Choice and Conscience: Lessons from South Africa for a Global Debate by Satang Nabaneh (review)

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been shattered, whereas if my artwork is released, it would be my sole witness for posterity"—epitomizes the stakes of this collection.[9]

The scholarly essays accompanying these testimonies deepen our engagement with al-Alwi's work. The analyses range from considerations of Elaine Scarry's seminal ideas on making and unmaking in *The Body in Pain*, Islamic art history and contemporary aesthetics, anthropological examinations of hunger strikes, and material rhetorics. Notably, the collection also critiques the structural limitations of legal and political systems, illustrating how art transcends these barriers by bearing witness in ways other forms cannot.[10]

Moore and Swanson's work is groundbreaking, not only in bringing al-Alwi's voice into academic discourse but also in supporting the movement for his art be taken seriously as art. They resist reductive readings that frame his work merely as a coping mechanism or an artifact of trauma. Instead, they position it as a politically charged act of material witnessing, capable of challenging the erasure perpetuated by the ongoing war on terror.

This collection achieves a rare and difficult balance. It treats al-Alwi's testimony and artwork with the integrity they deserve while drawing meaningful connections to broader theoretical, legal, and cultural contexts. In doing so, it embodies a form of scholarship that transcends the confines of academia, pushing through the literal and metaphorical walls of one of the world's most terrifying detention centers. *Deaf Walls Speak* is a powerful example of the possibilities of human rights scholarship, aesthetics, and activism.

Published in 2024, the book couldn't include this final development in the global activist effort it was part of: On January 6, 2025, in a bid to close the facility before the end of his term, President Biden's administration transferred Moath al-Alwi and ten other detainees to Oman.[11]

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Satang Nabaneh, *Choice and Conscience: Lessons from South Africa for a Global Debate* (Pretoria University Law Press, 2023), ISBN 9781776448456, 181 pages.

Choice and Conscience: Lessons from South Africa for a Global Debate by Satang Nabaneh presents a nuanced discussion of the negative impact of conscientious objection to abortion services. Using South Africa as a case study, she argues that even in a country with a liberal abortion law, other factors such as the invocation of conscientious objection can serve as a barrier to safe abortion services.[1] It is noted that despite

9. *Id*. at 44.
10. *Id* at 132.
11. Alice Cuddy, *US sends 11 Guantanamo detainees to Oman*, BBC (Jan. 6, 2025), https://www.bbc.com/news/articles/ckg3k2v11k5o.

1. Satang Nabaneh, Choice and Conscience: Lessons from South Africa for a Global Debate, at vi (Pretoria Univ. Law Press 2023).

the gains that have been recorded regarding the advancement of women's reproductive health and rights, conscientious objection remains a serious obstacle for the realisation of women's rights to safe abortion services.[2] She notes "Healthcare providers are increasingly refusing to provide abortion services on the basis of their religious, moral, philosophical, or ethical beliefs, leaving women vulnerable and at risk."[3] Her aim is to understand the various factors that contribute to the use of conscientious objection with a view to finding solutions that will lead to balancing the competing rights of women seeking abortion services and healthcare providers.

Conscientious objection is recognised widely and practiced in different countries across the world, including the United Kingdom, Australia, France and the United States.[4] The challenge is that in many African countries this practice remains unregulated thereby making it susceptible to abuse.[5] Even South Africa's Choice on Termination of Pregnancy Act of 1996 often regarded as a model law for abortion, fails to explicitly address the issue of conscientious objection.[6] This in turn exacerbates the limited choices available for women in South Africa and most African countries to seek abortion services.[7]

Nabaneh explores this very important topic using the African feminist lens. The book is divided into three main sections: part I, "Conscience Claims: Laws and Policy;" part II, "Nurses as Shapeshifters: Stories, Agency, and Testimonies;" and part III, "Charting a Legal Path Forward: Strategies for Change." Part I contains three chapters laying the foundation for the main arguments in the book. Nabaneh argues that while acknowledging its connections with international feminism, African feminism places a specific emphasis on addressing the unique needs and struggles of women in Africa.[8] In response to Western-based feminism, she acknowledged the pioneering works of African feminist theorists such as Filomina Steady, Oyeronke Oyewumi, Ifi Amadiume, and Akina Maman.[9] She observes that an important point to note about African feminism is the recognition that there is no single, uniform position that represents African women's experiences.[10] Rather, "African feminists aim to theorise the complexities of the relationships that exist within the context of colonialism, postcolonialism, imperialism, and social-economic exclusion."[11] Rather than focussing on visualisation alone, African feminism aims at reframing the dominant narratives about African women by emphasising their agency and contesting patriarchal structures that perpetuate their oppression.[12] Thus, the focus of the book is on how nurses exercise their right to conscientious objection which invariably has implications for women seeking

