



With the election of Jacob Zuma in 2009, South Africa became the second SADC country with a polygamous head of state. Above, Zuma with three wives, Nompumelelo Ntuli (left), Thobeka Mabhija (second left) and Sizakele MaKhumalo (right).
Photo: Google images

WOMEN'S RIGHTS AND POLYGAMY

Introduction

This policy brief is part of a Gender Links series on complex and controversial issues that intersect with its work. There are few social issues as contentious as polygamy. Those who support the practice argue that polygamy is a cultural tradition that improves economic stability in the home. Its proponents say women often choose polygamy over monogamy, aware that infidelity is present in many relationships and it is better to keep it in the open.

Polygamy's detractors underscore the gender inequity that is inherent in polygamous relationships in an already patriarchal system. In addition, they highlight the emotional stress linked to competition between wives and children for attention and resources, as well as the lack of rights that sometimes leads to gender violence. While some argue that polygamy helps reduce the spread of HIV and AIDS, this is only the case if all within the relationship are HIV negative and remain faithful to one another. An increasing number of studies suggest that polygamy may be an accelerator of the virus.¹

Polygamy is widely discussed in Southern Africa media, partly because two of the region's heads of state champion the custom: South Africa's President Jacob Zuma, who has four wives, and Swaziland's King Mswati III, who has 14 wives.

QUICK FACTS

- Two SADC heads of state practice polygamy: Jacob Zuma of South Africa and King Mswati III of Swaziland.
- Polygamy is recognised under civil law in almost 50 countries.
- Customary law recognises polygamy in more than 12 other countries, including eight countries in Southern Africa.
- The UN Committee on the Elimination of Discrimination against Women states that polygamous marriage contravenes a woman's right to equality.
- 85% of pre-modern societies are known to practice polygamy.
- An increasing body of research points to a connection between polygamy and HIV and AIDS.
- A 2008 UN report found that polygamy and promiscuity is the main driving force for the country's high rate of HIV.

Key terms and definitions

Polygamy can be practiced in three different forms:

Polygyny is when a man has more than one wife.

Polyandry is when a woman has more than one husband.

Group marriage occurs when a family unit is comprised of multiple husbands and wives.

While polygyny is the correct term to describe a man who has more than one wife, polygamy is commonly employed as a synonym for polygyny.

Polyamory is the practice of having more than one intimate relationship at a time with the consent of everyone involved.

¹ http://hdr.undp.org/en/reports/nationalreports/africa/swaziland/Swaziland_NHDR_2008.pdf

Global context

Polygamy has existed across the globe for centuries and into the present day. The practice is less common today than in the past and is now mostly concentrated in African societies, in Mormon faith communities in North America and in Muslim societies in the Middle East, North Africa and Asia. Yet even in those places where polygamy is legal and accepted it is not practiced by a majority. There has been a movement in recent years toward limiting polygamy.

The common denominator in all societies practicing polygamy is a patriarchal cultural construction. Of 1231 “pre-modern” societies noted in the Ethnographic Atlas Codebook, 85% practice either occasional or regular polygyny while 15% are exclusively monogamous and just four practice polyandry.²

Relevant international provisions

The United Nations Committee on the Elimination of Discrimination against Women stated, in its general recommendation number 21 on equality in marriage and family life, that: “Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited.”

The UN suggests that laws contain a clear definition of polygamy and that legislation should prohibit polygamy and ensure that the rights of women in existing polygamous relationships are protected.³

In addition to this, a 2009 United Nations report on Good Practices in Legislation on “Harmful Practices” Against Women notes that polygamy is one of a range of marriage practices discriminatory toward women. Where polygamy exists, violence against women perpetrated by a husband, as well as violence between co-wives, tends to be high.⁴



A 16 Days of Activism in Swaziland, where polygamy is common and thought by some to be a major driver of HIV and AIDS. Photo by Gender Links

Article 6 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa also promotes monogamy as the preferred form of marriage

and calls for the rights of women in marriage and family to be protected and promoted, including in polygamous marital relationships.

