



# Gender equality

**SDG 5:** Achieve gender equality and empower all women and girls  
life-long learning



*Image by Lindsay Mgbor for Department for  
International Development, Flickr.*

[www.research.uct.ac.za/research-report-2015-16](http://www.research.uct.ac.za/research-report-2015-16)



## Sufi Narratives of Intimacy

The year 1994 was particularly memorable for Muslim South Africans because of two significant events. First, the first non-racial democratic elections took place, signalling the official death of apartheid. Second, Professor Amina Wadud, a visiting scholar and author of a pioneering Islamic feminist work, *Qur'an and Woman*, delivered the Friday sermon (khuṭba) at the Claremont Main Road Mosque, which I attended.

The mosque had invited Wadud to share her insights on Islam with its members, who also decided to use the occasion to transform the gendered nature of their prayer space. Not only was a woman going

to give the all-important Friday sermon, but the female congregants would move from the balcony into the central space of the masjid, on par with, albeit separate from, the men.



For me, a young committed Muslim woman, entering the newly open and receptive masjid felt like stepping into the warmth of the sunshine after a lifetime of being concealed in the shadows, a feeling somewhat akin to voting in my country of birth for the first time. In my experiential framework, this minority congregation was boldly embodying a fundamental social justice imperative that was intrinsic to Islam. However, even as this act of liberation unfolded, many broader community contestations of this event were pervaded by assumptions that women are somehow peculiarly and inferiorly defined by their bodies and that these female bodies, in the proximity of men, somehow diminish and threaten the sacredness of the mosque. Integrating justice and harmony into both personal and communal religious spaces constitutes a serious religious challenge for a number of contemporary Muslims, which is why women's free access to central spaces of worship and women's ritual leadership remain controversial topics.

Wadud's khuṭba at the Claremont Main Road mosque was inspirational. Her words were like a glorious, warm summer rain, drenching us in mercy and radiating all kinds of existential possibilities. This was a spiritually ripe sermon, inspired and inspiring, beautiful and beautifying, luminous and illuminating. She went to the very heart of the matter, to the understanding of Islam as a state of engaged surrender in all of our most intimate and immediate relationships as human beings – marriage, pregnancy, childbirth – and sites of intimate relationship to the divine One.

For the first time in my adult life in a public religious space, I felt myself sincerely validated as a Muslim

woman. While some sectors of the South African Muslim community enthusiastically hailed the event, other segments of that community became incensed. The resulting conflict reflected fierce struggles regarding Muslim understandings of sexuality, sacrality, and human embodiment.

Contemporary gender politics relating to Islam is not restricted to the issue of women imams or internal differences within the Muslim world. Wide-ranging geopolitical dynamics and ideological contestations are played out on the bodies of Muslim women. Representations of Muslim women vacillate between dominant Western images of Muslim women as oppressed, and apologist Islamist images of Muslim women as the only truly liberated women.

The debates on both sides are often simplistic, rigidly formulated, authoritarian, ideologically loaded, and contingent on the political forces of the day. Examples abound. French public schools prohibit Muslim women from wearing head scarves (ḥijāb), ostensibly as a marker of a secular society; conversely, postrevolutionary Iran imposes the ḥijāb as a symbol of authentic Islamic identity. US politicians strategically invoked the plight of Afghani women as a way to build public support for the American-led invasion of Afghanistan in 2001, yet are notably silent about the Saudi regime's appalling women's rights record as a result of the two countries' intimate political-economic relationship. In many parts of the Muslim world, notions of gender equality are often interwoven with larger postcolonial identity struggles about indigenous values, cultural allegiances, and loyalties and disloyalties.

The global context for discussions of gender justice and Islam is, therefore, ideologically fraught with contestations of the nature of religion, law and secularism; citizenship, identity and empire; freedom, equality and self-expression. Many antagonists in these debates share the assumption that Islam is a monolithic religion with a singular, all-embracing gender paradigm. Such generalisations not only belie the complex varying realities of contemporary Muslim women, but also ignore the rich diversity of the Islamic tradition that is informed by the *mélange* of Arab, Turkic, Persian, Andalusian, African, and South Asian histories and cultures.

Gender dynamics among Muslims are as complex and polymorphous as the realities of women (and even men, for that matter) in other religious, social and political contexts. While there are undoubtedly universal aspects within Islam that fall within a cohesive religious category, this unity is mostly accompanied by myriad diversities. ○

*Excerpt from Sufi Narratives of Intimacy by Associate Professor Sa'diyya Shaikh. The book, published by University of North Carolina Press, won the UCT Book Award in 2015. Image of Sa'diyya Shaikh by Michael Hammond.*





# Living customary law and social realities

**Under apartheid, most married women in South Africa were regarded in law as minors, under the guardianship of their male relatives or husbands. New laws since 1994 set out to change that. But are the new laws working?**

Professor Chuma Himonga, the DST/NRF SARCHI Chair in Customary Law, Indigenous Values and Human Rights, and Dr Elena Moore of the Department of Sociology, conducted a national study, in collaboration with the National Movement of Rural Women, to examine how the new laws operate in practice. They found that structural and cultural barriers make these laws very difficult to implement.

