

The Rhetoric, Reality and Limitations of the Rights-Based Approach with specific reference to LGBTI rights in South Africa (SA).

'The Constitution is only a government document- the king's rule is considered supreme,' Nonhlanhla Mkize, manager of Durban Lesbian and Gay Community and Health Centre, (quoted in *Mail and Guardian*, Oct 13 to 19 2006, p 8).

MvZ: The most important is homophobia...absolutely crucial...

FS: Nobody is prepared to tackle it, Mikki. Nobody. The government has done nothing.

MvZ: At least we have the Constitution, even though the reality ... if we've got somebody like Zuma or Malema making policy around homosexuality, we'll all be dead. (Soldaat & Van Zyl 2014:10).

In the above quotations the references to the Constitution reveal the inherent possibilities and strength but also the limitations of the Constitution. In quotation 1 the subsidiary position it takes is outlined: '(it) is *only* a government document' (my emphasis) - compared to the King's rule it is not as powerful as what the King says - as the king's word is *supreme*. Quotation 2 starts off positively; 'At least we have the Constitution...'- it is a comfort, a resort and an achievement. With all this I agree. It is indeed remarkable considering the history of SA of nearly 400 years of patriarchal colonialism and 46 years of apartheid that the constitution could have been so progressive. But it was hard work as I outline later. The significance of the constitution is that it is the first globally to embrace comprehensive rights. The South African Constitution (Act 108 of May 1996) emphasises wide ranging aspects which should not be discriminated against [Chapter 2.9, (3)]. From the beginning, the constitution is unambiguous about the human rights of everyone that is,

'(T)o improve the quality of life of citizens and free the potential of each person'
(Preamble to the Constitution, Act 208 of May 1996).

However, after the positive words of quotation 2: 'At least we have the constitution...', comes the sobering fact with the heavy loaded nuanced qualification: 'But the reality...'. In other words even though we do have this constitution the implication is that implementation thereof is cardinal and the reality does not necessarily match the spirit and letter of what is currently happening in SA. The references to two persons, the first is the President, Jacob Zuma of SA and of the majority ruling party in SA, the African National Congress (ANC). The ANC, as the earlier Liberation movement formed on 8 January 1912, largely spearheaded the anti-apartheid struggle and the negotiations. The second reference is to Julius Malema, (former president of the ANC Youth League), currently leader and founder of the breakaway from the ANC, the Economic Freedom Front (EFF). The inference signifies that the speaker (Van Zyl) does not see them in anyway fulfilling the constitutional mandates (of Lesbian, Gay, Bi-, Transsexual, Intersexed and Queer persons [LGBTIQ]).

The above is confirmed by Judge (2014: 2):

The shift from colonial and apartheid era legislation that criminalised homosexuality to a constitutional democracy in which gay and lesbian citizens are equal before the law signals a radical rupture between past and present. Yet, despite - or perhaps because of - this achievement, those marked as sexual and gendered 'others' remain targets for prejudice, discrimination and exclusion.

This 'radical rupture' (Judge 2014:2) of the post-apartheid SA and its colonial/apartheid past continues currently but in a different form. As Judge concludes at the end of the quotation, there is a hiatus between what the constitution promotes and the reality on the ground in SA. What I will explore and hence argue to what extent the rhetoric and rights of the constitutional principles are reflected in the reality of people's lives in general and the LGBTIQ community specifically. My focus however will mostly be on women and lesbians. There is also a rupture in the initially positive atmosphere, hope and belief in the new democracy in the early 1990s and currently faith and support of the present political state.

In this presentation, I will first outline the context and my positionality as feminist activist, key aspects of the constitution of South Africa and what I term as the inherent contradictions of the constitution. Thereafter I will briefly highlight my theoretical framework of citizenship and the achievements and challenges of implementing the constitutional imperatives. Subsequent to this will be the concerns and jarring juxtapositions. Before the conclusions the agency of the feminist and/or LGBTIQ communities will be illustrated.

There has been much fanfare and celebrating at the advent of democracy. There was a general euphoria and many were enthused and overcome by the 'miracle' of the mostly peaceful transition. There was great hope and expectations for the country in which all were to realise their human rights and subsequently their full potential. Many lauded the impressive and broad ranging rights of the constitution. The constitution has also been used as a model for many other countries (for example, Fiji). What does this human rights and gender-sensitive constitution mean to the average South African citizen and how have their lives improved? More specifically, what do the constitutional rights mean for marginalised communities, like women, people from rural areas, the lesbian, gay, bi-, transsexual, intersexed (LGBTI) or as some people prefer: lesbian, gay, bi-, transsexual, intersexed, and queer (LGBTIQ) communities in South Africa have anything to celebrate? In order to assess the qualitative differences and if there has been any improvement in the lives of LGBTIQ persons, I use the theoretical framework of citizenship. In order to gauge to what extent the rights-based approach has been able to facilitate the achievement of the constitutional mandates I explore the following questions: Can the constitution change attitudes? To what extent do constitutions and progressive policies and laws necessarily reflect the values and attitudes of society? What are the factors determining and influencing society?

CONTEXT AND LOCATION:

The neo liberal economic context and the increasing religious right of all faiths have also negatively impacted on the improvement of women's as well as the lives of LGBTIQ

communities. Impressive policies have been and are still being made but are not translated into rights for women and LGBTIQ persons internationally and nationally. Molyneaux (2004) refers to this as the 'USA/Vatican/Islamist Alliance' (Molyneaux 2004:114). Mama denotes this as the 'Alliance of fundamentalisms' (Mama 2005:3). Many men, traditional and religious leaders and some women (because of the internalisation of oppression) are either threatened or disagree with women's and LGBTIQ rights and hence the facilitating of their citizenship. Mukhopadhyay effectively summarises this: 'The language of rights is deeply disturbing because it involves separating out the identity of women (and LGBTI persons) as citizens from their identity as daughters, wives and mothers (and people in general), the subject of social relations' (Mukhopadhyay 2004:97). It is central to consider the inter-relatedness of race, class, gender, location, language and other axes of oppression. Furthermore in SA these are paralleled by the neo-liberal Growth Employment and Redistribution Strategy (GEAR) policies and the increasing power of traditional chiefs and religious leaders. Poverty hampers the attainment of citizenship and the majority of the poor are women.

