

The legal duty of municipalities to enhance inclusive urbanisation in South Africa: A cultural diversity perspective

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ABSTRACT

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) was founded on the realisation that societies cannot thrive on a sustainable basis without the respect and protection of cultural diversity. This appreciation led the international community to adopt several binding and non-binding instruments to assist countries across the world with protecting and promoting diverse cultures. Although early instruments in this field only implicitly recognised a role for local authorities in their implementation, the recently adopted Sustainable Development Goals expressly provides a role for cities in actively protecting and promoting the tolerance and respect for different cultures in Goal 11.

Promoting and protecting cultural diversity is very important in the South African context mindful of its broad racial, ethnic and religious composition. This need is further heightened by increasing international and provincial migrations to the country's major cities. Given this reality and the legally entrenched powers and developmental mandate of local authorities, South African cities (municipalities in general) grapple on with the challenge of effectively managing cultural issues in their jurisdictions on a daily basis. This study investigates how municipalities in South Africa can utilise their legislative and executive powers to promote inclusive urbanisation from a cultural diversity perspective. Notwithstanding the fact that cultural matters are enumerated as a national and provincial function in part A of Schedules 4 and 5 of the *Constitution of the Republic of South Africa, 1996 (the Constitution)*, municipalities have an implicit role in protecting and promoting cultural diversity. Such a role is legally grounded in the culture-related rights-based duties of municipalities emanating from the Bill of Rights, the constitutional objects of local government, and provision made in national legislation and policies.

The study focuses on two metropolitan municipalities (the cities of Johannesburg and Tshwane) to analyse how their executive and legislative powers have been utilised to give effect to their legal duty to promote and manage cultural diversity within their jurisdictions. The study found that both municipalities do not have overarching by-laws or policies that seek to promote and protect cultural diversity

from a holistic point of view. Based on lessons distilled from international and African regional instruments, this study argues that municipalities in South Africa should design and implement local legislation and policies which protect and promote cultural diversity to realise inclusive urbanisation.

Keywords: cultural diversity, cultural rights, cultural expression, South Africa, local government

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LIST OF ABBREVIATIONS

SDGs	Sustainable Development Goals
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
IDP	Integrated Development Plan
ICH	Convention for the Safeguarding of the Intangible Cultural Heritage
CDC	Convention on the Protection and Promotion of the Diversity of Cultural Expressions
PELJ	Potchefstroom Electronic Law Journal
UCLG	United Cities and Local Governments
GTF	Global Taskforce of Local and Regional Governments
NUA	New Urban Agenda- Habitat III
NHRA	National Heritage Resources Act 25 of 1999
NEMA	National Environmental Management Act 108 of 1998
NDP	National Development Plan 2030
DAC	Department of Arts and Culture
D-MOSS	Durban Metropolitan Open Space System

CHAPTER 1

INTRODUCTION

1.1 Background

No society can flourish without culture and no development can be sustainable without it. Culture holds answers to many of the questions that societies face today. Intangible cultural heritage has a vital role to play in this respect as the living cultural practices, expressions and knowledge systems that provide meaning to communities that explain the world and shape it. The power of intangible cultural heritage is still far too overlooked despite the benefits demonstrated by numerous studies, showing that communities around the world rely on living heritage to tackle a wide range of challenges from food scarcity, environmental change and health to education, conflict prevention and reconciliation.¹

The above extract aptly illustrates why the promotion and preservation of cultural diversity should be a central component of the developmental agenda of all countries. This is also true for South Africa, which has been described as a "rainbow nation" because of its rich cultural diversity in terms of race, religion and ethnicity.² People from these groups are not confined to any geographic areas and constantly migrate to urban areas across the country in search of a better life.³ South Africa's major cities are said to accommodate 63.76% of the interprovincial migration that takes place in the country.⁴

South Africa's cultural diversity is further heightened by the influx of immigrants from different countries. According to the United Nation's 2017 International Migration Report, South Africa's net migration stands at approximately 4 037 a year and foreign migrants make up 7.1% of the country's population.⁵ South Africa has an advanced economy with employment and economic opportunities, consequently

1 UNESCO *Intangible Cultural heritage: Best Safeguarding Practices* 2.

2 Baines 1998 *Mots pluriels* 1. Cultural diversity is defined in Article 4 of the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (Paris, 20 October 2005) as the varied ways in which the cultures of groups and communities are expressed. It is manifested in various ways that cultural heritage of humankind is expressed, augmented and transmitted, also through artistic creations, production, distribution and enjoyment.

3 State of Cities Reporting *The State of South African Cities Report* 4.

4 Statistics South Africa 2018 http://www.statssa.gov.za/?page_id=6283.

5 UN Department of Economic and Social Affairs *United Nations International Migration Report* 2017 26.

becoming an attractive destination for refugees and immigrants from politically unstable and economically challenged countries.⁶ Todes *et al*/maintain that although some groups of the international migrants who come to South Africa move to the rural parts of the country and to mines in remote areas, the bulk of migration appears to be directed towards cities.⁷

Against the above background, it appears that big cities in South Africa are now home to both local and foreign migrants. With migration comes intensified cultural diversity, which can complicate the management of cities for local authorities. It is thus critical for local governments⁸ to create an environment within their jurisdictions that can accommodate differences with the use of their executive and legislative powers. They must promote cultural inclusivity.⁹ Without proper mechanisms to do so, tensions within a community with different value systems can develop into conflicts. Conflicts have the potential to affect the development of communities negatively, increase safety concerns and generally impair sustainable development.¹⁰

These conflict situations are addressed in Goal 11 of the United Nations Sustainable Development Goals (SDGs), which urges cities to, *inter alia*, enhance inclusive and sustainable urbanisation.¹¹ In addition, Goal 11 encourages cities to build capacity that will increase public participation in integrated and sustainable planning and management as well as adopt and implement integrated policy measures towards inclusion.¹² It also calls on cities to reinforce efforts towards protecting and safeguarding the world's cultural and natural heritage.¹³ Apart from the SDGs, South Africa has signed and ratified international instruments that are important for the

6 Landau and Wa kabwe Segatti 2009 *United Nations Development Programme Human Development Reports 4*.

7 Todes *et al* "Contemporary South African Urbanisation Dynamics" 12.

8 The terms "municipalities", "cities" and "local governments" are used interchangeably in this research.

9 UNESCO *Urban Future Global Report on Culture for Sustainable Urban Development 1*.

10 UNESCO *Urban Future Global Report on Culture for Sustainable Urban Development 1*.

11 Resolution adopted by the General Assembly on 25 September 2015 - *Transforming our World: The 2030 Agenda for Sustainable Development* UN Doc GA/RES/70/1 (2015) Goal 11 Para 11.b.

12 *Transforming our World* (2015) Goal 11 paras 11.3 and 11.b.

13 *Transforming our World* (2015) Goal 11 para 11.4.

regulation of cultural issues for sustainable development. These include the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* 2005,¹⁴ and the *Convention Concerning the Protection of the World Cultural and Natural Heritage Convention* 1972.¹⁵ In addition, South Africa is committed to the *African Union Vision 2063*.¹⁶ These instruments implore countries to integrate culture as a strategic element into local and national development policies.¹⁷

In South Africa, the local sphere of government, made up of approximately 257 municipalities of varying sizes, primarily derive its powers from Chapter 7 of the *Constitution of the Republic of South Africa*, 1996 (hereafter, the Constitution) and the *Local Government: Municipal Systems Act* 32 of 2000 (hereafter, Systems Act). Local government has executive and legislative authority in regard to matters enumerated in Part B of Schedules 4 and 5 of the Constitution, and these powers reside in municipal councils that are democratically elected.¹⁸ The Constitution accords local government the power to govern, on its own initiative, the local affairs of its communities.¹⁹ Notwithstanding the fact that national and provincial spheres of government have powers to regulate how municipalities discharge their constitutional powers and functions, the three spheres of government remain distinctive, interdependent and interrelated.²⁰ Municipalities are also obliged to promote public consultation in local government matters, to promote socio-economic development and a safe and healthy environment.²¹

Despite cultural issues and the environment not being listed in Schedules 4B and 5B of the Constitution, local governments have a role to play in managing cultural

14 *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (Paris, 20 October 2005), 2440 UNTS 311 Hereafter, CDC (2005).

15 *Convention Concerning the Protection of the World Cultural and Natural Heritage* (Paris, 16 November 1972), 1037 UNTS 151.

16 *African Union Vision 2063* (Addis Ababa, 30 January 2015).

17 Article 6 (2) of the CDC (2005); Aspiration 5 paras 41, 42 and 43 of the *African Union Vision 2063* (2015).

18 See Section 151 (2), 156 (1) (a) and schedule 4B and 5B of the *Constitution*; Fuo 2017 *De Jure* 325.

19 Section 151(1) of the *Constitution*.

20 Sections 40 and 155(7) of the *Constitution*; Olivier "Cooperative Government and the Intergovernmental Division of Environmental Powers and Functions" 351.

21 Section 152 of the *Constitution*; Fuo 2017 *De Jure* 325.

diversity.²² This view is supported by the fact that culture constitutes an integral part of the principle of sustainable development, which all spheres of government must promote in terms of the obligations imposed by the constitutional environmental right.²³ In addition, the principles of co-operative government outlined in section 41 of the Constitution oblige all spheres of government to secure the well-being of the people of the Republic.²⁴ Additionally, local government is perceived as being at the forefront of government and is in closer proximity with the community than the other spheres of government. For this reason it is seen as invaluable in addressing environmental and social issues.²⁵ The legal mandate for municipalities to manage cultural diversity was confirmed in *Oudekraal Estates V City of Cape Town*.²⁶ The decision illustrated the importance of local government's duty to take into consideration different cultural and religious rights and needs of local communities when executing their powers and functions.²⁷

Accordingly, local government in South Africa can play a big role in advancing the social and cultural aspects of sustainable development. Section 11(3) of the Systems Act states that municipalities can exercise their legislative and executive authority by designing and implementing policies, by-laws, strategic plans (such as the Integrated Development Plan or IDP) and programmes. This local government authority could be used in promoting inclusive urbanisation in line with *South Africa's National Development Plan: Vision 2030* and the vision of the 2016 *Integrated Development Framework of South Africa* to have integrated and sustainable human settlements.²⁸

22 Schedule 4A of the *Constitution*.

23 See Sections 24 and 7(2) of the *Constitution*; *Le Sueur v EThekweni Municipality* (9714/11) [2013] ZAKZPHC paras 19, 39 - 40.

24 Section 41(1) (b) of the *Constitution*.

25 Du Plessis *Environmental Law and Local Government in South Africa* 3.

26 *Oudekraal Estates V City of Cape Town* 2010 1 SA 335 (1) A.

27 *Oudekraal Estates V City of Cape Town* paras 69 - 70.

28 South Africa's National Development Plan: Vision 2030 (2015) 203; *Integrated Development Framework of South Africa* (2018) 44.

1.2 Research objectives

Against the above background, the aim of this study is to investigate how local government (municipalities) in South Africa can use their legislative and executive powers to promote inclusive urbanisation in cities and towns within their jurisdiction from the perspective of cultural diversity.

1.3 Research methodology

This study focuses on the Johannesburg Metropolitan Municipality and the Tshwane Metropolitan Municipality to analyse how their current laws and policies give effect to the legal duty to manage cultural diversity within their jurisdictions. These municipalities have been selected because of their mining backgrounds and metropolitan statuses, which make them attractive for interprovincial and international migration. They are also very diverse. This study is based mainly on an integrated analysis of primary (international law instruments, the Constitution, legislation and case-law) and secondary sources of law (policies, books, journal articles and reports) as they relate to local government's authority to manage cultural diversity.

1.4 Chapter outline

Chapter 2 of this study critically analyses the international legal framework on cultural diversity. Chapter 3 offers a critical analysis of the South African legal and policy frameworks on cultural diversity. Chapter 4 analyses how the by-laws and policies of the Cities of Johannesburg and Tshwane have been used to manage cultural diversity. Chapter 5 serves as a summation of the discussion and provides recommendations.

