

The Polemics of Gender Equality and Cultural Diversity in a Multicultural Setting

A South African Case Study

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ABSTRACT

This article aims to unpack the polemics associated with advancing gender equality through law and policy, while simultaneously advancing cultural diversity in a country where there are not only variant cultures but where the cultures themselves are multiple in nature. Part of the exploration in this article centres on the co-existence of gender equality (through law, policies and programmes), and the promotion of cultural diversity (through law and policies), in a country such as South Africa. The aspect of equality arises from the need to balance out power in order to eradicate the dominance of one gender towards the other. This is partly why, in some non-western countries, cultural practices and beliefs systems prevail amidst gender equality laws or policies. The implication here is that even though the laws on gender equality may exist as an ideal aspiration, the promotion of cultural diversity could present a conflict between cultural practices and gender equality. Given this context, this article will explore the politics, challenges and tensions of advancing laws and policies on gender equality within a domestic environment that promotes cultural diversity in a multi-cultural setting.

Keywords: *gender equality, cultural diversity, South Africa, societal roles, power balance*



INTRODUCTION

The explanation of the concept of polemics is its reference to how society often remains in dispute over social issues. The conflict, hostile or soft refutations of principles within a society make up the concept of polemics.

In gender equality studies, these disputes were historically largely related to the patriarchal norms and values which were against the norms and standards of gender equality. The implication of having a diverse set of cultures which may be patriarchal in nature, could possibly lead to an understanding of how diversity is framed in the policies and laws of South Africa. It is this complex conundrum that the authors have tried to examine, in attempting to establish the meaning behind the idea of equality in the context of cultural diversity.

The Constitution of South Africa makes reference to diversity outside of the norms of equality. The Constitutional reference to gender equality is framed in a manner that suggests that gender equality is to be a substantive issue, whereas cultural diversity is referenced a formal equality. In other words, the refutations that exist within the realm of cultural diversity are such that “diversity of cultures” is used as an “added feature” to the existing policies and Acts that deal with substantive equality. In essence, diversity of cultures is referred to in the context of existing laws and policies as a conduit for substantive equality. The implication of this is that gender equality could be viewed as a substantive issue, whereas cultural diversity could be an enabler of gender equality. The disputes located within gender equality and cultural diversity have often occurred in the courts of law where the substantive nature of gender equality within a diverse cultural society are argued.

The polemical outlook in relation to gender equality and cultural diversity is further compounded by the fact that South Africa has multiple cultures (referred to as multiculturalism), which vary in terms of beliefs and practices. It should be noted that there are even “modern cultures” which were created for the purpose of nation building after 1994. For example, the Constitution of South Africa is strongly premised on human rights and the culture of human rights in South Africa. The conventional field of human rights borrows its philosophies from universalism. African cultures often borrow their outlook from African episteme, supported by customs and traditions. The existing conflict between gender equality and cultural practices (in a multicultural setting) should lead to an inquiry on the dominance of ideas (dialectics). In essence, multiculturalism in South Africa resides within ethical questions on practices which are more important than others. The examination of equality becomes relevant in this case, insofar as the notion of substantive equality is concerned.

METHODOLOGY

The article is based on the qualitative, interpretive methodological paradigm. It includes a comprehensive scrutiny and content analysis of a wide variety of primary and secondary documents and its key empirical contribution is a case study of the “Uthukela Maiden Bursary”. The case study is examined and dissected through a careful utilisation of the dialectics of the combination of the empirical analysis with the ‘thesis-antithesis and synthesis’ principles.

GENDER EQUALITY AND CULTURAL DIVERSITY IN SOUTH AFRICA

The relational issues between gender equality and cultural diversity in South Africa remain complicated, in that the concept of gender in many South African nationalities creates a number of contradictions (Baden *et al.* 1998:16). One of these is related to the fact that the role of women in South Africa has always been influenced by a diversity of cultures, with identity steeped in rigid definitions or traditions (Baden *et al.* 1998:16).