In terms of my own location and positionality, many new questions about identity have become popular and I have not been unaffected by them. The constant question in feminist activist circles since the University of Natal 1990 Women and Gender conference is 'Who writes about whom?' and this still plagues us today. Nkululeko Daba (1987) questioned to what extent the oppressors had a right to write on behalf of the oppressed. To what extent do I as middle class and educated write on poor and marginalised black women? To this I also add the position of LGBTIQ persons. As a middle class feminist because of political opportunities and educational privileges because of my 'struggle credentials' and 'gender diva' status, I am not as vulnerable as my comrades, sisters and brothers in the LGBTIQ communities. My membership of the majority ruling party African National Congress (ANC) which catapulted me from political prisoner status in late 1980s to Member of Parliament in late 1990s also enhanced my status. Privileges linked to these positions are food for thought and constant self-reflection. During the early 1980s I was part of the women's movements. Then, we acknowledged the 'triple oppression' and our strategy was to unite against apartheid, thus blurring the diverse identity issues.

It was only in late 1980s that sexual orientation, disability and other concerns came onto the mass democratic movement agenda. In the early 1990s with the drafting of the interim constitution, it was time to self reflect, theorise and reconceptualise our praxis. As a feminist theoretical enquiry inherently implies political praxis: our theories must be linked to our actions. We theorise in order to understand subsequently to change and improve the position of marginalised or poor persons. Similarly in as much as I am emphasising the situation and citizenship of LGBTIQ communities, I emphasise the use of the intersectional approach. Various axes of oppression intersect and overlap: be they race, class, gender, sexuality, language, ethnicity, location of rural /urban, (dis) abilities, etc and this must be used as tools for analysis.

Given the context of identities and the question above – do outsiders write about others' problems I have to ask: Who am I? I see myself as a Black feminist; I acknowledge my slave and KhoiSan ancestry as an integral part of my identity. But what shapes my everyday 'do's and don't' most profoundly is my Christianity. Christianity forms a core part of my identity. It is for this reason that I need to reflect on this - what has my contribution been as a feminist Christian human rights activist?

I may have influenced (and this has been confirmed in diverse ways) many young women and some men professionally as a lecturer in Education for 21 years, influenced them politically in my nearly 40 years as political activist. But what have I contributed to the consciousness of my fellow church members especially regarding sexuality and sexual orientation, both women and men to whom I have been in close proximity for my entire life? I have achieved to a certain extent personally - my being the first woman chairperson of a Dutch Reformed Church council but how have I contributed to women's and especially young and insecure LGBTIQ youths' consciousness? What type of 'sister' have I been? If I am honest I have not done as much as I could have. I too, like in my critique of citizenship in SA in the next section, have separated my public activist life from my private religious life.

THE CONSTITUTION

The South African constitution is the world's first enshrining comprehensive rights including that of sexual orientation (Hassim 2005:18; Van Zyl 2005:75)ⁱ. Even though not constituted or legislated, there has been some progress globally.ⁱⁱ But what has this human rights constitution meant for the discourse in SA and what does this mean for the reality of the lives of lesbians and LGBTI persons in SA?

The South African Constitution (Act 108) emphasises that 'the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds; including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth [chapter 2.9 (3)]. In this presentation I will focus on the challenges of promoting the constitutional principles and imperatives in a society that is inherently heteropatriarchal, culturally diverse, largely complex and contradictory.

The constitution itself is a compromise document. When one analyses the Chapter 9 institutions there are simultaneously Commissions on Human Rights (HRCSA) and Gender Equality (CGE) and the Commission for the Promotion and Protection of Culture, Religion and Linguistic Communities (CRL). Contradictions abound hence abound. What does this mean for rights and whose rights will be privileged or not under which circumstances? This could mean promoting the rights of women and lesbian, gay, bi-, transsexual, intersexed and queer (some insist on including queer; LGBTIQ) communities, as protected by the Constitution (Ch 2) while the CRL could argue that this is culturally unacceptable. How are these balanced and how does one reconcile multiculturalism and diverse religions with

democracy and a human rights culture and constitution? I will explore how, during the past twenty years this contradiction has been managed and negotiated. Some successes as well as the challenges will be explored.

Much has been said about South Africa's constitution and the fact that it enshrines comprehensive rights and yet, according to the National Planning Commission (2011), quoted in Hassiem (2014), 61% of women are poor and 31% live in destitution whereas 39% and 18% men respectively. Women household head are predominantly poor, 'and despite virtual elimination of gender differentials in quantity and education, (women) continue to earn less' (Hassiem 2014:12).

If the above is a general picture of women in South Africa, how then do lesbians fare? Richardson (2000) cautions us about the centrality of citizenship that many feminists have used as a framework for achieving equity. She believes that if the citizenship discourse is accepted uncritically it may be limited as such discourses 'have reproduced a particular version of the responsible/good citizen focused on the values and norms associated with the heterosexual, nuclear family' (Richardson 2000:269). South Africa has also ratified and international instrument all promoting gender equality, which all emphasise the enhancement and inherent rights of women as citizens. So theoretically women's rights are assured in SA.

However, the South African constitution – as much as it progressive- is the product of a negotiated settlement. Transition was an opportune time for intervention:

Moments of political systems change when the distribution of power is in flux... (these moments)... offer great opportunities to (interest groups) ..., provided they ... are politically organised (Goetz 1995:11).

The National Coalition of Gays and Lesbiansⁱⁱⁱ lobbied extensively and actively sought the support and patronage of prominent African National Congress (ANC) leaders like Albie Sachs and Frene Ginwala. The success of this lobbying is illustrated by the Bill of Rights and the inclusion of no discrimination on the grounds of sexual orientation (South African Constitution, Act 108 of 1996, Ch 2, clause 9.3). What, however has to be remembered is that not only were there progressive alliances like the Gay Lobby and the Women's National Coalition.^{iv} Emerging during this transition period were also conservative and traditional groupings like the Congress of Traditional Leaders of South Africa (CONTRALESA) and their participation in the negotiations impacted on the constitution. The historic juncture of negotiations also heralded in the creation of overt religious political parties like the African Christian Democratic Party (ACDP) and the African Muslim Party (AMP).^v The negotiations was thus characterised by conflicting interests.^{vi} Nevertheless despite the lobbying around gay and lesbian rights, the constitution is inevitably a compromise document, which potentially could be contradictory. This is in essence what negotiations are all about and that no

participants achieved all their demands. In as much as a culture of human rights and gender equality are tenants of the constitution it also concedes cultural and religious rights. This is starkly illustrated by the juxtaposition of the Bill of Rights (Chapter two) and the acknowledgment and promotion of traditional leaders (Chapter 12).