CHAPTER 2

INTERNATIONAL AND AFRICAN REGIONAL LEGAL FRAMEWORK

2.1 Introduction

The international community started paying attention to culture after the Second World War with the establishment of United Nations Educational, Scientific and Cultural Organisation (UNESCO) in 1946.²⁹ The purpose of UNESCO was to contribute to peace and security by promoting joint efforts among nations in the areas of culture, education and science.³⁰ The idea behind UNESCO was that the education, sharing and understanding of each other's differences will go a long way in avoiding conflicts and promote peace and security. The relevance of this ideal in the era of increasing globalisation cannot be underestimated. Globalisation continues to play a central role in contributing towards mass migration, which has increased the levels of diversity in cities around the world.³¹

Following the work of UNESCO, several international instruments have been adopted to promote the management of different aspects of culture.³² At the African regional level, attempts have also been made to protect and promote the continent's rich cultural diversity.³³ As observed by Durbach and Lixinski, law has brought in a significant contribution as an instrument for accountability and a mechanism for the

29 Rautenbach 2011 *EOLSS* 1.

30 UNESCO 2018 <https://en.unesco.org/about-us/introducing-unesco>.

31 Graber 2008 *NCCR* 2.

32 *The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* (14 May 1954), 249 UNTS 240; *Convention for the Safeguarding of the Intangible Cultural Heritage* (Paris, 17 October 2003), 2368 UNTS 3 Hereafter, ICH (2003) ; *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (Paris, 14 November 1970), 823 UNTS 231; *Convention Concerning the Protection of the World Cultural and Natural Heritage* (1972); *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (Paris, 20 October 2005), 2440 UNTS 311; *Convention on the Protection of the Underwater Cultural Heritage* (Paris 2 November 2001).

33 See for example, the *Charter for African Cultural Renaissance* (24 January 2006).

advancement of cultural promotion and protection.³⁴ However, the crucial question is whether international and African regional instruments assign a role for cities to participate in promoting inclusion in the management of cultural diversity to advance sustainable development. Also related to this question is whether the law offers guidance on how local governments can achieve this ideal.

This Chapter analyses the international and African regional legal frameworks that have been adopted to enhance and preserve cultural diversity. The overarching objective is to identify measures that should be implemented by cities to better manage cultural diversity and foster inclusive urbanisation. The chapter is divided into three main parts. The first and second parts discuss the international and African regional instruments that have been adopted to promote and protect cultural diversity respectively. Part three discusses the role that cities can assume to promote cultural diversity and inclusivity within their localities.

2.2 International law

The scope of the concept of what culture is has broadened over the years. It has shifted from being only represented by property, structures and products that have cultural significance to being pluralistic and more of an active form that includes cultural manifestations and expressions.³⁵ It is now broader and relates to the way of life of a society and expressions of the identity of individuals. Cultural heritage is seen as an important component of cultural identity and of social cohesion so much that its destruction has adverse consequences on human dignity and human rights.³⁶ UNESCO has adopted six conventions and a charter that focus on how to promote and manage culture.³⁷ These instruments generate innovative suggestions to assist countries in developing and implementing measures that can improve

34 Durbach and Lixinski "Introduction" 2.

35 Durbach and Lixinski "Introduction" 3.

36 Durbach and Lixinski "Introduction" 1.

37 *The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* (1954); *ICH* (2003); *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (1970); *Convention Concerning the Protection of the World Cultural and Natural Heritage* (1972); CDC (2005); *Convention on the Protection of the Underwater Cultural Heritage* (2001).

cultural management in their jurisdictions.³⁸ This research paper only focuses on the two conventions that are relevant to the fostering and promoting of cultural diversity, namely the *Convention for the Safeguard of Intangible Cultural Heritage* (2003) and *Convention on Diversity of Cultural Expressions* (2005).

2.2.1 Convention on Intangible Cultural Heritage (2003)

The *Convention for the Safeguard of Intangible Cultural Heritage* (ICH), which was adopted in 2003, demonstrates the importance of respecting and safeguarding intangible cultural heritage. This Convention has three noteworthy aims which are to safeguard and ensure the respect of intangible cultural heritage and to raise awareness at local, national and international level of their importance.³⁹ Safeguarding intangible cultural heritage is further defined as the establishment of standards that ensure the survival of the intangible cultural heritage for present and future generations' enjoyment and access.⁴⁰ Additionally, intangible heritage is defined in the Convention as inclusive of practices, representations, expressions, knowledge that has cultural significance to a group of people or a community.⁴¹ According to Arizpe, it is vastly necessary for intangible cultural heritage to be perceived as one concept within a collection of ideas such as cultural diversity, cultural liberty and the dialogue between civilisations and less so just rituals by indigenous people.⁴² The importance in safeguarding intangible cultural heritage comes from the rapid loss, transformation and reinvention of cultural practices, performances and representations occurring in the context of globalisation.⁴³ The Convention acknowledges the decline of intangible cultural heritage that was brought about by forces of globalisation, social transformation as well as the phenomenon of intolerance.⁴⁴ The definition of intangible cultural heritage makes this Convention so relevant and significant for migrants in urban spaces seeing as

38 UNESCO *Urban Future Global Report on Culture for Sustainable Urban Development* 4.

39 A1 of the ICH (2003).

40 A2(3) of the ICH (2003).

41 A2 of the ICH (2003).

42 Arizpe 2004 *Policies and International Debates* 133.

43 Arizpe 2007 *Art Antiquity and Law* 361.

44 Preamble of the ICH (2003).

intangible cultural heritage is the only kind of heritage that they usually carry with them when they move to new spaces as opposed to heritage sites.

The ICH recommends standards that State Parties can adopt and implement to ensure the safeguarding of intangible cultural heritage present in their territories.⁴⁵ They can therefore be implemented by states locally. In addition to adopting national policies that promote intangible cultural heritage,⁴⁶ State Parties are required to adopt legal, technical, administrative and financial measures that are aimed at fostering the creation of institutions that manage intangible cultural heritage.⁴⁷ Furthermore, they are called upon to: integrate the safeguarding of intangible cultural heritage into their local planning schemes; foster scientific, technical and artistic studies to effectively safeguard intangible cultural heritage;⁴⁸ establish local competent bodies for the safeguarding of intangible cultural heritage within their territories;⁴⁹ and ensure access to the intangible cultural heritage for all members of the community.⁵⁰ Along with the above mentioned measures, State Parties must also ensure the recognition and respect for and enhancement of intangible cultural heritage.⁵¹ They are obliged to also make efforts to educate, raise awareness and build capacity for the promotion and protection of intangible heritage. Furthermore they must conduct training programmes within communities and establish non-formal means to transmitting knowledge concerning intangible cultural heritage.⁵² In addition, the Convention further requires State Parties to identify and define elements of intangible cultural heritage that are present within their territories;⁵³ develop inventories of their intangible cultural heritage; and work with local communities on identifying and launching measures to safeguarding those traditions.⁵⁴ State Parties are mandated to ensure the participation of community

45 A10 of the ICH (2003).

46 A1 (c) of the ICH (2003).

47 A13 (d) of the ICH (2003).

48 A13 (c) of the ICH (2003).

49 A13 (b) of the ICH (2003).

50 A13 (a) and A13 (d) (ii) of the ICH (2003).

51 A14 (a) of the ICH (2003).

52 A14 (a) (i) of the ICH (2003).

53 A12 (1) of the ICH (2003).

54 A13 of the ICH (2003).

groups, they must also include individuals that create, maintain and relay intangible cultural heritage.⁵⁵ The Convention also provides international assistance for State parties in the form of experts, staff training, creation and operation of infrastructure, financial and technical assistance for listed intangible cultural heritage in need of urgent safeguarding.⁵⁶

Aikawa has pointed out that around the time of the adoption of this Convention cultural standardisation was a growing threat to the maintenance of cultural diversity and cultural pluralism.⁵⁷ The recognition of intangible cultural heritage was in reality essential for the preservation of cultural identity and diversity and its safeguarding was a long awaited need. The preservation of cultural identity and diversity cannot be downplayed especially in this age of globalisation. The implementation of the measures introduced in the Convention can contribute to social cohesion and social development. This is due to the fact that the recognition and protection of different cultures within a community makes members feel valued and treasured and this inspires respect, which in turn leads to social cohesion. From the discussion above the Convention recommends measures that State parties can implement to ensure the survival, protection and promotion of intangible heritage. Blake asserts that the central purpose of the ICH was to introduce national safeguarding measures by state parties.⁵⁸ It is by the effective implementation of these measures that ICH will be better safeguarded and that cultural communities will become more closely involved in the process of its identifying, safeguarding, and managing intangible cultural heritage.⁵⁹ Forrest also notes that the implementation of the Convention rests on primarily educating and raising awareness of intangible cultural heritage and its importance.⁶⁰ For this to work it must be implemented at the local, national and international level. Raising

55 A 15 of the ICH (2003).

56 A 20 of the ICH (2003).

57 Aikawa 2004 *Policies and International Debates* 141.

58 Blake 2014 *International Journal of Cultural Property* 292.

59 Blake 2014 *International Journal of Cultural Property* 292.

60 Forrest *International law and the Protection of Cultural Heritage* 363.

awareness of cultural diversity and its importance and garnering the respect for that heritage is the best medium of ensuring its continued viability.

2.2.2 Convention on Diversity of Cultural Expressions (2005)

The *Convention on the Protection and Promotion of Diversity of Cultural Expressions* (CDC) is recognised as the first legally binding international document protecting and promoting the diversity of cultural expressions.⁶¹ The CDC aims to create a conducive environment where cultures can flourish and freely interrelate in a mutually beneficial manner.⁶² Moreover, it also aims to encourage the discourse within varied cultures with the aim of ensuring a wider and balanced cultural exchange.⁶³ Similar to the ICH, the CDC aims to raise awareness at local, national and international levels in promoting the respect for the diversity of cultural expressions.⁶⁴ The objectives of the CDC are to promote and protect the diversity of cultural expressions, to foster interculturality in order to develop cultural interaction in the spirit of building bridges and encourage dialogue among cultures.⁶⁵ Interculturality is defined as the existence of fair interactions within diverse cultures and the generating of shared cultural expressions through dialogue and mutual respect.⁶⁶ Furthermore the protection of cultural diversity is also defined as the adoption and implementation of measures aimed at the preservation, safeguarding and enhancement of the diversity of cultural expressions.⁶⁷ The other objective of the Convention is to reaffirm the importance of the link between culture and development.⁶⁸

The Convention provides guiding principles to assist State parties realise the ideals of the Convention. The first principle is for State parties to respect human rights and the fundamental freedoms of the people in their communities.⁶⁹ This principle

61 A1 (a) of the CDC (2005).

62 A1 (b) of the CDC (2005).

63 A1 (c) of the CDC (2005).

64 A1 (e) of the CDC (2005).

65 A1 (a), A1 (d) of the CDC (2005).

66 A4 (8) of the CDC (2005).

67 A4 (7) of the CDC (2005).

68 A1 (f) of the CDC (2005).

69 A2 (1) of the CDC (2005).

is based on the ideal that cultural diversity can only be protected and promoted if human rights and fundamental freedom of expression are guaranteed.⁷⁰ The second guiding principle is for State Parties to give equal dignity and respect to all cultures.⁷¹ The reasoning behind this is because the promotion of cultural expressions shows a respect for all cultures.⁷² The third principle is that of international solidarity and cooperation.⁷³ International and local cooperation should be aimed at enabling states to create and strengthen their means of fostering cultural expression at local, national and international levels.⁷⁴ The fourth principle is that culture must compliment the economic aspects of development.⁷⁵ Culture is said to be a mainspring for development, cultural aspects of development are viewed as important as the economic aspects.⁷⁶ The fifth principle is that the protection, promotion, and maintenance of cultural diversity is essential requirement for sustainable development.⁷⁷ The sixth principle is that of equitable access to the diverse cultural expressions that the world has to offer.⁷⁸ The access to diverse cultural expressions for communities is viewed as constituting an important element in enhancing cultural diversity and encouraging mutual understanding.⁷⁹ The seventh principle is that of openness and balance.⁸⁰ When State Parties adopt the measures set out in the Convention they must seek to promote openness to other cultures of the world and to ensure that these measures are geared towards the objectives in the Convention.⁸¹

The CDC in Article 6 provides a non-exhaustive list of eight regulatory, institutional and financial measures every State party may choose to adopt within their territories. The regulatory measures are aimed at protecting and promoting diversity