While none of these instruments attempts to ban polygamy, they all call attention to its role in exacerbating inequality between women and men.

There are a variety of legal protocols linked to polygamy in country- or region-specific contexts. For example, Dutch Civil Law states that marriages must be monogamous. In France, the Pacte Civil de Solidarité (PACS) is a form of civil union that grants rights to unmarried couples, but prevents these couples from entering into another civil union prior to the dissolution of a previous marriage or if they are already bound by another PACS. Meanwhile, *concubinage* exists in the French legal system, a civil law expression which refers to the legal recognition of the fact that two unmarried persons live together as spouses. It comes into existence without the expression of the will of the parties at a special ceremony.

The United States Model Penal Code recommends that state legislatures write their laws so that polygamy is classified as a felony. However, some state laws are much more lenient, considering polygamy a misdemeanour. Despite the laws, polygamy is rarely prosecuted in the United States unless in conjunction with another crime, such as child abuse.

The Canadian province of British Columbia is home to a polygamous fundamentalist Mormon community called Bountiful. In a landmark ruling in 2011, the British Columbia Supreme Court, responding to allegations of abuse in Bountiful, ruled that Canadian polyamorists should be permitted to have multiple relationships as long as they don't get married. The court, however, distinguished between polyamorous and polygamous relationships, ruling that polygamy should remain a crime in Canada. It noted that Canada's ban on polygamy is in place to protect the rights of women and children which, the judge ruled, is more important than religious freedom in this context.⁵

Polygamy and Southern Africa

The subject of polygamy is divisive in Southern Africa; especially in those countries whose heads of state practice it. However, the Southern African Development Community Protocol on Gender and Development Article 4 endeavours SADC countries to enshrine gender equality and equity in their constitutions and ensure that no provisions, laws or practices compromise either. Meanwhile, Article 21 mandates state parties to take measures, including legislation, where appropriate, to discourage traditional norms, including social, economic, cultural and political practices which legitimise and exacerbate the persistence and tolerance of gender-based violence with a view to eliminate them.

² <http://www.psychologytoday.com/blog/darwin-eternity/201108/are-people-naturally-polygamous-0>

³ Good Practices in Legislation on “Harmful Practices” Against Women, United Nations Division for the Advancement of Women, United Nations Economic Commission for Africa, Addis Ababa, 26 - 29 May, 2009.

⁴ Good Practices in Legislation on “Harmful Practices” Against Women, United Nations Division for the Advancement of Women, United Nations Economic Commission for Africa, Addis Ababa, 26 - 29 May, 2009.

⁵ http://www.xtra.ca/public/Vancouver/BC_court_upholds_polygamy_ban-11137.aspx

Despite this, **South Africa's** current president, Jacob Zuma, advocates for polygamy as a representation of freedom and culture. Given South Africa's history of apartheid, those championing polygamy hold it up as a symbol of openness in a newly democratic society. For others, it represents the very opposite: oppression and outdated tradition.

