

**Yunus Mohamaed National Public Interest Award Acceptance Speech for 'Violent Cistems:
Trans Experiences of Bathroom Spaces'**

By Nigel Timothy Mpemba Patel

Good-evening everyone,

First of all, I just want to thank the Kagiso Trust, Judge Dhaya Pillay in particular, and the Awards Committee for all the work they have put into the Yunus Mohamaed Public Interest Award initiative. Thank you also to Rose and Amandla and all the other people who have done the background work in order to make sure everything runs smoothly tonight.

It is very exciting to have had my first academic publication "Violent Cistems: Trans Experiences of Bathroom Spaces" selected for the National Award. The work is a moment in a journey towards realising full LGBTQIA+ freedom, specifically on the African continent. Originally presented at a conference called Queer in Africa, I want to recognize three queer academics; zethu Matebeni, B Camminga, and Alex Muller. Without their support, I would not be here. It was through their guidance and unapologetic embracing of their queerness that gave me and continues to give many others the platform to also embrace and embody their queerness.

I am also quite excited by the fact that since its publication the article has been cited ten times in other academic publications; nine of which are approving and affirming of the initial work and the article has also been re-published as a chapter in a book. I hope that the Yunus Mohamed Award will help to give the work a wider platform and in doing so allow more people to engage, learn and address the ways which society is largely built on systems that exclude people, often in violent ways, based on their gender, race, sex, sexual orientation, and disability.

With that said before I speak about the work, I think at times when trying to advance rights-based arguments we can get caught up in an academic or legal bubble, and sometimes it's difficult to explain our work, beyond the university or legal sphere, to our friends or our families back at home for example. In an attempt to sort of bridge that gap, while writing the paper I had also been working on a poem that I think illuminates part of the academic

publication in a more accessible and artistic way. The poem is called 'I Rise', based on the Maya Angelou poem it was made into a short film with the Queer Human Rights Media and Advocacy Organisation IRANTI.

I Rise

You may erase me out of history
With your sex equals gender lies,
You may jump over me one more time
But still, I'll transgress, I'll rise.

Does my dress upset you?
Am I beginning to loom?
Too tall, too broad, too hairy
To be in the women's restroom.

Just like my mother,
I have the strength to verbalize,
Just like she who created me,
Black and queer, I'll rise.

Did you want to see me naked?
With your voyeuristic eyes?
Hiding myself in fear,
Weakened and tokenized?

Does my ratchetness offend you?
You think I am trying too hard?
'Cause I dance like I've been blessed
Twerking in your churchyard.

You may misgender me with your words,
You may sex me with your eyes,
You may murder me with your sexuality,
But still, I'll transcend, I'll rise.

Does my body upset you?
Do you want to be baptized?
Looking thirsty for the Garden of Eden
At the meeting of my thighs.

Out of the boxes of a binaries claim
I rise
Up from an invisible pain
I rise
Coming out against law created to strike terror and fear

Into transgression, beautifully and illegally queer

Carrying the legacy of the bodies before me

I am the dream and the hope of a trans Malawian refugee.

I rise.

I rise.

I rise.

Now turning directly to the publication, it is a qualitative study that deals with the experiences of discrimination and violence against transgender people of colour within the bathroom space in a Cape Town context.

The different narratives demonstrate racist, sexist and transphobic modes of violence experienced in relation to the toilet space. In doing so, they show how the problems transgender people face within bathroom spaces are indeed significantly about gender, but cannot be robustly considered through a lens that views the problem as one that it is determined by gender alone.

Thus, the study suggests that activism directed towards the safety of transgender people of colour necessitates a queer decolonization of the toilet space, which has intersectionality at its core.

It is useful just to make sure we are on the same page before going further into the study to give a definition of some of the terms that are used.

- Queer is used as an umbrella term indicative of the diversity within gender and sexuality so operates as a way of promoting association between those who transgress the gender binary and heteronormativity.
- Transgender a term for “people who have moved away from the gender they were assigned at birth, people who cross over the boundaries constructed by their culture to define and contain gender” – Stryker 2009.
- The term cisgender, on the other hand, is indicative of a person who identifies with the gender assigned to them at birth (based on a system where the sex binary is equated to gender).

So, in order to support the overarching argument, the study firstly considers the context of the gendered bathrooms in Cape Town and the importance of bathroom spaces in social justice movements.

A quick history of the sex segregated toilet shows how this is a Western construction. Originally public bathrooms in the West were only available for men. The effect of this was to limit women's movement, confining them away from public spaces and into the private sphere. However, as women began to join the public working sector, anxiety over "women leaving their homes – the appropriate 'separate sphere'" prompted the enactment of sex segregated toilets.