70 A2 (1) of the CDC (2005).
71 A2 (3) of the CDC (2005).
72 A2 (3) of the CDC (2005).
73 A2 (4) of the CDC (2005).
74 A2 (4) of the CDC (2005).
75 A2 (5) of the CDC (2005).
76 A2 (5) of the CDC (2005).
77 A2 (6) of the CDC (2005).
78 A2 (7) of the CDC (2005).
79 A2 (7) of the CDC (2005).
80 A2 (8) of the CDC (2005).
81 A2 (8) of the CDC (2005).

of cultural expressions, promoting cultural expressions nationally, and improving access to diverse cultural expressions.⁸² State Parties are required to put in place local education systems aimed at educating people on the diversity of cultural expressions.⁸³ They must put in place measures to spread public awareness, encourage and promote understanding of the importance of protecting and promotion of the diversity of cultural expressions.⁸⁴ State parties must also encourage the active participation of the civil society to achieve objectives of the Convention.⁸⁵ The CDC also requires for State Parties to report to UNESCO every four years on measures they would have taken to protect and promote cultural expressions.⁸⁶ The CDC also requires for State Parties to integrate culture into their development policies at all levels for sustainable development.⁸⁷ It further encourages the development of partnerships between public and private sectors to cooperate in the developing and enhancement of local protection and promotion of the diversity of expressions.⁸⁸

The nature of the measures recommended in the CDC to protect and promote cultural expressions can contribute towards building inclusivity and social cohesion thereby fostering sustainable development. The respect of cultural diversity can positively contribute towards sustainability through building harmonious societies.⁸⁹ Culture contributes to the shaping of individual rights. Ensuring that citizens are afforded their right to access and participate in a community's cultural life and the right to preserve one's cultural identity contributes towards fulfilling the individual rights above.⁹⁰ Viewing culture as linked to human rights allows for cultural diversity promotion and protection to be taken seriously.⁹¹ The promotion of interculturality

82 A6 (1) of the CDC (2005).

83 A10 of the CDC (2005).

84 A10 of the CDC (2005).

85 A11 of the CDC (2005).

86 A9 of the CDC (2005).

87 A13 of the CDC (2005).

88 A15 of the CDC (2005).

89 Owosuyi 2015 *PELJ* 2028.

90 Francioni and Lixinski "Opening the Toolbox of International Human Rights Law in the Safeguarding of Cultural Heritage" 13.

91 Francioni and Lixinski "Opening the Toolbox of International Human Rights Law in the Safeguarding of Cultural Heritage" 13.

is not to be overstated in these current times because of the existence of global cities. The further promotion of inclusion is so essential to ensure that people can be able to move to cities without fear of being discriminated against on the grounds of their cultural differences. This will make cities more attractive and conducive for sustainable and safe cities.

2.2.3 Other International instruments

As mentioned earlier in this chapter, culture was originally limited to the conservation of monuments, and the protection of and trade of commercial performance arts and the conservation of heritage sites. This can be seen from the earlier UNESCO Conventions such as *The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* and the *Convention Concerning the Protection of the World Cultural and Natural Heritage Convention 1972*. This route of accepting culture as merely performance arts and monuments was highly criticised as it undermined the potential in the interpretation of what culture really is.⁹² It was argued that this marginalised the concept and limited its interpretation as it elevated the need to emphasise the conservation of monuments and sites rather than also fostering multiculturalism, inclusion and acceptance within urban spaces, which is needed to achieve sustainable cities.⁹³ In addition to the two conventions discussed previously there are other non-binding international instruments on cultural diversity that propose the inclusion of culture in sustainable development as an independent need and the integration and considerations of cultural diversity in local development planning.⁹⁴

An important document to note, adopted in February 2000, is the *United Nations General Assembly Resolution: Human rights and cultural diversity*. Similarly to the UNESCO Declaration this Resolution identifies an unmistakable link between cultural

92 Owosuyi 2015 *PELJ* 2019.

93 Owosuyi 2015 *PELJ* 2019.

94 See for example: *UNESCO Universal Declaration on Cultural Diversity* (2001); *Hangzhou Declaration: Placing Culture at the Heart of Sustainable Development Policies* (2013); *United Nations Habitat III New Urban Agenda* (2016) para 10.

diversity and basic human rights.⁹⁵ It draws a link to the long established concerns for the protection and guarantee of cultural rights focusing on individual human rights.⁹⁶ It further acknowledges that all human rights are universal, inextricable and interrelated and that the international community must treat human rights globally in a fair and equal manner.⁹⁷ In that respect the Resolution recognises that cultural diversity is a source of mutual enrichment for the cultural life of humankind, that cultural diversity is essential for peaceful coexistence among individuals and people of different cultures.⁹⁸ This resolution calls for the respect and recognition of cultural diversity by States, international organisations and United Nations.

The 2013 *Hangzhou Declaration*⁹⁹ is one of the recent non-binding international instruments. The Declaration recommended that a specific SDG on culture be included in any post-Millennium Development Goals framework and that the cultural dimension be systematically integrated in definitions of sustainable development.¹⁰⁰ It further called for inclusive social development and the leveraging of culture for poverty reduction.¹⁰¹ It also recommended the integration of culture within all development policies and programmes and equated the protection of culture with human rights.¹⁰² The Declaration also called for the mobilisation of culture as a way to foster peace and reconciliation.¹⁰³ The Declaration recommends for states to harness culture as a resource for achieving sustainable urban development and management.¹⁰⁴ It directly recommends for local municipalities to adopt culture aware policies in cities that promote diversity and inclusiveness.¹⁰⁵

95 *Human Rights and Cultural Diversity* (2015) UN General Assembly Resolution 70/156 (17 December 2015) para 4.

96 *Human Rights and Cultural Diversity* (2015) para 4.

97 *Human Rights and Cultural Diversity* (2015) para 6.

98 *Human Rights and Cultural Diversity* (2015) para 7.

99 *Hangzhou Declaration: Placing Culture at the Heart of Sustainable Development Policies* (2013).

100 Preamble of the *Hangzhou Declaration* (2013).

101 *Hangzhou Declaration* (2013) para 12.

102 *Hangzhou Declaration* (2013) para 12.

103 *Hangzhou Declaration* (2013) para 13.

104 *Hangzhou Declaration* (2013) Para 19.

105 *Hangzhou Declaration* (2013) Para 19.

The *United Nations Sustainable Development Goals* (SDGs) that was adopted in 2015 is equally important.¹⁰⁶ The 2015 Agenda sets out a philosophical and practical framework for sustainable development and implementation of relevant policies on a worldwide basis up to 2030.¹⁰⁷ The SDGs acknowledge the important role of culture across many of the goals including those that are committed to quality education, economic growth, sustainable consumption and production patterns, and peaceful and inclusive societies.¹⁰⁸ The goal on education recommends for countries to ensure that their schools teach learners skills needed to appreciate cultural diversity and the contribution of culture towards advancing the ideal of sustainable development.¹⁰⁹ Additionally, the goal on the promotion of sustained and inclusive economic growth recommends the implementation of policies to promote local culture and products.¹¹⁰ Significantly, culture is directly addressed in Goal 11, which aims to promote safe, inclusive, resilient and sustainable cities.¹¹¹ This goal is explicitly directed at cities and culture is viewed as a driver and an enabler of economic, social and environmentally sustainable development.¹¹²

2.3 African regional instruments

UNESCO reports that there are no official regional policies on culture.¹¹³ However, several regional milestones should be acknowledged such as the *Charter for African Cultural Renaissance*, which encourages African states to commit to developing national cultural policies.¹¹⁴ The Charter was adopted after an acknowledgement that the rules of governance used by every community in the world are based on culture. It had become clear that it was time for African states to integrate their distinctive linguistic, spiritual, intellectual and emotional culture to be reflected and encompassed in their domestic laws.¹¹⁵ The objectives of this Charter are to assert

106 *Transforming Our World* (2015) para 2.

107 Boer "Culture, Rights and the Post-2015 Development Agenda" 35.

108 See *Transforming Our World* (2015) Goal 4 para 7, Goal 8 para 9, Goal 11 para 4.

109 See *Transforming Our World* (2015) Goal 4 para 7.

110 See *Transforming Our World* (2015) Goal 8 para 9.

111 See *Transforming Our World* (2015) Goal 11 para 11.4.

112 See *Transforming Our World* (2015) Goal 11 para 11.5.

113 *UNESCO Urban Future Global Report on Culture for Sustainable Urban development* 2016 45.

114 Preamble of the *Charter for African Cultural Renaissance* (2006).

115 Preamble of the *Charter for African Cultural Renaissance* (2006).

the dignity of the African people, to promote freedom of expression and cultural democracy.¹¹⁶ The aims for its implementation are to assist States in combating all forms of alienation and cultural exclusion and to integrate their culture into development strategies.¹¹⁷ It also provides for coping mechanisms that African states can adopt to cope with globalisation, ensuring that their individual cultures are not diluted by other diverse cultures being assimilated into their communities, to ensure that they remain distinct.¹¹⁸ The Charter recommends the use of African languages in education and media and recognises the role of governments in restoring and promoting African cultures by eliminating any forms of alienation or cultural suppression.¹¹⁹

Another regional instrument to note is the *African Union 2063 Agenda* that was adopted in 2015. The 2063 Agenda aspires for African states to have self-confidence in identity, heritage and culture and to nurture their distinctive cultures which have to contribute to peace and development.¹²⁰ Aspiration 5 reiterates the Pan Africanism ideals reflected in the *Charter for African Cultural Renaissance*, these ideals should be entrenchment in local legislation and policies. The 2063 Agenda recommends for the African people to have pride instilled in them and to be able to celebrate the African creative arts industries.¹²¹ The aim of the aspirations are to ensure an inclusive and peaceful co-existence resulting in sustainable development and prosperous societies.

In addition to the above, there are other regional documents that have addressed issues of culture.¹²² These regional instruments have had an effect, like the use of vernacular languages in disseminating information to the public by government

116 Preamble of the *Charter for African Cultural Renaissance* (2006).

117 Preamble of the *Charter for African Cultural Renaissance* (2006).

118 Preamble of the *Charter for African Cultural Renaissance* (2006).

119 A1 of the *Charter for African Cultural Renaissance* (2006).

120 *African Union 2063 Agenda* para 40.

121 *African Union 2063* para 40-45.

122 *Cultural Manifesto of Algiers* (1969); the *Organisation of the African Union Lagos Plan of Action for the Economic Development of Africa and the Final Act of Lagos* (1980); *Our Creative Diversity* (1997); the *UNESCO Stockholm Action Plan on Cultural Policies for Development* (2008) and the *OAU Dakar Plan of Action on Cultural Industries* (1992).

departments.¹²³ However, there is still a long way to go to enable a remarkable decolonisation of African states from a known historic cultural suppression. There is a massive opportunity in implementing guidelines and integrating the cultural policies with the Pan African agenda, unfortunately there is a risk of the regional policies being largely ineffective resulting from the absence of funds to implement and integrate the recommendations into national and local policies.

Although many of the instruments discussed above are negotiated and signed by states, there is often provision expressly made for cities to play a role in achieving their visions. The discussion that follows reflects on the role that cities can generally play in promoting interculturality and cultural diversity within their jurisdictions

2.4 The role of cities in enhancing cultural diversity

Traditionally the negotiation and ratification of treaties was the exclusive reserve of national governments.¹²⁴ The incorporation of international laws into domestic legal and political structures by means of executive action in the past was also done by the national government.¹²⁵ Diplomacy and foreign policy were entrenched as the exclusive function for the national government. Cities were traditionally constructed from within a national legal order as creatures of the national government and subordinate to the national government.¹²⁶ Local governments performed only functions specifically assigned in legislation.¹²⁷

However, in recent years there has been a movement that is reflected in the inception of networks of subnational governments such as municipalities attempting to influence and shape global policies in areas such as sustainable development.¹²⁸ The emergence of subnational governments' influence is demonstrated by the establishment of local government networks such as United Cities and Local

123 Section 6 of the *Constitution*; subsection 3 specifically directs the national, provincial and local governments to take into account the language usage and preferences of their residents when disseminating any information.