2. *Id*.
3. *Id*. at 4.
4. *Id*.
5. *Id*. at 5.
6. *Id*.
7. *Id*.
8. *Id*. at 14.
9. *Id*. at 13.
10. *Id*. 14.
11. Susan Arndt, *Perspectives on African Feminism: Defining and Classifying African-Feminist Literatures*, 54 Agenda: Empowering Women for Gender Equity 32 (2002).
12. *Id*.

reproductive health care services, particularly abortion. She notes that women's access to reproductive health services, including termination of pregnancy is closely linked to power.[13] In this regard, she reminds us of the importance of intersectionality in addressing this challenge. Echoing Kimberly Crenshaw, she argues that rather than taking a universal approach to addressing this challenge we should consider various identities, including race, class, gender, sexuality, disability, and others, with "interlocking systems of oppression."[14] While admitting the limitations of the intersectionality approach to addressing the situation at hand, she nonetheless, argues that it is still useful in contextualizing South Africa's situation and gaining insights from a critical African feminist perspective.[15] In this part, Nabaneh also explains the methodology adopted in the book. She informs the readers that interviews and focus group discussions were held with nurses in public services with additional interview with some nurses in the private facilities in one urban area—Gauteng—and one rural area—Limpopo—of South Africa. In addition, semi-structured interviews were conducted with relevant stakeholders, including policy makers, nongovernmental organizations, women's and human rights' activists, and academic institutions.[16]

One of the important points considered in the book is the complex nature of conscientious objections given that it involves conflicting rights—the rights of women to safe abortion services and the right of healthcare providers to refuse to provide such services based on religious or moral grounds. She then examines the international and regional norms applicable to conscientious objections. She notes that most of the human rights instruments do not specifically refer to the right to conscientious objection, however, this right is derived from the right to freedom of thought, conscience, and religion.[17] This right is guaranteed in the Universal Declaration of Human Rights and subsequently in the International Covenant on Civil and Political Rights.[18] Clarifications have been provided by relevant human rights bodies on the meaning and extent of this right in general comments such as General Comment 18 of the Human Rights Committee and General Comment 22 of the Committee on Economic, Social and Cultural Rights.[19]

The book discusses some relevant case law from the Human Rights Committee, African Court on Human and Peoples' Rights, European Court Human Rights system, and the Inter-American Human Rights system to buttress the importance and limitation of the exercise of the right to thought, conscience and religion.[20] Nabaneh, then discusses the relevance of the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) to the discussion on abortion and the use of conscientious objection.[21] The Protocol is often described as radical and progressive and is the first human rights instruments to accord women

13. *Id*. at 15.
14. Patricia Hill Collins, Black Feminist Thought: Knowledge, Aonsciousness, and The Politics of Empowerment 18 (1990).
15. Nabaneh, *supra* note 1, at 16.
16. *Id*. at 18.
17. *Id*. at 55.
18. *Id*. at 22.
19. *Id*. at 28.
20. *Id*. at 21-36.
21. *Id*.

the right to abortion services on certain grounds.[22] Despite this provision, some African countries have entered reservations to the provision on abortion.[23] This has in turn made it difficult for women in many African countries to enjoy access to safe abortion services.[24] The importance of General Comment 2 of the African Commission in relation to article 14 (2)(c) is discussed.[25] Nabaneh notes that this General Comment serves as a benchmark to measure states commitments to advancing the sexual and reproductive health, including safe abortion services, of African women.[26] The various conscientious objection clauses in various African countries are discussed.[27] In the last chapter of part I, Nabaneh examines the liberal abortion law of South Africa with a particular focus on the Choice on Termination of Pregnancy Act 1996 and the South African Constitution of 1996 often touted as one of the most progressive constitutions in the world.[28] The chapter includes discussion of some landmark cases on how the provisions of the Constitution and Choice on Termination Act have been interpreted by the court. This further sheds light on how the courts have recognized the rights to reproductive autonomy vis-à-vis the right to exercise conscience.[29] An important point made in this chapter is the failure of the CTOP to include a clear provision dealing with conscientious objection.[30]

