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AN AFRICAN FEMINIST EXPLORATION OF CONSCIENTIOUS OBJECTION TO ABORTION

We define and name ourselves publicly as feminists because we celebrate our feminist identities and politics. We recognise that the work of fighting for women's rights is deeply political, and the process of naming is political too. Choosing to name ourselves feminists places us in a clear ideological position. By naming ourselves as feminists we politicise the struggle for women's rights, we question the legitimacy of the structures that keep women subjugated, and we develop tools for transformatory analysis and action. We have multiple and varied identities as African feminists. We are African women – we live here in Africa and even when we live elsewhere, our focus is on the lives of African women on the continent. Our feminist identity is not qualified with 'ifs', 'buts' or 'howevers'. We are feminists. Full stop.

– Charter of feminist principles for African feminists, 2006

Since the 1990s, the international health and development agenda has recognised the importance of sexual and reproductive health and rights. This was highlighted by the International Conference on Population and Development (ICPD) in 1994, which drew attention to the issue of women's sexual and reproductive health.¹ The Fourth World Conference on Women in 1995, where African feminists played a significant role, also emphasised the importance of reproductive autonomy and was instrumental in the adoption of the Beijing Platform for Action.² In Africa, the momentum around women's reproductive health has continued to grow.³ The adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) by the African Union (AU) in 2003 was a significant milestone.⁴ This was followed by the adoption of General Comment 2 on reproductive

1 United Nations (UN) 'Report of the International Conference on Population and Development' A/Conf.171/13/Rev.1 (1995).

2 United Nations (UN) 'Report of the Fourth World Conference on Women' A/CONF.177/20/Rev.1 (1996).

3 See CG Ngwena 'Inscribing abortion as a human right: Significance of the Protocol on the Rights of Women in Africa' (2010) 32 *Human Rights Quarterly* 783.

4 African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted 11 July 2003, entered into force 25 November 2005.

health rights in 2014, further strengthening the rights of women in Africa.⁵ Overall, the recognition of sexual and reproductive health and rights as a key part of the international health and development agenda has brought attention to the importance of these issues in ensuring the health and well-being of individuals, particularly women.

While the Maputo Protocol is deemed innovative, there are conflicting messages about women's roles as exemplified in the health and reproductive rights provided under article 14, as there continues to exist an uneasy tension between a focus on equal choice that resonates with liberal feminism while aligning it with women's distinct roles within religious and traditional norms.⁶ Generally, there has been a trend toward liberalisation of abortion on the continent. However, despite this changing abortion landscape, women in sub-Saharan Africa continue to face the most significant risk globally for unintended pregnancy resulting in unsafe abortion, given that most African countries have restrictive abortion laws. As of 2019, the region has the highest abortion-related case-fatality rate of any world region. Even where women meet the legal requirements, for the majority of African women, abortion services are frequently unavailable or inaccessible. While it can be argued that feminists are busy with 'bread, butter and culture' issues, particularly in Africa, and focused on campaigning for abortion reform, it is precisely because of the changing abortion landscape that it becomes necessary to address the issue of conscience claims.

1 Negotiating with African feminism⁷

Given this context, there is utility in engaging with the practice of conscientious objection from an African feminist lens. The theoretical lines I follow, extend, and sometimes diverge from are largely located in African feminism. Thereby contributing to the scholarship on African feminist discourses on abortion and the interpretation of African women's resistance. African feminist scholars reject the idea of a uniform position and emphasise the importance of visualising African women's realities. They see the need to optimise the African gaze and utilise relevant 'transcultural knowledge' while avoiding the enforcement of hegemonic

5 African Commission on Human and Peoples' Rights, General Comment 2 on article 14(1)(a), (b), (c) and (f) and article 14(2)(a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights (2014).

6 F Banda 'Blazing a trail: The African Protocol on Women's Rights comes into force' (2006) 50 *Journal of African Law* 76.