124 Dugard *International Law: A South African Perspective* 43.

125 Shuwen *Governing Climate Change: Global Cities and Transnational Law Making* 41.

126 Shuwen *Governing Climate Change: Global Cities and Transnational Law Making* 41.

127 See Fuo 2017 *De Jure*; Steytler and De Visser *Local Government Law of South Africa* 5-8.

128 Shuwen *Governing Climate Change: Global Cities and Transnational Law Making* 41.

Governments (UCLG) in 2004 and the Global Taskforce of Local and Regional Governments (GTF) in 2013.¹²⁹ This expansion into the foreign relations arena has been identified with the term paradiplomacy.¹³⁰ Nganje is of the opinion that the growth in paradiplomacy, particularly in the developing world, coincides with a period of governance reform that gave birth to the decentralisation of governments alongside the principle of subsidiarity.¹³¹ It was believed that this reform initiative will transform governance processes by increasing transparency, accountability, public participation and responsiveness. The devolution of political influence and responsibility to the local municipalities inspired the promotion and adoption of decentralisation policies and laws across the globe.¹³² The transfer of legislative and administrative authority to subnational governments in areas such as socio-economic development propagated incentives for these actors to look beyond their borders.¹³³

As highlighted above, cities have been forging transnational partnerships and creating organisations to represent their collective interests at the global level.¹³⁴ They have demonstrated how national governments and international organisations are no longer the only problem solving units in world politics.¹³⁵ To protect their residents from threats, cities are claiming political authority and developing independent policies in relation to sustainable urban development and security.¹³⁶ Through their activism, cities have managed to carve out an agenda for themselves in international instruments such as Goal 11 in the SDGs. Apart from the UNESCO Conventions and other international instruments discussed above implicitly recognising a role for local actors and requiring local action, SDG 11 directly provides a mandate for cities to manage and promote cultural diversity. However, SDG 11 does not expressly state what cities must do. Depending on their powers and

129 UCLG Gold IV 2016 *Fourth Global Report on Decentralisation and Local Democracy: Co-creating the Urban Future* 26.

130 Nganje 2014 *South African Journal of International Affairs* 89.

131 Nganje 2014 *South African Journal of International Affairs* 90.

132 Nganje 2014 *South African Journal of International Affairs* 90.

133 Nganje 2014 *South African Journal of International Affairs* 90.

134 Shuwen *Governing Climate Change: Global Cities and Transnational Law Making* 41.

135 Shuwen *Governing Climate Change: Global Cities and Transnational Law Making* 41.

136 Shuwen *Governing Climate Change: Global Cities and Transnational Law Making* 41.

functions, cities can implement many of the guidelines provided in the international instruments discussed earlier in this chapter to manage and promote diversity within their jurisdictions.

The discussion in part 2.2 suggests that cities can effectively promote cultural diversity by fostering a multicultural environment where every cultural identity can be celebrated and respected.¹³⁷ This environment is possible with concrete undertakings that local governments can set in place, these are in form of measures that ensure the promotion and respect for cultural diversity.¹³⁸ Local governments can independently implement measures from international instruments that have been recommended for states for effective outcomes. International treaty law discussed above recommends for the establishment of policies and laws that promote and protect cultural diversity.¹³⁹ All local governments that have the power to enact by-laws and adopt policies can integrate the promotion of cultural diversity in their development policies and strategies. Cities must also adopt policies that promote the recognition and respect of diverse cultural beliefs and activities.¹⁴⁰ The Convention on Intangible Cultural Heritage requires cities to establish local institutions that will handle cultural matters.¹⁴¹ Cities are now required to actively be involved in the urban agenda "to make cities sustainable, inclusive and safe".¹⁴² Multicultural recognition and nation building are seen as compatible.¹⁴³

Taking into account the link that has been identified between the promotion of cultural diversity and the sustainable development of cities, the New Urban Agenda requires for local authorities to establish structures that enable the positive contribution of migrants to cities.¹⁴⁴ This measure requires for cities to be realistic about migrations into cities and to further implement policies and strategies that will allow cities to be capable of handling the influx of culturally diverse immigrants.

137 See subtitle 2.2 above.

138 See subtitle 2.2.1.2, 2.2.2.4, 2.2.3 and 2.3 above.

139 See subtitle 2.2.1.2, 2.2.2.4, 2.2.3 and 2.3 above.

140 A13 (a) of the CDC (2005).

141 A13 (a) of the CDC (2005).

142 *Transforming our World* (2015) Goal 11 para 11.3 and 11.b

143 A2 (6) of the CDC (2005); *Hangzhou Declaration* (2013) para 12.

144 *UN Habitat III New Urban Agenda* (2016) para 28.

The New Urban Agenda further advocates for the embracing of diversity and recommends for local governments to promote a peaceful co-existence within a society with diverse cultures.¹⁴⁵ There is a clear understanding that with embracing differences, communities can co-exist peacefully. This can reduce the crime rates in cities and aid in realising SDG 11, which imagines safe cities that are inclusive. Cities can be healthy enjoyable resilient places to live and work when the needs of every resident is accommodated.¹⁴⁶ This will only be able to happen if cities use the opportunities brought by urbanisation as a tool for sustained and inclusive socio-economic and cultural development.¹⁴⁷ They must be flexible and tolerant enough to accommodate cultural diversity foreign to their countries and brought in by globalisation. Exclusion and inequalities flourish where there is no acceptance and a certain group of the community assume they are more relevant than others.

The above discussion also shows that local governments can contribute towards cultural inclusivity by raising awareness on the power of respecting diverse cultural expression locally.¹⁴⁸ Local governments, as the arm of government closest to the communities, should raise awareness at the local level.¹⁴⁹ Furthermore, international instruments require that local communities must participate in the development and implementation of the cultural policies and laws. The local communities are to participate in the carving out of local policies and laws. Additionally, cities and local authorities should respect and promote cultural diversity from the perspective of human rights.¹⁵⁰ Human rights issues are treated as very consequential; international instruments require for the same energy to be employed to cultural inclusion matters.¹⁵¹ The regional instruments further urge cities to enact Pan African policies, to ensure that members of the community are proud of their heritage,

145 *UN Habitat III New Urban Agenda* (2016) para 28.

146 *UNESCO Urban Future Global Report on Culture for Sustainable Urban Development* 5.

147 *UN Habitat III New Urban Agenda* (2016) para 4.

148 See subtitle 2.2.1.2; 2.2.2.4; 2.2.3 and 2.3 above.

149 See subtitle 2.2.1.2; 2.2.2.4; 2.2.3 and 2.3 above.

150 *Human Rights and Cultural Diversity* (2015) para 4.

151 *Human Rights and Cultural Diversity* (2015) para 6

culture and are advised of the importance of embracing their diverse African cultures.¹⁵²

2.5 Chapter Summary

This chapter discussed the international and African regional legal frameworks that have been adopted to enhance and preserve cultural diversity and reflected on the types of measures that should be implemented by cities to better manage cultural diversity and foster inclusive urbanisation in their jurisdictions. In terms of the international legal framework, it was established that the *Convention for the Safeguard of Intangible Cultural Heritage* (2003) and *Convention on Diversity of Cultural Expressions* (2005) impose binding obligations on State Parties that have ratified them to promote and protect intangible forms of cultural diversity. At the African regional level, it was established that it is crucial for local municipalities to also enact Pan African policies. It was established that members of the community should be able to be proud of their heritage, culture and be able to practice and access it. Local policies should embrace diverse African cultures present in their communities.

Although the binding international instruments referred to above do not impose any binding legal obligations on cities, it was established that they generally require local authorities to contribute towards realising the vision they encapsulate. It was argued that this is consistent with global changes in forms of governance, which have led to the recognition of cities as important drivers for realising global development goals. In this regard, it was submitted that cities can contribute towards promoting and protecting cultural diversity within their jurisdictions depending on the nature of their powers and functions in diversity of context. However, cities can generally contribute towards achieving this ideal by adopting and implementing by-laws and policies that promote and protect cultural diversity in urban spaces.

152 A1 of the *Charter for African Cultural Renaissance* (2006); *African Union 2063 Agenda* para 40-45.

Apart from the binding instruments discussed this research acknowledges that the mandates of cities in promoting and protecting cultural diversity also stems from soft-law instruments such as the recently adopted SDGs and the NUA. These instruments have mandates directed to cities specifically to create culturally inclusive urbanisation within their cities by employing their developmental strategies and by-laws. SGD 11 explicitly implores cities to make cities culturally inclusive and safe. It has also been establishing that the other soft laws such as the Hangzhou Declaration and *United Nations General Assembly Resolution: Human rights and cultural diversity* can be utilised to achieve that outcome and they provide effective measures cities can implement.

The next chapter builds on the established principles in international instruments by critically discussion to what extent national legislation and policy reflects on said principles. The aim is to establish how cities can use their legislative and executive powers to promote cultural diversity and inclusion.

CHAPTER 3

SOUTH AFRICA'S LEGAL AND POLICY FRAMEWORK

3.1 Introduction

South Africa is a very diverse country and enjoys the abundance of diverse cultures.¹⁵³ It also shares a dark past of racial conflict as a result of the former political dispensation's policy based on racial segregation.¹⁵⁴ South Africa has, however, transitioned from racial segregation to constitutional democracy, which is applauded as being one of the most amazing political achievements of modern times.¹⁵⁵ However, South Africa is reported to still be burdened by the apartheid legacy in certain respects.¹⁵⁶ Apartheid left its indentation on South African human settlements and municipal institutions.¹⁵⁷ Communities that were previously divided along racial lines still live apart not largely as a result of social and economic inequalities.¹⁵⁸ South Africa also has a share of reoccurring racism, tribalism and xenophobic incidents, some xenophobic incidents resulting in deaths.¹⁵⁹ The bulk of these incidents occur in cities. The constitutional democracy has not yet been able to achieve much to change these long standing patterns of inequality.¹⁶⁰ The description above suggests that South Africa still lacks social and cultural cohesion despite transitioning to constitutional democracy.

Diverse cultures make cities rich and attractive. However, if the interactions of different cultures are not well managed this can be a challenge to the pursuit of sustainable development. Diverse population dynamics that are not effectively

153 Statistics South Africa 2017 *Annual Report* <http://www.statssa.gov.za/?m=2017>.

154 Rautenbach "Implementation of the Convention on the Diversity of Cultural Expressions in South Africa" 395.

155 Rautenbach "Implementation of the Convention on the Diversity of Cultural Expressions in South Africa" 397.

156 Seekings 2008 *Journal of Contemporary African Studies* 1.

157 White Paper on Local Governments (1998) Section A.

158 Rautenbach "Implementation of the Convention on the Diversity of Cultural Expressions in South Africa" 397.

159 Sharp 2008 *Anthropology Today* 1.

160 White Paper on Local Governments (1998) Section B.

managed have the potential to intensify inequalities.¹⁶¹ As noted above, inequalities undermine the likelihood for the broader sustainable development of cities, developments such as the socio-political and economic stability, inclusive growth and equal access to social protection for all.¹⁶² It is important for cultural diversity to be promoted and for differences to be respected. From the discussion earlier on the international and African regional legal framework, it emerged that inclusion can be ensured legally through the adoption and implementation of different measures at the national and local level in different countries. South Africa is also member of UNESCO and has ratified and signed some of the international instruments on culture discussed in the previous chapter.¹⁶³ This means that the country has a legal duty to meet the ideals envisaged in the relevant international instruments. As evident from the discussion below, the promotion and respect of cultural diversity in South Africa is legally ensured by the prohibition of unfair discriminatory actions as well as the guaranteed access and right to enjoy different cultures.

The purpose of this chapter is to discuss South Africa's legal and policy framework regulating the management of cultural diversity to determine the extent to which it provides roles for cities to participate in the protection and promotion of cultural diversity. The first part of this chapter discusses the national legal and policy framework on cultural diversity. The second part reflects on the role that the local sphere of government can play in terms of the relevant law and policy framework. The third part is the chapter summary.