This brings about an ethical question in respect of the relationship between gender equality and culture. It is in this vein that the ethical consideration of gender equality in the context of culture overlaps with the question of how human rights and human identity can be mediated, without veering from the principles of equality which are underpinned by the Constitution of South Africa (Osler 2015). This is the first challenge. The second challenge lies in the fact that, through its leadership, the so-called traditional governance in a country such as South Africa is used to bolster monopolies of the governing political parties as the means to legitimise the reasons why locally elected governments should not be expanded (Ubink 2016:30). Critics of traditional leadership in non-western countries often fear that governance in this setting is likely to compromise the principles of democracy due to the customary nature and systems of governance that are often found in traditional leadership, where equity, human rights and gender equality are bound to suffer (Ubink 2016:30).

In the disciplines of political science and economics, reference is often made to the negative association between ethnic diversity and social trust: some nationalities may be untrusting of others in face of competition for resources (Robinson 2017:01).

Albertyn illustrates how the conflict between cultural disposition and gender equality are also found in several court cases (South African case law) that mediate conflict between gender equality and the right to cultural freedom (Albertyn 2009:166). She argues that the



source of conflict between these variables (gender equality and culture) is clearly related to the rootedness of patriarchy in the social systems of South Africans (Albertyn 2009:166).

The study of diversity points to the importance of assessing intersectionality and how intersectionality explains multiple social realities that shape the experiences of the minority class and their oppression (Rao & Donaldson 2015:09).

The aspect of class, race and gender in the liberation scholarship of South Africa suggests that all of these aspects (race, class and gender) are aimed to advance interests of those who are oppressed (Sokoloff & Dupont 2005:39). The connection or intersectionality of these aspects represents the struggles of each of the advocators of these three aspects within a society; as such, the connection to these aspects lies in the examination of power, privilege and the understanding that diversity comes with certain privileges (Sokoloff & Dupont 2005:39).

Grant (2006:04) argues that applying international human rights principles in South Africa is often complicated by how the general culture, the legal culture and the norms of the majority have always been subverted by Western norms and thought. In light of this, it can be deduced that there are difficulties in applying universal human rights norms in a culturally diverse setting such as South Africa.

The existence of patriarchy pervades law and custom through male superiority while advancing an egalitarian system (Nhlapo 1994:58). Cultural diversity in South Africa arguably exists in patriarchal social frameworks and thus compels the question whether one, namely, gender equality or cultural diversity, is antecedent to the other, or whether one is more important than the other. Grant (2006:09) argues that the clash between gender equality and cultural diversity can be mediated by prioritising equality over culture, in that the right to equality is not limited according to Constitution and is in itself an enabler to the right to culture.

Cultural Diversity in the Constitution and Policies of South Africa

The thesis on cultural diversity in the context of laws and policies brings to light interesting dimensions. There are many examples that illustrate the manner in which cultural diversity is framed in the laws and policies of South Africa but for the purposes of this article, we will use examples in the education and labour sector.

It should be noted that there is no direct policy on cultural diversity in South Africa (as opposed to gender equality), but cultural diversity is framed and referenced in

numerous policies, laws and national strategies. For instance, Sections 35 and 185 of the Constitution of South Africa spell out the need for cultural diversity and its advancement, promotion and protection (Justice.gov.za 2018).

Within the sectors of education and employment, cultural diversity is framed within the Schools Act of 1996, and the Employment Equity Act of 1998, respectively. The Social Cohesive Strategy of the Department of Arts and Culture makes reference to cultural diversity in the context of cultural relativism. The strategy emphasises the need to recognise their existence and that all these cultures ought to be treated equally (DAC.gov.za 2018). The factoring of cultural diversity in law and policy depicts the discursive manner in which cultural diversity is positioned.

The Schools Act places emphasis on the protection and appreciation of diversity along race, cultural and religious lines. The Employment Equity Act stresses the need for non-discriminatory practices in the context of “race, gender, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, and birth” (Labour.gov.za 2018:03).

Given this provision of the Act, it can be deduced that the notion of diversity is framed to suggest that the variances of the human state, i.e. race, gender, beliefs, cultures etc. should not be subject to discrimination, but that these variances should occur in a non-discriminatory manner (Gov.za 2018). This raises questions pertaining to equality in its prevailing form.