7 While recognising plurality (African feminisms) within the context of various localised realities in Africa, I will use the singular – *African feminism* – to acknowledge common features.

and universalising knowledge emerging from a 'Eurocentric canon'.⁸ From the standpoint of women's everyday lives, in this case, the lives of nurses, feminist theories afford a space for conceptualising power, knowledge and discourse. Such an approach is suitable for theorising relations of power and subject formation, which are all reflected within the day-to-day operation of nurses who give abortion care. However, there is a tacit caution about universalising women, which pays little attention to the range of experiences. In this sense, Audre Lorde, an African American writer, and feminist, expresses, 'there is a pretence to homogeneity of experiences covered by the word sisterhood that does not in fact exist'.⁹

African feminist scholars have portrayed the problematic nature of the Western-centric lens of the 'universalised woman', which is not responsive to the range of women's experiences.¹⁰ Chandra Mohanty situates this problem as one wherein western women place themselves as the 'primary referent', serving as a benchmark to measure deviation from.¹¹ She argues that a discursive practice is formed within the context of Western feminist representations of other women, which reinforces systems of domination that they seek to dismantle.¹² Contemporary expressions of African feminism are focused on the recognition and affirmation of the diverse experiences of African women. Rather than being preoccupied with visualisation alone, African feminism seeks to reframe dominant narratives about African women by highlighting their agency and challenging patriarchal structures that oppress them.

In response to Western-based feminism, the pioneering works of African feminist theorists such as Filomina Steady, Oyeronke Oyewumi, Ifi Amadiume, and Akina Maman have led to the articulation of the African feminist theory.¹³ This theory is grounded in the recognition of the unique historical, social, and cultural contexts of African women's experiences and seeks to challenge the universalising tendencies of Western feminism. Obioma Nnaemeka succinctly notes that African

8 C Ngwena *What is Africanness? Contesting nativism in race, culture and sexualities* (2018) 217.

9 A Lorde *Sister outside: Essays and speeches* (1984) 116.

10 See I Amadiume *Reinventing Africa: Matriarchy, religion and culture* (1997); P Gqola 'Ufanele uqavile: Blackwomen, feminisms and postcoloniality in Africa' (2001) 16 *Agenda* 17.

11 CT Mohanty 'Under Western eyes: Feminist scholarship and colonial discourses' (1988) 30 *Feminist Review* 61 at 61-62.

12 As above.

13 See A Mama *Beyond the masks: Race, gender, and subjectivity* (1995).

feminism 'is because it *resists*'.¹⁴ While acknowledging its connections with international feminism, African feminism places a specific emphasis on addressing the unique needs and struggles of women in Africa.¹⁵ Filomena Steady characterises African feminism as humanistic because it takes into account the totality of human experience, beyond just oppression based on race or class.¹⁶

The starting point for African feminism is the recognition that there is no single, uniform position that represents African women's experiences. African feminists aim to theorise the complexities of the relationships that exist within the context of colonialism, post-colonialism, imperialism, and social-economic exclusion.¹⁷ Patricia McFadden highlights how African and white men colluded to exclude African women from emerging urban spaces in colonial towns and cities, which illustrates the gendered exclusion and 'othering' of African women.¹⁸ This exclusion and marginalisation of African women has been a persistent challenge, and African feminist theory seeks to address it by emphasising the importance of including African women's voices and experiences in the struggle for gender equality.

The theoretical and analytical paradigm of the book is rooted in the observation of African women's lived experiences, and builds on existing feminist theories, specifically African feminism. The primary goal is to provide a feminist analysis of the practice of conscientious objection that centres on women's experiences. This analysis critically examines the gendered implications of existing laws, or the lack thereof, and their assumed link with health service provision, with a particular focus on South Africa. Through this examination, the book aims to develop insights into the power dynamics that underlie the provision of legal abortion within the broader African context.

In this research, a feminist lens is utilised that focuses on nurses, who are predominantly women, instead of doctors. The triangular relationship between healthcare providers, nurses, and patients illustrates the implicit power and hierarchical dynamics that are prevalent in patriarchal societies.

14 O Nnemeka 'Introduction: Reading the rainbow' in O Nnemeka (ed) *Sisterhood, feminisms & power: From Africa to the Diaspora* (1998) 6.

15 CB Davies 'Introduction: Feminist consciousness and African literary criticism' in CB Davies & A Graves (eds) *Ngambika: Studies of women in African literature* (1986) 8-10.

16 FC Steady 'African feminism: A worldwide perspective' in R Terborg-Penn & A Benton (eds) *Women in Africa and the African Diaspora: A reader* (1996) 4.

17 S Ardt 'Perspectives on African feminism: Defining and classifying African-Feminist literatures' (2002) 54 *Agenda: Empowering women for gender equity* 32.