Before 1994, the law barely recognised customary marriages, as opposed to marriages entered into in accordance with the Marriage Act 25 of 1961. Women in customary marriages were regarded as perpetual minors; they could not acquire or own property in their own right. In some parts of the country, husbands in a customary marriage had absolute ownership of household property and the personal property (including earnings) of their wives.

In the post-apartheid era, the Recognition of Customary Marriage Act (RCMA) improved women's access to economic resources from a marriage. The new laws introduced principles of gender equality, non-discrimination, and the protection of the rights of children in the family. All children, including female children and children born outside the marriage, now have an equal right to inherit. However, many women are still not benefiting from these new laws.

The findings of Himonga and Moore's study highlight the uneven consequences of divorce and intestate succession for many black South African women as wives, daughters or sisters. Failure to register a customary marriage has race and gender consequences that cannot be overlooked.

While almost one in every two men and women in a civil marriage is employed, only two in every five men and women in a customary marriage are employed. Only one-quarter of women in customary marriages are employed, compared to 37.5% of women in civil marriages. Among black South Africans there are almost five times as many widows as widowers, and there are almost twice as many separated or divorced women as men.

## Customary vs civil marriage

A customary marriage and a civil marriage are both types of legal marriage. Either can be registered at the Department of Home Affairs. Whereas a civil marriage is contracted between two parties under the Marriage Act, a customary marriage is legally defined as a marriage in accordance with customary law: that is, the customs and usages that are traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of those peoples. People can register their marriage according to customary law or civil law, but not both.

Himonga and Moore's study revealed a great deal of confusion among married couples about the differences between customary and civil marriages, and about the registration process and the legal regulation of both types of marriage. Despite the introduction of the Recognition of Customary Marriage Act, civil marriages are thought to provide better legal protection. According to Himonga and Moore, this is not the case.





Moreover, registering a marriage with the Department of Home Affairs was strongly associated with civil marriages: almost all the participants in Himonga and Moore's study thought they had registered their marriages as customary marriages; but in fact, they were all married under the Marriage Act. They were unaware of the marital system they had married under, and they were therefore unaware of the rights and responsibilities of being married according to a specific legal system.

The findings also show that officers registering marriages did not distinguish between registering a customary marriage and registering a civil marriage. This raises the question of whether officials at the Department of Home Affairs are prioritising the registration of civil marriages at the expense of customary marriage registrations.

### The question of lobolo

There is much discussion about the requirements for a valid customary marriage, but Himonga and Moore's findings show that the practices of the courts and the practices of the people require the payment of lobolo and the integration of the wife into the husband's family for the conclusion of a valid marriage. In some cases, part or full payment of lobolo is a prerequisite for concluding a valid marriage, while in others, the agreement to pay is sufficient.

Take the following example from the findings: Frank married Asanda (not their real names) in 1978; Asanda changed her surname, lived with her husband and his family, and participated in family life. Frank passed away in 2002, and Asanda sought to obtain the spousal benefit from her husband's pension, while continuing to live in the marital home. Frank's family said that she was never married, as Frank had died before he had finished paying lobolo. Asanda could not prove she was married to Frank, as the couple had not registered the marriage.

It has been suggested that people dispute the validity of a marriage as a way of escaping the financial obligations to spouses at the end of marriage. When this happens, the dispute hinges on the terms under which lobolo was negotiated. One side will argue that full payment was required, while the other side will argue that the families regarded the wife as a spouse. In most cases, there is no proof that a valid marriage exists, as the couple did not register their marriage. Providing evidence of a valid marriage is then very difficult, especially when elders have passed away.

The transfer of lobolo and the registration of a marriage are intricately linked in the eyes of the participants. However, the authors argue that for the purposes of the requirements for a valid marriage, the marriage should come into existence when the lobolo agreement is concluded, not when it is actually paid; especially since the parties behave as though they are married after the

agreement. This also ensures that the woman acquires a legally protected status earlier rather than later.

These matters affect the everyday lives of many South Africans, and their access to the resources necessary to sustain their livelihoods. People in customary marriages represent some of the most marginalised and vulnerable people in our society.