This toilet system that served to cement spatially constructed division between man and woman is still present today. Though, its current manifestation in the West is different to that of the Global South, specifically South Africa. The sex segregated toilet system was imposed on black communities through colonization and apartheid.

In pre-colonial times the indigenous people (who came from different African cultures) 'would dig for their excreta and bury it' (Mbatha et al 2008:4). Issues of sanitation were commonplace and were 'not conceptualized as an important subject matter'. This is particularly due to the fact that the balance between people and nature was managed with traditional learning and belief systems.

It was the arrival of the white settlers in 1652 and the consequent battles, particularly in 1800s that distorted indigenous community's ways of life. A shift away from the previous autonomous system marked the beginning of an organisational scheme whereby sanitation management became a centralized site through which ideological control could be influenced.

Furthermore, the first records of early variations of the European style toilet¹ were in the castle of Good Hope in Cape Town. Made for the soldiers and administrative staff of the Dutch East India Company, it is this point that marks the beginning of racialization through the cistem. Indigenous toilets that required the user to squat were constructed as inferior to the European style toilet. This set up the toilet that came from the Global North as a civilising

¹ Generally understood to be the English water closet toilet which is one with a bowl that is flushed by water.

technology. Toilets that required the user to squat such as pit latrines were branded “primitive’, ‘backwards’ and ‘retrograde’’. Thus, the indigenous people who used squatting toilets were excluded from the confines of femininity that were occupied by white European women who used the ‘respectable’ sex segregated water closet toilet.

So, it follows that during late colonialism and formal apartheid the creation of the racially and sex segregated English water closet toilet is directly connected to the ideology of the exclusion of bodies based on race.



As depicted in the image,² sex segregated toilets in South Africa also used to be racially segregated toilets. Hence, when reflecting on the history of gender discrimination in South Africa it must be considered alongside race and its close connection to class.

Notably, the politicization of the bathroom space by social justice movements is not unique to the trans movement. Feminists and disability rights advocates have also used the bathroom as a space to challenge systems of exclusion.

Following this history, the study then goes on to detail the method of the research, the decision was made to focus on people in Cape Town who live at the intersections of being a person of colour and transgender. This was motivated by the lack of specific studies on

² Fig. 1. William F. Campbell, *The LIFE Images Collection*, Getty Images, accessed September 1, 2017, <http://mashable.com/2015/06/20/apartheid-south-africa-signs/#jGaZ5YC9ikqY>

individuals who live at this intersection. Furthermore, the study focuses on colonization's effect on gender which is unarguably racialized.

The study is founded on an analysis of the toilet space in relation to ten in-depth interviews with transgender people of colour who have had to navigate Cape Town's toilet spaces. In addition to this, the study has also benefitted from the archives of various human rights and specifically transgender activist organization who work with transgender individuals in Cape Town.

I think it's important to touch on limitations, the interviews were limited in that none of the participants identified with homelessness, a pertinent problem for transgender people that increases risk of violence in bathroom spaces. Furthermore, no one identified themselves as living permanently or currently in a Cape Town township. However, some participants did identify as having temporarily and previously lived within a township spaces, not contained to Cape Town.

The final section of the study then covers the results and analysis which splits the issues into three categories which were visual and verbal discrimination, physical discrimination and spatial discrimination.

Nearly all the participants talked about how staring and repeated glances were regular responses to their presence in public bathroom spaces. These reactions are indicative of cissexist visual investigations on the transgender person. Furthermore, it was raised by one of the participant that the occupants of the bathroom did not seem to see themselves as voyeuristic, rather it seemed as if people felt authorized to look, particularly in the bathroom space "because for them [cisgender people,] you have elicited that reaction by not meeting the standards set up on the door". Evident here, is that binary gendered signs on bathroom doors invest visual power upon the cisgender onlooker validating their gaze and so allowing them to confidently stare or actively bar transgender people from using the bathroom of their choice.

In terms of physical discrimination, it was a common theme amongst the interviews where security guards mandated to look out for the safety of individuals, were actually the people

that were the most regularly physically violent towards the transgender participants. Neo's narrative raised the policing by those hired for security of an area.

"It was the evening of my friend's birthday, and we had gone to dinner, I was wearing a suit with a polo neck and I think I looked pretty cute. I think it is important to tell you what I was wearing because people like to gender clothing, you know. We just arrived at this club on Loop Street for the after-party celebrations and I needed to use the restroom. I go to the restroom that society has assigned to me as a woman which is the woman's restroom and I walked in there and another woman was like "this is the ladies bathroom." And as I was entering the bouncer grabbed me and said you cannot go in there, now everyone is looking and it is was an overall humiliation."