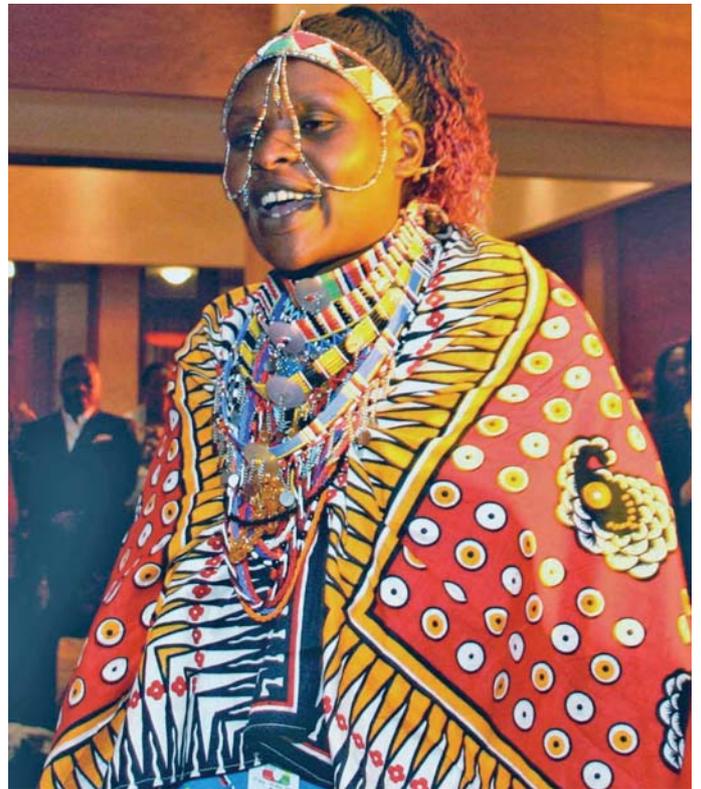
Polygamy exists in a complicated space within South Africa's legal structure. The practice is legal yet at the same time the country's constitution provides for the equal rights of women and men - something many see as inherently missing in polygamous relationships. Some argue that polygamy must remain legal so that women in these relationships may have more rights. The South Africa Law Reform Commission, Discussion Paper 104 on Domestic Partnerships it states: "A situation that is peculiar to South Africa is the legal recognition of polygamous customary marriages for some members of the population while for the rest a bigamous marriage is null and void."⁶

The Recognition of Customary Marriages Act no 120 of 1998 extends the state's recognition and regulation of marriage to both monogamous and polygamous customary marriages. Where someone enters into a customary marriage they have a legal duty in terms of the Act within three months of entering into the marriage to have that marriage registered.⁷ In this Act the financial position of the woman is protected. Section 6 of the Act states that: "A wife in a customary marriage has, on the basis of equality with her husband and subject to the matrimonial property system governing the marriage, full status and capacity, including the capacity to acquire assets and to dispose of them, to enter into contracts and to litigate, in addition to any rights and powers that she might have at customary law."

Section 7 stipulates that a husband wishing to marry another wife must put this in writing to the court and all co-wives must agree in writing to the additional marriage.

However, well meaning acts are not always well implemented, or even representative of the situation on the ground. Regardless of these laws, including the stipulation requiring written permission, a husband often wields his authority over his wives, rendering such laws useless futile.

Swaziland: Polygamy is legal under Swazi law but seldom practiced because of the high price of dowries husbands



The Maasai of East Africa are one of the few societies that practice both polygyny and polyandry.
Photo by Trevor Davies

must pay in order to take new brides. However, Swaziland's King Mswati III is a well known polygamist who is often in the media spotlight around the time of the country's annual Reed Dance ceremony. Single women travel from across the country to dance bare-chested at the event, at which the king has several times chosen a new wife.

Namibia: A proposed law introduced in 2012, the Recognition of Customary Marriages Bill, aims to do away with polygamous marriages in both civil and customary marriages. However, the prohibition of polygamy is controversial and some, including Ombadja Chief Mathias Walaula, have called on the government to reinstate polygamous marriages in an effort to tackle social problems.

Tanzania: The government of Tanzania in 2011 rejected a United Nations Human Rights Council recommendation to ban polygamy in the country. Polygamy is practiced among Tanzania's Muslim community, which make up approximately 50% of the population. It is traditionally common among the Maasai, who are also one of the few African societies to practice polyandry.

Case study: South Africa - Polygamy and the media

The South African media is divided on the issue of polygamy, with those who campaign for and against the practice. Public discussions about polygamy in South Africa intersect with various other issues, including debates related to masculinity, economics, constitutional rights, women's agency, HIV and AIDS and the role of tradition.

