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## **Underplaying women's sexuality to control women– the case of polygyny**

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## **Abstract**

This essay is an analysis of how women's sexuality is played out in polygynous unions by showing that women are not actors, nor are they decision-makers over their bodies and sexuality. The analysis is based on research I carried out for the Women's Law Diploma, (Nzira, 1995) and uses the sexual and rights framework as defined by the women's coalition to the Cairo and Beijing conferences as well as the principles of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) to show how the Zimbabwe law discriminates against women in polygynous unions, as well as the impact of the institution in the spread of HIV/AIDS. As feminists have shown that women's bodies are sites for male dominance, the purpose of the essay is to call on gender activists and/or feminists to bring the issue of women's sexuality to the fore otherwise talking about women's empowerment will remain an academic exercise as men will continue to control women's sexuality as a means of keeping women down.

## **Introduction**

As the debate rages on in Zimbabwe calling on government to reform marriage laws, with some groups calling for the abolition of polygyny and others for the total abolition of *lobola*, various arguments have been advanced to support these demands. Some of the reasons put forward for abolishing polygyny include: problems encountered on the death of the 'shared' husband, the incidence and confusing matrimonial property relations it engenders;(ZWLA, 2003; WLSA 1997) the competition for resources that can sometimes be intense and destructive; and that polygyny vexes the law even while parties are still together and more so on separation and on death, especially where men mix the available forms of marriage (WLSA, 1997). A counter-reaction and argument for the perpetuation of polygyny has been, for example, that polygyny is culturally entrenched so must be left as 'an optional marriage form' with legal regulations regarding the division of property and the consent of the spouse affected (Department of Information, Zimbabwe Cultural Preservation group, 2003).

However, all the arguments for and against polygyny have been limited to concerns with material inequalities and fall short of addressing the real problems faced by women in general and by women in polygynous union in particular – that of the overt control of their sexuality.

Like gender, sexuality is political and is organized into systems of power which reward some individuals and activities while punishing and suppressing others (Rubin, 1989). Polygyny, an institution that allows a man to take more than one wife – a man 'shared' by a number of women can be viewed as one such system. Complex inter-relations of power and injury are played out upon the body in heterosexual relationships in general and in polygynous unions in particular. Senior wives feel belittled when a husband takes on a young woman and the young wife also feels cheated when she has to compete for sex and other resources with the senior wife — she too feels belittled because, as shown by research, she has usually been promised that the husband would be hers exclusively (Nzira, 1995). However, sexuality as a subject for public debate is taboo in Zimbabwe, with only a few feminists who have dared to write on the subject (McFadden, 2003 and Zinanga, 1996) These feminists discuss issues like how the struggles for sexual equality in the north began to impact on the consciousness of southern women thereby changing the content of their demands; and how issues of sexuality are rarely if ever discussed, even among

friends, as it is surrounded by taboos, disgust, shame and fear. Zinanga (1996) ends her discussion by calling for the deconstruction of the myth of privatized sexuality through debate and research in Zimbabwe, as well as education that focuses more on what women want.

This essay contributes to the discourse started by the feminists cited above on women's sexuality in the south. Data from the aforementioned research has shown that the co-wife dynamics in polygynous unions are characterized by a scramble for resources, including sex, and that the gender dynamics supported male privilege and dominance where the women play a subordinate role in the union. However, the centrality of women's sexuality to women's empowerment and helplessness came to the fore when I undertook the Gender, Law and Sexuality course for the Master's degree in Women's Law. As the course unfolded through the course presentations and discussions, it became very clear to me that: sexuality is a tool that society uses to create hierarchies within heterosexual relations; the consolidation of these hierarchies make masculinity a priority over femininity; and that it would be impossible to talk about women's empowerment or to give women agency without addressing issues of sexuality. The object of the essay is to demonstrate how society and the law collude in perpetuating the existence of unequal relations between the sexes where sexuality in polygynous unions serves as a tool to reinforce the social and legal super-ordination of men over women.

The analysis follows the sexual and health rights framework as advanced by the women's coalition, then looks at implications of polygynous unions for women's sexuality as illustrated by data from the research referred to above and how the law in Zimbabwe discriminates against women despite the fact that Zimbabwe is party to CEDAW.