The notion of equality in this context should be viewed from the perspective of socio-political equality. The Schools Act further mentions that all learners need to be treated equally in respect of race, culture and religion (Gov.za 2018). The exclusion of racial groups from access to education does not only illustrate discrimination, but exclusion could also imply discrimination against the individual rights of the learners in the case of basic education. It is for this reason that “equal access to education” has been the mantra of the education sector since 1994 (Modisaotsile 2012:01). The exclusion for accessing education in the South African context could imply the exclusion from opportunities that require education as a prerequisite. The unequal treatment of citizens on the basis of race, gender, beliefs or culture, implies that discrimination leads to poverty, and not the well-being of those who do not belong to the belief system, culture, gender or race of others; hence equality becomes important in this instance.

The critics of the Schools Act remain adamant that there is a need to further guide various actors in the education sector on how diversity in the context of culture should be actualised. For instance, Meier & Hartell (2009:180) argue that there is a need to debunk



the assumption that there is one uniform culture when interpreting the Constitutional phrase “unity in diversity”.

The two scenarios in the Employment Equity Act and the Schools Act illustrate the connection between the existences of these policies and how cultural diversity is framed, hence the argument is made that equality in relation to cultural diversity should be referred to in the socio-political context.

Henrard (2001:24) states that substantive equality occurs to promote and protect the rights of individuals and groups: substantive equality makes provision for remedial action that is aimed at redressing inequalities. The latter is given credence by how the “LGBTI Clause” is factored into the Constitution, as this clause aims to protect LGBTI communities from discrimination and abuse as per Section 8 (Part II) of the Bill of Rights (Graziano 2004:303). This is how substantive equality would take place, in the context of law and the institution that would not only preserve gender equality but also protect gender equality as per section 181 of the Constitution. This therefore begs the question as to whether cultural diversity as a concept framed within the Constitution, would be protected in the same manner amidst multiculturalism.

In both the Schools Act and the Employment Equity Act, cultural diversity is framed as an ideal but not as the means to an end. In other words, non-discrimination as a practice is fore grounded as the means to attain or recognise diversity. Gender equality, on the one hand, as per its framing in the Constitution, is framed as a substantive component under section 187 of the Constitution, whereas cultural diversity, on the other, is framed as an ideal state of affairs as per Section 35. Section 185 of the Constitution makes provision through promotion and protection of all religious, linguistic and cultural groups in South Africa, and the notion of diversity is also framed as the means to an end, in that non-discrimination of cultures and religions should be achieved in order to appreciate diversity.

Gender Equality in Law and Policy

There are a number of policies and laws on gender equality in South Africa, including the following:

Gender Policy Framework

In recognition of the socio-economic challenges that South Africa faces, the national policy identifies compelling gender dimensions that need to be addressed in order to advance gender equality in South Africa. Amongst others, these include gender relations,

poverty, globalisation, HIV/AIDs, violence, and access to basic human needs (inclusive of education, housing, welfare, water and sanitation; Gov.za 2018).

Constitution of South Africa

Gender equality features within Section 9 (9.1. to 9.4.) of the Bill of Rights (a chapter of South Africa's Constitution), in the context of formal equality. In other words, formal equality in the context of Section 9 of the Constitution gives credence to gender equality (Gov.za, 2018).

The substantive equality (in the context of gender) provision is inscribed in law in the following manner:

Commission for Gender Equality Act, No. 39 of 1996

In fulfilment of Section 181 (1) (d) and Section 187 (1) of the Constitution of South Africa, the State has adopted and passed the Commission for Gender Equality Act, No. 36 of 1996. Consequently, in line with the Constitutional provisions, the CGE Act spells out the functions of the Gender Commission as follows (amongst others):

- To monitor and evaluate gender equality policies and practices of public and private sector institutions.
- To conduct public education and disseminate information on gender inequalities.

To lobby parliament on legislation that is likely to have an impact on gender equality (RSA 1996:4).

MULTICULTURALISM IN SOUTH AFRICA

The current reconstruction of culture in post-colonial discourse aims to focus on recourse that is necessitated by the post-colonial institutions in South Africa (Williams & Morey 2002:03).

The systematic inequality and discrimination in the context of culture was always imbedded in the country's laws, thereby creating double standards for women from all races and classes (Mahoney 1995:799).