Article: South African man weds four women at the same time to be faithful and save money!⁸

"A 44-year South African man last week married his four "well-behaved" wives, pledging his undying and equal love "because marrying all four was better than committing to one woman and then cheating on her... And marrying them all on the same day saved costs."

⁶ South Africa Law Reform Commission, Discussion Paper 104, Domestic Partnerships, Project 118, DOMESTIC PARTNERSHIPS, section 7.7.21. 2003.

⁷ De Vos, Pierre. *Is polygamy unconstitutional?* 4 Jan 2010.

⁸ *Is this culture, or bling-bling?* 16 Jan 2010.

The above excerpt from an article that appeared in South African media, *Is this Culture or Bling-Bling?*, exemplifies one side of the country's stance on the issue of polygamy. In it, Milton Mbhele, cites his Zulu "culture" as one of the reasons for his polygamous marriage. Also in the article, Shadrack Gutto, director of the centre for African Renaissance Studies at Unisa, states that human beings are polygamous by nature.

In another article, *Zuma ties third knot: Bling on show as president marries wife number 3 in traditional Zulu ceremony*,⁹ the author seems to support the practice by normalising it. "Many of those attending the ceremony yesterday saw nothing wrong with Zuma taking more than one wife," the article states.

Meanwhile, articles written by gender advocates have criticised South African President Jacob Zuma for engaging in an extramarital affair and having a child born out of wedlock. "If nothing else President Jacob Zuma's love child with Sonono Khoza has made it clear that the personal is political and the political is personal," writes Colleen Lowe Morna, "the love child case shattered this sycophantic barrage. It showed that contrary to Zuma's own claims about openness within his polygamous circle, the president wanders at will outside this circle."

Columnist Chris McEvoy adds his voice when he states: "My only problem here is with the South African customary law on polygamy, which is about as female friendly as date-rape... If this were a free country, Zuma's wives would even be allowed to marry each other - which, incidentally, is the best idea for a family sitcom I've had all month."



Milton Mbhele with his four brides: Baqinisile, Thobile, Simangele and Zanele.
Photo by Jackie Clausen

HIV and AIDS

The jury is still out when it comes to the role polygamy plays in the spread of HIV and AIDS. While some say it is an accelerator of HIV and AIDS, others claim that poly-gamous relationships actually help to decrease the spread of the virus.

The grey area in this discussion is linked to the issues around unprotected sex and multiple concurrent partnerships. Polygamy is by definition a multiple concurrent partnership and such relationships are seen as one of the key drivers of HIV transmission in Southern Africa. In some ways, polygamy is held up as a moral alternative to promiscuity outside of wedlock because the "multiple" other partnerships are unconcealed. However, as South Africa's Jacob Zuma has illustrated, men in polygamous relationships do not always remain faithful to those inside the marital union, and the reality is that many individuals in polygamous marriages do not uphold their marital vows.

The risk of HIV and AIDS is increased in situations where individuals cannot protect them-

selves from exposure to the virus; this is especially true in a marriage where women do not have a choice to refrain from sexual acts. In polygamous relationships - with multiple opportunities for infidelity - women have no way to know if another person in the marriage has been unfaithful.

Research has shown that the number one group contracting HIV is women between the ages of 15 and 24. This "choice disabled"¹⁰ population often cannot afford to say no to a man who may hold authority in their community. In addition, parents and families often push younger women into polygamous partnerships with older men in order to gain upward mobility for the family. This increases the likelihood that young women will contract HIV because older men with multiple sexual partners are more likely to have been exposed to the virus.

Further, a young woman in a polygamous relationship is liable to accept her husband's rules and decisions about sexual matters, including whether he takes additional partners and whether or not he uses a condom during sex. This structure often results in women who have little say over their relationship and sexual health.



A UN study in Swaziland - home of the annual Reed Dance - found that the country's high rate of HIV infection is related to polygamy.
Photo by Gender Links

⁹ Molele, Charles. *Zuma ties third knot: Bling on show as president marries wife number 3 in traditional Zulu ceremony* The Times. Jan 4, 2010.

