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Practices of inheritance amongst Muslim widows in Cape Town

Muslim personal law is not recognised by the South African state, and resultant Muslim marriage is not afforded the same legal status and protection as civil or customary marriage. A consequence is a lack of recognition and regulation of inheritance practices in Muslim families. This paper draws on the findings from a qualitative study which explored experiences of inheritance in Muslim families, using case law, archival research and in-depth interviews with six Muslim widows in Cape Town. In discussing the research findings, the paper focuses on women's experience of, and attitudes towards, inheritance in middle class Muslim families, interpreting how these experiences relate to the governing principles of equality and diversity in the South African Constitution. Fairness and reciprocity serve as guiding principles of inheritance practices, evidenced through gendered conditionalities of inheritance shares and the practice of gifting while alive. To a large extent the experiences of inheritance practices for Muslim women are aligned with the principles of equality and diversity in the Constitution. In this context, Muslim women's agency is conceptualised as proactively and strategically shaping their lives and the lives of female family members. However, these patterns of inheritance do occur in a context of gendered family practices. It is therefore argued that the challenge arises from the informality of inheritance practices, characteristically occurring in the private sphere. In instances where fairness and reciprocity are not given primacy, women tend to experience downward social mobility. Weak legal protection for Muslim widows during instances of discriminatory inheritance practices is resultant of the lack of a transformative mandate in the public sphere. Existing international discourse regarding family law reform on a state level is relatable in this instance as gender-sensitive reforms do not erode the foundations of religion and family, but merely challenge the tenuous balance of power.

Keywords

Inheritance, transformative justice, gender, reciprocity, Muslim marriage, widows

1. Introduction

Muslim marriages are yet to be recognised in South Africa; ad hoc legal protection is, however, provided through case law. Such judicial intervention allows for a certain degree of protection for women in monogamous and polygamous Muslim marriages (Amien, 2014). A consequence of the non-recognition of Muslim marriages in South Africa is a lack of recognition and regulation of inheritance practices in Muslim families. Although Muslim women are free to enter civil marriages, the majority of Muslim women enter marriages according to Muslim rites and case law indicates this non-recognition adversely affects Muslim women, rendering them a precariat position in society after the passing of their spouse (Amien, 2010). This paper draws on the findings from a qualitative study which explored experiences of inheritance in Muslim families, drawing upon case law, archival research and in-depth interviews with six Muslim widows in Cape Town. A fundamental gap within popular, political and academic discourses is an account of the lived experiences of Muslim women in South Africa and globally. The perspectives of Muslim women with regards to inheritance practices provides a unique lens to which we are better able to understand their lived experiences, how inheritance patterns are tied to gendered family practices and the navigation of Muslim communities in a legal pluralist society. In discussing the research findings, the paper focuses on women's experience of and attitudes towards inheritance in middle class Muslim families, interpreting how these experiences relate to the governing principles of equality and diversity in the South African Constitution.

Drawing on transformative justice and embedded agency as theoretical orientations, this paper finds that fairness and reciprocity serve as guiding principles of inheritance practices in middle class Muslim families around Cape Town. This is evidenced by two prominent practices of inheritance, namely gendered inheritance conditionalities and gifting while alive. It is argued that, to a large extent, on the micro level, experiences of inheritance practices for Muslim women are aligned with Constitutional principles of equality and diversity. However, these patterns of inheritance occur in a context of gendered family practices. Challenges therefore arise from the informality of inheritance practices among middle class Muslim families, characteristically occurring in the private sphere. In instances where fairness and reciprocity are not given primacy as guiding principles of inheritance practices, women tend to experience downward social mobility. Weak legal protection for Muslim widows during instances of discriminatory inheritances practices is resultant of the lack of a transformative mandate in the public sphere.

This paper contributes to the growing body of literature regarding Muslim family practices in South Africa, and empirically serves to highlight Muslim widows' experiences, expectations and challenges of inheritance in contemporary South Africa. Key to the contributions is an account of intersecting forces among institutional systems, social systems and family relations. Although mentioned in existing literature, the extent to which gendered inheritance conditionalities is practiced has been largely underestimated, therefore lacking appropriate academic and political acknowledgment. Furthermore, although the religious responsibility of Muslim men to "take care of" Muslim women through inheritance shares is widely known, little empirical evidence exists as to how this is taking place. This paper provides empirical and theoretical contributions in these regards. By investigating inheritance patterns in Muslim families, from the perspective of widows, the South African context is inserted into the limited conversations of inheritance practices globally. What is noteworthy is that previous studies on inheritance have neglected to pay specific attention to the gendered and religious nature of such practices. Most importantly this empirical investigation contributes to scarce social research focusing on experiences, opinions and perspectives of Muslim women in South Africa. It is anticipated that this research may be a contributing voice to the transformation of legal policy in South Africa, so that it may become more relevant to the lives of those whom it is meant to serve.

2. Regulation of personal lives in South African Muslim communities

The first Muslims in South Africa were brought to the Cape in the seventeenth century from the Malayan Archipelagos when the Western Cape and East Indies were under Dutch military control (Jones-Pauly & Tuqan, 2011:301). Execution of racial and colonial implications on Muslim communities was accelerated with the introduction of the formal apartheid regime in 1948. In the democratic South Africa, Omar (2004:2) locates the majority of the South African Muslim community in the Western Cape Province. This religious group is "divided along lines of race, class, gender, ethnicity, language and beliefs, and it is highly simplistic to collapse them into a monolith on the basis of their being Muslim" (Vahed & Jeppe, 2005:279). Amien (2013:359) indicates that most Muslim communities are still located in historically disadvantaged contexts curated from colonisation and apartheid. The colonial legacy observable in the South African population in the clear power relations, the distribution of wealth and the status of privilege which exist along racial lines. The experiences of Muslim women

provide an instance whereby we can witness the shortcomings of the *Constitution* (1996) in its attempt to redress past injustices (Amien, 2006).

Without the constitutionalisation of equal rights and of recognition afforded to Muslim marriages, individual parties continued to engage legislation on a case to case basis. Moosa (1998:202), however, argued that the failure to constitutionalise the right to recognize Muslim Personal Law (MPL) has left women in a disadvantageous position where there would be a continuation of MPL practised privately and independently from the law. However, Moosa (1998:203) rightfully points out the limitations accompanying this approach:

[N]on-recognition of MPL would enable a few privileged Muslim women who are educated and informed to theoretically exercise choice between MPL and South African law in regulating their personal affairs. However, for the clear majority of Muslim women there is no such choice.

Muslim women in Cape Town have played critical roles in the public spheres across the varying socio-political eras. Dangor (2001: 113), however, brings to the foreground the intra-personal contestations among Muslims regarding gender equality. The presence of conflict and contradiction between understandings of Islam and the daily practices of Muslims in South Africa is supported by Hoel, Kagee and Shaikh's (2011) empirical enquiry into the lived realities of Muslim women. It is argued that even though traditional Islamic gendered roles still inform women's understandings of their rights and societal position, their lived realities and relationships do not necessarily mirror these "prescribed" notions of being. As Muslim women experience, challenge and construct the fluctuations between gender neutral practices and traditional religious understandings, the cultural, social, political and economic landscapes influence and interact alongside such shifts in perception and lived gender realities. These transformations occur in a context which is both critically aware of the presence of oppressive systems but at the same time complicit in the maintenance thereof. This context in which Muslim women strategically navigate the social, religious and legal spheres of their lives brings forward the importance of investigating the impact of inheritance practices as a crucial element of their experience of constitutional regulation.