The inclusion of the various Chapter 9 institutions ('State institutions supporting Democracy')^{vii} succinctly embraces this contradiction: The Commissions of Human Rights (HRCSA) and on Gender Equality (CGE) and the Commission on the Promotion and Protection of Culture, Religion and Linguistic Communities (CRL). Some of the objectives of the CRL commission are:

- 4(b) To promote and develop peace, friendship, humanity, tolerance and national unity among and within all cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association;
- 4(d) To foster the right of communities to develop their historically diminished heritage.

... The Commission must be composed in such a way that it - ... (that) broadly reflects the gender composition of South Africa... (Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act of 2002)

On the one hand we have the HRCSA to promote and protect a culture of Human Rights, the CGE to promote and protect gender equality and also the CRL that may in fact be doing the opposite as most religions and cultures are patriarchal. How does one '... foster the right of communities to develop their historically diminished heritage' when the 'historically diminished heritage' has changed over time either through disuse, irrelevance or coercion? Many traditions negative to women are maintained and this is not so in the case with traditions relating to men. It is well known that some traditional or cultural aspects had been deliberately and coercively eradicated through colonialism and/or Christianity. Missionaries first demonised then criminalised same sex practices (Philips 2003 quoted in Van Zyl 2005:38). Who determines what 'diminished heritage' is or who decides which aspects of the 'diminished heritage' are to be privileged and hence revived and/or retained? But how does one distinguish between practices of cultural, religious and linguistic (read tribal) communities that are negative and violate the human rights and dignity enshrined in the constitution?

Some positive outcomes have been Constitutional court judgments. One judgment relates to foreign partners of South Africans within same-relationships have been granted residence permits and another of a police woman's partner being included on her medical aid. More are listed in the next section under achievements. It was also due to much advocacy and lobbying that the South African parliament passed the Civil Unions' Act (November 2006). Whilst at the level of the Constitutional Court there are these positive outcomes, the society at large remains heterosexist and many lesbians experience violence and even death because of their sexuality (Forum for the Empowerment of Women, September 2004-August 2005, p. 4 & 6).

I argue too that religions and traditions are interpreted with a patriarchal lens and hence are often inherently misogynistic and mostly heteronormative and homophobic.

At a SADC meeting (Gaberones 2006) sexual orientation was brought up in one of the commissions. MP Morotua (Chairperson, Joint Monitoring Group) confirmed that there is a history of same sex relationships in Southern Africa, especially amongst women traditional leaders (*sangomas*). But ironically this statement was left out of the final formal SADC report on the conference. Similarly sexuality and LGBTIQ issues are marginalised or pathologised. Subsequently many remain trapped in a heterosexual culture and seemingly there is no 'escap(ing) heteronormative bondage' (Van Zyl 2005:223). So there seems to be a schism in the rhetoric of the constitution and the reality of lesbians' lived reality.

CITIZENSHIP

The South African Constitution (Act 108 of May 1996) outlines comprehensively the rights, equality, human dignity and freedoms for all that effective citizenship should entail (Bill of Rights, Chapter 2). Do LGBTIQ have the rights and quality of life that this citizenship outlines? Citizenship has always aroused diverse emotions, especially as expectations around citizenship are so diverse. Citizenship is 'slippery' (Hassim 1999:7), a 'fluid' concept (Mouffe 1992:379) and an 'emergent and unsettled' concept (Enslin 2003 quoted in Manicom 2004:43). Will the 'irreconcilable tension' (Hall and Held, 1989, quoted in Lister 2002, 35) ever be resolved? Citizenship may mean many things to different people, depending on their needs. For feminists it is important to assess how LGBTIQ and other marginalised persons can best be acknowledged as equals in their diversity and in their own rights. How would 'sameness' and 'differences' in terms of human rights be accommodated and acknowledged? The current discourses in citizenship need to be challenged in order to resolve what would best suit the feminist project.^{viii}

Citizenship is a central concern for many feminists because it is through citizenship that substantive equality can be realised. The theories of Ruth Lister (2002), Nancy Fraser (2000) and Anne Phillips (2000) have been particularly influential. The exploration of citizenship by Manicom (2004), Amanda Gouws (2004, 2014) and Van Zyl (2005,2014) deal specifically with citizenship in South Africa. They raise the concerns on how race, class, gender, location obfuscates the attainment of citizenship.

If citizenship is such a porous concept, in order to assess the applicability and possibility of a comprehensive citizenship for the South African feminist project with specific reference to LGBTI community, I am confronted with the following questions:

1. Is citizenship gender neutral?
2. If citizenship is not gender neutral, does it mean that marginalised persons like the LGBTIQ community are specific sorts of citizens? and

3. Has the 'freedom' of the new democracy enabled LGBTIQ persons, as specific sorts of citizens^{ix}, to be citizens in their own right?

Within the confines of this paper I will limit my focus to whether lesbians in South Africa have attained the integrity, dignity and the human rights that the Constitution so nobly espouses. I am aware that there are multiple contradictions and intersectionalities within the LGBTIQ movement. Soldaat and Van Zyl (2014), Judge(2014) and Gouws (2014) all make reference to this. In fact Soldaat and van Zyl stress that often lesbians do not challenge gay men (2014:9). My observation is that LGBTIQ persons with disabilities are marginalised within the LGBTIQ movement. Women living with disabilities shared how within the disability movement, marriage and relationships in general are marred by patriarchal violence (Masimanyani Women's Forum, 2005, East London, SA).

To examine whether citizenship is gender neutral one should assess how it has been conceptualised. Theorists (including Marshall 1965 quoted in Hassim 2009) have long claimed the universality of citizenship: a neutral abstraction with the implication of being de-sexed, de-racialised, and de-classed. In reality this is not so. Hassim (1999:8) argues that citizenship is profoundly gendered – the public sphere (state, civil society) is distinguished from the private sphere, the family. Mouffe (1992) and Dietz (1985), like many feminists, question the private and public polarity in which women and men find themselves. The private sphere is linked to the family (women's primary place, tasks of caring and nurturing) and state and civil society linked to the public sphere (largely masculine).

