

SOUTH AFRICA

Polygamy and HIV/AIDS in South Africa: The Fatal Clash between Custom and Women's Human Rights in the Era of HIV/AIDS



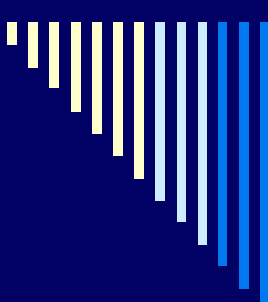
AMELIA VUKEYA



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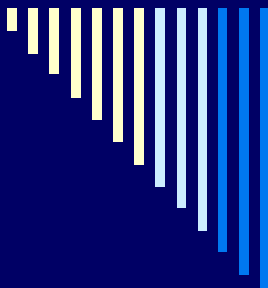
Excerpt from a speech by former President Nelson Mandela at the opening of Parliament in 1994:

“Freedom cannot be achieved unless women have been emancipated from all forms of oppression, unless we see in visible and practical terms that the conditions of the women in our country have radically changed for the better, and that they have been empowered to intervene in all aspects of life as equals with any other member of society”



INTRODUCTION

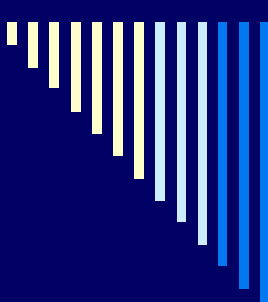
- Women's human rights in South Africa.
 - Polygamy as a harmful cultural belief:
 - Its social context and as protected by legislation.
 - Its harmful effects to women and girls
 - The link between harmful cultural practices and HIV/AIDS
 - Recommendations
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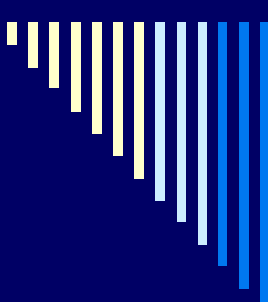
- ❑ Located in the Southern tip of Africa.
- ❑ Divided into nine provinces.
- ❑ A nation of over 47 million people.
- ❑ 52% of the population are women.
- ❑ Africans are the majority comprising 74.4% of the population.
- ❑ The minority groups include Whites, Indian/Asians and Colored.
- ❑ Eleven official languages.





WOMEN'S HUMAN RIGHTS MOVEMENT

- Women's contribution to the liberation struggle:
 - The struggle for women's rights started as early as the 1950's when women formed the Federation of South African Women.
 - In 1954 the Federation drafted the Women's Charter.
 - The main aims of the Charter:
 - Removal of all legal, economic and social disabilities.
 - Gender equality and economic rights.
 - The removal of all customs and traditions that discriminates against women.
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WOMEN'S HUMAN RIGHTS MOVEMENT

Cont...

- Women's contribution to the Constitutional process:
 - Women's Charter formed the basis of negotiations of women's human rights during the South African multi-party negotiations.
 - Women insisted that the post-apartheid Constitution include:
 - a preamble that explained gender oppression and its impact;
 - an equality clause that placed a constitutional duty of the state to ensure race and gender equality;
 - **protection against cultural practices that discriminated against women;** and
 - reproductive rights.
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WOMEN'S RIGHTS AND THE CONSTITUTION

- Progressive Constitution.
- The founding values of the Constitution (s1):
 - non-racist and non-sexism society.
 - Affirms the democratic values of human dignity, equality and freedoms
- Governments Accountability (s7(2))
 - Requires the state to protect, respect and fulfill all the rights stated in the Bill of Rights.
- Provisions advancing women's rights.
 - The right to equality (s9)
 - The right to dignity(s10)
 - The right to reproductive health(s12)
 - The right to health, property, food and housing (s25-9)

**The
Constitution**
of the Republic of South Africa



ACT 108 OF 1996

WOMEN'S RIGHTS AND THE CONSTITUTION

Cont...

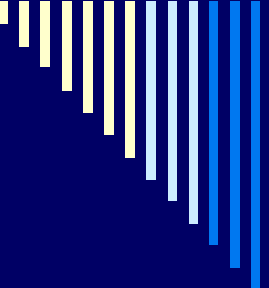
- The Promotion of Equality and the Prevention of Unfair Discrimination Act, 2000 (s8(d))
 - It provides for the prohibition of unfair discrimination on the grounds of gender:
“including any practice whether traditional, customary or religious practice which impairs the dignity of women and undermines equality between women and men, including the undermining of dignity and well-being of the girl child”
- Ratified the Convention on the Elimination of All Forms of Discrimination Against Women without reservation.