Lastly within the group of participants only three explicitly raised how the external space that the toilet was located in as significant factor in shaping their interactions with the toilet space.

Two in particular actively considered the external spaces of the toilets they had interacted with by reflecting on their past experiences with toilets spaces located in informal settlements. Both raised how they knew from stories and the media that these spaces were particularly dangerous and how they did not use these toilets at all because the risks were too high. Notably, toilets provided by the state in informal settlement areas are gender neutral. Despite this they are remain incredibly unsafe, particularly for queer people of colour. Hence, these spaces poignantly show how activism centred on degendering South African bathrooms alone, is insufficient to ensure safety for all transgender people of colour in South Africa.

One of the participants specifically mentioned the case of Zoliswa Nkonyana. This was a case that occurred in a tavern in Khayleitsha where Zoliswa, a black lesbian was murdered, following an argument based on her use of the ladies toilet. Zoliswa who identified as a woman was perceived as being masculine by another woman at the tavern. This woman in court testimony said "she had berated Nkonyana for using the ladies' toilets. She admonished the lesbians, and said they should have gone to the male toilets because they were acting like men." Originating in this openly gender based aggression, this woman then proceeded to "go to the nine men she was with, and tell them that Nkonyana made unwanted sexual advances towards her." In doing this her perceived gender transgression from the binary intersected

with her sexuality that transgresses the heterosexual norm. This resulted in a culmination of visual, verbal, and physical inflicted violence heightened by the informal settlement space.

In summation, the study documents the multi-dimensional considerations raised in the interviews around the violence experienced in Cape Town bathrooms and uses this to reinforce the need for a comparative, relational, historicized, and contextualized understanding of the issues.

A degendering approach devoid of intersectional considerations would be overly simplistic. This is because it would essentially lift the transgender politics currently pertinent to communities in the United Kingdom and United States and apply them uncritically to Africa. Strikingly to do so would be to disregard the South African context that historically necessitates significant considerations on the effects colonization.

The study does not aim to prescribe a solution. Where accessible and safe bathrooms were discussed with the participants each had differing ideas, notably these were not contained to degendering. That being said, whatever solutions that are created to promote inclusion of transgender people of colour they should be intersectional. In other words, a queer and decolonial approach aptly captured in one participant interviews is necessary.

“The toilets can be gender neutral but beyond that you need to create an inclusive space. It is not enough to just say or label your bathroom as gender neutral. Unfounded stereo-types need to be addressed.”

And finally, why is this important?

Well, just last week there was a ground-breaking South ruling in favour of a trans inmate. And in closing I just want to take a little time to consider the importance of this ruling in relation to my study.

On the 23rd of September, the South African Equality Court handed down a judgment in favour of Jade September, an incarcerated transgender woman and sex worker. The Court held that the respondents from the State’s Department of Correctional Services had unfairly discriminated against September by not allowing her to express her gender identity.

September was sentenced to prison for 15 years. Serving part of this sentence in spaces designated for males, September was harassed by prison officials for being transgender and prevented from expressing her gender. She was forced to cut her hair and prohibited from wearing make-up, jewellery and gender-affirming underwear. Prison staff refused to address September as a woman and use she/her pronouns.

Ten months after September's case was heard, Judge Chantal Fortuin ruled in favour of September. The Court declared the prison's operating procedures that prevent transgender inmates from expressing their gender to be unconstitutional. It was ordered that September be allowed to express her gender in prison and be addressed as a woman. The judge also provided an option for September to be transferred to a prison space designated for females.

To help bridge the gap between inclusive policy and its realisation in practice, the Court further ordered that all employees of the Department of Correctional Services undergo mandatory transgender sensitivity training.

I would argue the judgment is a ground-breaking moment in the development of an inclusive legal system that accounts for the spectrum of trans people's lives. Its implications are broad.

The fact the Court allowed the option of September to be transferred to a prison designated for females emphasises South Africa's legal duty to reasonably accommodate gendered difference.

The gendered self is everchanging and a legal remedy that may work for one trans person may not work for another. The flexible approach to gender shown by the court pushes the law and society to progress beyond the idea that gender exists in a fixed binary solely determined by the sex that one is assigned at birth. This ruling emphasises, in a similar fashion to my study, that institutions and individuals, that is all of us in this room, are responsible for expanding space to allow for gender self-identification.