The notion of universal equality too must be interrogated - as all citizens are not equal (Phillips 1991). This 'neutral concept' is gendered, unequal and embraces the dichotomy of public (men) and private (women) and includes access to power and lack of power respectively. This division of labour and division of location where the labour is enacted either in public or private implies that it is integrally gendered. One also has to caution against universalising that the terrain of women is private and that of men is public.^x Similarly, even though in many cases women lack power, it has not robbed them of agency or claiming power. However, in brief I reiterate that contrary to the constitutional mandates in South Africa women and the LGBTIQ community still constitute the majority of the poor (Hassim 2014, Chirwa and Khoza 2004:138, Fester 2005, McEwan 2004). According to the previous Deputy Minister for Social Development, Jean Benjamin, South Africa is confronting the 'feminization of poverty' (interview 2004).^{xi} This is still true ten years later in 2014. This includes LGBTIQ persons, some of whom choose not to be 'out'. Poverty prevents many to assert their rights as citizens.

In the context of South Africa, given the complex history of colonialism and Apartheid it is important to analyse theories coming from the 'centre' and assess their applicability to the 'margins'. Mamdani (1996) deals with the nature of the colonial and post-colonial states, political identities or subjects and the prospect of democratization of the African state. The underlying question is to what extent we can apply the institutions and culture of Western liberal theory to processing of democratisation and citizenship in Africa. Mamdani explores the relationship between rights and culture and thereby explores the possibility of a 'specific

African citizenship' (Mamdani 1996:18). I particularly find Mamdani's central argument of inclusion and exclusion of colonial citizenship relevant in dealing with the position of women and more specifically lesbians. According to Mamdani, citizenship only referred to White colonisers and the colonized were 'subjects' (Mamdani 1996:18; 1996:301). He states that the colonial state operated as a bifurcation or binary mode of law: one for the colonisers and one for the indigenous as 'subjects'. The indigenous or customary law was codified as suited the colonisers. With independence some African men and/or those of the ruling or hegemonic groups achieved rights and hence became the citizens. In applying this citizen/subject distinction of Mamdani's, I argue that the majority of women and especially lesbians remain 'subjects' to traditional law. They are also subjects of religions. All religions and traditions emphasise patriarchal relations.^{xii} What needs to be noted is that this 'legal bifurcation' of civil and customary law (Mamdani 1996:20) is still in practice and hence in African states most women and especially lesbians are still subjects. In fact when one analyses the content of the constitution, it affirms both the human rights culture (Chapter 2) and the role of the traditional leaders and customary law (Chapter 12). What needs to be emphasised though is that in Chapter 12 clauses 211 (i) and (iii) emphasise that these are 'subject to the constitution' and (iii) subject to the constitution and any legislation that specifically deals with customary law.' This is crucial to note as it gives a guarantee and room for LGBTQ advocates.

An institution which entrenches hetero-femininities and -masculinities and further marginalises sexual citizenship is the heterosexual nuclear family. In as much as hetero-patriarchy is hegemonic one cannot homogenise lesbians and the LGBTIQ community. In terms of seeking for alternative structures, many lesbians wanted marriage with their partners; relationship often were not seen as alternative or challenging prevailing current patriarchal and unequal relationships and to a certain extent there was an emulation of heterosexual roles: 'I'm not a man and I'm not a woman, I'm a lesbian and I'm butch.' (Morgan and Wieranga 2005: 321, 323).

While the rhetoric of gender equality and freedom from discrimination on grounds of sexual orientation is largely articulated, the underlying message is one that privileges patriarchal relationships and many people including lesbians have internalised this. The laws and the constitution may have changed but there is no way that the attitudes and culture can be eradicated by the writing of a law. Much more work needs to be done to conscientise and sensitise the communities of South Africa to internalise and respect the constitution.

So in terms of my questions women and LGBTIQ persons do have specific needs and demands. In terms of substantive equality lesbians, disabled, poor and First Nations and other marginalised groups do have specific needs. Furthermore they do not have the freedom in their own right. Just like women's private work is not included in the gross domestic product (GDP), so too is their reproductive work, contributing to the next generation of people, not seen as citizenship tasks. It is ironic that men going to war and killing people, is seen as citizenship task but not nurturing, reproductively and increasing the next generation.

What further needs to be stressed is as a citizen, one should be able to make independent choices as long as the choice does not impact negatively on others, nor should citizens be hampered by others for their choices. There should be no stigmatisation nor discrimination on the grounds of choices of their partners. But lesbians and the LGBTIQ communities experience immense ridicule and stigmatisation and are even murdered because of their life style and choices of partners.

ACHIEVEMENTS AND CHALLENGES:

It was with fanfare, delight but also disgust in some quarters that the constitution of South Africa (SA) was lauded in May 1996. It was also with much relief that the human rights enshrined in the interim constitution had been maintained. But so too the revulsion: SA has diverse polarised communities. There are various radical progressive communities who vociferously advocated for an inclusive human rights constitution and as many conservative religious and customary communities who selectively want to maintain traditions of the past. This conflict highlights the contradictory attitudes that still plague SA today.

Fortunately the Constitutional Court has been effective in some cases. Same-sex couples have claimed their rights to adopt children; challenging heteronormative nuclear families. The judgment found that partially the Children's and Guardianship Acts are unconstitutional. Children were granted to both parents and 'permanent same-sex partners' (para 42, CCT 40/01). Action by the Constitutional Court is not automatic. Whether or not a case is taken up and sponsored by NGOs or structures depends on a range of issues. In most cases it would depend on the situation and whether or not it would be a legal precedent. The concern is the expenses of these cases and the fact that it could be protracted. Some of the success cases relating to LGBTIQ communities and the Constitutional Court are the following:

Minister of Home Affairs vs Fourie; Lesbian and Gay Equality Project vs Minister of Home Affairs 2006 (1) SA 524(CC);

National Coalition for Gay and Lesbian Equality vs Minister of Home Affairs 2000 (2) SA 1 (CC);

Satchwell vs President of the Republic of South Africa 2002 (6) SA 1 (CC);

Du Toit vs Minister of Welfare and Population Development 2003 (2) SA 198 (CC).

But can the constitution change attitudes? To what extent do constitutions and progressive policies and laws necessarily reflect the values and attitudes of society? What are the factors determining and influence society? The Chapter 9 Institutions are tasked with popularising the content and principles of the constitution. This has been an uneven task with limited budget.