POLYGAMY

- ❑ Male dominance, cultural beliefs and practices.
- ❑ The Constitution protects the right to culture only if its consistent with the Bill of Rights(s30)
- ❑ The Recognition of Customary Marriages Act 1998
 - Protects past and future polygamous marriages.
 - Women have equal status with men.
 - Full status and capacity to acquire assets and to dispose of them
 - Women can enter into contract and can litigate.
 - Women have equal rights to children



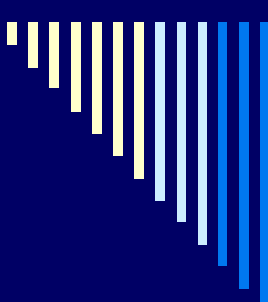
POLYGAMY: Prevalence, nature & effects

- Rural and urban polygamy.
 - The effects of this practice on women:
 - self development.
 - health.
 - Effects on the children especially girls:
 - Parental neglect
 - Economic and emotional support
 - child abuse
 - rape.
-

WOMEN AND HIV/AIDS

- The sixth highest infection rate in the world:
 - 18.8 % of the adult population is living with HIV.
 - 10.15 % of South African women are living with HIV.
- HIV effects on women:
 - Women are branded the “spreaders” of the virus
 - HIV puts a heavy burden on woman:
 - Voluntary primary care-givers are needed for the sick and the dying
 - Act as guardians to children orphaned due to HIV need care-taking
- Hinders a women’s development.





RATIONALE FOR PROTECTING POLYGAMY

- Political reasons
- Women's choice:
 - *"a woman is prepared to waive her rights to dignity in her own consent therefore why should she should not be free to do so."*

Prof C R M Dlamini

- Social reasons:
 - *"The morality of people has degenerated to an extent of trafficking women in the form of prostitution. There are brothels all over and the customers of these brothels are married men. If these men were in polygamous marriages they would not be frequenting such places."*

The Director of Kara Heritage
Institute, Dr Mathole Motshekga,



CULTURE AND HIV

- Men invoke culture as a justification for sexual entitlement.
 - The former Deputy President, Jacob Zuma, Rape trial.

“She was so aroused that leaving her at that stage would have been a betrayal to the Zulu culture”
 - ANC Chief Whip, Mbulelo Goniwe, sexual harassment case.

“he is said to have wondered aloud if she really was a Xhosa woman who understood her culture. How could she dare question her Chief?”

Quotes from Sunday times 3 December 2006

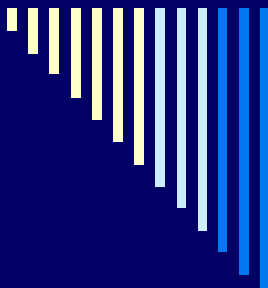
CULTURE AND HIV

CONT...

- ❑ Women are failing each other by being silent



CELEBRATION: Jacob Zuma's supporters danced outside the courtroom. REUTERS



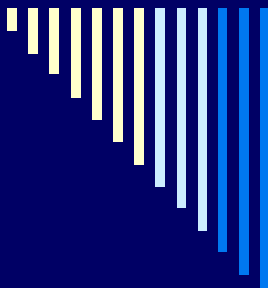
RECOMMENDATION: ENFORCEMENT OF WOMEN'S HUMAN RIGHTS

- ❑ Need sensitize health workers, police officials and male judges.
- ❑ Litigation by Non-Governmental Organizations
 - Constitutional Court of South Africa
 - ❑ *The Bhe v Magistrate, Khayelitsha & Others*
(Landmark case on women's right to equality and dignity in the context of culture)
 - ❑ Customary system of male primogeniture –unconstitutional

“the fact that customary law was marginalized does not mean that it can never change and adjusted by legislation. It is mandatory that the adjustments and development to customary law accord with the spirit, purport and objects of the Bill of Rights”

Chief Justice Pius Langa





RECOMMENDATION: ENFORCEMENT OF WOMEN'S HUMAN RIGHTS

Cont...

- Formal and informal education
 - Economic empowerment
 - Break the circle of dependency and eliminate poverty
 - Support of micro-enterprise projects
 - Sewing co-ops, chicken farming, gardening, arts and crafts
 - Support women's rights advocates
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CONCLUSION

For the sake of the women who does not have the courage to leave and the girl child who is being robbed of her innocence and childhood. Both bare the risk of being infected with HIV/AIDS



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