### **Women's sexual and health rights**

Sexual rights embrace the feminist ethics of bodily integrity and personhood that permeates the Cairo and Beijing conferences. The women's coalition at the World Conference on Population and Development (ICPD) in Cairo in 1994, and the Fourth World Conference on Women (FWCW) in Beijing in 1995 representing women from both the global south and the north, worked to replace the old population and family planning discussion with a broad concept of reproductive and sexual health rights that links sexual and reproductive freedom to women's human rights (Petchesky, 2000). At the core of that concept lies a principle that as recently as the mid-1980s was widely deemed unacceptable, if not unthinkable, in nearly all countries and political systems, that even the most intimate areas of family, procreation and sexual life are where women's human rights to self-determination and equality must prevail. The above principle is embodied in a historic paragraph adopted by government delegates, Zimbabwe included, in Beijing that:

The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences (United Nations, FWCW, Beijing 1995).

The fundamentals of this definition – sexual and reproductive health free of coercion, discrimination and violence; equal relationships between women and men in matters of sexual relations ... and full respect for the integrity of the person — are problematic in polygynous unions.

### **Women’s sexuality and health in polygynous unions**

Perhaps one could ask the question, why talk or even think about sex and sexuality? It is true that to some, sexuality may seem unimportant, a frivolous diversion from the more critical problems of poverty and disease. However, it has been suggested that it is at times when we live with the possibility of worsening poverty and threats to survival that people are likely to become dangerously obsessed about sexuality and that disputes over sexual behaviour often become vehicles for displacing social anxieties and discharging their attendant emotional intensity. As a result, sexuality should be treated with special respect in times of great social stress (Rubin, 1989). Sexuality is an integral part of identity on both a personal and social level, and, like gender, is socially constructed with its own internal politics, inequalities and modes of oppression. As a result, women have to some extent been excluded from the modern sexual system, yet men’s propensity to appropriate female desire, and women’s part in accepting or resisting this power raises issues of control in relation to the body – men’s super-ordination over women which is well played out in polygynous unions.

Feminist studies have identified the physical body as a social site and Foucault’s conception of micro-physics of power can be applied to these notions of women’s bodies as sites of male domination (Foucault, 1978). The identification of power as gendered links the disciplining of bodily activity to institutionalized heterosexuality as played out in polygynous unions. In a polygynous union, as shown by research, women are not actors, nor are they decision-makers over their bodies and sexuality (Nzira, 1995). Instead sexuality is basically reduced to a routine where the “shared” husband works out a schedule and determines when he will sleep with which wife. It can be argued that by giving women ‘timetables’, they are thus put under pressure to have intercourse when they do not want it. Furthermore, if the other wife is interested in sex when it is not her turn she cannot have it. In some instances where women have to take turns to visit the man in the city and only one of them visits during the winter season, it means sexuality and fertility are treated as synonymous and a woman’s sexuality becomes closely related to her reproductive role as a mother. This conception of female sexuality can be considered as fundamentally oppressive to women because it restricts and controls the expression of sexuality as a free form.

The term sexuality elicits images of physical and emotional belongingness. It is a complex term with multifaceted meaning referring to deep emotional feeling as well as to issues of power and vulnerability in gendered relationships (Machera, 2002). Polygynous unions raise questions on what happens to issues of companionship, just being together and sharing the good and bad times, just being close to each other physically for warmth and emotional support? The comparability of the time a man enjoys the companionship with each of his wives is well illustrated under the polygyny of the representative Islamic sort which licenses one male to have sole access and total possession of four women. According to Millet (1989), the ratio of sexual opportunity under such

practice is one in sixteen and each woman has one fourth of a man's sexual potential, whereas the man has that of four women. It is therefore not surprising that women in polygynous unions use any means to outdo each other in terms of service and creativity. Again this was well articulated by one polygynist<sup>1</sup> in the research that informed this discussion when he indicated that for him to spend 'quality' time with any one of his wives depended on how the wife treated him – services she provides and her attitude towards him. However, for the man, the options available are unlimited. Starting at the point when he has one wife, if one partner takes the other for granted, the stability of the marriage is threatened but the husband has the option to take another wife, a situation that allows him to play the wives against each other.

At law, women in polygynous unions are discriminated against. In Zimbabwe, we have two main instruments providing for the institution of marriage, namely; the Marriage Act [Chapter 5:11] – dealing with a monogamous type of marriage allowing only one wife, and the Customary Marriages Act [Chapter 5:07] – a potentially polygynous marriage which gives room to those men who, on 'cultural' grounds, feel they cannot be satisfied by one woman. During the subsistence of the marriage, the partners married under the first regime have sole entitlements to each other. If any of the partners engage in extra-marital relationship, the grieved partner can sue the other woman or man for damages. This proviso to claim damages, though not often exercised for various reasons – especially by women because they have been persuaded to accept their inferiority and perceived 'dependence' on their husband — basically places the parties to the marriage on an equal footing.