As a Commissioner on Gender Equality 10 years after freedom, it was not uncommon for me to encounter communities who have not ever heard of the Ch 9 institutions and their mandates. In conversation with current Ch 9 commissioners this still seems to be the case. However, any society undergoing transition, like SA, will be fluid and with the new and old

order in conflict. The trajectory of the political, social and legal context of 'women and gay friendly South Africa' has been a staccato journey with many gains and as many challenges and deliberate obstacles.

A turning point for many and even politically pivotal has been the court case of the then former deputy president, current president Jacob Zuma charged with the rape of 'Kwezi' in 2005 (Soldaat and Van Zyl 2014, Gouws 2014, Feminist Activist Workshop, Rondebosch East 2010, Feminists Statements 2008 and Feminist Statement 2011)

(<http://womensnet.org.za/south-african-feminists.html> accessed 30 January 2014).<http://www.ngopulse.org/press-release/women-statement-flowing-amplifying-feminist-voices-conference> accessed 31 January 2014 respectively).

This trial sparked off dichotomized social responses and protests. Activities in and around the court during the court case and extracts from the judgment are pointers to tendencies and trends, and to which extent they would colour the future. This has been proved true as will be elaborated later. This once 'women and gay friendly' country was no longer friendly. During this court case the past disguised and camouflaged homophobia was blatant, proudly exhibited and publically endorsed by many. These will be highlighted in the next section.

CONCERNS:

On the one hand we have the strengths of the compromised constitution and on the other hand we have a citizenry deeply divided. The weakness of the aforesaid is that there has not been enough inculcation of internalisation of the values of the constitution nor adequate education of the constitutional principles. I earlier referred to the shortcomings of the education projects of the Chapter 9 institutions. Subsequently there is no general consciousness of the internalisation and importance of a human rights culture and respect for diversity, differences and individuals' choices about their sexual choices and orientation. SA despite 20 years of freedom remains mainly deeply heteropatriachal. There has also been an increase in homophobia. I believe that the bravado and in some ways public acknowledgement of the homophobic behaviour of the crowds outside the court during Zuma's trial, greatly exacerbated heterosexism and misogyny.

One cannot write about the South African constitution, sexual politics and attitudes towards LGBTI issues without referring to what I define as a signify moment in New SA regarding rape, sexuality, religion and culture. I argue that the rape trial of president Zuma highlights divisions amongst South Africans in general, and amongst many women. This is exemplified by the extent of misogyny and the ineffectiveness of constitutionally mandated gender equality. There is currently no implementation of a serious programme of action to inculcate these values. Support for the ANC and hope in this 'Rainbow' country with its progressive constitution waned considerably during this period of the Zuma trial (Soldaat and Van Zyl 2014, Gouws, 2014, Judge 2014, Hassim 2014). On the other hand the support from the traditionalists and CONTRALESA was consolidated. To recreate a new consciousness,

changing attitudes and values in order to inculcate the principles and mandate of the constitution thus appreciating the inherent dignity of everyone is challenging.

The trial was a travesty for the human and LGBTIQ rights. The complainant, a young Zulu woman, Khwezi, was on trial. It foregrounded the contradictions: the accused was a powerful patriarch, chief, political leader, wealthy male elder, traditionalist and polygamist. The accuser: a young feminist, educated, lesbian, LGBTIQ and human rights grassroots activist. The issues: justice, human rights obviously including LGBTIQ rights versus culture, religion and traditionalists. Both were Zulu, members of the ANC and belonged to same kin: she addressed him as Uncle (*uluma*). Her father and Jacob Zuma had been 'struggle' friends and comrades and after the passing of her father she considered him as father. The question looms: can there be justice for the marginalised within the context of a progressive constitution?

Gertrude Mongella, secretary-general of the Beijing Conference and former Speaker of the Pan African Parliament lauded South Africa (SA) for having the mechanisms for effective transformation (Foreword, Lowe Morna 2004:9). According to Gouws, SA has the most advanced gender machinery in the world (Gouws 2005:3). But what has all this meant to women and lesbians in SA? In 2005, when Khwezi charged Jacob Zuma with rape, she may have done this, believing that the mechanisms were in place for gender equality and social justice in this 'women-friendly' SA. She was very brave considering that Jacob Zuma was then the second most powerful man in SA. This event took place in 2005/2006 and I believe it accelerated a trend and increasing homophobia in SA.

In the trial judgment of former deputy president Jacob Zuma, a journalist's statement is quoted: 'This trial is more about sexual politics and gender relations than it is about rape' (Case number FF321/2005, p3, dated 04/05/06). With this I agree. Sexual politics and gender relations are about power. But central in these concepts is the issue of culture, what is understood as culture and the inherent heteropatriarchy of culture as conceived currently.

I am confronted with the core issue of women's subjectivities and concomitant power or lack of power and who is given power and how this takes place. Within this trial we have the emergence of polarities coupled with the constructions and notions of identity: What is understood a 'good African/ a good Zulu woman'. Was Khwezi a 'good African woman' and how do the women who were castigating Khwezi see themselves?

Lewis argues that the 'figure of the African woman as mother has been a particularly prominent and confining one in patriarchal nationalism. This trope extols unique qualities of nurturance, protectiveness and altruism of African women that are often believed to make them morally and culturally superior to Western women' (Lewis 2003:3). Generally a good African woman is or should be a mother – Khwezi was not one. Has Khwezi perhaps been 'defiled' – did her stay in exile cause her to be 'contaminated with Western values?' Lewis outlines the static notion of African women: 'Fictions of undiluted African culture have been weapons for enforcing women's obedience, with the charge of 'Westernisation' being used against many women in public realms dominated by men' (Lewis 2003:2). Other

information that was disclosed after Khwezi's 'grilling' by the defence was that she was a lesbian. Again un-African according to many African leaders. Khwezi is also a feminist – and feminists, increasingly challenge nationalist agendas that defy the leadership and ideologies of elite men (Lewis 2003:2). Motsei reiterates: what is a good African woman and a good African Zulu woman and what is a good wife? (Motsei 2007:22). These are central subjectivities in this court drama. Khwezi emerges as a 'bad African woman' and hence she is justifiably degraded by other 'good Zulu women.' The Zulu women all iterated that she had no right to accuse her chief.

