ACHIEVING CULTURALLY LEGITIMATE HUMAN RIGHTS IN THE CONTEXT OF HIV/AIDS IN SOUTH AFRICA: AN ANALYTICAL FRAMEWORK

by

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ABSTRACT

Women in South Africa are disproportionately affected by the HIV/AIDS epidemic and face challenges in exercising their human rights. The cultural practice of lobola and polygamy are assessed in terms of HIV/AIDS and human rights risk factors namely, gender inequality, gender based violence and limits to sexual autonomy. This thesis argues that in order to advance human rights in Africa, they need to be perceived as culturally legitimate, which can be obtained through processes of cultural legitimation. Cultural legitimation is operationalized by disaggregating culture into practices, beliefs and value systems. This framework is grounded and analyzed through field research with regard to lobola and polygamy in the context of South Africa's HIV/AIDS epidemic. Data obtained through interviews and focus groups reveals that although polygamy and lobola might foster specific risk factors, broader contextual conditions account for putting individuals at risk for HIV/AIDS and human rights violations.

Keywords: cultural legitimacy/legitimation; human rights; HIV/AIDS; lobola; polygamy; South Africa

Dedicated with love to my parents, Jan & Trixie Nienaber, for

immigrating to Canada with all its cultural diversity and opportunity.

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Sub-Saharan Africa continues to bear a disproportionate share of the global HIV epidemic (UNAIDS, 2010). Approximately 76 percent of all HIV-positive women in the world live in Sub-Saharan Africa placing women in a high at risk group for HIV/AIDS. For example, "in South Africa, HIV prevalence among women aged 20-24 is approximately 21 percent, compared to about 7 percent among men in the same age range" (UNAIDS, 2010). The high HIV prevalence in Sub-Saharan Africa raises questions about human rights, including the right to health, of individuals and groups occupying this region. In fact, all countries have agreed to a universal standard of human rights for all peoples as expressed in the Universal Declaration of Human Rights (UDHR) (1948). Subsequent regional human rights charters, such as the African Charter for Human and Peoples' Rights (1981) reflects the same universal human rights as the UDHR while also recognizing economic, social and cultural rights. Women's rights, including the right to health, are further entrenched and specified in the adoption of the Women's Protocol to the African Charter, which came into force in 2005. However, despite the existence of formal legal human rights treaties, women in Sub-Saharan Africa continue to face challenges in exercising their human rights including their right to health. As the HIV/AIDS epidemic suggests, there remains

a disjuncture between human rights declarations and the lived reality of women in Africa.

1.1 Research Question and Objectives

Therefore, my research questions why African women face obstacles in accessing their human rights despite the existence of formal legal human rights treatises in Africa. The objective of my research is to understand why women continue to bear a disproportionate burden of the HIV/AIDS epidemic and suffer from human rights violations. Thus, my research seeks to provide possible recommendations to creating human rights that can be practiced in the context of African 'cultures' and societies. My research objectives are supported by my broader argument of the importance that human rights be accepted as culturally legitimate in order for human rights to be practiced.

1.2 Central Thesis

This thesis argues that human rights can only be realized if human rights are supported culturally. The premise of this argument is based on the recognition that human rights can only gain meaning in situated contexts. This approach does not reject the importance of universal human rights but argues that in order for these legal precepts to be realized by all peoples, human rights require cultural legitimacy without which human rights are meaningless for those who seek human rights protection. This seeks to move beyond universalism and cultural relativism in the human rights literature and argues that this debate is guilty of abstracting human rights from the context in which these rights are

practiced. Moreover, the debate between universalism and cultural relativism loses sight of the objective of human rights, that is, human rights empower individuals to challenge power and to "combat domination and oppression in their myriad forms" (Goodhart, 2008:191). Rather than pitting the concept of 'culture' against the concept of human rights, I argue that 'culture' can provide acceptance and ensure the realization of human rights.

Universalism grounds the validity of the concept of human rights on the ability of human rights to be universally accepted by virtue of being human. However, grounding the validity of human rights to universality undermines the universality of human rights due to reality of human rights abuses across the world. Cultural relativism argues that human rights are a product of 'Western' 'culture' containing little relevance to 'non-Western' parts of the world. Cultural relativism criticizes the universal content of human rights as cultural imperialism, that is, the imposition of universal human rights based on 'Western' values and beliefs on other 'non-Western' countries. Cultural relativism is criticized for condoning oppressive practices as part of 'culture' and in so doing is guilty of constructing 'culture' as a monolithic, static entity. Rather, I argue that 'culture' is neither static nor fixed in time but is fluid and constantly in flux. Evoking the cultural relativist argument should be critically questioned as certain hegemonic conceptions of 'culture' are often defended by powerful groups in 'culture' who preserve 'cultural' traditions in the name of 'culture', while harming others such as women's human rights. Rather, 'culture' is made up of disagreements over 'culture' and certain competing claims are often marginalized by dominant

groups. Therefore, I argue that abstracting human rights from their socio-cultural context serves to homogenize human rights struggles within 'culture' and diverse conceptions of 'culture' in the name of 'universality' or 'cultural relativism.'

In order for human rights to resonate in the struggles African's face, a body of literature argues for the cultural legitimacy of human rights (An-Na'im & Hammond, 2002; Ibhowah, 2000). Accordingly, cultural factors are argued to be "crucial for the development of the political will to initiate and sustain any approach, whether in favour of or against the protection of human rights" (An-Na'im & Hammond, 2002:18, 19). Thus, African and Africanist human rights scholars insist that in order to make human rights "relevant to the circumstances in the continent, the content of universal human rights has to be tempered by specific African cultural experiences" (Ibhawoh, 2004: 35). Delineating from Mutua's (1995) African 'cultural fingerprint,' I argue that human rights need to contain an African 'cultural fingerprint' which ensures that human rights are perceived as culturally legitimate as rights gain internal validity from existing cultural value systems. Thus, cultural legitimacy ensures that human rights resonate and are compatible with existing value systems. Central to my argument of culturally legitimate human rights, is that women equally participate in the process of challenging 'culture' and interpretations of existing cultural value systems. This social constructionist perspective, which points out that 'culture' is in flux and continually in the process of reconstruction, requires that women be empowered to challenge specific beliefs derived from the value system which are harmful to their rights. That is, women have to be empowered to equally

participate by having an authoritative voice in the process of legitimation where men and women equally contest, debate and struggle over the form of cultural traditions and practices. Thus, the process of cultural legitimation ensures that human rights gain cultural legitimacy as women and men validate and invalidate certain cultural practices by challenging certain repressive cultural beliefs. Cultural legitimation further ensures that human rights resonate within 'culture' as the process of cultural reconstruction simultaneously forms a part of the 'culture' itself while human rights become, what Pries (1996) calls, 'cultural practice.' Culturally legitimate human rights does not imply that all human rights have to be reflected in existing cultural value systems but rather the cultural legitimacy of human rights should be based on the strategic deployment of the positive and supportive elements of the cultural value system while redressing aspects that are harmful in a way that is in accordance with positive culture and various groups within culture (Ibhawoh, 2000). Thus, cultural legitimation, a process where men and women have an equal and authoritative voice in validating and invalidating certain cultural practices and beliefs, should draw strategically on positive aspects of African 'culture' and tradition while challenging those beliefs that are harmful to their rights.

The concept of cultural legitimacy is further developed and operationalized through an analytical framework which disaggregates 'culture' into three components and examines the linkages between them -- cultural practices, beliefs and value systems.[1] In this framework, practices are the most visible

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[1] This framework, based on disaggregating culture into values, beliefs and practices, was suggested to me by my supervisor, James Busumtwi-Sam.

aspect of 'culture;' these practices are supported by belief systems; and the two are embedded in underlying value systems. The argument is that in order to achieve culturally legitimate human rights, practices and beliefs have to be challenged while keeping existing value systems intact. By drawing upon the positive aspects of cultural value systems, the form that cultural practices take will ultimately change in accordance with human rights principles while ensuring the existence of an African 'cultural fingerprint.' This framework, then, provides an analytical and critical tool to understand processes of cultural legitimation where 'culture' is socially reconstructed through contestation and struggle to interpret the meaning and implications of existing value systems. This process is essentially 'political' and requires that women have an authoritative voice to validate and invalidate certain beliefs and practices as 'culture.'