Foregrounding the importance of inheritance practices as a lens in which to understand structural forces, family practices and caring networks, Finch, Mason, Hayes, Masson and Wallis (1996), Izuhara (2008) and Finch and Mason (2013) indicated the need for further investigation into patterns of succession planning, of which inheritance is an element. In England, Finch et al. (1996) highlighted how socio-economic changes have shifted the importance of social

science research on inheritance. Transferring this to the South African setting, the shift towards neo-liberal economics in the later 1900s increased individual property ownership and wealth accumulation. However, this was to a large extent influenced by the racial ideology of the ruling white minority. A further expansion has been witnessed in the democratic era as there is an enhanced opportunity for people of colour to individually own substantial property through the removal of race restrictions. Although not immediate, the difference in the racial nature of property ownership opens legal means for people of colour to become property owners.

With a lack of research regarding the Muslim population in Cape Town post 1994, the rise in upward social mobility of the oldest Muslim constituency is under documented. Under apartheid, Muslims were denied citizenship and property ownership, based on the apartheid classification into a native Asian “subgroup” such as Coloured, Arab, Malay and Mohammedan subjects: Muslims were understood as distinctive. The apartheid regime was able to enforce “racial demarcation of urban residential areas” according to “white”, “coloured” and “Indian” areas, while the “black” population was ushered to the outskirts of the city (Motala, 2013: 74). Motala (2013: 108) described the regime’s success in relation to the Cape Muslim population as “what was once a racially and socio-economically diverse and united community, was now divided into separate ethnic and socio-economic units”. Most Muslim families post-apartheid still live in areas classified as ‘non-white’ during apartheid. However, a shift in recent years has been witnessed as more Muslims move into formerly “white” areas (Motala, 2013:90). This aspect of democracy constitutes an adjustment to the social significance of inheritance, as the changes in patterns of inheritance cannot be taken for granted. Born out of the context of colonial conquest, the changing patterns of regulation of personal lives for South African Muslim communities render this investigation into patterns of inheritance practices significant, not only constitutionally but also in terms of increased wealth and access to property.

3. Understanding transformative justice through embedded agency

This paper brings into conversation transformative justice and embedded agency as a novel theoretical orientation. I forward Evans’ (2016) conceptualization of transformative justice. This approach towards addressing injustices within a society is more fitting as we begin to see the need for deep seated redress in order to begin to dismantle decades of marginalization. Transformative justice’s mandate in this instance is understood as the transformation of socio-economic and structural violence. Critical to this is the

importance of processes of transformative justice not just being a means to an end but also assigning moral value to them. This conceptualization of justice broadens the focus of mechanisms in which we might address human rights violations in post-conflict societies in order to promote a holistic realization of justice (Evans, 2016:5). Focusing on a holistic realization of justice, Evans underscores the need to incorporate economic, social and cultural rights by conceptualizing the agenda of transformative justice as “focusing upon socio-economic structures, the ways in which inequalities may produce structural violence and a focus upon how this structural violence may effectively be addressed”.

Mamdani (2017:373) highlights the criticality of both the political history of countries and the social history of people when wanting to realize group rights (which in its own right is transformative as it moves away from an individualistic focus that is imbedded in international criminal justice towards an understanding of rights as embedded in communal relations). Political changes within democratic South Africa had become an international human rights project (Mutua, 1997:64). Mamdani (2017:363) critiques this by illustrating how a shift towards a human rights paradigm was contextually an attempt to replace a discourse of “power” with a discourse of “rights”, thereby replacing the discourse which led to action from “revolution” with “reform”. Mamdani substantiates this claim by stating, “for the fact is that apartheid can be dismantled, and the agenda for human rights realized in South Africa, without a transfer of power from the minority to the majority” (2017:363).

In effect, Mamdani (2017:374) expands our conceptualization of transformative justice by stating, “the fact is that the question of rights and the rule of law needs to be approached in the same manner as that of nationalism and democracy – that is contextually”. Although the *Constitution* (1996) offers institutional protection for a plethora of human rights, it struggles to bring about the agenda of transformative justice because of this heavy reliance on a human rights discourse. This aided in the solidification of social injustices in contemporary South Africa and has been charged with perhaps enhancing inequality as these rights are still to be contextually operationalized. However, we can see the possibilities of realizing Mamdani’s (2017:374) call for contextualizing rights and the rule of law within the South African judicial system through cases such as *Hassam v Jacobs NO and Others* (1990) and *Daniels v Campbell NO and Others* (2004). Here the Constitutional Court can be seen as a transformative justice mechanism in so far as it ‘stretched’ its judicial reach and enforced the contextual relevancy of rights which were lacking in applicability to the lived realities of the society the Constitution is meant to serve.

I am bringing the perspective of transformative justice into conversation with embedded agency as it addresses the gap identified by Mamdani (2017). The ease of collaboration between transformative justice and embedded agency, I argue, can be found in the critique of individualistic understandings of human rights frameworks in favour of communal understandings of rights and responsibilities as proposed by Mamdani (2017:373). What is similar between Korteweg (2008) and Mamdani (2017) is that both authors identify the harm of an individualistic understanding of the agent and their corresponding rights as rooted in notions of liberty and freedom, which seek to conceptually remove a person from their context. Consequently, debates regarding agency and the realisation of rights is severely narrowed by this decontextualization, and this affects the quality of information that is informing policy (Korteweg, 2008:448). As stated above, Mamdani (2017: 363) would argue this ultimately manifests in the solidification of social hierarchies rooted in the inability to account for the individual contextually. Similarly, Korteweg (2008:435) argues this decontextualized understanding of agency leads to discussions of Muslim women's agency being reduced to resistance against gendered religious practices and the homogenisation of the Muslim community.

In response to this dominant discourse, Korteweg (2008:434) proposes an understanding of Muslim women's agency as "embedded in intersecting social forces of domination and subordination". Therefore, instead of agency as either "oppressed" or "resistant", Muslim women are understood as both religious and agentic, embedded in religious, cultural, social, economic and ethnic contexts. Agency in this way does not exhibit an explicit aim, but is motivated towards shaping the individual's life. Embedded agency elicits richer understandings about how the influence of forms of domination and subordination construct the subjectivity enabling the "capacity to act" (Korteweg: 2008, 137). The revolutionary nature of embedded agency is therefore proposed as shifting traditional understandings from agency stifled through social forces, to agency as embedded within these social forces. Ultimately, detaching the "capacity to act" from subjectivity as "free will" or "free choice".

The criticality of embedded agency as a theoretical framework in conjunction with transformative justice is therefore similarly grounded contextually as one can only interpret Muslim widows' subjective experiences and corresponding agency as shaped by contestations in South Africa and globally, and on a culturally, social and political level. In this way the intersecting forces of family, Islam, and colonisation, apartheid or democracy informs the agential experience of Muslim women. Embedded agency as a theoretical orientation expands our interpretations of the experience of inherence for Muslim women because "conceptualising Muslim women's agency as embedded enables an analysis that does not predicate women's capacity to act on liberal freedom, but rather

carefully situates agency in the context which informs it” (Korteweg, 2008:450). Key to the contributions made through this paper is filling in the gaps between the history of the regulation of personal lives in South African Muslim communities, transformative justice and embedded agency. What is significant here is a nuanced understanding of inheritance in relation to the Constitution and in relation to increased wealth and access to property, and what this means for Muslim women’s agency.