I assert that the polarised attitudes towards comprehensive human rights for all was reflected in the support and rejection and humiliation of Khwezi. Many women internalise patriarchy -MaMkhize 'achieved celebrity status'. If MaMkhize had been 'raped by Zuma she would not have bathed her bosom ... for days' (quoted in Motsei 2007: 31). Women protesting against the abuse of Khwezi shared that police did not protect them from the Zuma-supporting crowds (personal interviews 2006).

Culture was manipulated. Zuma argued it was culturally imperative '...to satisfy Khwezi'. But was not only culture that condemned Khwezi. Both inside and outside the court, the trappings of the Christian church with its ambivalent history of violence and oppression against women, paedophilia and heteropatriarchy, were evident. Inside the court, expert witnesses in the form of pastors Masoka, Mbambo, Modise and Matlhabe took the witness stand to preach about the false rape claims. They emphasised that the complainant was not 'well and needed help' (Malefane & Mafel, 'And now for the Judgment,' *The Sunday Times*, 7 May 2006). Outside the court, a woman carried a cross and youths were 'armed' with bibles^{xiii}. But the very Bible 'armed' youths continuously shouted unprintable slogans with references to women's body parts (Motsei 2007:143).

In the preface to his judgment, Judge Van der Merwe highlighted the similarities between him and president Zuma; that both of them pray every morning for guidance from Above. Using the Criminal Procedures Act 51 of 1977, the Judge allowed solely the disclosure of Khwezi's sexual history. The Judge justifies: '... (I)f evidence has sufficient cogency the witness must endure a *degree of embarrassment and perhaps psychological trauma*. Thus *harsh reality must be accepted as part of the price... paid to ensure that only the guilty are convicted*' (Case FF321/2006, p. 37, my emphasis). Why is one party's history alone 'cogent'? Khwezi was the sacrificial lamb. I concur with many writers who argue that Khwezi was not given her rights as a citizen during this trial (Motsei 2007, Gouws 2014). The recent address by former Judge Yacoob that he would have had a different judgment to that of Judge Van der Merwe's to this trial highlights the controversy around this trial and judgment (http://www.iol.co.za/news/politics/outcry-over-yacoob-rape-comments-1.1732803#.VD93-xbIA_U accessed in August 2014).

A more recent example of the challenges that culture entails is Zuma's comment of his admiration of Venda culture: that women lie down in front of men as a token of respect (*losha*) (mg.co.za/article/2013-12-20-zuma-impressed-by- Venda-women-bowing-down-to-

[him](#) accessed 17/02/2014). Once again the patriarchal role of women emerges. There was great consternation at Zuma's comment. Florence Maseba lay down on receipt of the African Movie Award for best actress. When critiqued, she retorted at the 'uninvited interest' in her culture (*City Press* 22/12/2013 quoted in Gouws 'Nie-seksistiese demokrasie?' (Nonsexist democracy?) *Die Burger*, 30 December 2013). Gouws questions whether you are not allowed to interrogate the culture if you are not Venda? This echoes the question asked 24 years ago: Why is race being privileged above class? (Walker 1990) asked in response to the tension at the Women and Gender Conference, 1990 University of Natal and Daba's (1987) assertion: 'The Right to Self-Determination in Research: Azanian Women'.

Various alliances, strategic, principled and/or opportunistic are often made. The ANC initially had a strong relationship with the South African Council of Churches (SACC). This ended when the SACC critiqued the ANC for not eradicating poverty and president Zuma for his abuse of culture (Mataboge, M. 'Why the ANC dumped the Council of Churches', *Mail & Guardian*, 18-23 September, 2009). Subsequently Zuma encouraged pentocostal churches (not represented in SACC) to organise. The National Interfaith Leadership Council (NILC) was launched in 2009, initiated by McCauley, a Zuma supporter (*Charisma Magazine* 2010 'South African Pastor Ray McCauley to Divorce', <http://www.charismamag.com/index.php/news/26182-south-african-pastor-ray-mccauley-to-divorce> (accessed 28 June 2010). Khunou, ANC MP and NILC secretariat, stressed that it (the NILC) would 'play a role' in revisiting legislation that legalises abortions and gay marriages (Mataboge *ibid*). The ANC abandoned former partners as it did not suit them and facilitated the creation of a conservative alliance.

Joy Watson, South African parliamentary researcher (interviewed 2012), stressed the increase of homophobia amongst the ranks of the MPS and that it was not uncommon that heterosexist comments were regularly made in the House. This has been affirmed by the role and escalating power of the CONTRALESA.

During 2013 the Constitutional Review Portfolio committee discussions were initiated which could overturn the hard won rights for LGBTI communities. It was reported by *Die Burger*, a local Afrikaans newspaper, that Parliament's constitutional review committee has referred proposals to political parties. Annually proposals are considered. Apart from the Pan Africanist Congress (PAC proposal that section 25 of the Constitution (regarding rights of property and property owners) be revised, CONTRALESA also proposed the cancelling of the sexual orientation section of the Bill of Rights (Chapter 2 of the Constitution). It is significant that the president of CONTRALESA, *Nkosi* (chief) Patekile Holomisa, was the chairperson of the Constitutional reform committee (he has since been promoted to Deputy Minister of Labour).

The then review committee chairperson *Nkosi* Holomisa informed the Cape-based *Die Burger*, that the committee only presided over only two constitutional changes since 1996 (promoting and then withdrawing floor-crossing between political parties). Besides this the Constitution has remained intact. He added that the proposed amendments could radically

alter people's lives, and the committee wanted to be more central in constitutional amendments than in the past (<http://www.lgbtqnation.com/2012/05/south-africas-constitutional-review-of-its-sexual-orientation-rights-is-shocking/?PageSpeed=noscript> accessed 1 October 2014). Even though *Nkosi Patekile* is no longer chair of the committee, CONTRALESA remains a powerful and influential ally of the Zuma government. Does this portend a threat to the constitution?

But not are there only threats from patriarchal males and cultural and traditional leaders. The interplay of racism, sexism, class and homophobia is rife and even within progressive movements and organisations there have been negative experiences. It needs to be stressed that women are not homogenous and '(s)ometimes African women justify ... patriarchy' (Soldaat and Van Zyl 2014:4). But women from all walks of life, class and race promote heteropatriarchy. Inspired by Angus Buchan who promotes the million men's march and ventures for men to become 'real men' again (read patriarchs), Gretha Wiid initiated the 'mighty women's conference' with the aim of encouraging 'real women to support their husbands' (News24 2009). The entire discourse is homophobic and central to their analyses of a good society is to promote the nuclear family with all the implications of defined masculinities and femininities.