Having multiple cultures in one country, with various cultural practices being prevalent within a social system, raises grave questions about the shape and form of cultural diversity here. This becomes an important issue especially when it raises the spectre of respect for minority cultures as well. Bloemraad & Wright (2014:295) argue that having a



heterogeneous cultural population might lead to a situation where there is a “hunkering down” of minority cultures who may choose to retreat from collective socio-cultural projects in society. In essence, there is a concern about the extent to which minority cultures are given recognition and respect in light of dominant cultures in a specific society. It is thus important to note that even though there is a demographic description of multiculturalism which takes into account characteristics of the population, multiculturalism is also conceived to make sense of how all individuals in society are provided their rights, in relation to the extent to which they “take part in the political, cultural, social and economic life of their communities and the country” (Berman & Paradies 2010:221).

In the definition of culture by United Nations Educational Scientific and Cultural Organisation (Unesco), it is mentioned that there is a need to ensure that “the reality of cultural diversity is transformed into the policy expression of cultural pluralism” (Unesco.org 2018). Having taken stock of the latter, it seems that the South African situation may also be subjected to the nuances and characterisation of culture and multiculturalism. For example, there are considerations of the fact that the notion of the rainbow nation in South Africa, is part of the consciousness of how the country is united but diverse at the same time. In this instance, one would consider the fact that Section 9 of the Constitution gives effect to the establishment of a in full (CRL) Rights Commission (Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act of 2002), whose mandate is to make sure that there is equity between cultures and that there is no dominance of one culture over another (Justice.gov.za 2017).

Bloemraad & Wright (2014:295) argue that there is a substantial body of literature that attempts to demonstrate how demographic diversity in the context of culture could potentially thwart social cohesion. It is probably for this reason that multi-culturalism ought to be part of a government strategy, and is considered to be part of policy design and development in a country that has diverse cultures. It would be imperative that such a strategy would then give government the systems and direction to outline and effect processes that need to be followed in order to ensure that there is equity amongst cultures. Doing so would avoid reaction to how some cultures may be favoured over others.

THE PAST AND CURRENT POLEMICS OF GENDER EQUALITY AND CULTURAL DIVERSITY

Polemics in relation to gender equality and cultural diversity

Awareness on gender equality was advanced through the global dialogue for the

purpose of seeking redress and justice for the persistent inequalities through institutions that were meant to advance gender equality across countries of the south and north (Connell 2005:1801).

The challenge associated with gender equality is how it finds expression within the notions of universality, a concept that is often promoted by powerful nations in order to regulate the less powerful nations of the globe (Osler 2015:09). This therefore raises another ethical question on the asymmetrical power relations which are perceived to be skewed towards those which are more powerful (Osler 2015:09).

The location of culture within a colonial context is related to social stereotypes created in and by non-western cultures for the purpose of suppressing these cultures, thus enfranchising western forms of cultures through hegemony (Williams & Morey 2002:05).

The custodianship of culture in non-western countries within the framework of so-called 'traditional governance' does not promote gender inclusivity (Ubink 2016:30).

Balmer (2017:01) argues that gender roles are placed within the notions of rights and obligations or a gender contract which describes the relationship between men and women.

The fact that the Constitution of South Africa allows for the existence of cultures and that all cultures ought to be treated equally and no culture given preference above another, illustrates the existence of cultural relativism. Tilley (2000:507) argue that cultural relativism (cultural diversity) and universalism are two concepts of two different schools of thought and are bound to unveil conflict when placed together. It is for this reason that the polemics of cultural diversity and gender equality in South Africa have created conflict which has been mediated by the courts. Nhlapo (1995:202) agrees with Tilley (2000:507) that earlier conflicts on culture and gender equality were highly discernible in the post-apartheid era, at a time when it became possible to inquire into the practices of culture and gender equality through the courts as a mediating institution.

Morrell *et al.* (2012:11) argue that African masculinity is often valorised with the notion of male superiority. This assertion by Morrell *et al.* (2012:11) and the assertion by Nhlapo above (1995:22), point to the fact that when certain cultural practices exist within the realm of gender equality, it is the harmful traditional practices that may be deemed to be against notions of gender equality.

The post-apartheid gendered research canon consists of an assessment of relational issues (among men), as they pertain to differences between patriarchy between men who



are white and black (Morrell *et al.* 2012:19). Recent research on gendered issues also helped to theorise conceptions of the role of white and black males in South African society (Morrell *et al.* 2012:19).

It is for this reason that over the past decades, there has been a resounding attempt by legal feminist theorists to challenge social, economic and cultural impediments to gender equality (Mahoney 1995:800). It should be noted that the fight for gender equality was not only premised on the liberation from patriarchy in the traditional mode, but also as a source of socio-economic justice (Andrews 1997:309).