4. Methodology

This paper discusses the findings of a qualitative study that aimed to understand women’s experience of inheritance in South African Muslim families. A qualitative case study methodology was conducted, and the triangulation of data was analysed through an intersectional multi-level approach, performed through the theoretical orientation of transformative justice and embedded agency. Three sets of data included semi-structured in-depth interviews with six Muslim widows on multiple occasions, archival documentary data in the form of wills from participants’ wider family and documentary data in the form of eight legal cases regarding inheritance disputes among Muslim families.

The sample was selected purposely. Parameters included a woman who identified religiously as Muslim, and during her marriage her husband had passed away. The study did not focus solely on inheritance relating to their late husbands. Types of marriages were not specified as a sample criterion; they were taken into account during the analysis. Due to sensitivity, the sample parameter stipulated a minimum of two years since the passing of spouses. The sample constituted lower-middle to middle class participants, thus ensuring data regarding inheritance would be substantial, as the probability of having a significant estate would be higher than for a lower-class sample. Sample selection entailed long periods of socialising in middle-class residential areas with a high population density of Muslim families. This allowed for the snowball technique to progress. The sample was thereafter based on personal, familial or marital property ownership in middle-class residential areas. Table 1 outlines the sample characteristics. Over a period of nine months I met with the participants on two to three occasions each. The first interviews focused on the participant’s life story, mapping their wider family relations. Subsequent interviews drew on information from the preliminary interview, focusing on significant events or experiences in relation to inheritance.

Table 1: Characteristics of participants

Pseudonym	Age	Years married	Years widowed	Age at Muslim marriage to deceased	Age at civil law marriage to deceased	Deceased spouse testate/intestate?	If testate: stipulation of islamic inheritance laws?	No. of children (No. of children of deceased)	Socio-economic position
Sunshine	60	36	5	19	21 (Antenuptial non-accrual)	Intestate	-	5 (5)	Upper-middle
Zulpha	50	24	7	19	25	Intestate	-	4 (2) *	Lower-middle
Anna	80	52	5	23	28 (in community of property)	Intestate	-	2 (1) **	Lower-middle
Maryam	40	5	4***	31	-	Intestate	-	4****	Middle
Didi	48	26	2	20	-	Testate	Yes	3 (3)	Middle
Fahiema	42	1*****	2	38*****	-	Intestate	-	3	Middle

* Zulpha's two daughters (eldest and youngest children) are adopted.

** Anna's eldest son was born before her marriage and is not her late husband's biological son.

*** Maryam is remarried.

**** Maryam's two eldest children were born before her marriage and are not her late husband's biological children.

***** Fahiema was previously married by Civil Law and Islamic Rights for twenty-three years and had got a divorce prior to the marriage in which she was widowed.

***** Fahiema entered a polygamous marriage whereby she was the second wife.

***** Fahiema's three children were fathered by her first husband. However, her eldest son was born out of wedlock.

In addition to religious beliefs and experience of being widowed, several other unifying factors existed across the sample. All participants had more than one child. Participants were born and raised in the wider Cape area, and older generations in their family resided in Bo-Kaap and experienced numerous forced removals during apartheid. Participants worked to varying degrees in the formal sector and experienced periods of being stay at home mothers. None of the participants had formal education further than matric. All six participants were married according to Muslim rites, while only three participants engaged in a civil marriage as well. Five of the participants were in, and had only been in, monogamous marriages, while one participant, Fahiema, was widowed from a polygamous marriage. Two of the participants had children out of wed lock, and two participants entered their marriage with children from a previous marriage. Participants had all received a form of an inheritance share while the giver was still alive, motivated by a variety of reasons. In the wider network of their families, there had been some form of experience whereby inheritance shares had been accompanied with conditions for the recipient. Conditions were often gender related as recipients were men while conditionalities were stipulated in relation to women. A strong sense of religious conformity was perceived to be upheld during inheritance practices by each participant's family.

The second data source was archived wills as documentary data. Drawing from information gathering through interview, archived wills were purposively selected based on familial relation to the participant. Wills allow researchers "to explore how people might conceptualise the claims of different individuals upon them, in the context of their own family circumstances and in light of the public expectations about such claims" (Finch et al., 1996:7). Specific family members from the participant's birth or marital family were collaboratively identified as having significant influence on the participant's experiences of inheritance, being key for the wealth accumulation of the family, leaving an estate and, through direct or indirect inheritance shares, impacting the participant. Seven wills were sampled and ascertained at the Western Cape Archives and Records Services.

Perspectives and responses of the state towards experiences of inheritance for Muslim women were operationalised through an analysis of legal cases. Case law is understood as a vehicle of legality in this instance and a direct mechanism for the state to actualize democratic principles. Sample parameters included legal cases involving Muslim family inheritance disputes. Cases were selected through a review of legal, sociological and political literature. The eight cases selected are as followed: *Oeslodien Estate v Estate Mustapha and Others* (1908), *Ismail v Ismail and Others*, (1983) *Ryland v Edros* (1997), *Amod v Multilateral Motor Vehicle Accidents Fund* (1998), *Daniels v Campbell and*

Others (2004), *Hassam v Jacobs NO and Others* (2009), *Faro v Bingham NO and Others* (2013) and *Moosa NO and Others v Harnaker and Others* (2017).

The analysis was performed with the theoretical guidance of transformative justice and embedded agency. Drawing from Winker and Degele (2011), data analysis was informed by an intersectional multi-level analysis. Analysis and data collection occurred simultaneously, and reoccurring practices and themes were categorised at the macro, meso and micro level. Categories were premised on differentiation between institutions, symbols and agency and operationalised through instances of social practice. Initial categories identified through case law informed key areas of inquiry. For example, by identifying moments of inheritance practices, differentiation was illuminated through categorisations such as “gifted while alive” and “conditional”. Understanding these actions on a deeper level, sub-categorisations were identified as “gender specific”, “religiously premised” or “state influence”. The analysis was negotiated as the platform where all three data sets converged through triangulation.

Participants were sufficiently informed about the research and research aims, aided by a participant information sheet. Participants initially filled in a consent form; however, consent was continuously negotiated at each point of contact. It was made clear to participants that their identity would be anonymised. Interestingly, participants who opted to choose their own pseudonym requested non-traditionally Muslim names. This is significant as a distinctive feature of the Muslim community in Cape Town is the continuity of Arabic names (Motala, 2013:9). The choice of more western names as a pseudonym indicates the participants’ active engagement in anonymising their identity while voicing their experiences, opinions and perspectives. Any information which may be traceable to the participant was redacted.

5. Inheritance and succession law

Normative ideological and practical understandings of intergenerational relationships is increasingly questioned as socioeconomic and demographic changes enforce variations within and between generational relations. Key aspects of the “micro-level generational contract” includes exchanges of goods and services across generations in families (Izuhara, 2008:1). Reciprocity has been argued as being a noteworthy characteristic of the generational contract which serves as a regulator for flows of support and the respective rights and responsibilities involved. However, Izuhara (2008) argues a more complex interpretation of regulation of support provision in the generational contract, as reciprocity alone cannot capture nuanced interpersonal relations. Through a

macro orientated contextualisation, the role of the state as a facilitator of family behaviour is forwarded as creating and maintaining behavioural boundaries. Izuhara (2008:2) argues that the degree one may exercise agency on interpersonal levels is significantly influenced by society on the macro level.