In part II of the book, "Nurses as Shapeshifters: Stories, Agency, and Testimonies," Nabaneh captures the interviews and voices of nurses as regards the exercise of conscientious objection in relation to abortion services. The section explores the important roles nurses play in relation to reproductive health care services, especially abortion services. While it is noted that nurses are not expected to be involved in abortion procedures beyond the first trimester, nonetheless, they play pivotal roles in administering medication and managing complications that may arise during or after abortions.[31] The training of nurses is examined in chapter 4 where it is noted that some of the trainings provided to nurses, especially those in public service, sometimes fall short of the standard and quality expected of them.[32] This section amplifies the voices of nurses regarding their views about the exercise of conscientious objections. Some of the challenges identified by the nurses as militating against safe abortion services include the unsupportive environment they work in.[33] Where the management is not supportive of abortion procedures the probability of conducting safe abortion services is low.[34] In some situations, this lack of supportive environment may manifest in form of dirty and dingy environment, inability to retain good hands, lack of medications and other facilities

22. *See* African Union [AU], *The Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, art. 14(2)(c) (adopted by the AU 2003, entered into force Nov. 27, 2005).
23. Nabaneh, *supra* note 1 at 27.
24. *Id*.
25. *Id*. at 25
26. *Id*.
27. *Id*.
28. *Id*. at 37-64.
29. *Id*.
30. *Id*. at 51.
31. *Id*. at 65.
32. *Id*. at 70.
33. *Id*. at 71.
34. *Id*.

required to procure abortions, lopsidedness in the number of patients vis-à-vis healthcare providers, burn out resulting in lack of respect for patients' rights.[35] Added to these is the issue of lack of specialization among the nurses in relation to abortion and stigma and discrimination often associated with nurses who perform abortion services.[36] For nurses in private practice, one of the challenges militating against them has to do with the long lists of requirements they need to meet before operating abortion services.[37] The list is so long and burdensome that it is so difficult for some of the private nurses to meet.[38] The implication is that the number of private nurses qualified to provide abortion services is reduced, thereby making abortion services difficult to access.[39] In some health facilities, there is no clear cut policies indicating when a nurse should exercise conscientious objection and what should be done when such an objection is exercised.[40]

Sometimes poor or lack of infrastructure hinders the need to perform abortions in some public health facilities.[41] Religion remains a major consideration in conducting abortion services.[42] Christianity and other African religions are opposed to abortion as it is considered immoral or a sin.[43] Thus, this can have implications for nurses who belong to these religions.[44] Young, poor, Black women tend to face the negative consequences of the exercise of conscientious objection by nurses more as compared to others.[45]

In part III—"Charting a Legal Path Forward: Strategies for Change"—the book discusses some of the norms and standards in relation to conscientious objections. It further discusses some of the decisions by the courts clarifying the use of conscientious objections. Here Nabaneh delves into the discussion on the clarifications provided by the UN Treaty monitoring bodies on conscientious objection. These include General Comments 14 and 22 of the CESCR and General Recommendation 24 of CEDAW.[46] Furthermore, she discusses some of the concluding observations by these treaty bodies bordering on conscientious objection. Some of these concluding observations highlight the need to provide information on alternative options for patients seeking abortion services, where a healthcare provider intends to exercise conscientious objection.[47] Also, she draws examples from the work of African regional human rights bodies on this issue. Specifically, she refers to General Comment 2 of the African Commission where it is noted that states that allow conscientious objection should provide regulatory framework that will ensure that healthcare providers do not abuse its use.[48] Furthermore, reference

35. *Id.* at 72.
36. *Id.* at 77.
37. Id. at 88.
38. *Id.*
39. *Id.* at 89.
40. *Id.* at 98.
41. *Id.* at 157.
42. *Id.* at 119.
43. *Id.* at 103.
44. *Id.* at 104.
45. *Id.* at 115.
46. *Id.* at 128.
47. *Id.* at 130.
48. *Id.*

is made to international standards such as the WHO abortion care guidelines of 2022, which incorporate precautionary measures aimed at preventing the practice of conscientious objection from causing any delay in the provision of lawful abortion services.[49] The guidelines further emphasize that the exercise of conscientious objection by healthcare providers should never hinder access to safe abortion services for which they are entitled under the law.[50]

The discussion on the use of conscientious objection at the national level centers on the South African laws. Here some of the limitations to the exercise of conscientious objection are examined. It is pointed out that there is the need to ensure balancing of rights between the patients seeking reproductive services and healthcare providers claiming conscientious objection.[51] Some decisions of the courts highlighting this balancing acts are discussed.[52] She argues that in order to determine the proportionality of a healthcare provider exercising the right to conscientious objection, the following factors must be taken into consideration:

(1) Is there a legitimate aim for limiting the provider's objection to abortion care?