It was also through the course of challenging patriarchal systems within the political sphere that, in turn, the discourse of public engagement on gender equality in general was transposed from the public sphere to the private sphere (Mahoney 1995:801). In essence, the continued discussions on gender equality aided the thinking on the advancement of gender equality from the public to private spaces, as the notions of equality actually affected women within their private spaces (Mahoney 1995:801).

The notion of socio-economic development in recent years have also given prospects to the social transformation of the lives of women and men at global scale, the existence of which has brought about changes in the labour force and education, and has improved public and private lives (Inglehart & Norris 2003:02). In light of this development, it may be worth noting how ideological norms are still located within the context to changing global issues of development.

One of the ways in which culture could become an impediment to gender equality, rests in the idea that societal modelling of modernisation is often conditioned by cultural heritage of a society steeped in attitudes within societies at certain levels of socio-economic development (Inglehart & Norris 2003:04). The essence of this points to how the influence of societal views on gender equality is often affected the cultural conditioning of a society.

Polemics in relation to issues of intersectionality

The main development in relation to the manner in which the liberation located the rights of women and gender equality within the intersectionality of race, class and gender, is that women's movements should have been understood as heterogeneous organisations rather than being viewed through the lens of the broader political institutions (Hassim 2005:01).

The concept of hegemonic masculinities has been deemed relevant in the analysis of gender power in conjunction with issues of the existing male hierarchies in society giving

way to differentiation between white and black males, stemming from the historical oppression and domination by white males of black males through colonialism (Morrell *et al.* 2012:12).

Hegemony in this case is located in the intersectionality between race, gender and social class (Morrell *et al.* 2012:12). This means that the historicity of South Africa bears significance, not simply in the analysis of the intersectionality but by taking into account the past legacies of the country.

Within the intersectionality of race, class and gender in the context of the liberation struggle of South Africa, it was race and class that dominated the public debates on the struggle for emancipation and freedom (Morrell *et al.* 2012:18).

It is argued that patriarchy as a concept gives rise to a certain state of being, where power influences gender norms and systems of living which pervade the existence of gender equality (Jewkes *et al.* 2015:13). It is for this reason that one of the current challenges of gender equality in South Africa needed intervention by changing the attitudes of citizens in order to transform hegemonic masculinities, especially the right to eradicate gender-based violence in South Africa.

Even though women's movements have advanced the course of challenging patriarchy, patriarchy itself has become an obstacle in eradicating power domination in the context of intersections of class, race and gender (Hassim 2005:02).

Recent Polemics in practical terms: A Case study of the “Uthukela Maiden Bursary”

The case study of the Uthukela Matter offers an interesting perspective on the interface between gender equality and cultural diversity within a multicultural setting (Ndaliso 2018). The polemics of this case study are linked to the notion or perception of dominance, power and influence.

The story of the Uthukela Maiden Bursary occurred in the rural area of the Uthukela Municipality in 2016 (eNCA.com 2018; Mtshali 2018). In this case, the municipality offered high school learners bursaries on condition that they remain virgins until they have completed their studies at university. The bursary scheme was linked to the traditional practice in the Nguni culture of virginity testing. High school learners were inspected for their virginity in order to verify their legitimacy to maintain the bursary (eNCA.com 2018). It should be noted that the practice of virginity testing in South Africa has been declared



illegal even though it exists in certain cultures (Commission for Gender Equality 2016). The frame of thought around cultural diversity in this case points to how the existence of cultural practices and diversity would not automatically be promoted in the instance of harmful traditional practices. When the Uthukela Maiden Bursary Scheme was launched, the Commission for Gender Equality (CGE/Gender Commission) instituted an investigation into the awarding of the bursary as well as its conditions. In its final investigative report, the CGE found that the practice in the case of the Maiden Bursary was unconstitutional due to a number of reasons. The findings of the Gender Commission were as follows (Commission for Gender Equality 2016; Mtshali 2018):

- Although there was a conscious effort to partly dissuade students from health risks such as HIV/AIDS infections, the decision to provide bursaries to female students on the basis of their virginity was discriminatory as it violated the right to equality, dignity and privacy.
- The Commission held that the cultural practice should not be used as a determining factor for the beneficitation of young women because in so doing, those who may not subscribe to the culture would be disadvantaged due to their belief systems.
- The bursary scheme amounted to gender discrimination against young women as it created a burden on them without imposing the same burden on young men.