I apply this analytical framework to specific cultural practices in order to understand the influence of cultural beliefs in shaping the form of the cultural practice. The analytical framework highlights the value system underpinning the cultural practice and assesses the potential of the positive aspects of the value system in supporting human rights principles and promoting women's rights. I point out that the way value systems are interpreted, which give rise to certain beliefs, are often to blame for human rights violations rather than the cultural practice itself.

1.3 Case Study: South Africa

This framework is applied to the analysis of human rights, gender and 'culture' in South Africa in relation to the HIV/AIDS pandemic. I examine the

cultural practice of lobola, or bride price, and polygamy. Specifically I assess if lobola and polygamy give rise to beliefs that put women at risk for HIV/AIDS and human rights violations. In other words, I assess if lobola and polygamy support the existence of gender inequality, gender based violence, and support women's inability to exercise their sexual autonomy. The literature on South Africa argues that the existence of gender-based violence, gender inequality and women's inability to assert their sexual autonomy in South Africa are the key determinants in increasing women's risk of contracting HIV (Jewkes, et al., 2010; Mswela, 2009; Dunkle et al., 2004; Mathews, 2008; Outwater, et al., 2005, Delport, 2006). Accordingly, in South Africa, women lack power within intimate relationships which is exacerbated by the high incidence of "domestic violence, battery and rape" (Gilbert & Walker, 2000: 1106). My research in South Africa compares traditional polygamy and lobola to its contemporary versions in order to ascertain if the traditional practice of polygamy and lobola would necessarily contribute to gender inequality, gender based violence and women's inability to practice sexual autonomy. However, as field research in South Africa suggests, lobola and polygamy transformed as a result of the influence of apartheid, for example, which denigrated African practices as 'inferior' and 'backward' and represented white practices as the norm. Apartheid was the institutionalization of the policy of racial segregation in South Africa which came into force in 1948 and ended in 1994. As research suggests, Apartheid impacted the interpretation of traditional cultural practices in South Africa and ultimately transformed cultural practices, having negatively influenced black African identity.

My research tests the validity of the framework in the context of South Africa by analyzing the relationship between practices, beliefs and value systems of lobola and polygamy and assesses if the practice supports gender inequality, gender based violence and sexual autonomy. Based on the analytical framework's prescription that in order to change harmful practices, beliefs need to be challenged while keeping value systems intact, I provide recommendations for achieving culturally legitimate human rights, as well as important insights for the future of human rights in South Africa.

My research methodology is based on triangulation as I ground the analytical framework in the literature on human rights and 'culture,' interviews and focus groups in South Africa. Literature is used in order to situate the framework in arguments pertaining to human rights and 'culture,' as well as to provide theoretical and conceptual background as to the meaning of and justification for my analytical framework. Historical and contemporary descriptions of polygamy and lobola in the literature are analyzed revealing that these practices have changed as a result of a reinterpretation of the value system. Interviews and focus groups in South Africa are conducted in order to assess if lobola and polygamy support gender inequality, gender based violence and limits to sexual autonomy in South Africa, or what I call risk factors. Whereas focus group discussions primarily provide an account of opinions held of male and female students and domestic workers with regard to lobola's and polygamy's relationship with the above risk factors, interviews with academics, researchers, NGO's and government provide an account of why these practices changed.

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Triangulation for purposes of research therefore tests the validity of my framework in operationalizing the concept of cultural legitimate human rights.

1.4 Chapter Outline

Chapter II provides an overview of the literature on human rights and 'culture'. I critique the debate between universalism and cultural relativism and provide a rationale for my main argument for the necessity of culturally legitimate human rights. Chapter III presents a social constructionist definition of 'culture' and develops this conception of 'culture' further into an analytical framework. This chapter explains and provides examples of how the analytical framework developed can provide as a conceptual tool for establishing culturally legitimate human rights. An introduction to field research in South Africa is proffered in chapter IV. I first discuss the main behaviours and beliefs in the literature on HIV/AIDS that are argued to put women at an increased risk for HIV/AIDS. Risk factors are identified, namely gender inequality, gender based violence, and limits to sexual autonomy. These risk factors are beliefs and behaviours that put women at risk for HIV/AIDS as well as human rights violations. A historical and contemporary overview of polygamy and lobola is provided in order to expose the transformation of the practice as a result of different interpretations of the value systems over time. In Chapter V, I discuss my research findings in South Africa. I provide a summary of the responses held by each grouping of participants in order to gauge different conceptions of lobola and polygamy in the context of HIV/AIDS and human rights in South Africa. In light of research findings, I assess the analytical framework and draw conclusions regarding the HIV/AIDS epidemic

and women's rights in South Africa. Furthermore, I provide recommendations for further research on human rights and 'culture'.

My broader aim of this thesis is to contribute towards understanding the challenge of mobilizing human rights principles towards human rights practice. I hope that through developing and applying the concept of cultural legitimate human rights in South Africa, my thesis and research will contribute towards furthering efforts at achieving human rights for all peoples in the rest of the continent characterized by the HIV epidemic.

2: CHAPTER 2: HUMAN RIGHTS AND CULTURE

Human rights are not exercised within a vacuum, but rather the realization of human rights are subject to specific cultural contexts. This chapter highlights the relationship between 'culture' and human rights and argues that because human rights operate within a specific 'culture,' a strictly legalistic approach to human rights is insufficient to provide cultural support for human rights for all individuals and groups. This chapter proceeds with a discussion on the Universal Declaration of Human Rights in order to reveal that the concept of human rights stems from a specific ['Western'] 'culture' in its emphasis on individualism and autonomy. The chapter then goes on to explore the right to 'culture' as stipulated in the African Charter on Human and Peoples' Rights, which recognizes individual rights alongside the right to 'culture'. In so doing, the discussion will highlight the continuing tension between human rights that have the support of 'culture' and rights that do not. The discussion will then situate this tension between universal human rights and the right to 'culture' in the broader debate between universalism and cultural relativism in the human rights literature. In my critique of the ontological foundations for human rights in Universalism and of Relativism's simplistic view of 'culture' that prioritizes a certain hegemonic discourse of 'culture' and construes 'culture' as static, I will argue that aspects of the debate in the human rights literature misses the point of human rights and

fails to address why human rights abuses occur despite the existence of universal human rights treaties. Rather, I argue that human rights should be based on 'cultural legitimacy'—entailing processes of legitimation that enhances the ability of human rights to provide a pragmatic response against, and empower individuals and groups to challenge, arbitrary power and domination in any form anywhere in the world. Conceptualizing human rights in this contextual way highlights the importance of human rights gaining the support of 'culture,' which can only come about through situated struggles and a preoccupation with human rights within a specific 'culture'. Rather than viewing 'culture' as an impediment to human rights, this chapter will argue that cultural legitimation – a process that is inherently political -- is critical in establishing support for human rights because the legalistic content of human rights treaties alone is not sufficient to establish human rights protection for all. Rather, respect for human rights is essentially a behavioural issue at heart.

2.1 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) specifies the minimum requirements for a dignified and worthy life. The United Nations Charter (1945) and the Universal Declaration of Human Rights (1948) formally express the concept of universal human rights. The General Assembly of the United Nations adopted the UDHR in 1948, which established a list of human rights to provide a common standard for all people. The UDHR is underpinned by universality, and its Preamble proclaims, "this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to

the end that every individual and every organ of society… shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance." The basis for this assertion of universality is founded on the fact of being human…a view drawn from natural law (Pityana, 2004). The concept of human rights is evident in the early writings of 'Western' political thought, such as in the work of John Locke in seventeenth century England, on natural law which reflected the idea that mankind was provided with natural rights, which came to be known through reason (see Second Treatise of Government, Ch I, II). It should be noted that the concept of individual rights is historically rooted in the 'Western' world. According to Mutua, "the rise of the modern nation-state in Europe and its monopoly of violence and instruments of coercion gave birth to a culture of rights to counterbalance the invasive and abusive state" (2002: 69). UDHR was a product of the Western liberal tradition as during the time the UDHR was drafted many countries were living under colonial rule and were therefore excluded from the drafting process. In sum, the "ascendancy of the language of individual rights has a specific historical context in the Western world" (Mutua, 2002: 69). The traditions and contexts of 'non-Western' countries were not taken into consideration, an oversight which has greatly hindered the development of decolonized states and consequently of a global human rights regime.