(2) Are there alternative measures available to achieve this aim that are less restrictive of the provider's right to conscientious objection? and

(3) Can a fair balance be struck between the provider's right to object and the interests of the pregnant woman in accessing healthcare services, particularly regarding her reproductive autonomy?[53]

Beyond the fact that the exercise of conscientious objection is a legal issue, it is also argued that it raises some ethical issues among care providers.[54] Usually, healthcare providers are bound by their professional ethics for which they are expected to uphold. Some of these professional ethics guidelines specify what need to be done if a healthcare provider intends to exercise conscientious objection. It is universally agreed that such a healthcare provider must preserve lives by delivering emergency care when required, provide detailed information to the patient, and must refer the patient to an alternative facility where the services required can be obtained.

The book has shown that the exercise of conscientious objection by nurses regarding women seeking abortion services is a complex one. Beyond the consideration of religion as one of the reasons for exercising conscientious objection other factors such as the status of women seeking abortion also influence decisions by nurses. Nabaneh opines that the exercise of conscientious objection in a liberal abortion law country such as South Africa, remains a barrier to safe abortion services.[55] She recommends that something urgent must be done about this to prevent further loss of life.[56] The roles of nurses in ensuring abortion services should be recognised and better working conditions should be guaranteed. Moreover, the need for training of nurses to be able to perform abortion services should be prioritised.

Overall, Nabaneh's book is a new addition to the complex and underre-

49. *Id*. at 132.
50. *Id*.
51. *Id*. at 133.
52. *Id*.
53. *Id*. at 136.
54. *Id*. at 138.
55. *Id*. at 155.
56. *Id*. at 160.

searched issue of conscientious objection as a barrier to safe abortion services. The book is thought provoking and has made a significant contribution to knowledge. She must be commended for daring to seek a path that even angels fear to tread. Through the voices of nurses, she has refined our understating of the reasons for the exercise of conscientious objection and the implications for access to safe abortion services.

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Kimberly Theidon, *Legacies of War: Violence, Ecologies, and Kin* (Duke University Press, 2022), ISBN 9781478018384 (paperback), ISBN 9781478015772 (hardcover), eISBN 9781478023005, 128 pages.

Kimberly Theidon's ethnography documents the experiences of women, children, and their communities in post-conflict Peru and Colombia, where parties to civil conflicts used sexual violence as weapons of war against local populations. In recent decades, myriad international treaties have sought to protect the rights of women during war, but have not always dealt head-on with the issues that survivors of sexual violence – in this case, women and children conceived by rape—have no choice but to face.[1] For example, Security Council Resolution 1325 advocates for the equal rights of everyone affected by sexual violence in war but stops short of stating that women have a right to sexual and reproductive health, in a nod to U.S. conservatives opposed to abortion.[2] Among Theidon's key arguments is that women need a say in what harm is and what recovery should entail: Beyond decisions about reproductive healthcare, they ought to decide how and whether to have a relationship with children conceived of rape, and whether and with whom they even want to talk about the violence at all.[3]

In the book's first main section, "Beyond Stigma," Theidon tackles the notion of stigma towards those affected by sexual violence as conditional, not a given. We should not assume that women who survive rape during wartime and their children will be excluded or singled out. Language matters: Every time someone uses a phrase such as "stigma and children born of war" or enters a research project presupposing that stigma exists, it is created or reinforced.[4] In my view, one of the great strengths of this book is its bridging of research and theory. If stigma is not a given, then researchers can seek out conditions that facilitate community and recovery for women and their children, and indeed, situations when wartime sexual violence does not occur. On the flip side, Theidon's ethnography

1. Kimberly Theidon, Legacies Of War: Violence, Ecologies, And Kin 89 (2022).
2. S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000).
3. *Id*. at 19.
4. *Id*. at 10.