However, under the Customary Marriage Act and for partners in an unregistered customary law union, the wife does not have the right to sue for adultery damages. The marriage, being potentially polygynous, gives room to one partner – the man — to claim that he intends to marry such other woman or women. Whether he eventually does so or not is of no consequence but he is free to roam as much as he wishes without any fear and at times with little respect for his wife or wives. Conversely, the husband in the event that his wife and or wives engage in an extra-marital relationship can sue the other man for damages.

It is patently clear from the above that the law through the practice of polygyny forces women to discipline their own bodies and pleasures to suit men in ways that leave the women basically without personhood as they seem to only exist to serve the man and to bear his children. This in itself is a form of sexual or psychological violence. In so doing, women concede to men's definition of what is acceptable or even pleasurable and thus maintain the hierarchical relation between women and men which is the foundation of the super-ordination of men to women.

The Sexual Offences Act has been hailed as a welcome development because of its recognition of marital rape and is therefore considered a milestone towards achieving gender equality. However, even if one looks to it for protection, it is still difficult to see how a woman in a polygynous union will benefit under this law. The woman in a polygynous union may have been 'starved' of sex and companionship for two or more weeks — even longer for women who have to visit the husband in town one at a time and only during the winter season — so how can she deny the husband's sexual 'attacks'. Some people might consider this acceptance of the sexual 'attacks' as

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1 This man had twelve wives although at the time of the research he was only living with two of them, the rest having left because they did not meet his 'mark' of a good wife.

consent, and to some extent it is consent but only at a very theoretical level: it could be very clear that she is only consenting under duress. After all, if she was to miss this opportunity, she would have to wait for another turn which may not arise in a very long time. When will that be and, in the meantime, what is happening to her physical and psychological sexual needs? The man once rejected will move on to the next wife whom he will obviously find 'only ready and willing' especially when she is informed that she is better than the other wife.

In this instance, the woman is not given the opportunity to discuss her desires openly with the husband. This removes from the woman an intimate space within which man's power can be subverted and resisted. It has been shown that where women do have critical consciousness of the embodiment of their sexuality, and are comfortable with desires of their own, men's power can be directly threatened (Holland *et al.*, 1998). It can be argued that, if sexuality is related to our personal lives and our internalized forms of oppression, that it is an important element in our lives and wellbeing. It is an important need in human beings — a source of power and strength — and when people are allowed to express their sexuality in their own terms as determined by their specific needs, it becomes a source of strength and empowerment.

From the foregoing, it is clear that it is in polygynous unions that the law displays a double standard which offends women's rights in that men and women are not treated equally. Whereas men have the option to marry additional wives, women do not have this option. From this point of view, the wide option available to the husband indicates that he has more rights in the marriage than women. In this regard, polygyny is discriminatory against women because while men can have more than one wife, women are not allowed more than one husband. The effect of this custom is to put women in a very low position in marriage and family relations.

In addition, it is also patently clear that in polygynous unions, there is little or no room for women to construct and express their sexuality in a way that would empower them, both socially and at law. Instead, their sexuality is constructed in relation to the perceived male sexuality and pleasure, basically linked to reproduction. Thus women's sexuality becomes externally directed as opposed to being specific personal expressions unique to each woman.

Furthermore, the unequal impact of the law in polygynous unions does not end with control of women's sexuality. It even extends to distribution of assets in the estate of a deceased spouse. Although the Administration of Estates Amendment Act No. 6 of 1997 provides for the inheritance by a surviving spouse or spouses from the deceased estate, the shares given to wives in a polygynous union (one third – irrespective of their number) is in real terms not equal to the one third given to the husband when any of the wives die. In addition the man has an opportunity to inherit several times should all of his wives pre-decease him. Furthermore, it has been shown that in a polygynous union, each wife and her children form an almost independent family unit where the husband contributes very little in real terms. Thus the husband who inherits from the estate of his deceased wife is almost 'reaping from where he did not sow'. Women feel 'injured' because the efforts of their labour have been misappropriated for the benefit of the man.

In essence and based on the foregoing analysis, polygyny is a practice that violates women's sexual and health rights as perceived and defined by the women's coalition cited above. This is also in contrary to the principles of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) to which Zimbabwe is party. CEDAW has been

hailed as the most comprehensive and the only detailed international agreement in the history of women's rights with its spirit rooted in the goals of the United Nations and the conviction that equality before the law is a fundamental human right essential to the advancement of women. The convention incorporates critical gender provisions for example, in articles 2 (a & f), 5 (a) and 16 in general. Article 16 (f) of CEDAW provides that state parties shall take all measures:

To embody the principle of equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women; and

To eliminate discrimination against women in all matters relating to marriage and family relations; and specifically the same rights and responsibilities with regard to guardianship, wardship, trusteeship of children, or similar institutions where these concepts exist in national legislation, in all cases the interests of the children shall be paramount.