Colonialism installed an "authoritarian framework for local administration…reducing most indigenous rulers to relatively minor cogs in the

administrative machinery" (Ibhawoh, 2000: 845). European laws were introduced and applied mostly in urban areas, "while traditional legal precepts were incompletely codified, relegated to an inferior position in civil law, and applied particularly in rural areas" (Ibhawoh, 2000: 845). During decolonization, provisions dealing with human rights in constitutions tended to be "an importation of 'Western,' European models with scant attention paid to the need to focus on local initiative and input" (Ibhawoh, 2000: 845). Thus, newly formed African constitutions were based upon the European framework, a model that was more readily accepted by a minority in urban areas but lacked popular support and legitimacy from the majority in African societies. As a result of colonialism, the framework of law and human rights in newly independent African societies reflected Western liberal assumptions which often conflicted with traditional cultural orientations (Ibhawoh, 2000). As Ibhawoh (2004) argues, "one of the inadequacies of 'Western' concepts and institutions uncritically adopted by most African states at the dawn of independence was that they borrowed little or nothing from the existing traditional norms and values" (35). Since independence, African countries have revised 'old colonial-engineered' constitutions in order to more adequately meet the needs of their societies through the establishment of a regional human rights framework namely, the African Charter on Human and Peoples' Rights.

2.2 The African Charter on Human and Peoples' Rights - The 'African' Declaration

The African Charter on Human and Peoples' Rights was the first formal human rights framework in Africa. The African Charter was adopted by the Assembly of Heads of State and Government of the Organization of African Unity (OAU) in Kenya in June 1981 and came into force October 21, 1986 (Pityana, 2004). The African Charter, as with all regional Charters, is derived from the 1948 Universal Declaration, but takes into account the African experience, which emphasizes economic, cultural and social rights (Mohan & Holland, 2001). Otherwise put, the African Charter places greater emphasis on those rights pertaining directly to self-determination of peoples and the right to development. The African discourse on human rights departs from the emphasis on universality of human values, by stressing the role of 'tradition,' colonialism and imperialism in shaping the constitution and realization of human rights (Mohan & Holland, 2001). The African Charter differs from the UDHR as it "declares not only that all human beings are equal but that all peoples are as well" (Hollenbach, 1998: 308). This difference is explained in the Preamble to the African Charter, which states that "historical tradition and the values of African civilization…should inspire and characterize…reflection on the concept of human and peoples' rights" (Hollenbach, 1998: 308). The African Charter seeks to eradicate all forms of colonialism from Africa while taking into consideration the values of African civilization (Mohan & Holland, 2001). Rather than emphasizing abstract individualism, the African Charter emphasizes embeddedness and responsibility to upholding and preserving African 'culture'. Article 18 of the African Charter can

be seen as a transitional clause from individual to collective rights (Pityana, 2004). The African Charter asserts that the family shall be the "natural unit and basis of society" and shall serve as the "custodians of morals and traditional values recognized by the community" (African Charter on Human and Peoples Rights, art. 18). Accompanying the list of peoples' rights is a list of duties which include "the duty of the individual to serve the national community by placing his physical and intellectual abilities at its service" as well as the duty "preserve and strengthen positive African cultural values in relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society" (African Charter on Human and Peoples' Rights, art. 29.2, 29.7). In addition to communal duties and cultural rights, the African Charter also recognizes the rights of individuals. For example, the preamble to the African Charter states that, "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples," with Article Two stating, "every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status" (African Charter on Human and Peoples' Rights). The African Charter also places positive obligations on the state to ensure "the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions" (African Charter on Human and

Peoples' Rights Art. 18.3). The African Charter represents a reaction to 'Western' conceptions of universal human rights through its emphasis on 'culture' and tradition, but is not a complete departure from the language of human rights. The debate between universalism and cultural relativism in the human rights literature captures this tension between universal human rights standards and 'culture' and tradition.

2.3 The Concept of Human Rights: Universalism and Cultural Relativism

Human rights are simply the rights one has because one is human. According to Jack Donnelly, a prominent proponent of universal human rights, "human rights are held 'universally' by all human beings…against all other persons and institutions" (Donnelly, 2003: 1). According to Donnelly, human rights encompass 'moral universality' as they are the "highest moral rights, [regulating] the fundamental structures and practices of political life, and in ordinary circumstances they take priority over other moral, legal, and political claims" (Donnelly, 2003: 1). Human rights contain certain features: equal rights (everyone has the same human rights as everyone is a human being); inalienable rights (no one can stop being human no matter how one behaves); and the notion that rights are universal (we are all members of the species, Homo sapiens, are thus are all bearers of human rights) (Donnelly, 2003). Donnelly states that human rights constitute 'conceptual universality,' which implies that human rights are, by definition, equal and inalienable (Donnelly, 2007: 283). For Donnelly, human rights are important as they demand social changes in order to

realize the moral vision they encompass. Thus, states need to provide legal and political changes in conformance with universal human rights. Societal acceptance of the moral worth of human rights is an instance of where "rights have shaped society in their image" (Donnelly, 2003:15). As Donnelly argues, "where theory and practice converge, it is largely because the posited rights have shaped society, and human beings, in their image…where they diverge, claims of human rights point to the need to bring legal and political practice into line with (moral) theory" (2003: 15). Therefore, the relationship between human nature, human rights, and political society is envisioned as dialectical, as "human rights shape political society, so as to shape human beings, so as to realize the possibilities of human nature, which provided the basis for these rights in the first place" (Donnelly, 2003: 15,16).

Delineating from John Rawls' (1971) 'overlapping consensus,' Donnelly reveals how human rights can be accepted universally regardless of moral or metaphysical foundations. As Donnnelly states "overlapping consensus implies that human rights can, and in the contemporary world do, have multiple and diverse 'foundations'" (Donnelly, 2007: 292). In this sense, Donnelly's method parallels Rawls' (1971) *Theory of Justice* which argues that justice can be widely accepted as it is a political conception of justice and does not rely on the acceptance of diverse and divisive comprehensive moral doctrines, and thus the existence of ontological universalism. Functional universality of human rights is the notion that "human rights provid[e] attractive remedies for some of the most pressing systemic threats to human dignity" as all humans, of whatever 'culture'

and region, as everyone "face[s] threats posed from market economies and bureaucratic states so need inalienable universal human rights (Donnelly, 2007: 288). International legal universality refers to the "widespread active endorsement of internationally recognized human rights law" (Donnelly, 2007: 288) International legal universality is reflected in the reality that virtually all states accept the Universal Declaration of Human Rights. States support internationally recognized human rights as it is "increasingly seen as a precondition of full political legitimacy" and "precondition to its full recognition as a great power" (Donnelly, 2007: 288). That human rights represent an 'overlapping consensus universality' refers to the notion that people of different moral and philosophical backgrounds can achieve an "overlapping consensus" as is political conception rather than moral or religious" (Donnelly, 2007: 289). That human rights involve a political conception rather than moral or religious is due to the fact that "different arguments [for the protection of basic liberties] will appeal to different groups in society, and the end result is an 'overlapping consensus' in which we all agree on the necessity of upholding basic liberties, albeit for different reasons" (Kymlicka, 2002: 232). Therefore, Donnelly contends that human rights can be widely accepted as human rights do not need to converge on moral grounds. As Donnelly puts it, "more and more adherents of a growing range of comprehensive doctrines in all regions of the world have come to endorse human rights- (but only) as a political conception of justice" (Donnelly, 2007: 290). In sum, Donnelly argues that human rights can and have in fact been

accepted as universal throughout the world. Regardless of 'culture' or moral doctrines, for Donnelly, human rights can be universally accepted.