3.2 Cultural diversity in South African law and policy

3.2.1 Constitutional framework

The Preamble of the *Constitution* starts off with the statement proclaiming that South Africa belongs to all that live in it and that the country aims to be united in its diversity.¹⁶⁴ The above statement from the preamble clearly portrays how the

161 Seekings 2008 *Journal of Contemporary African Studies* 3.

162 UNESCO *Urban Future Global Report on Culture for Sustainable Urban Development* 6.

163 South Africa ratified the CDC (2005) in 2006;

164 Preamble of the *Constitution*.

Constitution is not merely obliging the toleration of diversity but is affirming it as one of the primary treasures of the nation.¹⁶⁵ From the Preamble it is clear that one of the aims of the *Constitution* is to heal the divisions created by past legal regimes and to establish a society based on democratic values, social justice and fundamental human rights.¹⁶⁶ Human dignity and the achievement of equality are furthermore listed as fundamental values in the Constitution.¹⁶⁷ The aims of the Constitution are to promote social justice, human dignity and achieve social cohesion.¹⁶⁸ The different categories of rights in the Bill of Rights are supposed to be further interpreted to promote the underlying values of human dignity, equality and freedom.¹⁶⁹

Cultural rights are further protected in two sections in the Bill of Rights. According to section 30 of the Constitution, everyone "has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights". According to section 31(1) of the Constitution, people associated to a cultural, religious or linguistic group may not be denied the right, with other members of that group to enjoy their culture, religion and use their language; and to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.¹⁷⁰ However, these rights may not be exercised in a manner inconsistent with any provision of the Bill of Rights.¹⁷¹

Sections 30 and 31 of the Constitution protect the right to enjoy culture for individuals and as a community respectively. These provisions mean that cultural rights as protected in the Constitution lie at the heart of protecting diversity in the South Africa.¹⁷² These rights are said to acknowledge how South Africa is a culturally

165 *Minister of Education v Pillay* 2008 (1) SA 474 (CC) para 65.

166 Preamble of the *Constitution*.

167 Preamble of the *Constitution*.

168 Preamble of the *Constitution*.

169 *Minister of Education v Pillay* Para 63.

170 Section 31(1)(a)-(b) of the *Constitution*.

171 See Section 31(2) of the *Constitution*.

172 Rautenbach *Rautenbach-Malherbe Constitutional Law* 468.

diverse society of many languages, cultures and religions.¹⁷³ The cultural rights have been described as further affirming, embracing and celebrating this diversity.¹⁷⁴

In *Minister of Education v Pillay*,¹⁷⁵ Langa CJ also expanded on the interpretation of the cultural rights by stating that Section 30 protects both voluntary and involuntary cultural practices.¹⁷⁶ Furthermore, O'Regan J in the same case states that cultural rights are very important as understood against the background of human dignity as they express an affirmation of all members of diverse cultural groups as human beings of equal worth in a society whose associations and practices must be treated with respect.¹⁷⁷ Cultural rights foster associations and bolster the existence of cultural groups as long as an individual remains committed to living that way.¹⁷⁸

Other rights in the Bill of Rights further enhance cultural rights. In *Mhlekwa v Head of the Western Tembuland Regional Authority; Feni v Head of the Western Tembuland Regional Authority*,¹⁷⁹ the court held that the constitutionally protected cultural rights are accompanied by the freedom to be able to pursue one's culture and beliefs.¹⁸⁰ The court held that a person should have the freedom to choose to be part of a culture and its practices. The emphasis was put on the word 'choice' in section 30 of the Constitution, which was said to be intentional and meaningful.¹⁸¹ This implies that people should also not be forced to be part of any particular culture and its practices.¹⁸² It has also been argued that one of the reasons why culture is protected in the Constitution is because it is central to human identity and human dignity.¹⁸³ Human dignity is in turn central to equality as a constitutional value.¹⁸⁴

173 Rautenbach *Rautenbach-Malherbe Constitutional Law* 468.

174 *Minister of Education v Pillay* para 65.

175 2008 (1) SA 474 (CC).

176 *Minister of Education v Pillay* para 65.

177 *Minister of Education v Pillay* para 150.

178 *Minister of Education v Pillay* para 150.

179 *Mhlekwa v Head of the Western Tembuland Regional Authority; Feni v Head of the Western Tembuland Regional Authority* 2002 (2) SACR 603

180 *Mhlekwa v Head of the Western Tembuland Regional Authority* 630 para A.

181 *Mhlekwa v Head of the Western Tembuland Regional Authority* 629 para I-J.

182 *Mhlekwa v Head of the Western Tembuland Regional Authority* 629 para J.

183 *Minister of Education v Pillay* para 150.

184 *Minister of Education v Pillay* para 62.

The right to equality also further enhances the cultural rights. The right to equality is protected in Section 9 of the Constitution, which states that:

(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) 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.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.¹⁸⁵

The right to equality affords protection against unfair discrimination on the basis of among others culture and protects the equal worth of people.¹⁸⁶ However, the right does not entirely afford everyone the right to equal treatment as in some instances, the pursuit of equality may require persons to be treated differently.¹⁸⁷ Section 9(3) of the Constitution prohibits unfair discrimination, which is defined as differentiation that impairs human dignity or affects an individual in a serious way. The right to equality has been labelled as an essential component of the type of wide-scale social transformation that the Constitution seeks to achieve.¹⁸⁸ The basis for this is that the right encapsulates what the South African society aspires to achieve, a country where everyone enjoys equal access to resources and amenities, and are able to develop their full human potential notwithstanding diverse cultures.¹⁸⁹

The right to equality and the cultural rights entrenched in Sections 30 to 31 of the Constitution are guaranteed to everyone living in South Africa. They can only be

185 Section 9 of the *Constitution*.

186 Rautenbach *Rautenbach-Malherbe Constitutional Law* 139.

187 Rautenbach *Rautenbach-Malherbe Constitutional Law* 140;

188 Langa 2006 *Stellenbosch Law Review* 352.

189 Langa 2006 *Stellenbosch Law Review* 352.

limited in terms of the general limitation clause contained in Section 36 of the Constitution.¹⁹⁰ The state must respect, protect, promote and fulfil the rights in the Bill of rights. This obligation applies to all spheres of government and organs of state. As reinforced by section 8 of the Constitution, the Bill of Rights binds the legislature, executive and judiciary and all organs of state.¹⁹¹ They must realise entrenched rights for everyone and ensure that the exercise of personal or group rights does not infringe on the rights of others.

3.2.2 Legislative framework

Many legislation deal with various matters pertaining to culture in South Africa.¹⁹² This discussion begins with *National Heritage Resources Act 25 of 1999* (NHRA), which regulates the promotion, and preservation of cultural heritage. The Act in its preamble begins with the premise that culture:

...helps us to define our cultural identity and therefore lies at the heart of our spiritual well-being and has the power to build our nation. It has the potential to affirm our diverse cultures and in so doing shape our national character. Our heritage celebrates our achievements and contributes to redressing past inequities. It educates, it deepens our understanding of society and encourages us to empathise with the experience of others.¹⁹³

The above extract explains that the NHRA reinforces the commitment to cultural diversity in the preamble of the Constitution. The NHRA regulates the management of heritage resources in South Africa, it designates certain objects as heritage resources if they have "cultural significance". Most importantly, the NHRA

190 For an application of Section 36 of the *Constitution*, see *S v Zuma* 1995 (4) BCLR 401 (CC) par 21; *Moise v Greater Germiston Transitional Local Council* 2001 (8) BCLR 765 (CC) paras 17-19.

191 Section 8(1) of the *Constitution*.

192 *Pan South African Languages Board Act* 59 of 1995; *National Archives of South Africa Act* 43 of 1996; *Legal Deposit Act* 54 of 1997; *National Arts Council Act* 56 of 1997; *National House of Traditional Leaders Act* 10 of 1997; *National Film and Video Foundation Act* 73 of 1997; *South African Library for the Blind Act* 91 of 1998; *National Library of South Africa Act* 92 of 1998; *South African Geographical Names Council Act* 118 of 1998; *Cultural Institutions Act* 119 of 1998; *National Heritage Council Act* 11 of 1999; *National Heritage Resources Act* 25 of 1999; *Council for the Built Environment Act* 3 of 2000; *Local Government: Municipal Systems Act* 32 of 2000; *African Renaissance and International Co-operation Fund Act* 51 of 2000; *National Council for Library and Information Services Act* 6 of 2001; *Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act* 19 of 2002.

193 Preamble of the NHRA.

recognises living heritage as the intangible heritage aspects of inherited culture that may include cultural tradition, oral history, performance, ritual and indigenous knowledge systems that signify a holistic approach to nature, society and social relationships.¹⁹⁴

Despite the Constitution assigning cultural and environmental matters to both the national and provincial spheres of government, the NHRA as the principal law governing heritage management nationally sets out a system for heritage management and divides duties across all 3 spheres of government.¹⁹⁵ It integrates the framework for all the three spheres of government for the protection of heritage resources. Heritage resources are recognised as having the capacity to promote reconciliation; understanding and can contribute to the development of a unified South Africa. The Act requires the state to promote culture through education and awareness to communities and that authorities managing heritage resources must promote awareness on culture.¹⁹⁶

Moreover, the *National Environmental Management Act* 107 of 1998 (NEMA), which is the environmental framework act sets out principles in Section 2 that must be complied with when managing the environment by all the three spheres of government and all organs of state.¹⁹⁷ It states that when managing the environment the state must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.¹⁹⁸ The inclusion of culture implies that all the decisions regarding the environment must also consider cultural interests. All organs of state must generally use the Act's principles in environmental planning and decision-making.¹⁹⁹

Additionally, to give effect to Section 9 of the Constitution, the *Promotion of Equality and Prevention of Unfair Discrimination Act* 4 of 2000 (*Equality Act*) was enacted.

194 Section 2 of the NHRA.

195 Section 8 of the NHRA.

196 Section 5 of the NHRA.

197 *Earthlife Africa Johannesburg v Minister of Environmental affairs* (2) SA 519 (GP) para 58 and 80.

198 Section 2 of NEMA.

199 *Le Sueur v Ethekwini Municipality* para 37.

This Act is meant to prevent unfair discrimination and to promote equality.²⁰⁰ It is relevant for the promotion and protection of cultural diversity in that it prevents all forms of discrimination including discriminating on the grounds of cultural differences. This Act also provides for the establishment of Equality Courts as a means to expedite the eradication of unfair discrimination.²⁰¹ Equally important, the Act also requires the state to educate the public and raise awareness on the importance of promoting equality and overcoming unfair discrimination, hate speech and harassment.²⁰² It is the duty and responsibility of all three spheres of the government to promote and achieve equality.²⁰³

In the *MEC for Education, KwaZulu-Natal v Pillay*, the court dealt with an issue on unfair discrimination on the grounds of culture by a government school.²⁰⁴ They had to decide whether the suspension of a student of Indian descent by the public school because of a nose piercing was unfair discrimination.²⁰⁵ The court held that the decision to suspend the student was discriminatory and the discrimination was unfair.²⁰⁶ It was also mentioned that both the Constitution and the *Equality Act* protect equally the right to culture and religion.²⁰⁷ Furthermore the *Equality Act* makes it the responsibility of persons operating in the public domain to promote equality.²⁰⁸ There is a specific directive to the state and persons operating in the public domain to promote equality. This provision is significant as persons in positions of power have a wider audience and what they say has a larger impact.

Additionally, the *Employment Equity Act* 55 of 1998 is relevant to this discussion as it aims to achieve equity in the working environment by promoting equality and fair treatment and eliminating unfair discrimination. Employers as they oversee a workplace that has a different array of people from diverse backgrounds, cultures

200 Preamble of the *Equality Act*.

201 Chapter 4 of the *Equality Act*.

202 Section 2 of the *Equality Act*.

203 Section 2 of the *Equality Act*.

204 *MEC for Education, KwaZulu-Natal v Pillay* para 1.

205 *MEC for Education, KwaZulu-Natal v Pillay* para 1.

206 *MEC for Education, KwaZulu-Natal v Pillay* para 15.

207 *MEC for Education, KwaZulu-Natal v Pillay* para 15.