Inheritance in South Africa is governed by succession law which comprises seven Acts: *Wills Act, No.7 of 1953* (1953), *Intestate Succession Act, No. 81 of 1987* (1987), *Estate Duty Act, No. 45 of 1955* (1955), *Administration of Estates Act, No. 66 of 1965* (1965), *Administration of Estates Laws Interim Rationalisation Act, No. 20 of 2001* (2001), *Maintenance of Surviving Spouses Act, No. 27 of 1990* (1990), *Reform of Customary Law of Succession and Regulation of Related Matters Act, No. 11 of 2009* (2009) and the *Trust Property Control Act, No. 57 of 1988* (1988). Through judicial intervention, South Africa witnessed the “extension, limitation or adaptation” of such laws (Hofmeyr, 2014:1). *Wills Act, No.7 of 1953* (1953) and *Intestate Succession Act, No. 81 of 1987* (1987) are of most significance in this instance. Inheritance is understood as practiced either by freedom of testation, or alternatively by the devolution of an estate through the *Intestate Succession Act, No. 81 of 1987* (1987).

Islamic laws of inheritance were born out of a cultural context in which these laws are considered revolutionary. Islam allowed for the insertion of a fixed shares system whereby blood relatives and spouses would inherit, and at the same time allowing continuity of existing customs by permitting bequests of one third (Jouirou, 2017:20). The revolutionary nature of such is the allocation of shares for daughters and sisters, brought about through the women in Islam. However, these shares were notably limited. This transformation was soon politized as agnates challenged a gender sensitive Islamic inheritance framework. Consequently, “a highly complex mathematical system for calculating shares based on these basic rules evolved” (Jones-Pauly & Tuqan, 2011:401). Power which is maintained through agnatic interpretations of inheritance and customary practices preserves patriarchal political rewards. The irresponsibility of de-historicising a woman’s disparate inheritance share allows for rigid patriarchal interpretations of Islamic fundamentals. In this way we understand that although there is a lesser inheritance share, the contextualisation of Qur’anic texts in conjunction with fundamentals of Islam presents the intention to eliminate distribution disparity (Jouirou, 2017:23). However, perpetuation of discrimination is maintained by ideological interpretations. Furthermore, the misused privilege of interpretation falls short in recognising moments where the Qur’an refers to wealth distribution rules as responses to specific questions in a specific socio-historical context (Jouirou, 2017). Therefore, these provisions reflect the intention to be responsive towards human and social elements.

As early as 1908, inheritance in South African Muslim families has been contested in secular courts (*Oeslodien Estate v Estate Mustapha and Others*, 1908). Persisting non-recognition of Muslim marriages, ideologically rooted in Christian monogamous values and racial discrimination, endured from colonialism into apartheid in the 1980s (*Ismail v Ismail and Others*, 1983). Democratic constitutional values present themselves in *Ryland v Edros* (1997) for recognition of the contractual obligations of Muslim marriage contracts, furthering the protection of Muslim wives post-divorce. Judicial activism is further witnessed throughout the democratic era in cases such as *Amod v Multilateral Motor Vehicle Accidents Fund* (1998), *Daniels v Campbell and Others* (2004), *Hassam v Jacobs NO and Others* (2009), *Faro v Bingham NO and Others* (2013) and *Moosa NO and Others v Harnaker and Others* (2017). These cases forced the execution of Constitutional values in relation to Acts such as *Intestate Succession Act, No. 81 of 1987* (1987) and the *Maintenance of Surviving Spouses Act, No. 27 of 1990* (1990) (Amien, 2019:115-119). These bring to light the link between transformative justice and the embedded realities of inheritance for Muslim women. Encouraging the institutionalization of economic, social and cultural rights, Arbour (2007:24) calls for the evaluation and revision of key legislation in ensuring state accountability, which would address Evans' (2016) transformative concern of structural violence.

At the intersection of legal systems, Jones-Pauly and Tuqan encourage the investigation of the manner in which Muslim families transverse these incompatibilities, and state, “[o]ne of the most serious problems which non-recognition of Muslim marriages imposes on Muslims relates to inheritance” (2011:388). Responding to shifting socio-political landscapes, South African Muslim families have relied on the privileging of testation and the practice of giving gifts while one is alive (*inter vivos*). Jones-Pauly and Tuqan (2011:389) state that Muslims in Cape Town rely mainly on religious leaders when drafting wills and testaments, while Muslims in Durban rely on community lawyers. They further highlight the frequency of the use of a usufruct in order to equalize shares between sons and daughters. Additionally, South African Muslim families equalise shares through the practice of gifting while alive (*hiba*). The myriad of practices undertaken by Muslims when approaching inheritance reflects the multitude of perceptions regarding the intersection between Islam, South Africa and inheritance. Muslim communities’ values are aligned with Jones-Pauly and Tuqan’s (2011:393) argument that “methods of removing gender discrimination and equalizing the inheritance shares of daughters are not regarded as an evasion of traditional Islamic rules”. This notion is further supported by Dangor (2001:115), who found that 92% of their sample of South African Muslim women did not regard inheritance laws as discriminatory; they highlighted the differentiated nature in which one gains access to inheritance shares as their justification.