18 P McFadden 'Cultural practice as gendered exclusion: Experiences from Southern Africa' in A Sisask (ed) *Discussing women's empowerment: Theory and practice* (2001) 64.

Women's access to reproductive healthcare, including termination of pregnancy, is closely linked to power. Power structures exercised in patriarchal societies exert influence over women's power of agency over their own bodies, which in turn negatively affects the institutions and systems in society against women.¹⁹

It is acknowledged that power relations play a critical role in deciding the position of women and the subjective experience arising out of that location.²⁰ These power dynamics can manifest in 'paternalistic control', which, as Sally Sheldon explains, involves influencing the woman not to end a pregnancy or, in the case of an objector, refusing to provide an alternative to the woman seeking an abortion.²¹ As bell hooks stresses, while all women suffer in some way, they are not all oppressed or equally oppressed.²²

Shifting the focus from universal theorising, a crucial aspect to consider is intersectionality, which illuminates the interconnectedness of various identities, including race, class, gender, sexuality, disability, and others, with 'interlocking systems of oppression'.²³ However, some critics of the concept of intersectionality argue that it lacks a defined methodology, as social categories are simply listed without recognition of their manifestation of power in specific contexts.²⁴ Kimberlé Crenshaw suggests that it is insufficient to merely assert a range of identities in intersectionality; rather, one must understand their differences in historical and social contexts.²⁵ As African women are not homogenous, Ebenezer Durojaye and Olubayo Oluduro argue that variables such as age, socio-economic status, and rural or urban dichotomy must be considered when applying intersectionality in various African contexts.²⁶ This holistic approach is in line with Sylvia Tamale's observation that 'the dialectical relationship between gender, class, ethnicity, religion, imperialism, and

19 T Braam & L Hessini 'The power dynamics perpetuating unsafe abortion in Africa: A feminist perspective' (2004) 8 *African Journal of Reproductive Health* 43 at 45-47.

20 See J Butler *Gender trouble: Feminism and the subversion of identity* (1999).

21 S Sheldon *Beyond control: Medical power and abortion law* (1997) 66.

22 Sheldon (n 21) 57.

23 PH Collins *Black feminist thought: Knowledge, consciousness, and the politics of empowerment* (1990) 18.

24 See JC Nash 'Re-thinking intersectionality' (2008) 89 *Feminist Review* 1; V Patil 'From patriarchy to intersectionality: A transnational feminist assessment of how far' (2013) 38 *Signs: Journal of Women in Culture and Society* 847.

25 K Crenshaw 'Mapping the margins: Intersectionality, identity politics, and violence against women of color' (1991) 43 *Stanford Law Review* 1241.

26 E Durojaye & O Oluduro 'The African Commission on Human and Peoples' Rights and the woman question' (2016) 24 *Feminist Legal Study* 321.

neo-colonialism is especially pertinent for an analysis of gender relations in the African context'.²⁷

In order to gain insights into cultural shifts and their implications, Uma Narayan proposes the use of a methodology that traces the history of changes over time.²⁸ In South Africa, gendered division of nursing was historically shaped by inequalities related to race and class.²⁹ By examining this history, we can gain insight into how the identity and work of professional nurses have evolved over time. This historical understanding provides a crucial basis for critically examining the current role of nurses in providing abortion services. Focusing solely on race, or the 'Afrocentric standpoint' as Patricia Hill Collins points out, can overlook how gender power dynamics are influenced by multiple factors.³⁰ Therefore, by using a broader intersectionality approach, we can better understand the impact of various social categories on nurses' experiences providing legal abortion services. Although intersectionality has its limitations, we can still use it to contextualise South Africa's situation and gain insights from a critical African feminist perspective. This approach helps us examine how power dynamics shift as we discuss abortion legalisation and how these dynamics vary in different times, locations, and material contexts. Moreover, this framework is useful for understanding nurses' experiences with conscientious objection when it comes to providing abortion services in South Africa.

This book adopts Joan Williams' approach of using lawyers as persuaders to shape social discourse, with the aim of reframing existing rhetoric to promote feminist objectives.³¹ Using this framework, I explore crucial issues related to power, knowledge, gender, and the laws surrounding abortion and conscientious objection. By applying this lens, I seek to challenge essentialist thinking and acknowledge the complexities of multiple identities.