Universal human rights are criticized by cultural relativists for being a product of the [dominant] 'Western' parts of the world, theorized in 'Western' conceptions and thus reflecting 'Western' needs and desires (Brems, 1997). Cultural relativism's critique of human rights argues that human rights stem from 'Western culture' in its emphasis on individualism. Cultural relativism argues that 'non-Western' 'cultures' do not define themselves first and foremost as "autonomous individuals, but instead experience themselves as having an ascribed status as members of a larger group or community, such as a family tribe, class, nation, or other group" (Brems, 1997:145). Thus, cultural relativists critique the abstract concept of the atomistic [unembedded] individual as well as the abstract concepts and categories of human rights. Cultural relativism evolved as a reaction against cultural evolutionism which is "the view that human societies tend to progress from 'primitive' or 'savage' to 'modern'" (An-Na'im, 1990: 339). Historically, many [Eurocentric] anthropologists, in the nineteenth-century ranked 'Western' societies highest in terms of progress and used 'Western' values the standards of their universal model for the 'evolution' of societies (An-Na'im, 1990). This imposition of universal values and belief systems on other ['non-Western'] 'cultures' is criticized by cultural relativists as cultural imperialism, that is, exporting cultural norms of the developed world to parts of the developing world in an effort to conquer value systems that are deemed 'backward' or 'inferior' to 'Western' [human rights] standards. Pollis and

Schwab critique the concept of universal human rights as a 'Western' construct with limited applicability and argue that human rights are based on ideological and cultural ethnocentrism (1990 in Preis,1996). As certain 'cultures' define themselves first as foremost as belonging to groups not primarily as individuals, Pollis and Schwab conclude that "the Western conception of human rights is not only inapplicable" and "of limited validity," but even "meaningless to third world countries" (1980: 13 qtd. in Preis, 1996: 291). Critics of cultural relativism perceive these reactions as "undermining the ability to condemn repressive practices in other countries that are sanctioned by the particular culture" (An-Na'im, 1990: 340). However, various positions within cultural relativism exist with regard to the various extent of cultural variation permitted within human rights standards.

Donnelly provides a typology or a continuum of universalism and cultural relativism in terms of the extent of cultural variation permitted within human rights. Radical cultural relativism maintains, "culture is the sole source of the validity of a moral right or rule" (Donnelly, 1984: 400). Radical universalism would hold that culture is "irrelevant to the validity of moral rights and rules, which are universally valid" (Donnelly, 1984: 400). Radical cultural relativism rejects human rights "in their totality as foreign to and incompatible with a particular non-Western culture" (Brems, 1997: 143). Although this definition of cultural relativism is the one which is the most consistent with the cultural relativist stance, more often "cultural relativists either reject specific rights, or reject the specific content or interpretation of those rights" (Brems, 1997: 143). Radical universalism and

radical cultural relativism are ideal types that mark the end points of the human rights spectrum (Donnelly, 1984). Within this continuum there are various mixes of relativism and universalism and can be divided into strong and weak cultural relativism. Donnelly defines the continuum as follows:

Strong cultural relativism holds that culture is the principle source of the validity of a moral right or rule. In other words, the presumption is that rights (and other social practices, values and moral rules) are culturally determined, but the universality of human nature and rights serve as a check on the potential excesses of relativism. At its furthest extreme, just short of radical relativism, strong cultural relativism would accept a few basic rights with virtually universal application, but allow such a wide range of variation for most rights that two entirely justifiable sets might overlap only slightly. Weak cultural relativism holds that culture may be an important source of the validity of a moral right or rule. In other words, there is a presumption of universality, but the relativity of human nature, communities, and rights serves as a check on the potential excesses of universalism. At its furthest extreme, just short of radical universalism, weak cultural relativism would recognize a comprehensive set of prima facie universal human rights and only allow relatively rare and strictly limited local variations and exceptions. (Donnelly, 1984: 401)

Donnelly defends a weak cultural relativist or weak universalist position as Donnelly recognizes that the claims made by cultural relativism and universal human rights cannot be reduced to an either or choice as claims of cultural

relativism show a great "diversity in meaning, substance and importance" (1984: 410) Thus, Donnelly's weak cultural relativist position permits limited deviations from universal human rights standards at the levels of form and interpretation without infringing on the essential universality of human rights, or in other words the content of human rights (1984: 401).

Accordingly, the Universal Declaration and the two covenants (Covenant on Civil and Political Rights and the Covenant on Economic, Social, Cultural Rights) support a weak cultural relativist approach to human rights, an approach which "views human rights as prima facie universal, but recognizes culture as a limited source of exceptions and principles of interpretation" (Donnelly, 1984: 402). It is important to note that Donnelly emphasizes that the content of these rights should be and are accepted as universal. Thus, Donnelly's position assumes that the content of human rights are accepted as universal with only limited variation at the level of form and interpretation with the essential content of human rights being uniform or homogenous. Donnelly's narrow interpretation of human rights, which does not permit variation in content but only implementation, assumes that all human rights will have equal importance universally. However, certain parts of the world will disagree over the content of human rights. Thus, whereas, some ['Western'] states agree that the content of human rights should be based on civil and political (first generation of human rights), other ['non-Western'] states disagree over this content of human rights and rather place more emphasis on economic, social or cultural rights. Thus, Donnelly's argument which claims that the content of human rights are universal,

calls into question the ability of the legal content of human rights to be universally accepted. Nevertheless, Donnelly seeks to acknowledge certain aspects of the cultural relativist argument by allowing for cultural variations in the level of form and interpretation while the content of human rights remains universal.

While Donnelly provides an influential argument in the literature on human rights, the details are not without criticism. Goodhart (2008) provides a compelling critique of Donnelly's central thesis, mainly the questionable universality of human rights. The reality of human rights abuses in many parts of the world reveals that human rights are not universally supported. Goodhart argues that "linking the legitimacy of the political efficacy of human rights to their universality is mistaken and dangerous" (2008: 190). If defenders of human rights tie their legitimacy to the universality of human rights, the legitimacy of human rights is undermined. "[F]ormal declarations, though important, will not suffice to establish universal human rights [as] legal systems cannot regulate societies unless the laws are supported by cultural norms" (Schwartz, 1990: 369). Some states may feel compelled to sign human rights declarations in order to further their legitimacy on the world stage yet may not fully ascribe to the values promoted. Zeleza makes an important point by arguing that writings and debates on human rights often tend to be "idealistic in that human rights are reduced to ideas abstracted from social history, so that they are seen as the outcome of concepts not conflicts, insights not instigations, philosophy not politics" (2004: 7). This is a compelling critique that focuses attention on the need for further study and research on the realization of human rights. Although universal human rights

standards are 'universal,' the actual realization of these rights depends on these rights gaining cultural legitimacy, which is a product of a history of struggles and preoccupations with human rights. As Shivji contends, while the "dominant liberal human rights perspective is important; an African agenda must also be premised on the right to self-determination and to organization" (1989 in Zeleza, 2004:7). As An-Na'im & Hammond put it, "many factors affect the implementation of human rights, such as the level and quality of political commitment to the implementation of administrative, educational and other policies, allocation of economic resources, and civil society activism" (2002:18). These factors and strategies all have a cultural dimension because "culture is the framework for understanding human motivation and behaviour that underlie political commitment, determination of priorities for allocation of resources and direction of civil society activism" (An-Na'im & Hammond, 2002: 18). Thus, in the final analysis, cultural factors are crucial for the protection of human rights.

The African Charter will now be assessed in order to expose the continuing tension between the African Charter's recognition of universal human rights as well as the right to maintain cultural heritage. The African Charter exemplifies that recognizing universal human rights in combination with cultural rights does not solve the tension between universal protection of human rights [universalism] and cultural rights [cultural relativism] as those rights that have the support of 'culture', or are cultural legitimate, in practice, supersede rights that do not. The African Charter reveals that human rights are essentially contested concepts embedded in relations of power as the meaning of 'culture' is

constructed through a hegemonic discourse at the expense of marginalizing alternative perspectives of 'culture'. Appeals to 'culture' should be questioned as some groups within 'culture' have more power than others in presenting their version of 'culture' as true 'culture' (Ibhawoh, 2000).

2.4 The African Charter on Human and Peoples' Rights: Whose Rights and Whose Culture?

Although Africa has adopted the UDHR, the African Charter is "founded on basic universal human rights standards but also enriched by the African cultural experience" (Ibhawoh, 2000: 839). The African Charter provides a seemingly 'African' human rights framework and recognizes 'culture' as a means to recognize the unique context of Africa. Although the African Charter creates an [ostensibly] African human rights framework as it addresses the right to 'culture', there remains a tension between the existence of dominant cultural traditions and universal national human rights standards. Universal human rights as reflected in the adoption of the UDHR, while simultaneously recognizing local cultural variation as well as the right to 'culture' in newly formed African constitutions, have not "adequately addressed the continuing tensions and conflict between these guarantees and prevalent customary practices that are inconsistent with them" (Ibhawoh, 2000: 847). As Ibhawoh succinctly puts it "on the one hand we have national human rights ideals beautifully articulated in national constitutions-sometimes in exactly the same words as the UDHR and other international human rights instruments…on the other hand we are confronted with cultural practices and notions of rights that reflect local world views (or at least those of

the dominant groups within the society), which in turn conflict with national human rights standards" (2000: 847). Thus, there remains a tension between universal principles as enshrined in the African Charter and national constitutions, on the one hand, and the cultural practices of the African people on the other. In theory, national human rights guarantees take precedence over customary or cultural practices that conflict with human rights protections as guaranteed in the African Charter. As Ibhawoh points out, "the principle of the supremacy of national constitutions ensures that in legal interpretations, national human rights guarantees take precedence over any other laws or customary rules" (2000: 844). However, often constitutions are rather vague in indicating whether fundamental rights supersede customary law or vice versa, with some constitutions in Africa stating that "the application of African customary law is not subject to the prohibition on discrimination contained in the constitution" (Ibhawoh, 2000: 844). As a result, the "articulation of cultural rights in national constitutions and the prohibition of some customary practices that conflict with national human rights standards has had only limited effect in actually resolving the inherent conflicts between national human rights aspirations and some dominant cultural traditions" (Ibhawoh, 2000: 848). As a result of constitutional rights subject to abrogation by customary laws and practices, cultural prejudices against women and dominant cultural perceptions of gender roles prevail despite national legislation that guarantees women's rights (Ibhawoh, 2000). Customary law in Africa often condones discrimination against women in family matters despite individual human rights protection in the African Charter (Pityana, 2004).

