traditional masculinity' for consumption by both the court and the broader citizenry. According to Zuma's version of 'African masculinity', in Zulu culture 'leaving a woman in that state [of sexual arousal]' was the worst thing a man could do. 'She could even have you arrested and charged with rape', he told the attentive court.”⁶⁸ In a 174-page opinion, the presiding judge chastised Zuma for having unprotected sex with an HIV-positive woman, but concluded that the encounter had been consensual.⁶⁹

Jacob Zuma is now President of the country that has been called the “rape capital of the world” by Interpol; it is a nation in which some claim a woman is raped every 36 seconds.⁷⁰ Women whose circumstances require that they use communal toilets are at an even greater risk of rape than those in the general

⁶⁴ For an analysis of the various anthropological aspects of the Zuma trial, see generally Elizabeth Skeen, Thesis, *The Rape of a Trial: Jacob Zuma, AIDS, Conspiracy, and Tribalism in Neo-Liberal Post-Apartheid South Africa* (2007), https://lapa.princeton.edu/hosteddocs/skeen_2007_thesis.pdf.

⁶⁵ Jacob Zuma Cleared of Rape, *The Guardian* (May 8, 2006), <https://www.theguardian.com/world/2006/may/08/aids.southafrica>.

⁶⁶ Steven Robins, *Sexual Politics and the Zuma Rape Trial*, 34/2 J. S. AFR. STUD. 411, 415 (2008).

⁶⁷ Jacob Zuma Cleared of Rape, *supra* note 65.

⁶⁸ Robins, *supra* note 66, at 421.

⁶⁹ Robins, *supra* note 66, at 415-16.

⁷⁰ Bafedile Moerane, *SA Still a Rape Capital as the Country Commemorates Women's Month*, SABC News (Aug, 7, 2015), <http://www.sabc.co.za/news/a/1c17cb80496476f5bb5fbffbc39efa26/SA-still-a-rape-capital-as-the-country-commemorates-Womens-Month>.

population.⁷¹ Yet the plight of these women received little notice until the brutal murder of Sinxolo Mafevuka stunned, and shamed, the public.

I learned of this injustice from one of my personal heroes, Zackie Achmat, who introduced Sinxolo to the participants of Study Space IX. If you are not familiar with Zackie, he is a Nobel prize nominee associated with HIV/AIDS causes who defies categorization. The *New Yorker* called him "the most important dissident in [South Africa] since Nelson Mandela."⁷² When I first began traveling to South Africa, his group, the Treatment Action Campaign, had already taken the South African government to court to establish a national treatment plan for HIV/AIDS.⁷³ TAC also was instrumental in making generics available in South Africa.⁷⁴ He is one of the bravest people I have ever encountered.

Zackie is now the Associate Director of Ndifuna Ukwazi ("NU"), a Cape Town NGO that promotes awareness, engagement, and collaboration on social justice issues and provides technical, legal, and organizational support to other social movements. He also is a member of the Social Justice Coalition's Secretariat ("SJC"). On July 1, 2016, shortly after the Study Space program ended, the NU Law Centre, representing the SJC, filed a lawsuit in the High Court of South Africa Western Cape Division, sitting as an Equality Court, to compel the City of Cape Town to adequately budget and plan for the provision of improved access to sanitation in the City's informal settlements.⁷⁵ The case seeks to affirm the equal right to quality sanitation of Cape Town residents who reside in informal settlements.⁷⁶

⁷¹ S. C. Kalichman, L. C. Simbay, D. Cain, C. Cherry, N. Henda & A. Cloete, *Sexual Assault, Sexual Risks and Gender Attitudes in a Community*, 19(1) AIDS CARE 20, 20 (2007).

⁷² Samantha Power, *The AIDS Rebel*, *The New Yorker*, 54 (May, 19, 2003).

⁷³ Treatment Action Campaign 2002 (10) BCLR 1033 (CC) at para. 10 (S. Afr.).

⁷⁴ TAC aligned with the ANC the drug company lawsuit. Directly after the victory, the ANC made clear that it had no plans to take advantage of the potential for lower prices by creating a national treatment program. See Ben Hirschler, *Glaxo Gives Up Rights to AIDS Drugs in South Africa*, Reuters NewsMedia, Oct. 6, 2001 (describing the government's resistance and TAC's response), <http://www.aegis.com/news/re/2001/RE011009.html>. TAC then shifted its focus to the government, filing and winning a landmark constitutional case establishing the government's obligation to create programs to provide medicines to HIV-positive women to prevent the transmission of HIV to their children. *Minister of Health v. Treatment Action Campaign*, 2002 (5) SALR 721 (CC) (S. Afr.).

⁷⁵ *Social Justice Coalition & Others v City of Cape Town*, High Court Application (2016), http://nu.org.za/wp-content/uploads/2016/09/sjc_v_cityofct_WCC17067_16NOMFA.pdf.

⁷⁶ *Social Justice Coalition & Others v City of Cape Town*, *supra* note 75.

The SJC began its “Clean and Safe Sanitation Campaign” in 2010 and has repeatedly expressed its understanding of the complexity of planning, budgeting, designing, constructing, and managing sanitation facilities in the City’s informal settlements.⁷⁷ Cape Town’s apparent unwillingness to engage with the SJC and its community members created a situation that made litigation inevitable.

The NU-SJC case currently is pending, and it is critical that issue remains in the public eye so that advocates continue to receive support from the broad-based constituency that they have garnered.⁷⁸ This support is not surprising given that these experiences are gendered for all of us regardless of geography or economic status. Men can relieve themselves in virtually any open public spaces, in both urban and rural settings.⁷⁹ However, most women are constrained by the physical need to be in a squatting position to urinate or defecate, which increases their vulnerability to physical and sexual assault. There also are sociocultural taboos that constrain many women in these circumstance, constraints that may be even more of a barrier than those that are physical, particularly when a woman is menstruating.

Zackie Achmat’s involvement in the organizations that have presented the case should raise its profile; I do not believe that it is hyperbole to state that TAC’s successes made and changed history. For me, seeing Zackie was like seeing Elvis or the Beatles: my daughter was so jealous. We both still have our TAC “HIV Positive” t-shirts from the early TAC campaigns, although they now are so worn that they read “HI ve”. I share all this to explain why I am so grateful to UT for offering the support that allowed me to participate in Study Space IX and to Gordon Pirie, Julian Juergensmeyer, Karen Johnston, and Karen Butler, the organizers, for continuing the tradition of the founder of Study Space, Colin Crawford, by offering programming that was inspiring, enlightening, at times infuriating and frustrating (*you know, that one visit...*), and, as always, intellectually stimulating.

⁷⁷ Social Justice Coalition & Others v City of Cape Town, *supra* note 75.

⁷⁸ Overy, *supra* note 4, at 15-16.

⁷⁹ Sommer, et al., *supra* note 4 at 110.