Each of the above provisions binds ratifying states both to enshrine the legal status of women in law and enforce these measures in practice. In this way CEDAW can be said to demand women's right to self-determination and by implication require that women be treated as individuals in their own right.

Furthermore, the convention is monitored by a committee and among some of the functions of this committee is making general recommendations related to specific articles of the convention. In 1994, for example, the committee adopted, among others, recommendation 21 on 'equality in marriage and family matters' based on articles 9, 15, and 16 which are relevant to the status of women in the family. Polygyny is among the many cultural practices that violate recognized women's rights based on the fundamental right to equality of all persons and non-discrimination that are addressed by Recommendation 21, and is specific to the African experience. Already some countries in Africa (Tunisia and Cote d'Voire) have taken bold steps to abolish the practice, while others (such as Somalia, Egypt and Morocco) have adopted a midway approach to limit the practice by imposing conditions on the husband to seek permission from courts or a recognized authority to marry a second wife (Kisaakye, 2002). This is a very small number considering the prevalence of the practice on the whole of the African continent. However, although recommendations emanating from this committee are not formally binding interpretations of the convention, they are still influential and useful material to support arguments based on the conventions.

Although Zimbabwe is signatory to CEDAW without reservations, the possibility of achieving equality between women and men seems a long way off since the constitution, the superior law of the country, continues to stand in the way. First of all, the constitution (section 89) provides for the co-existence of both the general law and customary law. Secondly, and more specifically, section 23 of the constitution allows for legal discrimination in cases of, among other things, marriage. In addition, the Zimbabwe Constitution requires that any international conventions first become domestic law before they have practical application at national level. Furthermore and in addition to the fact that polygyny is one of the cultural practices that could be abolished through the application of CEDAW, another practice related to marriage formation stands in the way of women having equality at law in relation to guardianship — the practice of *lobola*. *Lobola* adds to the myriads of practices that bring out the tension between culture and women's human rights and underpin the ideologies regarding the inequalities between women and men in Africa, Zimbabwe included. Through the practice of *lobola* women can be denied any decision-making power over the product of their sexuality – children. Although the woman is the one who bears children, the significance of *lobola* in the marriage process involves the permanent transfer of a woman's fertility to a man's group that is validated by the transfer of cattle or their monetary equivalent. In those countries where *lobola* has not been paid, the children do not belong to the father and his lineage but belong to the maternal family (WLSA, 2002). By implication, the transfer of the woman's fertility means that the man and his group will have full rights over her reproductive capacities and they will take full rights to guardianship of the children. In addition, the general attitude among Zimbabweans is that the number of cattle is proportionate to the number of children that a wife is expected to bear and the wife is not allowed to use contraceptives. Moreover, the interest and control of women's sexuality in cases where cattle or *lobola* have been transferred does not just apply to the expectation that she must bear children that are proportionate to the number of cattle. It extends to childless marriages which are not tolerated, and if the *lobola* is not demanded back, a brother's daughter or young sister is brought in to replace the wife. What this simply means is that children are born for men.

Considering the conception of the human rights of women by the women's coalition, through the practice of *lobola*, women's bodily integrity is systematically violated. Denying a woman the right to use contraceptives means that when her health is at risk, she has not only lost control over her reproduction but she has also lost control over her body and her health.

### **Implications of underplaying women's sexuality**

The way women's sexuality is perceived by society and treated at law is illustrative of modest femininity that requires a young woman to construct a disembodied sexuality and be passive rather than to actively embody feminine sexuality, especially in polygynous unions. However, there are complex interconnections of power and resistance in which women experience and respond to the union's pressures to construct their bodies as passive and fragmented sexual objects, and bear testimony to the amount of competition that sometimes takes place between and or among the women. For example, they use vaginal drying agents to improve their sexual performance, a practice that is detrimental to the woman's health and may predispose the woman to cancer and HIV/AIDS. Some get frustrated when sexual expectations and emotional needs are not met as illustrated by a story from a young woman in one such a union who would spend



nights pounding grain while the husband was with the other woman. Others feel belittled, despondent and opt out of the sexual 'circus' by suggesting that the husband spend his time with the young wives, but does this mean that they no longer have sexual desires?