Nor is the LGBTIQ movement without the encounters of power issues. According to Soldaat in Soldaat and Van Zyl (2014:9), there are many cases where 'lesbians do not challenge gay men'. There often are tensions within the feminist movements and there have been accusations of lesbians promoting LGBTI issues only and counter concerns that lesbians are marginalised. Mkhize et al (2010), quoted in Judge (2014:71) raise concerns that black lesbians are more violated as a result of the different axes of oppression and that gay males are targetted as they do not portray macho masculinity.

JARRING JUXTAPOSITIONS:

Whereas the chief concern is the inherent contradictions within the constitution itself, fulfilling what Mamdani calls the 'bifurcated legal system' (Mamdani 1996: 20), Judge (2014) eloquently juxtaposes the subsequent legislative results. These are in the form of the Civil Unions' Act of November 2006 (same-sex marriage) and societal attitudes in the form of violence against LGBTIQ persons and also murder of persons who do not conform to the prevailing dictates of masculinities and femininity.

She highlights the

'Chasm between normative inclusions that mark 'same-sex marriage' and the persistent exclusions that mark 'homophobic murders' signal the paradox of gay and lesbian citizenship in post apartheid South Africa' (Judge 2014:71).

One notes that the awareness and education among South Africans and the transformation in consciousness was not successful. This highlights the schism between formal and legal equality versus the reality and substantive equality. It also emphasises the dissonance between social justice and legal gains.

Not all activists welcomed the legalisation of same sex unions. Many feminists and others believe that marriage is the vehicle for heteronormativity reinforcing specific gendered masculinities and femininities. However, the gain, emanating from the tenets of the constitution was the vehicle for the Civil Unions' Act and giving LGBTI persons the opportunity of whether to marry or not, enhancing their citizens' rights of choices. But Ramya Subramanian reminds us that:

While rights may have proliferated, the conditions under which women (and marginalised peoples) are exercising these rights are not necessarily improving'
(Subramanian 2004:94)

South African feminists have also echoed this. Pregs Govender has referred to the increasingly misogynistic and homophobic (Keynote speech, Women's Day Speech, 9 Aug, 2006, Community House, Cape Town). Sheila Meintjes to the androcentric atmosphere. (Ethical Leadership at the Moral and Regeneration Movement Conference, University of Cape Town, 13 September 2006). This was reiterated by Meintjes at the Second Gender Summit, hosted by the Commission on Gender Equality, Lake View Hotel, Benoni, April 2014.

Hence SA has failed in its protection of human rights towards its citizens nationally and fellow Africans continentally. What has been shocking and out of keeping with this new SA is the continued inhumanity of the extensive 'homophobic murders' of lesbians and gays and especially black lesbians. From perspectives of rapists their actions are seen as an attempt to 'correct' the errant behaviour of these women in the townships. This term, 'corrective rape' has been rejected by feminists and any other language that pathologises the LGBTIQ community (Hames 2011).

The rapes and murders Zoliswa Nkanyane (2006), partners Sizakele Sigase and Solome Masoaa(2007), soccerplayer Eudy Simelane (2008) and beating and rape of Millicent Gaike (2012) are but some of the gruesome murders of black lesbians. The trials of these homophobic murders have been marked by postponements and charges being withdrawn. LGBTIQ activists have raised the concern that police, spurred on by their own homophobia, have not been diligent in their forensic duties and procuring admissible evidence to convict alleged rapists - hence charges have had to be withdrawn. The trial of Nkanyana in Khayekitsha, Cape Town, has been postponed for 38 times (Hames 2011). Recently four men were found guilty. Because of the advocacy and protests around the treatment of LGBTIQ community the South African cabinet issued a statement condemning this practice (<http://www.news24.com/SouthAfrica/News/Cabinet-condemns-corrective-rape-201-10-3> Cabinet condemns 'corrective rape' accessed 13 October 2014).

Despite the optimism and positive hopes of the late 1990s, SA has, in terms of the realising rights of marginalised persons, like women and LGBTIQ persons, retrogressed. As a country, SA has also been the politically insensitive in the deployment of an anti-gay ambassador to Uganda which is rife with homophobia. Furthermore, SA, despite having an LGBTIQ-friendly constitution and being a continental superpower, has not been able in any way to stem the

tendency of increasing homophobia on the African continent. SA has failed to be the moral leading light on the continent.

FEMINISTS' AGENCY:

The above illustrates the contradictions of contemporary South Africa. Even though there is no united feminist or LGBTIQ voices what is remarkable is that the LGBTIQ communities challenge homophobia and the homophobic murders and made impact nationally. They are not victims but agents actively changing oppressions and discrimination.

The One-in-Nine-Campaign started February 2006 with Zuma's rape trial in solidarity with Khwezi and women who speak out. The Medical Research Council study (2012) indicated that one out of nine rape survivors reports attacks -hence the name. Working holistically, they incorporate amongst others, LGBTI activism and feminist research (oneinnine.org.za accessed 19/02/14).

The Triple-7 Campaign was initiated by the Joint Working Group, a national LGBTIQ network. It is named after dates of murders of 'out' lesbians, Sizakele Sigasa and Salome Massoa, 7 July 2007(iglhrc.org/content/south-africa070707/campaign-held-ceremony-commemorate-murdered-lesbians accessed 20 /02/14).

What too was revealing is that many South Africans participate in international feminism (www.africanfeministforum.com.wgm/-working_group_members accessed 20/02/14). promoting feminist issues including LGBTIQ concerns.

CONCLUSIONS:

My key questions are: Can the constitution change attitudes? To what extent do constitutions and progressive policies and laws necessarily reflect the values and attitudes of society? What are the factors determining and influencing society? Do the rights in the constitution necessarily contribute to the attainment of rights of LGBTIQ community? Through the above I expound some of the gains but also the fact that despite the constitution homophobia and heteropatriarchy are the norm in SA. So the constitution has not radically transformed the consciousness of all. Rights are not automatic. The mandate to promote the constitutional principles nationally is a daunting and challenging task for the chapter 9 institutions. To facilitate education, knowledge, consciousness and internalisation of the constitutional principles successfully needs to be revisited and creative alternatives explored.