27 S Tamale *When hens begin to crow: Gender and parliamentary* (1999); O Oyèwùmí *The invention of women: Making African sense of gender discourse* (1997) 3.

28 U Narayan 'Essence of culture and a sense of history: a feminist critique of cultural essentialism' (1998) 13 *Journal of Feminist Philosophy* 86.

29 C Burns 'A man is a clumsy thing who does not know how to handle a sick person: Aspects of the history of masculinity and race in the shaping of male nursing in South Africa, 1900-1950' (1998) 24 *Journal of Southern African Studies* 695.

30 PH Collins *Black feminist thought: Knowledge, consciousness, and the politics of empowerment* (1990) 234.

31 J Williams 'Gender wars: Selfless women in the republic of choice' (1991) 66 *New York University Law Review* 1559 at 1562.

2 Methodology

Drawing on my background as a lawyer and feminist, I sought to address the questions animating this book on *law in action* through a combination of normative and empirical methods, providing insights into the intersection of law and social practice. While the Choice on Termination of Pregnancy Act does not directly address conscientious objection, this book provides an empirical focus on a case study of South Africa.³² Despite the fact that abortion can be obtained on demand in South Africa, various challenges hinder access to abortion services.³³ This is consistent with Rachel Rebouché's observation that liberal laws do not necessarily lead to increased access to abortion services.³⁴ The lack of a legal framework to regulate conscientious objection, accessibility difficulties for poor or marginalised women, stigma, and lack of information on how to access safe abortion services are among the most common barriers to accessing abortion services in South Africa.

The book's particular focus on conscientious objection is driven by the lack of clarification of rights and obligations, which creates a discretionary space for healthcare providers, influenced by power relations. By addressing these issues from a socio-legal perspective, this book contributes to the literature on the challenges of accessing safe abortion services in Africa and highlights the importance of addressing the intersection of legal and social factors that impact reproductive health care access.

Throughout the book, I utilise a wide range of sources to provide a comprehensive examination of conscientious objection to abortion provision in South Africa. These sources include interviews, doctrinal analysis, and archival research, such as the Constitution, laws, cases, and parliamentary Hansards, as well as other relevant archival records. To fully comprehend South Africa's obligations regarding conscientious objection, international and regional human rights instruments were

32 J Gerring *Case-study research: Principles and practices* (2007) 20. See also HE Brady & D Collier *Rethinking social inquiry: Diverse tools, shared standards* (2010).

33 See for example, KA Trueman & M Magwentshu 'Abortion in a progressive legal environment: the need for vigilance in protecting and promoting access to safe abortion services in South Africa' (2013) 103 *American Journal of Public Health* 397; M Favier et al 'Safe abortion in South Africa: 'We have wonderful laws but we don't have people to implement those laws' (2018) 143 *International Journal of Gynaecology and Obstetrics* 38; A Harrison et al 'Barriers to implementing South Africa's Termination of Pregnancy Act in rural KwaZulu/Natal' (2000) 15 *Health Policy and Planning* 424.

34 R Rebouché 'A functionalist approach to comparative abortion law' in RJ Cook et al *Abortion law in transnational perspective* (2014) 101.

also gathered and studied, primarily from the United Nations (UN), African Union (AU), European Union (EU), and foreign case law. This situates the discussion of conscientious objection within a broader framework of not just constitutionalism but also international human rights, which has transnational significance. Additionally, a broad range of secondary materials, such as government reports, survey and census data documents, demographic and health reports, reports from non-state actors, newspapers, and other media materials, were used extensively. This approach ensures a thorough analysis of the complex socio-legal issues surrounding conscientious objection and abortion provision in South Africa.

More importantly, the book's focus on the politics of nurses' locations and their impact on restricting and punishing pregnant women they deem underserving requires an understanding of the theoretical frames and embodied methodologies nurses navigate. To achieve this, I draw on interview and focus group data with public sector nurses that was collected as part of a larger three-country study on conscientious objection led by Ipas in South Africa, Mexico, and Bolivia.³⁵ I also conducted in-depth interviews with nurses in private facilities in Gauteng, which is urban and Limpopo, which has a large rural population. The rationale behind the inclusion of these two provinces was to ensure diversity in the data sites, both in terms of their locations and the type of facilities they represent, particularly regarding reproductive health indicators. The objective was to gain a comprehensive understanding of both the commonalities and differences in approaches across the sites. One contributing factor to the contrasting characteristics between urban and rural landscapes could be the availability of different types of private health facilities. For instance, in Gauteng, typical with urban areas, there is access to specific private clinics like Marie Stopes, which are not present in Limpopo. However, it was observed that nurses who owned their own private clinics were present in both provinces. Furthermore, certain cultural norms and beliefs were found to be more prevalent in rural areas. These cultural factors likely influenced the healthcare practices and approaches utilised in those regions.