¹⁰ Almost all current AIDS prevention strategies address the choice-enabled - those who can take preventive measures if they want to. Abstinence, for example, protects only those who can say "no." But many do not have this freedom of choice, mostly because they are victims of violence or are simply destitute, or for both reasons. These are the choice-disabled. <http://www.ciet.org/en/documents/projects/200912104240.asp> [accessed on January 18, 2010].

Issue	Arguments for:	Arguments for:
Culture and masculinity	<ul style="list-style-type: none"> • In his paper <i>Cultural Politics and Masculinities: Multiple-Partners in Historical Perspective in KwaZulu-Natal</i>, Mark Hunter writes of the rise and fall of the <i>isoka</i>, a type of Zulu man who traditionally had multiple-sexual partners. Hunter writes that the <i>isoka</i> died at the hands of capi-talism, migrant labour and Christianity. South African President Jacob Zuma defended the <i>isoka</i> at the World Economic Forum in Davos, Switzerland as a means of restoring African cultural pride that was lost due to colonialism. • Women and children were traditionally safer in large households where they could be protected from outside aggressors. People took pride in larger families and felt shame for having small families. 	<ul style="list-style-type: none"> • Polygamy is almost never polyandry, ensuring continued inequality between the sexes. • In many societies, a family chooses a husband for their daughter, which means girls have little say in decisions like marriage, which are fundamental to their lives. The practice of forced marriage still exists in many cultures, usually leaving women no choice but to be involved in a polygamous marriage. • Sexual satisfaction in polygamous marriages is mostly focused on men's satisfaction.
Constitutional and legal	<ul style="list-style-type: none"> • Customary law is legal in many Southern African countries and polygamy is a cultural practice in many countries, making it lawful. E.g. customary marriages act no 120 of 1998 in South Africa, which is practiced by the Sotho and Zulu people. • Religious freedom, as enshrined in the UN Declaration of Human Rights, ensures polygamy remains legal in some countries. UN Declaration Articles 2 and 18 pertain to religious freedoms and practices. 	<ul style="list-style-type: none"> • Polygamy, which is viewed as patriarchal, contradicts the unalienable human rights for all humans enshrined in the UN Declaration of Human rights as well as other human rights laws and instruments. • Some legal rulings, including a 2011 decision in the British Columbia Supreme Court in Canada, have come out against polygamy and stated that the rights of women and children are paramount to religious rights in this instance.
Rights and choice	<ul style="list-style-type: none"> • Women have the right to choose any lifestyle they want and African feminists have critiqued international non-governmental organisations for preaching that African women must be “empowered.” They argue that western feminists are condescending and lack insight into the agency that African women actually wield. 	<ul style="list-style-type: none"> • Many women feel obliged to enter into a polygamous marriage because of their culture or religion. This does not give a true sense of choice. • In some cultures, family members choose a woman's husband for her, which means a woman does not have any choice. • Many women in polygamous marriages do not have a say in choosing the co-wives their husband brings into the relationship. This results in emotional instability in polygamous marriages.
Economic	<ul style="list-style-type: none"> • Agricultural societies relied on human labour, therefore polygamy provided more hands to work the fields and produce more food. Polygamy has thus traditionally helped ensure greater wealth and economic security. • In his 1981 book, Gary Becker expressed the view that polygyny is in a woman's best interest. According to Becker: “My analysis of efficient, competitive markets indicates however that the income of women and the competition by men for wives of would be greater when polygyny is greater... This view is supported by the fact that bride prices are more common and generally higher in societies with a greater incidence of polygyny.” (1981, p56) 	<ul style="list-style-type: none"> • An in-depth questionnaire survey by Valerie Møller and Gary John Welch of 253 retired Zulu male migrants resident in rural areas examined the relationship between polygamy, economic security, and quality of life after return migration. Results indicate that polygamous marital status contributes only indirectly to feelings of enhanced well-being relative to economic advantage and good health. Despite changing economic circumstances, a traditionally-oriented polygamous head of a Zulu household may still expect to feel optimistic about his social and spiritual security in old age. Further research is required to explore Zulu women's views regarding the longer-term advantages of polygamy throughout the life course. • Children of polygamous families do not have equal access to education and are more likely to have behavioural and developmental problems.¹¹
HIV and AIDS	<ul style="list-style-type: none"> • Defenders of polygamy say that infidelity is rare in polygamous marriages, thus limiting the risk of contracting HIV and AIDS. While some studies support this claim, there is no conclusive evidence that it is true. 	<ul style="list-style-type: none"> • Swaziland: A 2008 UN report found that polygamy and promiscuity is the main driving force for the high rate of HIV in the small kingdom. This is usually connected to the problem of multiple concurrent partnerships and widow inheritance within a polygamous culture. “If one sexual partner in such sexual networks is HIV-positive and sex is unprotected, the practice becomes an important driver of the pandemic,” noted the UN Development Programme (UNDP)'s Swaziland Human Development Report for 2008.