There needs further research on ways of recreating a new consciousness in keeping with human rights constitutions and policies and how to sensitively eradicate traditional and conservative behaviour and beliefs over time. Cuba had cell groups termed 'Committees in Defense of the Revolution' where key aims of the society were discussed and debated. Many Rwandans believe that through their *umudugudu* (cell) and *umuganda* (community meetings) they are educated and internalise their constitutional imperatives. However,

Rwanda which is lauded worldwide as it has the highest number of women in government (64%) also is still confronted by beliefs in gender stereotypes (Muganza 2014) and has high incidences of violence against women. The African Union regional instruments, declarations and policies are radical and progressive. Even though most of the African states have ratified them, minimal is being done to encourage a new consciousness in keeping with the progressive documents to their people. The schism between theory and praxis continues.

There is also an ahistoric attitude by many who insist that homosexuality is 'un-African'. Research highlights pre-colonial same sex relationships in Africa (Morgan and Wieranga 2005, Tamale 2004). In SA this should be used in advocacy. Using the constitution to realise rights is important. Chapter 12, Clause 211 (1) states

'The institution, status as role of traditional leadership, according to customary law, are recognised, *subject to the Constitution*.' Furthermore Chapter 12 clause 211 (iii) emphasises '*subject to the constitution and any legislation that specifically deals with customary law*.' (My emphases). This is crucial to note as it gives room for LGBTQ advocates.

The rhetoric of the rights of all is unquestionably promoted in SA. But the reality and limitations of the rights-based approach is limited. The discourse in SA with the 'homophobic murders' is definitely one of heteronormativity. These polarities or jarring juxtapositions exist side by side. Consequently lesbians and LGBTIQ persons, together with the poor, many women and other marginalised groups have still not achieved citizenship in South Africa.

In terms of forward-looking strategies we have to acknowledge there is a rupture between the constitution and other progressive documents that SA has ratified and the reality of poor and uneducated people and the marginalised like the LGBTIQ communities. The content of the constitution must be popularised and implemented. An active, mobilised and dedicated civil society is imperative to work together with the many progressive organisations like Triangle. Civil society should challenge government by using its own documents. We should establish 'pro-poor coalitions' as Mohanty (2003) advocates. Progressive coalitions with open-minded radical leading clergy, traditional leaders and other prominent community members should be formed. The ANC with its complexities and contradictions still has the most progressive policies which should be utilized. None of the opposition political parties remotely raise LGBTIQ issues. The state is also not homogenous and radical persons in government must be approached and together there should be strategised about how to take the process forward to implement the constitutional imperatives. We must learn from our own past best practice how we overcame Apartheid. Best practice from other countries must be researched and adapted to the needs of SA.

We cannot essentialise women or LGBTIQ persons. Because of the intersectionality of race, class, gender and other factors, not all women/lesbians are oppressed to the same degree nor do all necessarily promote women's/lesbians' or feminist issues or a radical agenda. The dialogue between progressives in SA should begin. Working to realise the content of the constitution is long overdue.

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ⁱ In 1995 Canada included protection against discrimination based on sexual orientation. Legislation against discrimination have also been initiated included (Van Zyl 2005:37)

ⁱⁱ Even though there is no legislation positive developments have taken place in some developed countries, e.g., *Mardi Gras*, Sydney, Australia. Despite the political conservatism reigning in the USA, post Stonewall culture of homo-assertiveness and *becoming*. However, the USA is not homogenous and in some states there is tolerance and others great degrees of homophobia.

ⁱⁱⁱ It needs to be noted that lesbian and sexuality issues were marginalized and invisible in most progressive women's organizations during the 1980s. See Fester G (1997) 'Lesbian Lobby: Apartheid's Closet' in M Reinfelder (ed) *Amazon to Zami: Towards a Global Lesbian Feminism*, Cassell, London.

^{iv} Formed in 1992 on initiative of key ANC individuals and the ANC Women's League in order to maximize the intervention of women in the Constitutional Talks. This united erstwhile polarised groups like the ANC and the Inkatha Freedom Party and the National Party.

^v The former contested elections nationally and has seats in the National Assembly. It has also managed to improve its national representatives gradually over the past years. The AMP contests provincially in the Western Cape. There are similar religious groups in other provinces and if these groups attain more power it would spell the reversal of numerous rights attained. For a more extensive explanation see Fester G (1998) 'Closing the Gap-Activism and Academia in South Africa: Towards a Women's Movement' in O Nnaemeka, *Sisterhood, Feminisms and Power*, Africa World Press, Inc, Trenton NJ and Asmara, Eritrea.

^{vi} Even though CONTRALESA argued that the Equality Clause had to be subjected to Customary Law, the vociferous lobbying by women succeeded in defeating this proposal (Fester 2005).

^{vii} Other institutions are the Public Protector, Independent Electoral Commission and the Auditor-General.

^{viii} I consider the feminist project to be one that entails equality for all marginalised groups, lesbians (and Gay, Bisexual, Transgender, Intersex and Queer- LGBTIQ people), women with disabilities, poor people, etc.

^{ix} Potgieter's research illustrates the diversity of lesbians as defined by themselves. Some see themselves as 'just like everybody else. Only one difference, I am a lesbian' (Potgieter 2005: 189). Others '...resort to differentiat(e) between the 'real' God-given lesbian and the 'default lesbian created as a result of the apartheid government's evil intentions.' (Ibid 190).

^x It is the reality of the majority of South African women that their lives are not bound to the same extent by the private domain as majority of Western women's lives are. That many African women work in agriculture is well known. Gender roles too cannot be assumed to be universally the same as comprehensively depicted in Amadiume (1987). However, with the rapid increase in urbanization, many African women find the 'private' role imposed upon them in a complexity of ways. See Also Adomako Ampofo (2004)

^{xi} McEwan, after interviewing women in Khayalitsha and the informal settlement of Harare, Cape Town, states: 'The situation is worse now than it was in 1994,' (McEwan 2004:184)

^{xii} That traditions condemn same sex relations is in a completely ahistoric way as Fester(1982) relates with relation to Lesotho and Morgan et al (2005) and Van Zyl et al (2005) outline

^{xiii} It is well known that the Bible especially the Old Testament has examples of misogyny and femicide. However there are many women-affirming texts in scriptures which are ignored,