This phenomenon points out that human rights, as exercised in a particular 'culture', are subject to unequal relations of power and discrimination due to the way 'culture' is or has been [socially] constructed, which influences who exercises human rights.

The African Charter's objective to preserve cultural traditions and its outright prohibition of some cultural practices brings to the forefront the critical concept of power, that is, who defines dominant cultural practices and symbols. Efforts aimed at reconciling the tensions between cultural relativism and universalism turns attention away from critical questions such as who defines 'culture' and 'cultural rights' and what obstacles these socially constructed concepts pose for individuals seeking to exercise their rights within a 'culture' in which certain groups do not have equal participation in the construction of cultural norms. Efforts to establish an ontological foundation of human rights that can be universally accepted, draws attention away from the object of human rights that is, human rights provide equal protection for all from arbitrary power any where in the world. As the discussion will indicate, because 'culture' is socially constructed and is neither fixed in time nor static, there is no essential essence to 'culture' that any one can claim to protect. Thus, empowering women to equally participate in the construction of 'culture' to validate or invalidate certain practices and attitudes is imperative in order for human rights to gain cultural legitimacy. However, before determining how cultural legitimacy of human rights can be established, it is first necessary to outline the shortcomings of the debate between universalism and cultural relativism. In so doing, the

discussion will pave the way for constructing a new analytical framework in the following chapter for achieving human rights.

2.5 Transcending the Debate between Universalism & Cultural Relativism: Human Rights as a Pragmatic Response Against Arbitrary Power

The debate between universalism and cultural relativism misses the point of human rights and does not capture what is at stake in the struggle for human rights. Human rights should be based on the ability to serve as a pragmatic response by people to challenge arbitrary power, and not on ontological universalism. As Goodhart argues, "rejecting the universality of human rights actually boosts their legitimacy…human rights are neither relative nor universal in the familiar sense of the term" (2008: 190). Human rights empower people and offer the means to challenge domination and oppression in whatever form. Human rights discourse is criticized as it is so often focused on the "state as the progenitor of either 'negative' rights (protection of political and civil rights) or 'positive' rights (promotion of economic, social and cultural rights) that the state becomes almost the exclusive domain of human rights violation" (Zeleza, 2004: 16). However, some of the worst human rights violations have not occurred within public realm of the state but rather in private domains, such as the relations within 'cultures' such as the family and between men and women. Therefore, the range of threats, as identified by Donnelly (2007), are actually much "broader than those posed by bureaucratic states and capitalist markets: it also includes threats posed by husbands, parents, officials, landowners, and religious and social authorities- in a word, by power" (Goodhart, 2008:190). Rather, "human

rights offer people a way to challenge power, to call power-holders to account, and in so doing to combat domination and oppression in their myriad forms" (Goodhart, 2008: 191). The validity of human rights should be based on the ability of human rights to serve as a challenge to power, an integral part of the cultural struggle itself. For Ake (1987) the litmus test for rights should be based on the ability of rights to provide protection for the vast majority of Africans that need it.

Critiquing Donnelly's typology of cultural relativism, Preis argues that "one does not escape the questions pertaining to human rights and culture by distinguishing between 'radical,' 'strong,' or 'weak' relativism" (1996: 296). For Preis, these propositions "send us back to…the debate about tolerance" and "force us to engage in fallacious reductionism" (1996: 296). These distinctions, although articulated with great theoretical rigour in the human rights literature, misconceptualize 'culture' as a static, monolithic entity. The debate fails to acknowledge the [continual] social construction of 'culture' and the competing views within 'culture' over legitimacy of human rights itself. In addition, "these suggestions tend to represent rather ethnocentric 'Western' models of social behaviour based upon the assumption of the individualist 'utilitarian man,' consequently ignoring the specificities of culture and context" (1996: 297). Distinctions such as weak and strong relativism and universalism "offers no real solution to the methodological and theoretical questions pertaining to human rights and culture" (Preis, 1996: 297). Thus, "prefabricated solutions and quick recipes like the universalists' 'treat people like humans-see attached list- and you

will get truly human beings,' or the relativists' insistence on the cultural difference in its essentialist sense, simply do not generate the knowledge that we need in order to make more valid statements about the dynamics of human rights and culture" (Preis, 1996: 311). Consequently, the debate between universalism and cultural relativism misses the point of human rights in its efforts to provide an ontological foundation for human rights. As a result, critical questions of the acceptance of human rights, not in principle but in practice, have not been addressed. Understanding human rights through a contextualized perspective, which takes into account the role of 'culture' in establishing support for human rights, can better address the challenges and issues at stake in ensuring human rights for those that seek protection from arbitrary power.

Mutua (2002) critiques the implication of Donnelly's argument that establishes human rights on Western liberalism, as it is thought that this philosophy is inevitable under modernization and can form the foundation of human rights. However, Mutua argues that "this argument in effect destroys any claim of universality because it places the concept of human rights exclusively within a specific culture" (2002: 78). In other words, the universalism of human rights is founded in Western liberalism and thus in 'Western culture.' It is argued that universalist and relativist positions are both "equally guilty of idealism, abstracting human rights from social history which makes the universalist-relativist discourse part of the ideological armory of Western and African elites, arguments that cannot stand up to closer historical and political scrutiny" (Zeleza, 2004, 14). Abstracting rights from their socio-cultural contexts constructs 'culture'

as fixed and a monolithic entity which does not recognize the continual social [re]construction of 'culture.' Thus, universalism and cultural relativism simplify the realization of rights in a particular context by viewing 'culture' as irrelevant in the struggle for and realization of human rights. As Preis argues, "when culture is thus viewed as an externalized impediment to the struggles toward human rights, rather than as an integral part of the struggle itself, we are prevented from seeing the various contradictions, inconsistencies, and disagreements as culture - and perhaps the culture of human rights itself" (1996: 295). Therefore, 'culture' and struggles over the direction of 'culture' is critical in realizing human rights as 'culture' provides [internal cultural] legitimacy for human rights in the context in which rights are practiced. It is important to note that "cultural legitimacy…cannot be deduced or assumed from the mere fact of official recognition of the claim as a human right in existing formal documents" (An-Na'im, 1990: 333). Rather, as a Shona proverb of the Zimbabwean people put it, "paths are made by walking," a metaphor referring to "processes that need to be undertaken to actualize rights" (Hellum, et al., 2007: xvii). Thus, it is necessary to move from idealistic, abstract principles of human rights to a grounded and responsive strategy in which the subject of rights are the actors of change, who initiate the [cultural] process of cultural legitimacy in order for human rights to be realized.