### New laws fail to ensure equality: women still excluded from inheritance

As part of the drive to transform customary family relations in post-apartheid South Africa, in line with the new constitutional rights and principles outlawing discrimination, the Constitutional Court decision in *Bhe v Magistrate Khayelitsha* abolished the rule of male primogeniture. This was because it was discriminatory against women and children born outside marriage, contrary to constitutional principles. Instead, the court created new rules of inheritance. For instance, if the deceased is survived by one spouse, the spouse inherits the entire estate. Where the deceased is not survived by a spouse or spouses, but descendants (children), the descendants – including extra-marital children – inherit the entire estate.

But despite these new rules, some members of the deceased's family who should inherit, still do not do so. For example, some daughters, widows and extra-marital children are excluded from the estate of a deceased family head. There are several reasons for this, one of which is the fact that many estates are administered and distributed informally, within the family. In other words, they are not administered and distributed by the Master of the Court's office. In the study, in some cases, this was because interested parties were not aware of the new rules.

In other cases, participants said they did not like or approve of the new rules, because they did not include the customary-law idea of family property. According to customary law, family property belongs to the deceased's family. At death, the property is not inherited, but given to a 'custodian' heir who holds it for the entire family of the deceased (the extended family), for their common use and support in time of need.

Since the objectives of the new rules are not being met in practice, there is a need for measures to improve the implementation of the new rules, to realise the objective of eradicating discrimination in inheritance procedure against women and children born outside marriage. ●

*This feature is based on a series of articles published in [www.groundup.org.za](http://www.groundup.org.za). More insights from this study can be found in the authors' book, Reform of Customary Marriage, Divorce and Succession in South Africa: living customary law and social realities. Image by Salym Fayad, Flickr.*





# Access to healthcare for women

## The culture of illegal abortion in South Africa

In 1996, the South African Choice on Termination of Pregnancy (CTOP) Act was passed, promoting the right to safe and legal abortion. Even though abortion is now freely accessible under South African law, many thousands of women continue to terminate unwanted pregnancies illegally every year.

Medical historian, Dr Rebecca Hodes, at the AIDS and Society Research Unit in the Centre for Social Science Research, investigated why the rates of illegal abortion remain persistently high, despite the mandates of reproductive health legislation.

While the law reflects the state's commitment to reproductive rights, the stigma and suffering that often accompany abortion reveal a chasm between policy objectives and their real-world enactment in South Africa's public health sector. Clinical observations and expert interviews revealed

that pain and humiliation among abortion patients may be accepted as an inevitable part of its public provision. The participants in her research describe how pain blockers are given infrequently to abortion patients.

One healthcare worker, with decades of experience in treating medical abortion patients, explained: "The woman don't get pain medication. They abort at home, they abort on the way [to hospital], or they abort while waiting there." While some healthcare workers sought to adapt national health protocols to

improve the patient experience, "shortages in equipment to ensure the quality of care rendered the experience of abortion more painful and more difficult for many women in this study," says Hodes.

"The law mandates that abortion should be a safe medical procedure that forms an integral part of healthcare in South Africa. Nevertheless, through obstructing its access and rendering its legal procurement a conduit of punishment and suffering, it remains a source of pain, enacted against the women whose health it is meant to protect," says Hodes.

## Novel use of mobile technology helps women self-assess their eligibility for early medical abortion

New research suggests that women could use their cell phones to accurately assess their eligibility for medical abortion, via an online gestational-age calculator called *i-calculate*.

Most pregnancy-calculator applications or websites use due-date calculators, and provide other information that is not suitable for a woman seeking to terminate a pregnancy. This mobile app represents an opportunity to empower women, by providing them with self-assessment opportunities and accurate and safe abortion information.

The director of the Women's Health Research Unit (WHRU), Associate Professor Jane Harries, led the IPAS-funded pilot study to explore women's experience of using the *i-calculate* app. Once they had accessed the site, women were guided through a process

that included determining the first day of their last menstrual period, as well as five standardised medical abortion-eligibility questions. After completing the online process, they received confirmation messages of their self-calculated gestational age. Most of the participants found the online gestational calculator easy to use.

"Seeking services earlier in pregnancy is safer, less expensive, and provides more options for women," says Harries. The ability to self-assess gestational age using an online calculator has the potential to empower women, providing them with some self-autonomy of health care.

As part of a multi-country Global Turnaway Study, the Women's Health Research Unit (WHRU) partnered with researchers at the University of California, San Francisco to find out what happens when women are denied access to legal abortion services in South Africa. A high proportion of women who were initially denied an abortion at legal facilities went on to seek options for pregnancy termination outside the legal system, through internet searches – some of which could have led to unsafe abortion practices. "Further efforts should be directed towards informing women about the availability of free services in the public sector, and educating them about the dangers of unsafe methods of pregnancy termination," says WHRU director Associate Professor Jane Harries.