In response to the outcome of the investigation of the Gender Commission, the CRL Rights Commission argued the following (Mtshali 2018; eNCA.com 2018):

- The practice of virginity testing ought to be promoted as a cultural practice and that there was nothing harmful about the actual practice.
- The Commission maintained that promoting and upholding the culture was in line with the Constitution.

The point of contention in this case was, what became of equality in the context of the Constitution as per the CGE's finding? The inference of cultural diversity could be viewed from a dual perspective in that, on the one hand, in-as-much as cultures ought to exist and be advanced, these cultures are also subject to legal and policy scrutiny as long as they cause harm to people. The over-arching matter in the case of the Uthukela Maiden Bursary as per the findings of the CGE, was never to argue whether the cultural practice was more important than the culture of human rights or the right to education in general; rather, it was more inclined to explain whether the practice was exclusionary and constitutional (Commission for Gender Equality 2016). The notion

of equality in the case of the Uthukela Maiden Bursary was an assessment of socio-political equality regarding the right to practise a culture or practice, and whether that cultural practice would be subject to interrogation of constitutionality and equality. The cultural practices as they are borrowed from customs and traditions would arguably vary in terms of scope, and in the case of the Uthukela Maiden Bursary, at least a precedence has been set on whether equality becomes a dominant factor in the assessment of cultural diversity. What emerged from the Uthukela Maiden Bursary experience is the idea that the notion of equality can become far more dominant as the means for substantive value.

Thesis

The thesis of gender equality is found in universal human rights issues and exists alongside norms and standards of the universalist frame of thinking. Inasmuch as the South African state would have given rise to the notions of cultural relativism, through the promotion of cultures are variant, it is important to note that it was the intention of the South African state to build a culture of human rights. This is evident through the provisions of Sections 187 and 185 of the Constitution. The existence of both cultural diversity and gender equality have been founded under the ideals of creating cultural autonomy as well as the need to promote equality in the context of gender as an ideal that stems from South Africa's past. Both these concepts are important, but their significance also lies in their extent to which they do not become a contributor to an injustice of any kind. The prevailing polemics within the two concepts would exist if any threat of dominance is perceived, much like the Uthukela Maiden Bursary scheme.

Anti-thesis

The anti-thesis in the case of the Uthukela Maiden Bursary scheme is that there may be instances where gender equality as a substantive issue protected by the constitution is threatened in relation to equality. What became the anti-thesis in the Uthukela Maiden Bursary is when a cultural practice in the name of cultural diversity is exercised in a manner that becomes harmful, or when the rights of others become threatened.

Synthesis of the issues

The issues of gender equality and cultural diversity in the case of Uthukela were synthesised through the examination of substantive equality. It was recognised that the actual practice of virginity testing is harmful but additionally, that using the practice as a source of beneficitation had proved to be problematic. In light of the polemics of cultural



practice, diversity and gender, it is argued that a harmful traditional practice was actualised as an indirect source of empowerment of young women, as the ultimate goal was to incentivise access and opportunities to education using culture.

It is understood that when Section 185 of the Constitution and Section 187 of the Constitution fell into polemic collision, the determination or the legal question was whether the practice was constitutional. It would seem that the argument of the CRL Rights Commission considered whether the cultural practice was protected and that it ought to have been promoted, according to the Constitution. The key issue within the polemical rambling that ensued was that gender equality as a substantive form of equality (with policy, law, institutions that ought to drive it, including the courts), would have been at risk as a constitutional provision. In other words, there is a fundamental difference in promoting a Constitutional provision (cultural diversity, practices and beliefs) and substantively protecting gender equality in order to adhere to non-discriminatory purposes.

CONCLUSION AND RECOMMENDATIONS

It should be noted that this article has made arguments citing South Africa's historicity in eking out the nodal points between gender equality and cultural diversity in a multicultural setting. It is shown above that it is possible to adopt global ideals especially when these global ideals aim to fashion the global regulation of gender issues through equality. The point has been made that South Africa is a multicultural society but this multicultural society exists within a state that protects the rights for gender equality through laws, policy and institutions; however, though this might be the case, it is not always guaranteed that gender equality would be attained adequately when it exists in the space of cultural diversity.