6. Findings

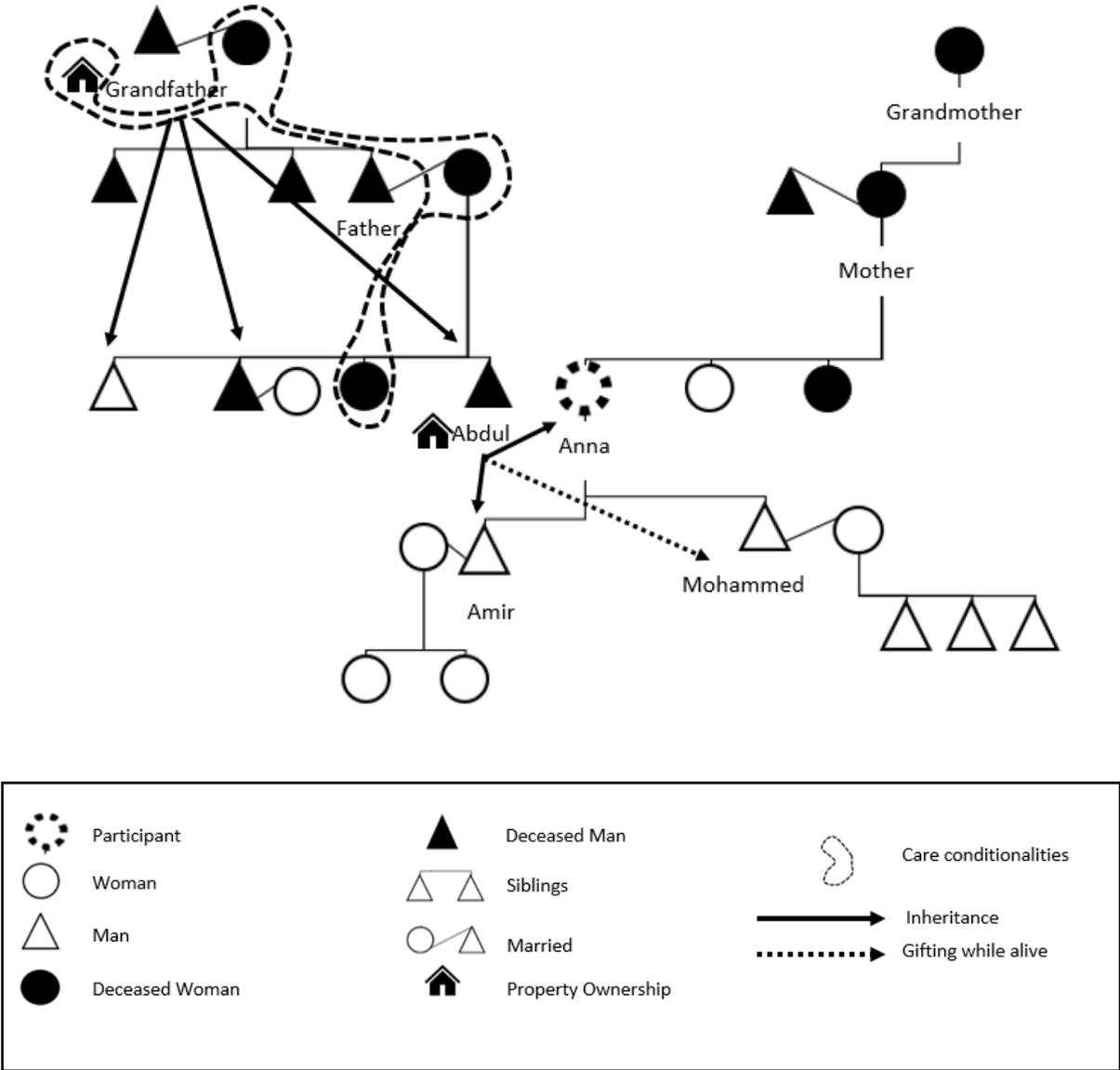
The following sections draw on the research findings to discuss women's experience of and attitudes towards inheritance in middle class Muslim families, interpreting how these experiences relate to the governing of equality and diversity. In discussing the research findings, fairness and reciprocity serve as guiding principles of inheritance practices in middle class Muslim families around Cape Town. This is evidenced by two prominent practices of inheritance, namely gendered conditionalities of inheritance shares, and secondly the practice of gifting while alive. These two prominent practices of inheritance emerged from the data as key themes due to their prominence as a social practice throughout all data sets. Focusing on practice as an empirical point of entry, differentiation within inheritance as a social practice is identified through the way agents delineate themselves within their embedded context. In this way, while agents are constructing social identities, maintaining processes of symbolic representations or challenging social structures, patterns and themes are identified in these social practices. Prominent within the data were patterns of gifting while alive, as well as conditionalities assigned to inheritance shares, and, through deeper analysis of differentiations between inheritance conditionalities, gender emerged as a key theme. Findings indicate that to a large extent, on the micro level, the experiences of inheritance practices for Muslim women are in fact aligned with the principle of equality in the *Constitution* (1996). However, these patterns of inheritance do occur in a context of gendered family practices. It is therefore argued that the challenge arises from the informality of inheritance practices among middle class Muslim families in Cape Town, characteristically occurring in the private sphere. In instances where fairness and reciprocity are not given primacy as guiding principles of inheritance practices, women tend to experience downward social mobility. Weak legal protection for Muslim widows during instances of discriminatory inheritances practices is resultant of the lack of a transformative mandate in the public sphere.

6.1 Gendered inheritance conditionalities

I explore the case of Anna (refer to figure 1) in depth to establish a more layered and complex construction of the experience of gendered inheritance conditionalities as a prominent inheritance practice within middle class Muslim families in Cape Town. Anna's life story explores the colonial, apartheid and democratic eras, allowing for a deeper understanding of intersections between macro and micro forces and the influence this has on inheritance practices. As outlined in Table 1, Anna shares similar characteristics with the rest of the

sample. The practice of assigning gendered conditionalities to inheritance shares highlights the links between understandings of fairness and intergenerational reciprocity as support and responsibility regulators. Although religiously conceptualised, there is a significant gap within the literature detailing the actual practice of how women are “taken care of” through disparate inheritance shares.

Figure 1: Anna’s family tree



Understanding Anna’s experience of inheritance as embedded in her life story necessitates a broader understanding of her family. Anna was born in 1939 and was raised by her mother and grandmother, both of whom were live-in domestic workers, experiencing socio-economic precarity. In her early twenties Anna unexpectedly fell pregnant and gave birth to her first son Mohammed. At the age of twenty-eight Anna married Abdul under Muslim rites and moved into Abul’s family property. The property was owned by Abul’s grandfather, who came

from India and owned a business in the same area. Under the apartheid era the area where Abdul's grandfather owned property and operated out of was classified under the *Group Areas Act, No. 41 of 1950* (1950) as a coloured area. Anna gave birth to her second son Amir, who is Abdul's first son. The shifts in the political landscape and her gender become central in Anna's experience of inheritance.

In this context the state served as a primary force of socio-economic discrimination, resisting a supportive framework in which to govern inheritance patterns on the intergenerational level. In 1966 Abdul's grandfather died testate and stipulated in his will that he excluded his three biological sons, in favour of his wife and three grandsons born of his one son, Abduls' father,

Give and bequeath the whole of my estate and effects to my wife on subject to the following conditions: That the whole of my estate shall after the death of my aforesaid wife, devolve upon my three grandchildren, the children of my son X in equal shares.

Forty days after the passing of Abdul's grandfather, his grandmother passed too, leaving Abdul and his two brothers the heirs of their grandfather's estate. Izuhara (2008:24) argues that "changing families and the development of public policy play a significant part in changing the patterns of intergenerational reciprocity". Through this lens we understand the choice of testation as intergenerational reciprocity because Anna recalls her husband and brother-in-law's devotion to the family business owned by the grandfather. However, in line with Izuhara's recognition of structural forces as regulators of intergenerational wealth transfer, archival research suggests the political ideology of the time influenced the grandfather's choice of testation. In accordance with the *Group Areas Act, No. 41 of 1950* (1950), Abdul's grandfather was in defiance of the state in that he was part of the 'Indian' racial group remaining in his house which was consequently classified as a coloured area only. This defiance subsequently became noticeable to the state on his death,

An account was lodged in 1966 but the estate was not finalised as the Master raised certain queries and the question of transfer was a problem in that members of the Indian Group were involved, the property being in a Coloured Group area.

Interference of the institutional racial discrimination threatened the socio-economic position of Anna's marital family. It is proposed that the grandfather bestowed the property onto his grandchildren not only in accordance with intergenerational reciprocity, but also as an attempt to avoid the dispossession of

the family property. Property dispossession and relocation emerges as a prominent feature in all participants' family networks.

In 1990 the institutionalisation of discrimination emerged again. Evolving from a tone of racial discrimination towards marginalisation based on cultural difference, Anna and her husband's marriage was rendered illegitimate. Abdul and Anna decided to contribute together towards buying the property out of the estate from the brothers. Anna recalled the obstacles her and her husband faced,

At that time, I was only married by Muslim rites, and he (Abdul) said to me that the lawyers said 'well you are only married by Muslim rites, but now if you are going to buy the houses you must get married by civil law', and I went there and we got married.