### Cheaper HPV vaccine might come from tobacco

In a pioneering step towards using plants to produce vaccines against cervical cancer and other viruses, UCT researchers have generated synthetic human papillomavirus-derived viral particles called pseudovirions in tobacco plants.

Biopharming uses plants as 'biological factories'. They have been used to create flu vaccines, potential anti-Ebola drugs, and an enzyme used to treat Gaucher's disease in people. Now, researchers from the Biopharming Research Unit (BPRU) report using tobacco plants to create synthetic viral particles known as pseudovirions. These pseudovirions look like viral infections, but contain no infectious viral DNA.

The shell of this newly-created pseudovirion was of the human papillomavirus (HPV) type 16, which is responsible for more than 50% of cervical cancer

cases worldwide. This is the first time researchers have successfully created pseudovirions in plants – up to now, yeast and mammalian cell cultures have been the glass ceiling. The BRU team hope this new plant-based technology could one day be used to test future HPV vaccines.

Image by Magnus Manske, [Wikimedia Commons](#).



### Lack of rehabilitation for women after breast cancer surgery impacts their ability to work

While improved cancer treatment protocols lead to higher survival rates and reduced side effects, many women develop upper limb pain, dysfunction and swelling for up to six years post-surgery – all of which impact on the patient's quality of life and their ability to return to work.

To better understand the impact of this pain and dysfunction in South Africa, Dr Delva Shamley, director of the Clinical Research Centre, led a prevalence study involving over 300 patients. Shamley's study showed that even up to two years post-treatment, 78% of the participants were unemployed; 41% had a swollen arm; 48% reported pain associated with shoulder movement at a level shown to interfere with the activities of daily living; and 43% scored

greater than 40 for disability (out of a maximum of 80).

Despite these findings, current access to rehabilitation services is patchy to non-existent. That this aspect of care does not fall into the standard cancer-care pathway means that patients remain uneducated and unmanaged with respect to the long-term impact of treatment.

In the absence of comprehensive social support in South Africa,

most women cannot afford not to work after receiving breast cancer treatment. In order to enable women to re-enter the workforce after receiving treatment, "a public-health intervention for breast cancer-related lymphoedema and upper limb pain and dysfunction is crucial," says Shamley. Her team continues to work towards developing a suitable intervention that will be delivered at all levels of care.



# Mainstreaming a gender perspective is crucial

The sustainable development framework emanating from the United Nation's (UN) 2030 **Agenda for Sustainable Development** acknowledges that the achievement of sustainable development must include 'a world in which every woman and girl enjoys full gender equality'. In addition to a stand-alone goal (SDG 5) to achieve gender equality and empower all women and girls, the systematic mainstreaming of a gender perspective in the implementation of all other goals is crucial, argues **Rashida Manjoo**.

The expansive and aspirational provisions of SDG 5 include the following targets: ending all forms of discrimination against women and girls everywhere; eliminating all forms of violence in both public and private spheres; the recognition and valuing of unpaid care and domestic work; ensuring women's full and effective participation and equal opportunities for leadership at all levels; and ensuring universal access to sexual and reproductive health rights.

The means of achieving the targets include undertaking reforms to give women equal rights to economic resources in accordance with national laws, and the adoption and strengthening of policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls.

## Fundamental human rights

These laudable goals and targets are underpinned by the fundamental human-rights obligations of states to respect, protect, promote and fulfil all human rights and fundamental freedoms of women and girls. This requires political will and an adequate allocation of resources to address inequality, discrimination, disempowerment and violence. In order to effectively implement SDG 5, states should act in good faith and commit the same effort and resources to achieving SDG 5 as they do to the other goals.

Women's rights activists remain concerned about the barriers to full and effective implementation of all goals, due to the inclusion of language such as: 'as reflected in UN policy documents' (which are not legally binding on states), 'taking into account national circumstances' and 'in accordance with national laws'. The concern

is that the pledge 'that no one will be left behind' will not necessarily be applicable when addressing the individual, institutional, structural and multifaceted needs of women and girls.

## Accountable and inclusive institutions

The need to mainstream gender equality and the empowerment of women into all the goals requires that close attention be paid to their implementation. This includes SDG 16, which requires the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and the building of effective, accountable and inclusive institutions at all levels.

It is important to bear in mind that state responsibility for violations of human rights may be based on acts or omissions committed by state actors or by those whose actions are attributable to the state, or by a failure of the state to act to prevent or respond to violations perpetrated by non-state actors.

Thus, the monitoring of state responsibility in their efforts to implement the SDGs requires vigilance, to ensure that they are observing the frameworks through which obligations and accountability emanate. This, in turn, requires a robust and transparent review process for the SDGs.

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