The debate between universalism and cultural relativism is guilty of removing itself from the "cultural realities it alleges to speak about" (Preis, 1996: 293). The debate between universalism and cultural relativism, while seeking to find agreement on ontological grounds for human rights, abstracts rights from the

context in which rights are exercised. By removing itself from the context in question, the debate between cultural relativism and universalism, fails to realize that 'culture' is not homogenous but is comprised of competing claims over 'culture'. According to Preis, "culture is repeatedly launched by both universalists and relativist as if it were an unproblematic, everyday term about which there exists overall, common consent (1996: 293-94). This undermines the fact that 'culture' is comprised of competing disagreements over 'culture' and human rights itself (Preis, 1996). Cultural relativism, by claiming to understand the nature of 'culture', is guilty of preserving 'cultural' traditions that hinder women's rights in the name of [the dominant definition of] 'culture.' Universalism, by abstracting rights from its particular historical setting, undermines the fact that in order for rights to have any real significance, rights are "usually taken [through struggles], not given [through legislation alone]" (Ake, 1987: 10). Abstracting human rights from their socio-cultural context serves to homogenize divergent [cultural] experiences and human rights struggles in the name of 'universality' or 'cultural relativism.' Although legislating rights certainly helps, "the realization of rights is best guaranteed by the power of those who enjoy the rights [which can only come about through the] empowerment by whatever means, of the common people" (Ake, 1987: 11). The realization of rights can only come about once women are empowered to participate in the social [re]construction of 'culture' in which women challenge cultural beliefs in a way that does not radically transform existing value systems. As Tamale points out, for "many African women the sustainable solution to their oppression, exploitation and subordination hardly lie

in vague, alien legal rights, but in a careful and creative deployment of the more familiar cultural norms and values" (2008: 64). Thus, women must be empowered to challenge specific beliefs and practices that result in their oppression and exploitation. As the next chapter will argue, in order for women to have a legitimate voice in constructing 'culture' by validating or invalidating certain *practices*, some existing value systems must not be eradicated but rather should remain intact with a [strategic] emphasis on positive *cultural values*. This argument points to an important relationship between cultural practices, beliefs and values, which are explained in the next chapter.

2.6 Conclusion

This chapter has highlighted the relationship between human rights and 'culture' by rejecting the universalist notion that formal legal rights alone can ensure human rights protection for all peoples. Universalism abstracts human rights from the 'culture' in which these rights are exercised and undermines the importance of cultural support for human rights in order for rights to be realized. In addition, cultural relativism simplifies the complexity of 'culture' and constructs 'culture' as a monolithic, static entity, concealing competing [marginalized] versions of 'culture' by representing certain dominant discourses of 'culture' as authentic. Moreover, the debate between universalism and cultural relativism draws attention away from the critical questions of the acceptance of human rights, not just in principle, but also in practice within 'culture.' This chapter has argued that support for and the realization of human rights requires more than the existence of the legal content of human rights but also the support of 'culture'

and cultural legitimacy. In addition, the validity of human rights should not be based on its ability to provide 'universal' support, as this has evidently not occurred, but rather on its ability to empower individuals to challenge arbitrary power and domination. Moreover, support for human rights can only be obtained through a process of struggles in which individuals and groups challenge those practices that infringe on human rights. In order for women to have an authoritative voice in challenging certain cultural practices, women's empowerment is required in order to validate or invalidate certain practices as 'culture.' The following chapter will build upon the "socially constructed" concept of 'culture' and provide a framework to promote the cultural legitimacy of human rights.

3: CHAPTER 3: CULTURE AND CULTURAL LEGITIMACY: INTRODUCING THE ANALYTICAL FRAMEWORK FOR CULTURALLY LEGITIMATE HUMAN RIGHTS IN AFRICA

Underpinning this chapter is a social constructionist view of 'culture,' which reveals the complexity of the concept of 'culture' and highlights the issue of power in any claim to a fixed definition of 'culture.' Viewing 'culture' as a fluid rather than a fixed entity, this chapter will highlight the importance of establishing cultural legitimacy for human rights in order for human rights to be realized and practiced within 'culture.' Human rights, by empowering marginalized groups, provide individuals with an authoritative voice to validate or invalidate certain practices as 'culture.' After defining 'culture' and cultural legitimacy, this chapter will introduce the conceptual and analytical tools for establishing the cultural legitimacy of human rights by outlining the relationship between cultural practices, beliefs and value systems. In so doing, the analytical framework for examining human rights in Africa, and specifically in South Africa, will be established. The chapter will conclude with the example of female genital mutilation (FGM) in order to reveal the effect that transforming beliefs has, that is, a reinterpretation of value systems has, in changing cultural practice.

3.1 'Culture' Defined

The concept of 'culture' can be defined as "historically transmitted patterns of meanings embodied in symbols, a system of inherited conceptions expressed in symbolic forms by means of which men [and women] communicate, perpetuate, and develop their knowledge about and attitudes towards life" (Geertz, 1973: 89 qtd. in An-Na'im & Hammond, 2002: 21). Preis points out, "'culture' is implicitly or explicitly conceptualized as a static, homogenous, and bounded entity, defined by its specific 'traits'" (1996: 289). However, 'culture' should not be conceptualized as fixed in time and monolithic, but rather as fluid, dynamic and always in flux. 'Culture' is never static but is always subject to social [re]constructions over the meaning and purpose of 'culture.' Viewing 'culture' as a social construct, it is evident that at any one point in time 'culture' will reflect shared meanings and values. Social constructionists argue that ideas and practices are created, re-created, and instantiated by human actors in particular socio-historical settings and conditions" (Stammers, 1999: 981). A social constructionist view of 'culture' recognizes that there is no true essence to 'culture' or a fixed definition which any one can claim to. By rejecting a fixed or static conception of 'culture', 'culture' can been seen as a process of societal interaction in which people constantly negotiate the cultural norms which will guide their actions and behaviours, as well as the individual roles which will be occupied within society.

It is important to point out that 'culture,' "the shared meanings, practices, and symbols that constitute the human world does not present itself neutrally or

with one voice" (Ranibow & Sullivan, 1979: 6 qtd. in Pries, 1996: 299). In other words, 'transmitted patterns of meaning' are not devoid of relations of power in the construction of 'culture'. Rather, "powerful groups and individuals tend to monopolize the interpretation of cultural norms" (Ibhawoh, 2000:849). Powerful groups within 'culture' will often monopolize 'culture' to their own advantage claiming that the norms and practices under question constitute 'authentic culture.' Thus, assertions about "culture tends to be totalizing and simplifying, privileging some voices and patterns of acts, and ignoring and marginalizing others" (Chanock, 2002: 39). I believe a social constructionist view of 'culture' brings to forefront the concept of power in 'culture.' Any claims to 'true culture' draws upon a static definition of 'culture' in order to maintain a hegemonic discourse of a particular conception of 'culture,' a discourse often to the benefit of certain interests. Rather, 'culture' is a social construction [re]formulated through an on going process between humans, subject to relations of power in which certain dominant definitions of 'culture' supersede other competing conceptions. By acknowledging that there can be no essential claims to 'true culture,' it calls into question which [dominant] group has greater power in shaping the [hegemonic] discourse of 'culture' as well the [hegemonic] discourse of human rights within 'culture.'

'Culture' is often used as a means to explain or justify human rights violation, i.e. 'in the name of culture.' Because 'culture' is often idealized as it if it represents a homogenous entity, it is criticized as it serves as a convenient tool for African leaders and elites to silence internal criticism and to assert anti-

'Western' nationalist sentiments (Ibhawoh, 2004). It is suggested that "appeal to cultural practices is often a mere cloak for self-interests and arbitrary rule" (Ibhawoh, 2004: 33). However, it cannot be assumed that 'culture' is the underlying reason for human rights abuses. Decrying human rights abuses as due to 'culture', misconceptualizes 'culture,' as it implies that there an essential nature to 'culture.' This is not to deny that human rights abuses occur *within* a 'culture' but rather to reemphasize that 'culture' is complex, fluid and indefinable and that there is no fixed essence to 'culture' that can be used to justify human rights abuses. Also, due to increased globalized flows of information and values, 'culture' can be viewed less and less as a contained entity as all 'cultures' around the world are subject to influences of globalization. The socially constructed nature of 'culture' is important in the discussion of human rights, as arguments that justify human rights abuses in the name of 'culture' are problematic because no one [within or without] can claim to speak for a 'true culture.'