208 Section 24 of *Equality Act*.

and religions are accordingly guided by the Act. In the *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi*,²⁰⁹ it was noted that, because of diversity there will always be occurrences within our society, the workplace and elsewhere where these diverse cultural and traditional beliefs and practices create challenges.²¹⁰ Employers should not trivialise their employees' cultural beliefs and practices.²¹¹ It is required that there be reasonable accommodation to ensure harmony and to achieve a united society.²¹² The workplace is supposed to be accommodative so as to nurture cultural diversity.²¹³

Moreover, South African common law also criminalises unlawful and intentional impairment of the dignity of another.²¹⁴ This can be comprised of verbal insults and threats. The ridiculing of a person's ethnicity using racial slurs can be considered *crimen injuria*, same with religion or sexual preference.²¹⁵ Concerning diversity this common law remedy has been used to bring to justice racial and sexist attacks, importantly so when the attacks have caused emotional and psychological harm.²¹⁶ This common law remedy has made an impact in the bringing to justice discriminatory acts as it carries imprisonment sentences as well as fines for first time offender.

Furthermore, there are recent developments in the form of the *Prevention of Hate Crimes and Hate Speech Bill* published on the 29th of March 2018. This Bill is committed to the advancement of equal rights and outlawing discrimination.²¹⁷ The Bill is meant to give effect to section 9 of the Constitution.²¹⁸ This Bill will make hate speech a statutory criminal offence and also seeks to provide appropriate sentences. A first offender could get a 3 years sentence imprisonment whilst a repeat offender

209 *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi* 2012 11 BLLR 1099 (LAC).

210 *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi* para 26.

211 *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi* para 26.

212 *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi* para 26.

213 *Kievits Kroon Country Estate (Pty) Ltd v Mmoledi* para 26.

214 Hunt and Milton *South African Criminal Law and Procedure: Common-law crimes* 491.

215 Hunt and Milton *South African Criminal Law and Procedure: Common-law crimes* 491.

216 Hunt and Milton *South African Criminal Law and Procedure: Common-law crimes* 491.

217 Section 2 of the *Prevention of Hate Crimes and Hate Speech Bill* as published in GN 41543 of 29 March 2018

218 Preamble of the *Prevention of Hate Crimes and Hate Speech Bill*.

up to 10 years.²¹⁹ It is clear that this is a firm stance on discrimination of any kind as compared to the common law remedies. The highlight is that the Bill also protects migrants from xenophobic attacks and discrimination.²²⁰ However, it has been criticised as effectively abolishing freedom of speech and critics argue that the civil penalties provided for by the *Equality Act* were adequate to address the problem.²²¹ The writer would like to argue that since the enactment of the *Equality Act*, discriminatory actions have persisted throughout the country and that the Bill is necessary. A firm hand is needed where the tolerance and respect for others in the community cannot be ensured through awareness and the threat of civil action is not an effective tool.

3.2.3 South Africa's policy framework

The Department of Arts and Culture published the White Paper on Arts, Culture and Heritage in 1999. The White Paper sets out the policy on culture, arts and heritage in South Africa and its aim is to lead in nation-building and societal transformation and social cohesion. It further aims to promote and develop the diverse cultures that can be found in South Africa.²²² Its objectives are to promote inclusion and the equitable access to diverse cultural expressions and the joint mutual respect of all people.²²³ The White Paper recognises the strategic value of art, culture and heritage. It states that society is a cultural formation and to maintain itself and develop it must be able to adapt to social and global changes.²²⁴ This national policy document is meant to guide government departments in the performance of their duties and requires that they must promote social inclusion.

Furthermore, the National Development Plan: 2030 (NDP) that was adopted in 2012 recognises the importance of social cohesion through promoting arts and culture. It confirms that with the promotion of the creative and cultural industry this can

219 Section 6 of the *Prevention of Hate Crimes and Hate Speech Bill*.

220 Section 4 of the *Prevention of Hate Crimes and Hate Speech Bill*.

221 Staden 2018 https://www.huffingtonpost.co.za/martin-van-staden/hate-speech-bill-a-threat-to-democracy-in-south-africa_a_23374035/.

222 Department of Arts and Culture *White Paper on Arts, Culture and Heritage* (1996) 8.

223 Department of Arts and Culture *White Paper on Arts, Culture and Heritage* (1996) 8.

224 Department of Arts and Culture *White Paper on Arts, Culture and Heritage* (1996) 8.

contribute substantially to small business development, job creation and urban development.²²⁵ In addition, the National Policy on South African Living Heritage (2009) recognises the need to liberate the potential for South Africans to celebrate their mutual social existence by safeguarding their heritage and celebrating equal entitlement.²²⁶ It further states that living heritage should not be separated from tangible heritage and recognises two roles that heritage can play, it is a valuable resource that can be safeguarded for future generation and it can also be a tool to achieve social cohesion.²²⁷ The Department of Arts and Culture (DAC) also adopted a Social Cohesion and Nation Building Strategy in 2012.²²⁸ The strategy states precisely that its purpose is to ensure the progression from ethnic and racial divisions that were created by past regimes.²²⁹ It rejects the colonial custom of enlisting cultural diversity as a ground for justifying inequality, exclusion and systematic discrimination.²³⁰

The strategy has been criticised for conceptualising social cohesion as mainly around the citizens of South Africa and the invention of a citizen's identity. This is considered as a narrow approach at looking at social cohesion.²³¹ This is mainly in a context of the widespread discord and violence against foreigners in South Africa. It is perplexing why citizenship would be the basis for social cohesion. The strategy does acknowledge violence against foreigners in a passing reference in a bullet point stating that South Africans should welcome and assimilate foreigners.²³² However, what the wording of the strategy manages to highlight is how foreign migrants who are residents of the city are viewed as distinct from South African citizens. The distinction alludes that therefore they must be treated differently and are not included in the advocating for social inclusion.

225 National Development Plan: 2030 36.

226 Department of Arts and Culture *National Policy of South African Living Heritage* (2009) 8.

227 To date the policy has yet to be officially adopted by the department.

228 Department of Arts and Culture *Social Cohesion and National Building Strategy* (2012).

229 Department of Arts and Culture *Social Cohesion and National Building Strategy* (2012) 1.

230 Department of Arts and Culture *Social Cohesion and National Building Strategy* (2012) 5.

231 Department of Arts and Culture *Social Cohesion and National Building Strategy* (2012) 5.

232 Department of Arts and Culture *Social Cohesion and National Building Strategy* (2012) 6.

3.3 Role of South African local government

As mentioned in Chapter 1, Section 156 sets out the powers and functions of South African municipalities. Section 156 (1) provides that municipalities have executive authority and the right to administer local government matters set out in Part B of the Schedules 4 and 5 and any matter assigned to them by national and provincial legislation.²³³ A reading of these Schedules show that municipalities do not expressly have legislative and executive authority over matters not explicitly stated in 4B and 5B such as the environment and cultural matters. However, a reading of case-law shows otherwise.

In the *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties*,²³⁴ it was indicated that Section 156 and Schedules 4B and 5B of the Constitution are not the only sources of local government's powers.²³⁵ These provisions have been clarified to be merely showcasing the functional areas where municipalities have exclusive executive and legislative powers.²³⁶ These provisions are said to merely show functions that provincial and national government have only limited supervisory authority.²³⁷ Local municipalities can exercise these powers and functions without any interferences from the national and provincial.²³⁸ This case clearly indicates that the powers of municipalities and their objectives go beyond Schedules 4B and 5B of the Constitution, but such powers have not been exhaustively defined.²³⁹

Moreover, in the case of *Le Sueur and Another v Ethekwini Municipality* it was illustrated further how the powers of the local municipalities are not limited to the Schedules.²⁴⁰ In this case the question raised was whether the Ethekwini

233 Section 156 (1) of the *Constitution*.

234 *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties* 2012 (2) SA 104 (CC).

235 *City of Johannesburg v Blue Moonlight Properties* para 21-29.

236 *Fuo Local government's role in the pursuit of the transformative constitutional mandate* 104.

237 *Fuo Local government's role in the pursuit of the transformative constitutional mandate* 104.

238 S 151 (3) and (4) of the *Constitution*.

239 *Fuo 2015 Commonwealth Journal of Local Governance* 31.

240 *Le Sueur v Ethekwini Municipality* (9714/11) [2013] ZAKZPHC.

Municipality had the authority to legislate on biodiversity conservation matters.²⁴¹ Biodiversity conservation is not a listed function and it is not specifically assigned to local municipalities.²⁴² For this reason it was argued that they do not have authority to legislate on such matters.²⁴³ The Ethekewini Municipality used its executive and legislative authority on municipal planning, which is listed in Schedule 4B of the Constitution to legislate on biodiversity conservation with the D-MOSS Amendments.²⁴⁴ Gyanda J held that municipalities are in fact authorised to legislate in respect of environmental matters to protect the environment at the local level.²⁴⁵ This conclusion was based on an elaborate argument made that included the state's obligations that are imposed by the right to environment in Section 24 of the Constitution; the objects of local government in Section 152 of the Constitution; the scope of municipal executive and legislative power in terms of Section 156 of the Constitution; the constitutional requirements for co-operative governance; and the meaning of "municipal planning".²⁴⁶ This was further expanded by stating that the Municipality can use its planning powers to protect the environment.²⁴⁷

Fuo argues that it can be inferred from the above cases that socio-economic issues go beyond the rigid confines of the Schedules.²⁴⁸ This argument is supported by the view that the legislative and executive powers of municipalities must be understood in the context of the entire constitutional framework, previous socio-economic rights jurisprudence and the specific obligations imposed by national and provincial legislation as well as policies on local government.²⁴⁹ Fuo submits that:

one can draw from *Le Sueur* and the Constitutional Court's socio-economic rights jurisprudence in *Blue Moonlight Properties* that there is nothing which prevents municipalities that have the necessary resources to self-fund environmental projects that typically fall within the legislative area of competence of national and provincial government - as defined by Schedules 4A and 5A - in so far as such

241 *Le Sueur v Ethekewini Municipality* para 6.

242 *Le Sueur v Ethekewini Municipality* para 6.

243 *Le Sueur v Ethekewini Municipality* para 7.

244 *Le Sueur v Ethekewini Municipality* para 20.

245 *Le Sueur v Ethekewini Municipality* para 19.

246 *Le Sueur v Ethekewini Municipality* paras 16, 19; Humbly 2014 PELJ 1664.

247 *Le Sueur v Ethekewini Municipality* para 21.

248 Fuo 2015 *Commonwealth Journal of Local Governance* 32.

249 Fuo 2015 *Commonwealth Journal of Local Governance* 32.

projects seek to further the objectives of the Bill of Rights in the Constitution and are not in conflict with national and provincial programmes.²⁵⁰

From the above extract, it appears that municipalities can adopt and implement measures to further the objectives of the culture related rights in the Bill of Rights if such measures do not contradict those of national and provincial government.

Furthermore in *Nel v Hassequa Local Municipality*,²⁵¹ the applicants wanted the By-laws relating to the management and use of rivers passed by the Hassequa and Swellendan municipalities to be declared unconstitutional.²⁵² The applicants argued that the powers to regulate the use of rivers fell outside the scope of local government's powers as listed in the Schedules of the Constitution.²⁵³ The High Court held that it is permissible for a municipality to make by-laws requiring persons wishing to use boats on rivers or to fish in the rivers in its jurisdiction, notwithstanding that the power to regulate the use of rivers falls outside the sphere of local government authority in terms of Section 156.²⁵⁴ This decision was supported by Section 24 of the Constitution and the NEMA environmental management principles that bind all organs of state, including the local municipality. It was also indicated that the schedules further make public amenities, public places a municipal function and rivers fall under that.²⁵⁵

From the above cases, it is clear that there are other provisions in the Constitution that give local municipalities duties in various areas. As established in 3.2 above, cultural diversity is protected through guaranteed constitutional cultural rights, the rights to equality, religion, dignity, language and expression in the Bill of Rights. It is common knowledge that the Bill of Rights binds all spheres of government organs of state.²⁵⁶ Municipalities form part of the state and these constitutional duties also generally apply to them.

250 Fuo 2015 *Commonwealth Journal of Local Governance* 32.

251 *Nel v Hassequa Local Municipality* (9714/11) [2013] ZAKZPHC.

252 *Nel v Hassequa Local Municipality* para1.

253 *Nel v Hassequa Local Municipality* Para1.

254 *Nel v Hassequa Local Municipality* Para 13.

255 *Nel v Hassequa Local Municipality* Paras 13-15.