As a consequence of the non-recognition of Muslim marriages, the nature of Anna and Abdul's relationship was legally transformed. Anna's access to justice in this instance as a spouse of the heir to the grandfather's property was barred; only through institutional conformity could she enjoy her full rights as a wife. Entering a civil marriage for practical and legal purposes is demonstrated in each case of civil marriages within the sample.

Wealth accumulation in Muslim families has been met with structural violence motivated by racial and cultural discrimination. Although the intersection of race, religion and class marginalization is experienced by most, this marginalization is compounded for Muslim women on the grounds of gender. This was evidenced from the beginning of Anna's life story through her mother and grandmother's position in society. Although Anna improved her class status she still experienced lack of access to justice through deprivation of her social, cultural and economic rights.

Enmeshed among stratification of wealth accumulation through institutional mechanisms are patterns of practices at an inter-personal level. Highlighted by Jones-Pauly and Tuqan (2011), intergenerational wealth transfers at the micro level do not solely conform to ideological perceptions of Islamic inheritance laws, supporting Izuhara's (2008) proposition of the divorce between perception and practice regarding intergenerational reciprocity. By practicing his right of testation, Abdul's grandfather ensured the maintenance of care for women in his family by introducing conditionalities of inheritance shares,

That my aforesaid grand-children shall provide my aforesaid wife, and their mother, with residential quarters, food & clothing during their lifetime and provide their sister with living quarters whilst unmarried.

This gendered conditionality protecting Muslim women's socio-economic position is significant because it departs from the decision to skip a male generation in his family; here he incorporates all generations of women. This indicates reciprocity is an underlying regulator for Abdul's grandfather because women in the family performed reproductive labor, consistent with the productive labor supplied by his grandsons. Although the grandfather's choice to disinherit his sons defies interpretations of MPL, assurance of his female family counterparts' socio-economic position is in accordance with the "intention of justice and equality in the eternal text" (Jouirou, 2017:23). This gendered family practice emerges in multiple accounts throughout the sample and on a recurring basis between generations of each family within the sample.

However, understanding this practice in the context of a democratic society and the supposed realization of a full rights framework, assurance of one's social and economic rights by proxy of familial relations can be charged with a lack of true security. While men are assured socio-economic rights and protection of their socio-economic position through direct intergenerational wealth transfers, women tend to benefit only indirectly. A demonstrable example of the lack of this gendered family practice is demonstrated in the experience of Fahiema's stepmother. For nineteen years since the passing of Fahiema's father, his second wife, who was married only by Muslim rites, was "protected" through a gendered conditionality of a man's inheritance share. However, conflict has arisen on account of the council urging the family to transfer the property into an heir's name (either Fahiema or her siblings). Unwilling to finance the transfer, the siblings have argued that their stepmother must either pay for the fees herself and transfer the property into her own name, or she must move out. Unable to afford the financing of the property transfer, the stepmother is left in a precariat position of homelessness and "conditional protection" in relation to her extended family.

It becomes clear that, although racially marginalized by the stratification of wealth accumulation through institutional mechanisms, Muslim men are ensured better socio-economic protection through both the legacy of systemic violence and agnatic interpretations of Islamic inheritance laws when compared to Muslim women, especially widows. It can, however, be argued that, at the familial level, Muslim women are afforded better assurance of their socio-economic position through the gendered conditionality of a man's inheritance share based on fairness and reciprocity. However, instances where fairness and reciprocity are not upheld as guiding principles of inheritance, and where the corresponding responsibility of an inheritance share is not fulfilled, women tend to experience downward social mobility. This juncture between traditional interpretations of Islam and realities of Muslim women under South African law, constrains a widow's "capacity to act". It is argued that this stems from

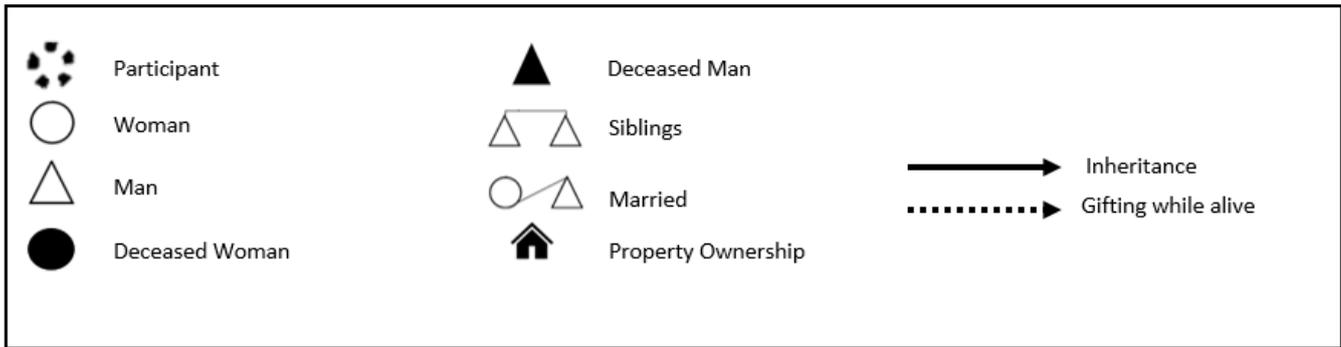
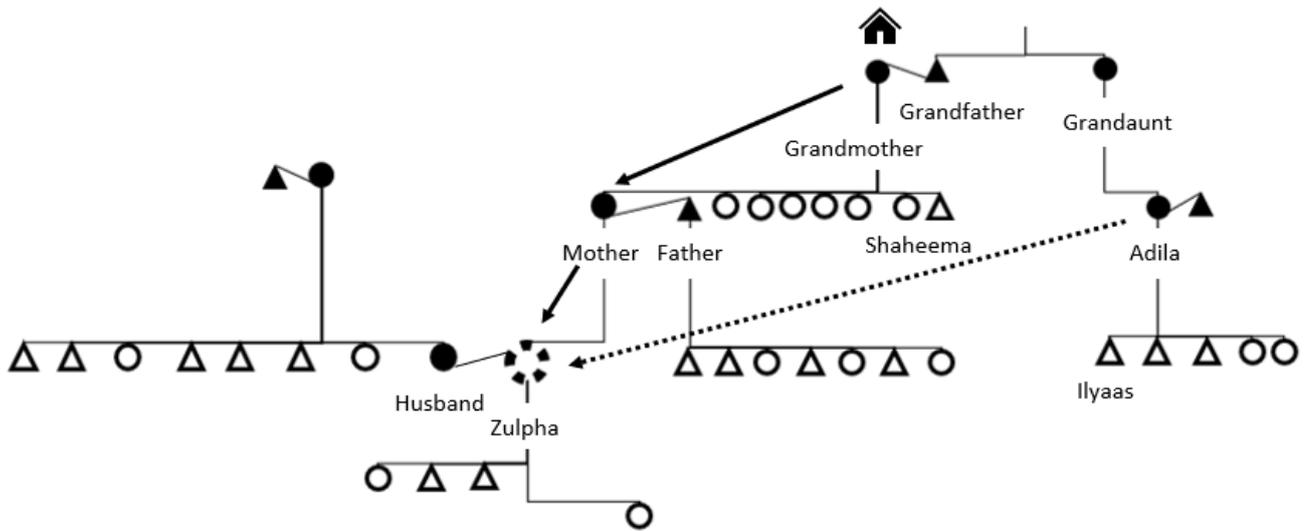
weak legal protection for Muslim widows during instances of discriminatory inheritance practices. These legal weaknesses are embedded in the failings of the state to realize the social, economic and cultural rights of Muslim women.