Power is central to the concept of 'culture' as 'culture' is a "network of perspectives… in which some groups have more power to present their versions as true culture" (Ibhawoh, 2000: 842). An-Na'im argues, "culture mediates power and acts as the framework within which self-interest is defined and realized in any community" (1990: 333). 'Culture' has important implications for gender roles as it defines the appropriate roles of men and women in society and establishes power relations between women and men. Importantly, feminists point out that the "differences between men and women are socially constructed [and are not] essential differences, but are particular to a given culture and time" (Marsh &

Furlong, 2002: 18). Feminists argue that differences between men and women are "a product of patriarchy, in which male dominance shapes the culture and values of society" (March & Furlong, 2002: 18). It is important to question if all groups within a 'culture' participate in the definition of cultural norms at all times. It is argued that the current voices that "get listened to in African cultural discourse are mostly those of fundamentalists who have a selective view of culture" (Tamale, 2008: 64). I argue that women, although members of a 'culture,' have had unequal participation in defining 'culture' and gender roles within 'culture' and thus have not had a legitimate voice in validating and invalidating certain cultural practices. Women's unequal power in defining 'culture' has perpetuated a 'culture' of patriarchy and male dominance in determining cultural values. Thus, patriarchal interests often "fly the cultural flag to keep women in a subordinate position" (Tamale, 2008: 64). Therefore, gender roles have been defined by the dominant [hegemonic] 'culture.' Just as 'culture' should not and cannot be essentialized as it negates differences within 'culture' and competing perceptions of 'culture,' gender roles within 'culture' should not be essentialized as it silences marginalized voices in the name of 'culture.' As Brems points out, "linked to the problem of essentialism is the practice of rejecting 'inauthentic voices'" (1997: 155). The socially constructed nature of gender contains specific cultural roles and hierarchies with regard to women and men. Women have an unequal voice in defining gender and 'culture.' As feminism reveals, the unequal relations of power between men and women within society, is a product of patriarchy in which men dominate interpretations of 'culture' and gender roles. As

a result, the social construction of the gender hierarchy is directly related to the construction of 'culture' in which dominant conceptions of 'culture' are used to justify specific and often unequal gender roles. Thus, unequal power relations within 'culture' have silenced women's [marginalized] voices, often in the name of [dominant constructions of] 'culture.'

Dominant constructions of 'culture' and gender can only be reconstructed within a particular context through local and situated struggles within the 'culture' in question. The empowerment of women is critical in order for women to participate and have an equal role in defining 'culture,' that is, to have an authoritative voice to validate or invalidate certain practices and customs as 'culture.' It is important to [re]emphasize that 'culture' is not monolithic but constantly in the process of change as a "result of individuals being exposed to and adopting new ideas" (Ibhawoh, 2000: 841). Individual actors within 'culture' who adopt new ideas "initiate a process of change which may influence dominant cultural traditions" (Ibhawoh, 2000: 842). As 'culture' is dynamic, change and adaption as a result of struggles within 'culture' over human rights holds the potential of human rights gaining cultural legitimacy. Struggles have to be rooted in the 'culture' in question to target specific patriarchal norms and attitudes. Struggles can take place in the public sphere, such as political institutions, or in the private sphere, such as the home or community, challenging power relationship between men and women, fathers, brothers or husbands. Struggles challenging arbitrary power provide a tool for human rights to gain cultural

legitimacy as these struggles over human rights are rooted in the lives of Africans.

3.2 Legitimacy, Legitimation and 'Culture'

In general terms, legitimacy is a socially constructed normative opinion, belief, or assumption held by agents that a rule, norm, practice or institution in any given social context is right, appropriate, valid, or desirable, and ought to be obeyed or complied with (Beetham, 1991, Barker 1990). Legitimacy is often viewed as a static condition/quality that is possessed 'objectively' (or not) by a rule or entity at any given moment. However, as Barker (1990, 2001) and Busumtwi-Sam (2002) note, legitimacy is not a static condition – it involves continuously generated (and contested) subjective and intersubjective processes – and hence prefer the term *legitimation* to describe these on-going processes. This thesis examines the processes involved in the cultural legitimation of human rights.

Cultural legitimacy is defined by An-Na'im as "the quality or state of being in conformity with recognized principles or accepted rules and standards of a given culture" (1990: 336). Accordingly, a "prime feature of underlying cultural legitimacy is the authority and reverence derived from internal validity" (An-Na'im, 1990:336). An-Na'im argues that, "the difficulties in implementing established human rights effectively, and in recognizing other claims and interests as human rights and implementing them also, derive from the insufficiency of cultural support for the particular right or claim" (1990: 333). This 'internal validity' is based upon existing value systems within 'culture,' which form the basis of

beliefs, which in turn, underpin practices and customs. As 'culture' is constructed through a process of dialogue and conflict between individual and groups, once cultural legitimacy for a given human right is established, those in power have to "accept accountability for the implementation or enforcement of that right" (An-Na'im, 1990: 332 qtd. in Mutua, 2002: 80). As An-Na'im argues, "with internal cultural legitimacy, those in power could no longer argue that national sovereignty is demeaned through compliance with standards set for the particular human right as an external value [as] compliance with human rights standards would be seen as a legitimate exercise of national sovereignty and not as an external limitation" (1990: 332 qtd. in Mutua, 2002: 80). When human rights achieve internal validity and have therefore become culturally legitimate, human rights will have the support of 'culture' and social forces and thereby have achieved cultural legitimacy.

As human rights are mediated through 'local understandings and interpretations' (Pityana, 2004), I argue that it is important that human rights resonate with existing value systems. In order for human rights to obtain cultural legitimacy, that is, being in conformity with established *value systems* in the social realities in which rights are practiced, human rights within Africa have to contain an "African cultural fingerprint" (Mutua, 1995 in Ibhawoh, 2000). Mutua defines an 'African cultural fingerprint' as cultural values that, "emphasizes group duties, social cohesion and communal solidarity as opposed to rigid individualism" (1995 in Ibhawoh, 2000: 843). This notion of an African 'cultural fingerprint' does not essentialize African 'culture' or privilege any particular

(hegemonic) interpretation of 'culture' because a cultural *value system* (as the foundation) can give rise to varying cultural *beliefs* and *practices*.[2] Thus, my argument is that although recognizing that cultural values (the African cultural fingerprint) are important to establish cultural legitimacy of human rights in Africa, it is important that women challenge specific beliefs derived from the value system. By challenging and targeting beliefs, it is possible to transform the observable cultural practices, norms and traditions which oppress women rights. This is because beliefs are interpretations of and give effect to a given value-system, and practices are the actions and behaviours based on those beliefs.

The argument outlined here about challenging specific practices by targeting beliefs, without uprooting the existing value system upon which these beliefs are based, is directly related to my central argument of the necessity of empowering women to challenge 'culture' through reinterpreting and reconstructing the meaning of 'culture.' The empowerment of women is necessary for women to have an authoritative voice in the construction of 'culture' -- that is, by having a voice in validating and invalidating certain cultural practices. The process of participating in 'culture' by validating and invalidating certain practices creates a process of cultural legitimation as women and men contest, debate and struggle over the form of cultural practice and traditions. The process of legitimation contributes to the cultural legitimacy of human rights as struggles form both a part of 'culture' while simultaneously challenging beliefs.

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[2] I thank Dr. Busumtwi-Sam for helping to clarify this argument.

Although the African cultural fingerprint is based on preserving certain value systems, I argue that achieving human rights can be made compatible with existing African value-systems through processes of cultural legitimation. That is, cultural legitimacy can be obtained through the process of contesting, debating or struggling over the legitimacy of human rights in the 'culture' in question. In addition, as far as human rights for women are concerned, the legitimacy of an African cultural fingerprint can only be established with women's equal participation and the existence of women's authoritative voice. Culturally legitimate human rights do not imply that all human rights have to be reflected in perceived, dominant cultural values. Rather the cultural legitimacy of human rights should strategically be based on the supportive and positive elements of cultural value systems, "while redressing the antithetical or problematic elements in ways that are consistent with integrity of the tradition in question and the contending groups with in it" (Ibhawoh, 2000: 859-60). 'Culture' should not be merely reinforced but rather "needs to be approached in a dynamic and unritualised fashion, examining the linkages between its positive aspects and the emancipation of women" (Tamale, 2008: 64). Thus, in order for struggles over human rights to establish cultural legitimacy, struggles should draw upon existing African 'culture' and values such as positive interpretations of the concept of duty and other positive elements of the African Charter. As Ibhawoh argues, "it would be counterproductive to attempt to enhance the awareness of human rights within any culture in ways that are unlikely to be accepted as legitimate by that culture or significant groups within it" (2000: 860). Thus, a perceived resonance

with past 'culture' is vital for human rights to be accepted as legitimate. The cultural legitimacy of human rights has to be viewed as a process of struggles in which all groups, including women, equally participate. Therefore, struggles rooted in 'culture' will challenge negative interpretations of African 'culture' while simultaneously forming a part of 'culture' itself.