256 Section 8 (1) of the *Constitution*.

Municipalities must respect, protect, promote and fulfil the rights in the Constitution.²⁵⁷ In brief, the duty to respect the rights in the Bill of rights entail that there is a negative obligation on government not to interfere with the existing enjoyment of rights.²⁵⁸ This applied to the right cultural rights, indicates that cities have the obligation to not interfere with the enjoyment of these rights. Fuo expands on this by stating that the duty to respect places an obligation on municipalities to respect the free use of resources for the purposes of satisfying the rights in the Bill of Rights.²⁵⁹ The duty to protect connotes a positive duty on the part of the municipality, they must protect individuals from unwarranted interference by private or non-state parties.²⁶⁰ Cities have an obligation in their localities to ensure that the rights are within the reach to all members of their communities. They must adopt by-laws that regulate activities of individuals and entities that affect people's access to the enjoyment of cultural rights.²⁶¹ The duty to promote imposes a duty on the municipality to raise awareness and to embrace educational measures regarding a particular right regulate their local environments to ensure that people can enjoy this right.²⁶² It has also been suggested that local municipalities must promote values and objectives of fundamental rights in administrative decision making. Lastly the duty to fulfil refers to the positive duty on the municipalities to ensure the realisation of the rights.²⁶³ They must take proactive measures that facilitate the fulfilment enjoyment of rights without discrimination.²⁶⁴

Local municipalities, as co-responsible organs of state, share culpability with the national and provincial spheres of government to pursue constitutional objectives.²⁶⁵

257 For a discussion of these duties, see Fuo *Local government's role in the pursuit of the transformative constitutional mandate* 205-211.

258 Heyns and Brand 2009 *Law, Democracy and Development* 158. Fuo *Local government's role in the pursuit of the transformative constitutional mandate* 205-211; ACHPR 2011 *Principles and Guidelines of the African Commission on the Implementation of economic, Social and Cultural Rights in the African Charter on Human and People' Rights* 11-12.

259 Fuo *Local government's role in the pursuit of the transformative constitutional mandate* 205.

260 Heyns and Brand 2009 *Law, Democracy and Development* 158.

261 Fuo *Local government's role in the pursuit of the transformative constitutional mandate* 206.

262 Heyns and Brand 2009 *Law, Democracy and Development* 158.

263 Fuo *Local government's role in the pursuit of the transformative constitutional mandate* 206.

264 Heyns and Brand 2009 *Law, Democracy and Development* 158.

265 Du Plessis 2010 *Stellenbosch Law Review* 261; Fuo *Local government's role in the pursuit of the transformative constitutional mandate* 83.

This includes the Constitution's commitment to rectify the injustices of the past and to establish a society based on social justice.²⁶⁶ The entire government is mandated to promote sustainable development, which includes the imperative to promote social cohesion and inclusiveness.²⁶⁷ The duty imposed by Section 152 of the Constitution on municipalities to promote socio-economic development requires that they promote cultural diversity and the freedom of residents to enjoy their diverse cultures.²⁶⁸

In addition, as discussed earlier in Chapter 2, local municipalities also have international objectives emanating from the SDGs and the Urban Agenda that they have to meet. In terms of Goal 11 of the SDGs, they must strive to create sustainable, safe and inclusive cities. In the context of South African cities, they must use their legislative and executive authority to develop cities that are inclusive in the cultural and social sense. The national legislation discussed earlier portrays a zero tolerance of discrimination and exclusion and require local government to actively participate in the realisation of a social and cultural inclusive South Africa.

3.4 Chapter Summary

The main objective of this chapter was to discuss South Africa's legal and policy framework regulating the management of cultural diversity to determine the extent to which it provides roles for municipalities to participate in the protection and promotion of cultural diversity within their jurisdictions. This chapter established that South Africa has a strong human rights approach to the protection and promotion of cultural diversity through the entrenchment of fundamental cultural and culture-related rights in the Bill of rights. The Bill of rights imposes legal duties on all three spheres of government and organs of state to respect the cultural rights of everyone living in South Africa and to adopt and implement positive measures that promote this ideal. In addition, the commitment to social justice and inclusion,

266 Fuo *Local government's role in the pursuit of the transformative constitutional mandate* 83.

267 Steytler and De Visser *Local Government Law of South Africa* 5-8; Fuo *Local government's role in the pursuit of the transformative constitutional mandate* 83.

268 See 2.4 above.

human dignity, equality and non-discrimination were identified as foundational constitutional values that should guide public and private conduct in South Africa.

The discussion above shows that South African legislation is strict against discrimination on the grounds of race, religion or culture. It is clear that the importance of a culturally diverse and inclusive society cannot be understated in a country such as South Africa that has experienced different forms of segregation.

The powers of municipalities to promote and manage cultural diversity in their jurisdictions emanate from their rights-based duties in the Bill of Rights, the objectives of the Constitution and the constitutional objects of developmental local government. Municipalities can utilise their constitutional self-governing powers to promote cultural diversity and inclusivity in their jurisdictions.

CHAPTER 4

REVIEW OF THE BY-LAWS AND POLICIES OF THE CITIES OF JOHANNESBURG AND TSHWANE

4.1 Introduction

For those abreast with post-apartheid constitutional developments, it is now common knowledge that local government has undergone fundamental transformation. Local government is currently recognised as a sphere of government with Chapter 7 of the Constitution dedicated to protecting the mandate, status and powers and functions of municipalities. A fundamental aspect of this transformation is the self-governing power entrusted on municipalities, despite provision made for national and provincial government to regulate how municipalities execute their powers and functions.²⁶⁹ In *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council*,²⁷⁰ the Constitutional Court remarked that:

The constitutional status of local government is thus materially different to what it was when parliament was supreme, when not only the powers but the very existence of local government depended entirely on superior legislatures. The institution of elected local government could then have been terminated at any time and its functions entrusted to administrators appointed by central or provincial governments. That is no longer the position. Local governments have a place in the constitutional order...and are entitled to certain powers, including the power to make by-laws and impose rates.²⁷¹

As evident from the above extract, municipalities have powers to adopt and implement by-laws, policies, plans and strategies that will enable them realise their developmental mandate. As already indicated in Chapter 1, this power is further confirmed in Section 11(3) of the Systems Act.

269 *City of Cape Town v Robertson* 2005 (2) SA 323 (CC) para 60; *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* 2010 9 BCLR CC para 56; *Fuo* 2017 *De Jure* 324-345.

270 *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1998 12 BCLR 1458.

271 *Fedsure Life Assurance* para 36.

The purpose of this Chapter is to evaluate how Tshwane Metropolitan Municipality and Johannesburg Metropolitan Municipality have used their by-law and policy making powers to manage and promote cultural diversity in their jurisdictions. As indicated in Chapter 1, these municipalities are cosmopolitan centres and have diverse populations that hail from across the world.²⁷² They are multilingual, religiously diverse and are polycultural cities.²⁷³ As established in previous chapters, effectively managing differences is a crucial aspect of combating social exclusion and managing urban social cohesion. The discussion that follows has three main parts. The first part begins by reviewing by-law and policy developments in the City of Johannesburg relevant to culture. The second part reviews the situation in the City of Tshwane. The third part is a critical reflection on how municipalities have responded to the duty to promote cultural diversity and social inclusion in South Africa. The chapter ends with a summary.

4.2 *By-laws and policies of Johannesburg Metropolitan Municipality*

The City of Johannesburg Metropolitan Municipality has adopted a by-law titled "Culture and Recreation By-Law".²⁷⁴ The title of this legislation is misleading as it presupposes that the instrument will address cultural issues. A reading of the instrument clearly indicates that it is meant to regulate access to public libraries and sports facilities.²⁷⁵ The process to become a member is very inclusive as it does not distinguish residents of the municipality, for a person to be registered as a member of the libraries and sports facilities they need to be resident, working or studying within the Municipality.²⁷⁶ There are currently no other by-laws that address cultural diversity for the City of Johannesburg.

The City of Johannesburg does not have a specific policy on cultural diversity. However, the 2018 IDP of the City indicates in its mission statement that one of its

272 UN Department of Economic and Social Affairs 2017 *United Nations International Migration Report* 26.

273 Todes *et al* "Contemporary South African Urbanisation Dynamics" 12.

274 City of Johannesburg *Culture and Recreation By-Law* of (2005).

275 Part 1 and part 2 of the *Culture and Recreation By-Law* of (2005).

276 S1 of the *Culture and Recreation By-Law* of (2005).

aims is to develop an inclusive society that will be able to contribute to the sustainable development of the country.²⁷⁷ The aim to have a sustainable and inclusive city is echoed throughout the policy document.²⁷⁸ The IDP acknowledges that the City is overwhelmed with economic migration and aims to have a social and cultural cohesive community.²⁷⁹ One of the challenges being faced by the Municipality is social disconnectedness of the members of the community and the aim of the IDP is to create a "Johannesburg identity" for every resident to feel like they belong in the City.²⁸⁰ To overcome the challenge identified, the City seeks to create positive social relationships at all levels by promoting citizen participation, diversity awareness and tolerance to create a new urban culture. Criticism on the measures that the City has plans to implement to promote social and cultural inclusion is its focus on "South African citizen" and not including the City's residents that might not be citizens. Part 4 of the IDP is dedicated to creating an intensive cohesive society and creating a culture of community-based planning.²⁸¹ However, with other challenges such as failure in service delivery, extreme poverty and corruption it is easy for social and cultural cohesion to be tabled and not treated as a high priority issue.

The City of Johannesburg also has a Social Development Strategy that was adopted in 2004.²⁸² The Social Development Strategy is a plan designed to promote the well-being of South African citizens.²⁸³ It draws on the need to improve social change in the communities. It aims to ensure that the communities enjoy their citizen entitlements such as culture and personal expressions. The criticism to this strategy is that it also focuses on citizens as that term is used numerous times in the strategy. This is believed to be at the exclusion of all foreigners residing in the City. The wording of this Strategy prevents it from being considered effective for social

277 City of Johannesburg Metropolitan Municipality 2017/2018 IDP.

278 City of Johannesburg Metropolitan Municipality 2017/2018 IDP 11, 120, 145.

279 City of Johannesburg Metropolitan Municipality 2017/2018 IDP 11.

280 City of Johannesburg Metropolitan Municipality 201/2018 IDP 26.

281 City of Johannesburg Metropolitan Municipality 201/2018 IDP 146.

282 Kliptown Social Development Strategy available at <http://www.jda.org.za/developments/kliptown/overview/216-kliptown>.

283 Kliptown Social Development Strategy available at <http://www.jda.org.za/developments/kliptown/overview/216-kliptown>.

development as it aims to selectively improve lives of certain members of the community to the exclusion of others. The writer considers the wording of the strategy contrary to the opening statements of the Constitution that South Africa belongs to all that live in it and that social development should be beneficial to all the members of the community.

4.3 By-laws and policies of Tshwane Metropolitan Municipality

The City of Tshwane Municipality has one by-law that is culture related and it regulates the operation and management of initiation schools.²⁸⁴ This by-law relates to cultural diversity in that it's an indication of acceptance of diverse cultural practices by certain members of the community. It shows how this cultural practice is accepted and respected. The by-law was adopted to regulate the schools to ensure the safety of the members of the community.²⁸⁵ Initiation schools have to be registered so as to operate and they must have written consent to perform circumcisions from the Municipality.²⁸⁶

Just like the City of Johannesburg, the City of Tshwane does not have an overarching policy on cultural diversity. The policy document that can be identified as closest to addressing cultural issues is the Arts, Culture and Heritage Facility User Policy.²⁸⁷ This document is, however, only meant to be used as a guide for "proper management, reasonable access and self-sustainability of all cultural facilities" in Tshwane. Various departments of the City of Tshwane have also put in place a number of policies that seek to enhance cultural development from their respective perspectives. There is a Language Policy that sets out the standard language to utilised by the City's departments when disseminating information to the public, the

284 City of Tshwane Metropolitan Municipality *Operation and Management of Initiation Schools By-Law* (2004).

285 *Operation and Management of Initiation Schools By-Law* (2004).