6.2 Gifting while alive

By contextualising the experience of inheritance for Muslim widows as embedded in wider family relations, it became apparent that Muslim families are relying on the practice of gifting while alive (*inter vivos*) to navigate diverse social institutions to which they are subject. The extent to which this practice occurs has largely been underestimated, and therefore lacks appropriate academic and political acknowledgment. Data indicate three primary motivations for practicing gifting while alive as an inheritance pattern. Reciprocity is a primary motivation for gifting while alive; families conceptualise the transfer of property between generations as “payments for goods or services rendered” after the fact or with future assurance thereof. Secondly, harbouring the tenants of reciprocity and fairness, gifting while alive is used to equalise inheritance shares between daughters and sons. Another key motivation behind equalising shares by gifting while alive is to ensure the fairness of shares for those children born out of wedlock.

The micro-level generational contract among Cape Muslim families must be contextualised within macro orientated social structures and public policy, such as interpretations of Islamic inheritance laws, colonial imposition and key apartheid policies. This highlights the role of the state, through public policy, as a facilitator of Cape Muslim family behaviour when creating and maintaining boundaries. Interplay between the state, and micro-generational contracts is best depicted through the life story of Zulpha, as shown in Figure 2. I rely on Zulpha’s life story initially to introduce the practice of gifting while alive, as her experience best highlights the extended nature of reciprocity beyond the “nuclear family”, depicting the extent to which Muslim women are embedded in their family relations.

Figure 2: Zulpha's family tree



The Bo-Kaap council property which Zulpha inherits came to her family through her grandparents as indentured labourers. Two generations later, the apartheid state played a crucial role in her story by delegitimizing her aunt's right to inherit the property because of her being unmarried. With Zulpha's parents married by civil and Muslim rites, the trajectory of the council property rights flowed to Zulpha. The larger context of marginalisation of Muslim women was then witnessed in the life of Adila, Zulpha's mother's cousin. Facing domestic violence and financial instability, Adila and her children often took refuge in Zulpha's family home at the request of her mother. Decades later, with Zulpha now the head of the house, the democratic council began to apply pressure on Zulpha to buy the property, but her financial position rendered her incapable. Adila, now in her eighties, told her children that her last wish was to pay for the council property on behalf of Zulpha, to secure her family's future. Adila, through her children, gifted the payment of the property,

Just before she [Adila] passed on, it was about two to three weeks before she passed on she made them promise this is her last wish that she wants them as her children to buy the property on behalf of me for

my kids because my mother did a lot for them and that is a token of appreciation.

This act of gifting while alive, perceived of as inheritance by Zulpha, was guided by the principle of reciprocity on behalf of Adila. Each political era significantly influenced flows of inheritance for Zulpha's wider family network. As "payment" for goods and services, the inheritance practice of gifting while alive not only occurred in retrospect; many of the elder generations "gifted while alive" with the intended responsibility for the recipients to provide reciprocal care during the givers' later years of life. Maryam explained this intergenerational transfer of wealth as such,

Say they have three properties they will give them to each of the kids but they will live with one of the kids until they pass on.

Perceptions of gifting while alive as a legitimate form of inheritance practice was further substantiated by Didi when she explained how the gendered nature of Islamic Inheritance Laws began to dictate share portions of gifts *inter vivos*,

Didi: I think they (her husband's parents) gifted all their kids during their living days, so they didn't really have a will.

Researcher: When they sold their house and divided the money up...how did they divide the shares?

Didi: well obviously the daughters get one third

Interpretations of Islam alongside state intervention are continuously witnessed in instances of equalising shares through gifting while alive. When estates open for inheritance, female family members have already been compensated therefore equalising inheritance shares despite sons inheriting twice as much as daughters from the actual estate. When commenting on the familiarity of the practice Didi added, "Shariah is there...and you must just follow through. But there is a kind of loophole...and what applies to me and my family doesn't always apply to others".

Equalizing shares *inter vivos* did not only manifest in relation to gender directly, the practise became prominent in succession planning of parents with children born out of wedlock. The importance of the principle of equality was not only extended to ensure all children inherited in some form but also in some cases where wives came into the marriage with a child from a previous relationship, they too were ensured a fair "inheritance" share *inter vivos*. Grappling with the nuances of the circumstance, Anna explained how, according to Islam, her eldest son from a previous relationship could not technically inherit,

I give to the one I give to the other one, I am like that. But where it comes to inheritance...it is entirely different. Like I said to you, he is not my husband's child so he can't inherit from me and he can't inherit, even though he said to his father "daddy" but he can't inherit from him.

Anna went on to explain how her husband understood the responsibility of maintaining the generational contract and in doing so he navigated Sharia law by means of gifting while alive to ensure the intergenerational transfer of wealth,

...because that is why I say making a will isn't like a sharia law, I can do with my life what I want but I must think of him (her youngest son), because the eldest one (Mohammed) got such a lot from my husband when he was alive.

Anna and her husband depict the importance of fairness as a guiding principle for inheritance practices; they too demonstrate how these patterns of inheritance are often aligned with the principle of equality. A consensus throughout the sample was the interpretation of gifting while alive as necessary while navigating intersecting social institutions. When understanding the necessity of gifting while alive in relation to family cohesion and continuity, Maryam explained,

I have seen it happen many times when somebody passes away and they fight over the money and they fight over the properties and for years nobody speaks to each other. So I think to save that, while you are alive just give it.

However, it is important to keep in mind that patterns of inheritance occur in a context of gendered family practices. The challenge arises here through the character of these practices being predominantly informal and most often occurring in the private sphere. Fahima's experience of inheritance best depicts instances whereby fairness and reciprocity are not given primacy, and in many instance results in downward social mobility. Keeping in mind Fahima's marriage was polygamous, she explained her perception of her husband's succession plan before his passing,

Because he was still living he was entitled to give gifts, so whether or not it was going to be shariah wise I really don't know... But I think while you are alive you are allowed to give gifts.

Further elaborating on the specificities, she later added,

He did tell me that he was going to give me a portion and his other wife a portion and for his children something and he was going to do other little stuff with the money. That was his plan.

When elaborating on her husband's motivation to do such, Fahiemma explained,

Because we were only married eleven months and I was not accepted by his first wife really so I think he knew that there was going to be problems there and I think that is what he wanted to avoid.

Fahiemma's position as the second wife in a polygamous marriage unrecognised by the state and unaccepted by the first wife became more vulnerable when the husband passed away before ensuring the fulfilment of his initial succession plan. Fahiemma received no inheritance share, *inter vivos* or testate,

Researcher: When he passed away did he leave a will?

Fahiemma: No...can you believe it! Somebody of that stature, and somebody who preaches 'will, will, will', and he had no will.

The precarity of her social and economic position as a Muslim widow became evident in this moment. Unaccepted by the first wife, she was unable to turn to the established quasi-judicial Islamic institutions for help. While at the same time, unrecognised by the state she was faced with weak legal protection. Fahiemma was left in a position whereby she did not know the particularities of his estate, nor did she receive anything.

I would have to go and ask his other wife if she had access to that (his estate) or... so I just thought I am not going to. And I think that is the other thing...who do I ask? Is there a line to follow? Is there rules and stuff?