Power issues related to sexuality are also critical because of the potential transmission of HIV/AIDS through heterosexual activity and where male to female transmission appears more likely than from female to male. As already discussed above, heterosexual relations in patriarchal societies like Zimbabwe involve, as in the case of polygyny, inequalities of power and without the power how are women required or expected to take preventive and protective actions aimed at minimizing their risk to HIV/AIDS? It is in this regard that one of the issues that has come to the fore is whether this patriarchal entrenched male institution (polygyny) is going to be maintained even in the face of increasing evidence that the man can repeatedly infect several women within a 'respectable' marriage form like polygyny and that, at the end of the day, this marriage form perpetuates high-risk behaviour which facilitates the spread of AIDS. The major reason for this is that the unequal power between men and women in marriage in general and in polygynous unions in particular for reasons cited above expose women to involuntary infections, including HIV/AIDS.

For a long time, African countries have continued to record very high rates of fertility and currently soaring rates of HIV/AIDS infection (Machera, 2002). Again polygyny can be given as one of the reasons for this sad phenomenon. Though HIV/AIDS infection takes place in different ways, it is the competitive relations between the wives and therefore 'coercive' gender relations existing in polygynous unions that predispose most women to infections.

Uganda has been hailed as 'the best practice' in HIV/AIDS control and lessons from that country include that polygyny complicates HIV control strategies in a number of ways. Firstly, it puts the couples at risk of infection in as much as a woman may seek social and economic support from other men if the support is not forthcoming from her husband in cases of poverty. Secondly, in getting the serum-status of any spouse, what happens to the other spouses and in case one partner is sero-positive, should this information be relayed to the other partners in the union? Even when looking at stigmatization where any one of the parties is known to be HIV positive, the other parties are equally affected by the social impact of the HIV/AIDS infection because all of them in effect are one because they share something central through the husband (Izama, 1996).

The gender dimensions of the pandemic, focusing on women's lack of control over their own bodies and the terms on which sex is determined all relate to how women's sexuality is perceived.

### **What choices do women have – opt out of polygyny?**

The analysis has shown that polygyny is an institution in which women's sexuality is controlled in order to maintain the super-ordination of men over women and that this goes against the principles of sexual, reproductive rights of women as defined by the women's coalition and the principle of CEDAW. The question that may be asked is why do a majority of women continue to stay in such oppressive relationships and others continue to enter such situations despite witnessing bad experiences of close relatives or friends. A number of reasons explain this.

When a woman feels she is being abused in her marital home, especially by someone who promised to 'love, cherish and care for her in richness, poverty— till death do us part', there are a number of choices she could make. First she must decide whether to endure the abuse or escape it. Second, whether or not to seek legal assistance. Research has shown that sometimes even naming violence within ongoing heterosexual relationships is difficult. In polygynous unions, this may be influenced by the woman romanticizing public representation that as the youngest, she is the favourite wife or that being married, she is 'a good woman', thereby forcing her to internalize the violence. This is illustrated by some of the reasons given by the women for entering a polygynous union, such as being promised that the man will divorce his first wife or the stigma attached to being a single woman (Nzira, 1995). Although the women were disappointed and sometimes disillusioned by the reality of polygyny, not all of them could opt out. Some women have further practical and material reasons for minimizing the abuse they may experience – a felt need to protect the natal family from pressures to return *lobola* should they ask for a divorce or just walk out of the union. The natal family may pressurize the woman not to leave her children, thereby using altruism over personal rights to support the oppressive patriarchal system.

Although the adoption of this system of inequality was never the result of deliberation, forethought or any social ideas, it arose from the fact that from the earliest human society, every woman was found in a state of bondage to some man, owing to the value attached to her by men. Because laws and systems of polity always begin by recognizing the relations they find already existing between individuals in order to maintain political stability, they convert what was a mere physical fact into a legal right, giving it the sanction of society. So turning to legal assistance may not be a viable option either.

Each of these factors can function as a powerful re-enforcer of the cultural and legal injunction to stay in abusive relationships.

## **Conclusion**

Polygyny is a marriage form which puts women in such a low bargaining position, that they have little control over decisions which affect their bodily integrity. Instead of removing the pain or risk of going through life unmarried, households with several wives are characterized by rivalry and friction. The idea that the 'shared' husband equitably shares cohabitation between and or among the wives is a utopia never seen as the husband seems to encourage and enjoy the sometimes tense and dysfunctional competition between or among the wives as they struggle to please the men sexually and otherwise at the expense of their own sexuality. Thus women are denied a fundamental right to sexual pleasure.

The law also plays a major role in perpetuating the super-ordination of men over women in polygynous unions by treating the two partners differently in situations where one partner engages in extra-marital relations.

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