¹¹ http://www.academia.edu/175877/The_Problem_of_Polygamy

Economics and polygamy

Some supporters of polygamy claim it makes for an economically stronger family because there are more people working and bringing money into the home, including more children.



South African women participate in a Take Back the Night event to make sure all citizens have equal rights. Some gender activists argue that polygamy is harmful to women, even though it is legal under South African customary law.

Photo by Gender Links

The debate about the economics of polygamy is not unique to Southern Africa. In Kyrgyzstan, many believe that due to ongoing financial instability, a collective approach to making ends meet is more pragmatic than an individual effort. "Polygamy exists due to the poverty of the majority of the population, and there is no way to eliminate it without improvement of living standards," said Osh-based independent sociologist Minojat Tashbayeva. Researcher Hamid Toursunof spoke to many women in Kyrgyzstan who said they would marry a man who is already married if he is prepared to care for them and their children.¹²

Meanwhile, polygamy's detractors instead argue that in many cases, husbands in polygamous relationships struggle to provide for multiple wives and children.

South African gender expert Nomboniso Gasa states: "It is the height of irresponsibility for men whose positions do not allow them to ensure that all wives and children are treated equitably and adequately supported, to enter into polygamous unions." She notes that the reality is that most South African men cannot afford to have multiple wives, but many still aspire to.

Some studies have found that men in polygamous relationships are more likely to suffer from alcoholism. In addition, men in such relationships are more likely to have lower levels of education than men in monogamous relationships.¹³ Both of these factors have economic impacts.

"I" Story: I don't see myself in a polygamous marriage

My name is Isabella Jaime and I am a 20-year-old Grade 12 student living in Maputo. My father is a traditional healer who has five wives and more than 18 children, though he could have more children and wives who are not known to the family.

Since he became popular 15 years ago, he has had several offers of women. Sometimes, when he treats people who cannot pay, they offer him a wife in the place of money.

Although I have grown up in the family where my father had pride in his polygamous status, I cannot imagine myself getting into my mother's shoes by marrying a man who has other wives, or will think of himself as being a polygamist.

I detest the idea, because I have seen how his wives suffer because he cannot meet their needs. For us children, it was only a lucky few who managed to go to school.

Our father never gave us the love that children should get from their fathers. When he was not away on his endless healing errands, he would be busy rotating around houses of his wives. At times, we would not know where he was for a week.

It is a bad experience that I would not want to happen to my children and me. I would like to be always together with my children and husband, in good or bad times.

What I also detest in a polygamous marriage is the fact that women are sort of put in competition with each other, as each woman vies to attract the attention of the husband. It is because of this competition that many women die of being either poisoned or otherwise murdered by the wives of her husband.

¹² Toursunof, Hamid. Kyrgyzstan: Polygamy issue sparks debate. May 21, 2007.

¹³ http://www.academia.edu/175877/The_Problem_of_Polygamy