The notions of gender equality and cultural diversity may be noble concepts in thought, but in practice they may not necessarily exist in harmony. The one concept, gender equality, is a universalist concept which happens to mirror the same vision of South Africa as reflected in its Constitution. However, the ideal of gender equality would, in South Africa, exist amidst a complex state, with societal interaction through policy, law and institutions. Even though these institutions may exist, in reality these institutions are arguably bound to observe the importance of other rights, such as the rights to water and sanitation. The Constitution of South Africa makes it clear that no one right may be dominant over the other, thereby lending an aspiration of equality to these endeavours, as these cultures ought to exist on an equal footing.

RECOMMENDATIONS

What recommendations can be made then to address these difficult challenges? Two emerge from the analysis in this article:

- The need to strengthen gender equality outside of intersectional issues
- The need for on-going testing of substantive equality between cultural diversity and gender equality

Strengthening gender equality outside intersectional issues

The intersectional nature of politics in South Africa has arguably left women and gender issues on the periphery, based on the discussion here and in the literature. One suggestion is that the post-liberation formations of women's organisations in South Africa (mainly civil society organisations), need to create space for women and gender issues as direct factors that need attention. This is possible to achieve, since gender equality is a concept that is protected by the Constitution of South Africa.

Ongoing testing of substantive equality

The case of the Uthukela Maiden Bursary serves as a precedent for what should happen when cultural diversity and gender equality are in dispute (polemic). It was in this case that the supreme law of the country took precedence over belief systems and practices even though these practices have existed over centuries. The Constitution may recognise the existence of diverse cultures but the question of substantive equality became an over-arching theme and an arbiter. In short, there needs to be more examination on similar aspects that become a source of conflict in relation to gender and culture.

REFERENCES

- Albertyn, C. 2009. The stubborn persistence of patriarchy? Gender equality and cultural diversity in South Africa. *Constitutional Court Review*, 2(1):165–208.
- Andrews, P.E. 1997. Striking the rock: Confronting gender equality in South Africa. *Mich. J. Race & L.*, 3:307.
- Baden, S., Hasim, S. and Meintjes, S. 1998. *Country Gender Profile: South Africa*. Institute of Development Studies.
- Balmer, M. 2017. Energy poverty and cooking energy requirements: The forgotten issue in South African energy policy? *Journal of Energy in Southern Africa*, 18(3):4–9.