Relevant stakeholders, including policy makers, Non-Governmental Organisations (NGOs), women's and human rights activists, and institutions, were also interviewed using qualitative semi-structured

35 The author was a consultant, serving as a member of the innovation team to provide technical guidance related to developing and testing interventions to address the use of conscientious objection among public sector health care workers to deny women's access to safe, legal abortion services in Bolivia, Mexico and South Africa. The views expressed by the author in the analysis do not necessarily reflect those of Ipas.

interviews.³⁶ Observational data was also collected by attending Ipas VCAT (values clarification for action and transformation) workshops as a participant observer.

The empirical focus on nurses drew data from a sample of 33 nurses³⁷ involved in different aspects of abortion service provision in public and private facilities that offer abortion services in urban areas of Gauteng and rural areas of Limpopo. The majority of these nurses were female and black, as they form the majority of nurses with termination of pregnancy certification and practice. The South African Nursing Council (SANC) register shows that 79 nurses (75 female nurses and 4 male nurses) have registered the certificate in termination of pregnancy as an additional qualification,³⁸ with a slight gradual reduction in this number over the past five years.³⁹

Although there are male nurses, the majority of nurses are female, which accounts for the gendered profession of nursing, which portrays not only how power works among themselves but also the male-female dimension of power in the healthcare system.⁴⁰ Nursing as a profession is gendered in nature, which is primarily female-dominated, and its implications on power dynamics within the profession and the larger healthcare system. The book primarily focuses on the subjectivity of female nurses, examining how their beliefs, practices, and attitudes towards various issues, such as abortion work, are shaped by the prevailing social norms and values. Through interviews with informants, the book provides an understanding of the factors that shape female nurses' day-to-day practice, including legal, professional, moral, ethical, and religious considerations. Overall, the book provides valuable insights into the intersection of gender, profession, and social norms and their influence on the experiences and attitudes of female nurses.

36 Attempts were made to conduct interviews with pro-life organisations, but this was not constructive. They shared documentations regarding their institution's positions on conscientious objection, which have also been used in this thesis.

37 This includes the six focus group discussions conducted in public facilities in Gauteng and Limpopo by the Centre for Aids Development, Research and Evaluation (CADRE) on behalf of Ipas South Africa (transcripts on file with researcher).

38 South African Nursing Council (SANC) 'Registrations and listed qualifications: Calendar year 2022' (2023) <https://www.sanc.co.za/wp-content/uploads/2023/01/Stats-2022-2-Registrations-and-Listed-Quals.pdf> (accessed 2 January 2023).

39 South African Nursing Council (SANC) 'Annual statistics' <https://www.sanc.co.za/sanc-statistics/> (accessed 2 January 2023).

40 See WHO 'The world health report' (2006) <http://www.who.int/whr/2006/en/> (accessed 12 March 2018).

3 Conclusion

The chapter starts by highlighting the significance of African feminist theory in understanding power dynamics in various forms and provides an analytical framework for examining the experiences of nurses within the abortion context. I argue that African feminists can play a vital role in investigating conscientious objection to abortion from an African feminist perspective. African feminist scholars reject the notion of a singular viewpoint and stress the importance of recognising the unique historical, social, and cultural contexts of African women's experiences. In this way, African feminism aims to reframe dominant narratives about African women by and to highlight their agency while confronting patriarchal structures that oppress them. Therefore, an exploration of conscientious objection to abortion must avoid universal knowledge derived from western centric and instead strive to incorporate diverse and transcultural perspectives.

Building on this, the next chapter explores the current debate surrounding conscientious objection and its relevance to the African region. I draw attention to the lack of visibility of Africa in the current discourse and stress the importance of an Africa-focused discussion. By doing so, we can gain a deeper understanding of the changing landscape of abortion in the region and how conscience clauses are being implemented in practice. The aim is to shed light on the implications of these developments for women's access to safe and legal abortion services in Africa.