286 Section 2 and 3 of the *Operation and Management of Initiation Schools By-Law* (2004).

287 City of Tshwane Metropolitan Municipality *Arts, Culture and Heritage Facility User Policy* available at <http://www.tshwane.gov.za/sites/Council/OfficeofExecutiveMajor/SRAC/1.%20Arts,%20Culture%20and%20Heritage%20Facility%20User%20Policy.pdf>.

policy applies to the City's employees and the residents of Tshwane.²⁸⁸ The Heritage Facility User Policy is also worthy to note as it ensures the proper management and access of all cultural facilities in the City.²⁸⁹ Additionally, the City of Tshwane's IDP aims to create a sustainable and inclusive city. However, the IDP does not mention cultural diversity, which is a serious flaw as the IDP sets out what the municipality sets out to achieve. This reveals that cultural diversity has not been considered a priority enough to be included in the official IDP.

4.4 Critical appraisal of developments in local government

Sirayi attests that throughout South Africa's history, from colonialism to the apartheid regime, various governments in South Africa have utilised cultural policies in their various formats for development notwithstanding that it was for the benefit of the dominant section of the population.²⁹⁰ He further argues that despite constitutional democracy "very little attention has been given to local cultural policy through government as a tool for addressing social, economic and physical development at grass root level".²⁹¹ This sentiment is echoed elsewhere by Roodt who also comments that the lack of development in local government cultural policies is because of misconceptions.²⁹² These misconceptions stem from the view that schedules 4 and 5 of the Constitution "prohibits" local authorities from making by-laws and regulations dealing with cultural issues.²⁹³ Because of this particular misunderstanding of constitutional imperatives, many local authorities side-line culture as an issue to be catered for in development planning by national and provincial government.²⁹⁴ As Mokebe argued in 2008:

288 City of Tshwane Metropolitan Municipality Language Policy available at <http://www.tshwane.gov.za/sites/Departments/CME/Documents/1.1%20Language%20Policy%20English%20of%20the%20City%20of%20Tshwane.pdf>.

289 City of Tshwane Metropolitan Municipality Heritage Facility User Policy Available at <http://www.tshwane.gov.za/sites/Council/OfficeofExecutiveMajor/Pages/Policy-Listing.aspx>.

290 Sirayi 2008 *The Journal of Arts Management, Law and Society* 340.

291 Sirayi 2008 *The Journal of Arts Management, Law and Society* 340.

292 Roodt 2006 *Fundamina* 205.

293 Nawa *Municipal Cultural Policy and Development in South Africa: A Study of the City of Tshwane Metropolitan Municipality* 43.

294 Nawa *Municipal Cultural Policy and Development in South Africa: A Study of the City of Tshwane Metropolitan Municipality* 43.

The municipality (City of Tshwane) does not have a policy framework on arts, culture and heritage and this can be attributed to the following reasons; there is no national legislation on arts and culture; arts, culture and heritage is a national and provincial competency; the City's Arts, Culture and Heritage Division lacks capacity and financial resources to implement any developed arts, culture and heritage policy framework.²⁹⁵

As the above extract suggest, some municipalities have simply side-lined culture from their service delivery or developmental agenda for diverse reasons. The argument that municipalities cannot adopt policy or by-laws to promote cultural matters within their jurisdictions on the basis that "culture" does not appear in Schedules 4B and 5B of the Constitution was squashed in the previous chapters.²⁹⁶ As established in the previous discussions on the international, regional instruments and South Africa's legal framework, local municipalities have a big role to play in managing and promoting cultural diversity within their jurisdictions.²⁹⁷ There is no law that prevents municipalities that have the requisite resources from implementing cultural policies and legislation to complement the work already done by provincial and national government. The social developmental mandate of municipalities and their human rights obligations in the Constitution requires municipalities to include the management of cultural diversity and the promotion of social inclusion in their development efforts.²⁹⁸ The institutionalisation of cultural policies at the local levels has also been identified as an effective tool for culture-led sustainable development in cities.²⁹⁹

As established earlier, it is necessary for municipalities to be more involved in the cultural polices to promote sustainable development.³⁰⁰ It is the view of the author that through the use of local government by-laws and the inclusion of local government in cultural governance and management that the ideals of sustainable development can be greatly advanced through the cultural dimension. The

295 Nawa *Municipal Cultural Policy and Development in South Africa: A Study of the City of Tshwane Metropolitan Municipality* 68; Mr. Mokebe was interviewed as a representative of the City of Tshwane's Deputy-Director in Policy and Systems, Department of Sports, Recreation, Arts and Culture in 2008 by L.L. Nawa. 6 March. Pretoria.

296 See the discussions in 2.3 and 3.3 above.

297 See 3.3 above.

298 See 3.3 above.

299 Sirayi 2008 *The Journal of Arts Management, Law and Society* 340.

300 See 3.3 above.

reasoning behind this thinking is the fact that issues of culture are reflected at the grassroots level, which is the local government's area of governance.³⁰¹

4.5 Chapter Summary

The main objective of this chapter was to discuss the two metropolitan cities in south Africa, the City of Johannesburg Metropolitan Municipality and the City of Tshwane Metropolitan Municipality with the objective of identifying what measures they have adopted and are currently implementing to promote cultural inclusion and cohesion. The review above revealed that the two municipalities have not yet comprehensively grasped how the management of cultural diversity can aid in achieving sustainable development in their jurisdictions. They both have not enacted By-laws that explicitly seek to promote the management of cultural diversity from a holistic point of view. The city of Johannesburg addresses cultural diversity issues in its IDP and sets out measures on how to combat and challenges and manage it. However, the solution is promoting social inclusion within the "South African citizen", which excludes other residents of the City that might not be citizens but residing or working in the City properly and. On the other hand, the city of Tshwane does not even address cultural inclusion in its IDP despite it also experiencing the influx of migrants and facing the same cultural diversity challenges. As seen from the review above, cultural diversity and social inclusion have not yet been integrated into the two cities' development strategies and administrative processes.

301 Sirayi 2008 *The Journal of Arts Management, Law and Society* 340.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 General background

The international and African regional community have recognised the need for protecting and promoting culture. UNESCO was founded on the idea that the protection of culture will bring about peace and development. With the mass migrations to urban areas worldwide it is vital more than ever to protect and promote culture. Intolerance has resulted in a lot of conflicts in the past and the international and regional instruments implore the protection of diverse cultural expressions. The aim of this study was to investigate how local authorities in South Africa can use their legislative and executive powers to promote inclusive urbanisation in cities from the cultural diversity perspective. The investigation was conducted to determine what measures cities can implement to promote and foster cultural diversity. It is crucial for cities to actively promote cultural inclusivity in urban spaces as part of their constitutional social development agenda.

Chapter 2 discussed the international and African regional instruments adopted to promote and protect cultural diversity. The objective was to identify measures that local municipalities can implement to better manage cultural diversity and foster inclusive urbanisation. The international and African regional instruments discussed,³⁰² imposed concrete obligations on State Parties that have ratified them to promote and protect all forms of intangible cultural expressions in their jurisdiction. Instruments generally indicated that local participation and action was crucial.³⁰³ The regional instruments advance the adoption and implementation of Pan Africa policies and laws locally.³⁰⁴ They recommend that local policies should embrace diverse cultures present within their jurisdictions. Although these binding instruments do not impose directly binding legal obligations on local municipalities,

302 See 2.2 above.

303 See 2.3 above.

304 See 2.3 above.

it was established that they generally require local authorities' contribution towards realising their vision.³⁰⁵ It was put forward that this is line with global changes in the form of governance that have pushed local actors in the fore front as drivers in the realisation of global developmental goals.³⁰⁶ In this regard it was submitted that local municipalities can effectively contribute to the management of cultural diversity depending on the nature of their powers and functions. Local municipalities can adopt and implement by-laws and policies that promote cultural diversity, cultural inclusion and social cohesion.³⁰⁷

Chapter 3 was a discussion of South Africa's legal framework regulating the management of cultural diversity to determine the extent to which it provides a role for local municipalities to participate in the protection and promotion of cultural diversity. It was found that South Africa has a very strict human rights approach to the protection and promotion of cultural diversity.³⁰⁸ Culture and culture related rights are entrenched in the Bill of Rights of the Constitution. The Bill of Rights imposes a legal duty on all spheres of government and organs of state to respect, protect, promote and fulfil the cultural rights of everyone living in South Africa. It was found that south Africa is very strict on unfair discrimination on the grounds of race, religion or culture. This has been attributed to the south African history with different forms of segregation. Local municipalities must promote and manage cultural diversity in their jurisdictions emanating from the rights-based duties in the Bill of Rights and the social developmental objective of local municipalities in the Constitution. Municipalities can utilise their self-governing powers granted by the Constitution to promote cultural diversity and inclusion in their jurisdictions.

Chapter 4 evaluated the by-laws and policies two municipalities, The City of Johannesburg and the City of Tshwane, on how they have utilised their self-governing powers to manage and promote cultural diversity. From the evaluation it has emerged that the two municipalities have few policies that address cultural

305 See 2.4 above.

306 See 2.4 above.

307 See 2.4 above.

308 See 3.4 above.

issues and none of them have by-laws that manage cultural diversity issues. The investigation shows that the lack of policies and by-laws on cultural diversity stemmed from the misconception that local municipalities are prohibited by legislation to legislate on culture issues.

5.2 Main findings

Local municipalities are drivers of sustainable development, and with their legislative and executive powers and functions, they can actively promote inclusive urbanisation as their constitutional social development objective.³⁰⁹ From the discussion on international instruments, concrete measures were identified for local municipalities to implement for effective cultural diversity management and promotion in cities.³¹⁰ International instruments provided concrete measures such as the enactment of by-laws on the management and promotion of cultural diversity, the integration of culture into local development policies and strategies; the establishment of local institutions that explicitly deals with culture; the raising of awareness about the value of cultural diversity, community participation and involvement in the design of local by-laws and policies.

The investigation conducted on south Africa's two metropolitan municipalities revealed that they do not have overarching by-laws, policies or strategies explicitly focusing on cultural diversity.³¹¹ The reason for the lack of legislative frameworks was identified as mostly misconception that cultural issues are not within the purview of local municipalities' legislative powers. This misconception was addressed in the study in Chapter 3. Municipalities as part of the state have a duty in terms of Section 7 of the Constitution to respect, protect, promote and fulfil the rights in the Bill of rights. The duty to protect requires municipalities to adopt measures that protect members of the community from unwarranted interference in exercising their rights. The duty to respect mandates municipalities to not interfere in the exercise of the rights. The duty to promote requires municipalities

309 See 2.4 above.

310 See 2.4 above.

311 See 4.2 and 4.3 above.

to raise awareness on the rights, to embrace educational measures on the rights and promote their values in their administrative decision. Lastly the duty to fulfil requires municipalities to facilitate the enjoyment of the rights.

5.3 Recommendations

Based on the findings in this study, the following recommendations for local municipalities in South Africa are made:

Municipalities should regard culture as an important element in their developmental plans and strategies. With the IDP as the main strategic planning instrument available for municipalities to set out their long-term sustainable development visions, it is recommended that cultural diversity management must be properly planned for in their IDPs. Cultural inclusion and cohesion must not be used as a catch phrase in the IDP's aim and vision and not be properly addressed in the IDP.

It is recommended municipalities officials need training to broaden their understanding of their powers on cultural diversity management and importance thereof. As evident from the international instruments, municipalities must adopt by-laws that explicitly regulate cultural diversity. It is recommended that cities must create an environment of acceptance and inclusion of diverse cultural practices through the passing of by-laws that do not infringe on certain cultural rights. It is also recommended that they make use of policies and strategies to address cultural diversity management. They can adopt social cohesion strategies that comprehensively address cultural diversity issues in their by-laws, policies and strategies

It is recommending that local municipalities create effective communication tools for their awareness programmes. The success of such programmes hinges on the inclusive dissemination of information to their residents. It is recommending that they improve their communication strategy into user-friendly and inclusive formats. The improvement will ensure that public awareness programmes that they conduct on cultural diversity will be effective. It is also further recommended that municipalities comply with human rights obligations emanating from the Bill of

Rights by respecting, protecting, promoting and fulfilling culture related rights, taking into account the nature of their powers and functions as well as the resources at their disposal.

5.4 Conclusion

This research has shown that the effective management of cultural diversity is inevitable for the sustainable development of cities. This is a reality acknowledged by Goal 11 of the SDGs. In South Africa this is implicit in the constitutional objects of local government and their obligations emanating from the Bill of Rights. South Africa's cities must therefore use their self-governing powers to promote and protect cultural diversity in their jurisdictions.

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