- Berman, G. and Paradies, Y. 2010. Racism, disadvantage and multiculturalism: Towards effective anti-racist praxis. *Ethnic and Racial Studies*, 33(2):214–232.
- Bloemraad, I. and Wright, M. 2014. Utter failure” or unity out of diversity? Debating and evaluating policies of multiculturalism. *International Migration Review*, 48(s1).
- Commission for Gender Equality. 2016. Systemic Investigative Report on Uthukela Maiden Bursary Scheme.
- Connell, R.W. 2005. Change among the gatekeepers: Men, masculinities, and gender equality in the global arena. *Signs: Journal of Women in Culture and Society*, 30(3):1801–1825.
- DAC.gov.za. 2018. National Cohesion Strategy. Republic of South Africa. [online]. www.dac.gov.za/sites/.../NATIONAL-STRATEGY-SOCIAL-COHESION-2012.pdf. [Accessed 10 October 2018].
- eNCA. 2018. ‘Maiden bursaries’ unconstitutional. [online] Available at: <https://www.enca.com/south-africa/maiden-bursaries-unconstitutional> [Accessed 6 Aug. 2018].
- eNCA. 2018. *Cultural and Religious Rights Commission defends maiden bursary*. [online] Available at: <https://www.enca.com/south-africa/cultural-and-religious-rights-commission-defends-maiden-bursary> [Accessed 6 Aug. 2018].
- Grant, E. 2006. Human rights, cultural diversity and customary law in South Africa. *Journal of African Law*, 50(1):2–23.
- Government of South Africa. 2018. Schools Act. Republic of South Africa. [online]. <https://www.gov.za/documents/south-african-schools-act>. [Accessed 10 October 2018].
- Graziano, K.J. 2004. Oppression and resiliency in a post-apartheid South Africa: Unheard voices of Black gay men and lesbians. *Cultural Diversity and Ethnic Minority Psychology*, 10(3):302.
- Government of South Africa. 2018. National Gender Policy Framework. Republic of South Africa. https://www.gov.za/sites/default/files/transformation_0.pdf. [Accessed 10 October 2018].
- Hassim, S. 2005. Voices, hierarchies and spaces: Reconfiguring the women’s movement in democratic South Africa. *Politikon: South African Journal of Political Studies*, 32(2):175–193.
- Henrard, K., 2001. The Accommodation of Religious Diversity in South Africa against the background of the centrality of the Equality Principle in the New Constitutional Dispensation. *Journal of African Law*, 45(1):51–72.
- Inglehart, R. and Norris, P. 2003. *Rising tide: Gender equality and cultural change around the world*. Cambridge University Press.
- Jewkes, R., Flood, M. and Lang, J. 2015. From work with men and boys to changes of social norms and reduction of inequities in gender relations: A conceptual shift in prevention of violence against women and girls. *The Lancet*, 385(9977):1580–1589.
- Justice.gov.za. 2018. Constitution of South Africa. Republic of South Africa [online]. www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf. [Accessed 10 October 2018].
- Labour.gov.za. 2018. Employment Equity Act. Republic of South Africa. [online]. www.labour.gov.za/DOL/.../legislation/acts/employment-equity/ee gazette2015.pdf. [Accessed 10 October 2018].
- Mahoney, K. 1995. Theoretical perspectives on Women’s Human Rights and Strategies for their Implementation. *Brook. J. Int’l L.*, 21:799.
- Meier, C. and Hartell, C. 2009. Handling cultural diversity in education in South Africa. *SA-eDUC Journal*, 6(2):180–192.
- Modisaotsile, B.M. 2012. The failing standard of basic education in South Africa. *Policy Brief*, 72:1–7.

- Morrell, R., Jewkes, R. and Lindegger, G. 2012. Hegemonic masculinity/masculinities in South Africa: Culture, power, and gender politics. *Men and Masculinities*, 15(1):11–30.
- Mtshali, M. 2018. *Virginity testing backers fight back* | *Daily News*. [online] iol.co.za. Available at: <https://www.iol.co.za/dailynews/news/virginity-testing-backers-fight-back-2038176> [Accessed 6 Aug. 2018].
- Ndaliso, C., 2018. Controversial bursaries for virgins initiative a success/Independent Newspapers. <https://www.iol.co.za/dailynews/news/controversial-bursaries-for-virgins-initiative-a-success-15971601>. [Accessed 10 October 2018].
- Nhlapo, T. 1994. Indigenous law and gender in South Africa: Taking human rights and cultural diversity seriously. *Third World Legal Stud.*, p. 49.
- Nhlapo, T. 1995. Cultural diversity, human rights and the family in contemporary Africa: Lessons from the South African constitutional debate. *International Journal of Law, Policy and the Family*, 9(2):208–225.
- Osler, A. 2015. The stories we tell: Exploring narrative in education for justice and equality in multicultural contexts. *Multicultural Education Review*, 7(1–2):12–25.
- Rao, M.A. and Donaldson, S.I. 2015. Expanding opportunities for diversity in positive psychology: An examination of gender, race, and ethnicity. *Canadian Psychology/Psychologie Canadienne*, 56(3):271.
- Robinson, A.L. 2017. Ethnic diversity, segregation and ethnocentric trust in Africa. *British Journal of Political Science*, pp. 1–23.
- Sokoloff, N.J. and Dupont, I. 2005. Domestic violence at the intersections of race, class, and gender: Challenges and contributions to understanding violence against marginalized women in diverse communities. *Violence against women*, 11(1):38–64.
- Tilley, J.J. 2000. Cultural relativism. *Human Rights Quarterly*, 22(2):501–547.
- Ubink, J., 2016. *Traditional Authorities in Africa. Resurgence in an Era of Democratisation*. Leiden University Press.
- Unesco. 2018. Definition of Cultural Diversity. [online]. <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/cultural-diversity/>. [Accessed 10 October 2018].
- Williams, P. and Morey, P. 2002. 4 Colonial Discourse, Postcolonial Theory. *Year's Work in Critical & Cultural Theory*, 10(1).