Legal weakness introduced through Fahiemma's experience elicits an understanding of her social, economic and cultural rights that indicate a lack of operationalising the principles of equality and diversity. This experience is reiterated in *Daniels v Campbell and Others* (2004) whereby the husband's oral contract to gift his wife their marital home was barred by the court due to the verbal nature of this contract and its lack of fulfilment in relation to the South African judicial system (Jones-Pauly & Tuqan, 2011:393). As argued in *Daniels v Campbell and Others* (2004), and supported by the data, *inter vivos*

gifts are clearly understood within Cape Town Muslim communities as an implied term of a Muslim marriage contract.

Through an analysis of gifting while alive as a pattern of Muslim family inheritance practices, Izuhara's (2008:2) assertion that the degree to which one may exercise agency on the interpersonal level is significantly influenced by society on the macro level and the varying jurisdictions among society's application in this instance. In experiences of inheritance for Muslim widows in Cape Town, religion, gender and political shifts have to a large extent influenced different agent's "capacity to act". Through this understanding of the micro-level intergenerational contract, connections between housing assets, care provision and inheritance perspectives are conceptualised in context, eliciting a better understanding of the shifting familial boundaries through support.

7. Discussion and conclusion

Bringing the findings into conversation with transformative justice, it is argued that there has been a stratification of rights and the realisation thereof, resulting in weak legal protection for Muslim widows in instances of discriminatory inheritance practices. Existing international discourse regarding family law reform on a state level is relatable here as gender-sensitive reforms do not in fact erode the foundations of religion and family, but merely challenge the tenuous balance of power (Htun & Weldon, 2011:146).

Highlighting the religious and agentic nature of Muslim women, the study foregrounded religious, cultural, social, economic and racial contexts in which a participant's agency is embedded. Experiences of Muslim women highlight how their agency is to a large extent motivated towards proactively and strategically shaping their lives and the lives of female family members. Within the contextual confines of their "capacity to act", the practices of Muslim women indicate certain degrees of power in society; this power is strategically mobilised by participants through inheritance practices in order to proactively influence the balance of power between different family members, in the Muslim community and broader society. By actively participating in informal and formal inheritance practices, Muslim women are agents of change in society as they are negotiating and influencing structural forces through their interpersonal relations on the micro level. Informal inheritance practices can be understood as positive in relation to Muslim women as they are still aligned with Islamic practices, they are beneficial to younger female generations and in effect the female "giver" is held in high esteem. This is, however, not the case for all Muslim women and obtaining a sample through a different recruitment technique or sample criteria may elicit different experiences.

Experiences of inheritance for Muslim widows in contemporary South Africa indicate that civil and political rights are prioritized at the expense of economic, social and cultural rights. Arbour (2007:7) highlights connections between the misconception of social justice and the rights dichotomy by illustrating that in fact civil and political, as well as economic, social and cultural rights have been fully integrated and are of equal standing within international and South African law. There is a lack of holding states and international communities accountable for economic, social and cultural rights, and the judicial enforcement of such rights has been actively resisted as through the intra-group conflict regarding gender sensitive interpretations of MPL among the Cape Muslim community (Arbour, 2007:11).

Keeping in mind the progression of judicial enforcement of such rights and taking note of the ruling in the customary law *Bhe and Others v Khayelitsha Magistrate and Others* (2005), it is witnessed that the Constitutional Court declared “traditional” interpretations of inheritance practices, which discriminated based on gender, as unconstitutional. This argument can be upheld for reinterpretations of Islamic texts in relation to inheritance laws. From their experience, the middle-class Muslim families in Cape Town to a large extent do not perceive the employment of alternative inheritance mechanisms, which serve a more gender sensitive motivation, an “evasion of traditional Islamic rules” (Jones-Pauly & Tuqan, 2011:393). The experiences of this community indicate the potentiality of upholding principles of equality and diversity when exercising the multiple avenues in which inheritance practices may be executed. Cautioning the role which religious interpretations may play in motivating discriminatory practices, a transformative justice mandate calls for a re-evaluation of specific religious interpretations actively resisting “the spirit of egalitarianism” (Jones-Pauly and Tuqan, 2011:410) and for the judicial enforcement thereof. Gender contestations emerge across all cultural and religious domains and are not indigenous to South Africa, furthering the potentiality of addressing inheritance patterns that erode principles of equality and diversity.

On a global scale, Htun and Weldon (2011:146) demonstrate a correlation between a nation’s traditional legal system and the “status of women in family law”, thus urging the judicial system to synchronise the lived experience of inheritance for Muslim widows with the revolutionary nature of the *Constitution* (1996). Family law reform in many countries is met with suspicions of the delegitimization of religious autonomy by the state. Htun and Weldon (2011:165) demonstrate that, for Morocco, Brazil and Spain, family law reform occurred without the suspected threatened religious autonomy, and they conclude,

This raises the question about whether the survival of the family, religion or national identity is really at stake. At issue rather, is the question of who decides how family relations should be structured. Family law reform provokes fierce opposition because it threatens to transfer control from religious authorities to secular bodies and to shift weight in favour of alternative interpretations of religious traditions...Family law reform, like other political conflicts, revolves around the struggle for power.

Bringing into conversation transformative justice and international family law reform literature, the question arises why Muslim family law reform is not reflected in South African jurisprudence to an extent that it is able to translate into the realisation of a full spectrum of rights for Muslim women. This question is situated in a context where data indicates that Muslim families are to a large extent upholding principles which inform South African judicial system.

In a context whereby a Muslim marriage is not afforded the same legal status and protection as civil or customary marriages, literature indicates that a consequence is the deficient recognition and regulation of inheritance practices in Muslim families, which adversely affects Muslim women. Although Muslim women are free to enter civil marriages, the majority of Muslim women enter marriages according to Muslim rites. This paper drew on findings from a qualitative study which explored experiences of inheritance in Muslim families, using case law, archival research and in-depth interviews with six Muslim widows in Cape Town. This study employed an interpretivist qualitative research methodology whereby a case study design was utilized. Guided by the theoretical orientation of both transformative justice and embedded agency, the data converged during the intersectional multi-level analysis. This paper argues that fairness and reciprocity serve as guiding principles of inheritance practices among middle class Muslim families in Cape Town, specifically highlighting two prominent patterns of inheritance practices, namely gendered conditionalities of inheritance shares and gifting while alive. To a large extent, experiences of inheritance for Muslim widows are in fact aligned with the principle of equality. However, patterns of inheritance occur in a context of gendered family practices. The challenge therefore establishes itself as the informality of such practices and the private nature thereof. In instances where fairness and reciprocity are not afforded primacy in the devolution of one's estate, women tend to experience downward social mobility. It is argued that weak legal protection for Muslim widows during instances of discriminatory inheritance practices is resultant of the lack of a transformative mandate in the public sphere. This paper contributes to the growing body of literature regarding

Muslim family practices; importantly the empirical investigation contributes to the scarce social research focusing on the experiences, opinions and perspectives of Muslim women. With regards to inheritance in contemporary South Africa, this paper empirically strengthens scarce understandings of how Muslim men “take care of” their female family members, furthermore highlighting the lack of recognition regarding the frequent practice of gifting while alive. Conceptually, an account of the strategic and proactive agency of Muslim women as agents of change in South Africa is foregrounded. Key to the contributions made to the existing body of knowledge is an account of the intersecting forces among institutional systems, social systems and family relations.

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