Struggles over the cultural legitimacy of human rights need to appeal to existing positive African values in order to influence norms that are antithetical to human rights. Appealing to traditional leaders will contribute to the cultural legitimacy of human rights as the support of those with authority in the community can enhance the legitimacy of human rights. Traditional leaders within the community often provide a cultural source in which values are passed down. Thus, struggles should target traditional African leaders as their perceived prestige could more effectively support and initiate cultural change, providing cultural legitimacy for human rights. Struggles over human rights provide the means for human rights to 'earn' the support of 'culture' and vice versa. As 'culture' is socially constructed, cultural reconstruction will never be radical at any one point in time, but rather gradual and incremental, resulting in cultural change and as a result, eventually rooted in African 'culture.' Thus, human rights need not be conceived as an impediment to 'culture' as this would be simplifying the complexity of 'culture.' As 'culture' is always in flux, struggles rooted in 'culture,' involving both men and women, determines the direction of 'culture' and the legitimacy of human rights.

3.3 Analytical Framework for Understanding Human Rights and 'Culture': The Relationship between Cultural Practices, Beliefs, and Value Systems[3]

My analytical framework for establishing cultural legitimacy for human rights is supported by Preis (1996) who argues that human rights gain meaning in cultural contexts. Preis (1996) seeks to ground human rights in the 'culture' in which rights are practiced, or as she coins it, 'human rights as cultural practice.' This approach "attempts to unravel the complexities of meaning and social action through the development of a conceptual framework that accords priority to the understanding of human rights in everyday solutions" (Preis, 1996: 311). This [contextual] approach does not reject human rights treatises but rather claims that these texts are only intelligible in situated contexts (Preis, 1996). Thus, human rights are grounded in the "meanings accorded them through the ongoing life experiences and dilemmas of men and women" (Preis, 1996: 290). Importantly, this approach recognizes that social change or development of human rights does not emanate primarily "from centers of power in the form of intervention by the state or international interests" (Preis, 1996: 312). Rather, it recognizes that the development of human rights stems primarily from situated [cultural] contexts. Preis points out that the progressionist assumptions of many human rights texts are "tainted by determinist, linear and externalists views of social change" (1996: 312). Rather, because 'culture' is continuous and in flux, "human worlds are constructed through historical and political processes and not as brute timeless facts of nature" (Preis, 1996: 315). For Preis, "a theory of

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[3] The analytical framework was developed through discussion and consultation with Dr. James Busumtwi-Sam

human rights must be based upon real human beings rooted in their social contexts" (Fields & Narr, 1992, 9 qtd in Preis, 1996: 290). As Preis succinctly puts it, "human rights discourse and action essentially involve a struggle over images of human rights and 'the good society'" (Preis, 1996: 315). Therefore, it is important to view 'culture' as a network of perspectives rather than monolithic, and thus as an ongoing debate over human rights within 'culture.'

The preceding discussion provides an alternate perspective and forms the basis of my analytical framework on human rights and 'culture.' Rather than viewing 'culture' as an impediment to human rights, 'culture' is seen as the foundation for human rights acceptance. Viewing human rights through a social constructionist perspective draws attention to the continual [re]construction of 'culture' in situated contexts and the competing conceptions of 'culture.' Because 'culture' and gender are socially constructed, challenging cultural beliefs is pivotal to the realization of human rights in the context in question. The relationship between cultural beliefs and value systems within a specific cultural context gives rise to certain practices and behaviours. Because cultural practices are underpinned by specific beliefs on how to achieve cultural values, it is important to ensure that both men and women equally participate in forming beliefs on how these values can be realized (which are then manifest in the form of cultural practices). Thus, beliefs are specific interpretations of value systems, that is, beliefs of how value systems can be realized which take the form of practice.

In reality, it is difficult to clearly distinguish between values and beliefs, as they are very closely related. However, for analytical purposes, the distinctions

are valuable. Analytically, values are normative and affective -- encompassing normative notions and feelings of what is 'good', 'proper', 'right' or 'desirable.' Beliefs are cognitive and epistemic -- what people think or know about values and about how those values can be realized. Practices are what people actually do -- their behaviours, actions, interactions, rituals, etc. Hence, cultural beliefs give effect to the underlying values, which are then manifest in visible cultural practices.

I argue that in order for new beliefs to give rise to new practices that are perceived as culturally legitimate, they must be perceived as keeping existing value systems intact. In other words, for human rights to be accepted as culturally legitimate in the context of African societies, human rights need to have a perceived resonance with past and existing value systems. By challenging beliefs without eradicating value systems, cultural practices and norms can be transformed in a way that is culturally legitimate. Because cultural beliefs of gender have provided women with an unequal voice, women have not had an authoritative voice in validating and invalidating certain practices as 'culture.' Thus, power and 'culture' are interrelated as powerful groups often monopolize cultural norms to their own advantage at the expense of other [competing] views. I argue that in order for human rights to gain cultural legitimacy in the context of African societies, human rights need to be obtained through a process of struggles and legitimation in the 'culture' in question, in which women [and men] target beliefs that perpetuate the gender hierarchy in the 'culture' in question. Thus, the cultural legitimacy of human rights can be obtained through a process

of struggles in which human rights obtain the support of existing [positive] value systems. This process ensures that human rights contain an 'African cultural fingerprint' as human rights resonate within African value systems. However, human rights that have an African cultural fingerprint can only come about once women are empowered to participate in the reconstruction of 'culture,' empowerment that can ensure that women have an authoritative voice to validate or invalidate certain practices and beliefs.

Therefore, human rights cannot be passed onto African peoples through legislation alone. Eradicating or outlawing certain harmful practices by legislation alone will not have the support of 'culture' or be considered as cultural legitimate. Without cultural legitimacy for a human right, outlawing a cultural practice is likely to drive the practice underground (Ibhawoh, 2000). Rather, cultural beliefs have to be targeted in order to change harmful practices without radically transforming the value system within 'culture.' As Tamale succinctly puts it, "we must invoke the core values of societies to engender transformation; find those values that resonate from indigenous cultures that will speak to the rights repertoire" (2008: 60). Before this chapter concludes, examples of using existing cultural values to transform harmful cultural practices will first be provided in order to reveal the insights this framework provides into processes of establishing the cultural legitimacy of human rights in Africa. That 'culture' can serve as an emanicipatory tool for women's rights will highlight the importance of invoking core value systems of a particular 'culture' to engender transformation (Tamale, 2008).

3.4 FGM in Africa

The transformation of the practice of female genital mutilation (FGM) in some parts of Africa is an example where belief systems have been changed, which previously regarded the physical practice of circumcision necessary. Beliefs systems are a specific interpretation of cultural values. In cases where destructive FGM practices have been successfully changed, the underlying value systems have still been upheld. That is, the value system of the rite of passage into womanhood has been kept intact as it presents an important part in order to participate as a full member in society.

In the Sabiny and Pokot communities of eastern Uganda, FGM is widely practiced. FGM traditionally involves the "incising of the clitoris and/or labia… [and] is associated with women's purity and its proponents argue make women more virtuous by reducing their sexual desires" (Tamale, 2008: 63). Because FGM is strongly associated with women's status and identity in the community "most women would rather risk the health harms that are linked to it [FGM] than face social ostracism" (Tamale, 2008: 63). Women subjected to FGM experience "pain and trauma, and regularly experience severe physical problems such as blood loss, infections or even death" (Mswela, 2009: 189). Moreover, FGM increases women's vulnerability to HIV infection due to the use of unsafe equipment. Clearly, the cultural practice of FGM "violates women's bodily integrity and their sexual and reproductive rights" (Tamale, 2008: 63).

When the government in Uganda attempted to outlaw FGM, the initiative was met with a "severe backlash by pushing it underground" (Tamale, 2008: 63).

Underground FGM also took place in Burkina Faso in West Africa as a reaction to the prohibition of FGM in its Draft Constitution and has prosecuted practitioners in connection with the deaths of women during female circumcision (Ibhawoh, 2000). In agreement with Tamale (2008), Ibhawoh argues that "criminalizing practitioners and families [involved with FGM] has only succeeded in driving the practice underground [and as a result] creating an obstacle to outreach and education" (2000: 857). In Uganda, government responded to the continued practice and found a solution to eradicating the harmful elements of FGM while preserving the value systems upon which FGM is based. In other words, "the solution found was to engage communities practicing the ritual in finding alternative means of preserving the essence of 'culture' (the rite of initiation) while eradication the violent form in which that rite was practiced" (Tamale, 2008: 63). Similarly in Kenya, 'alternative circumcision rites' have been introduced as a result of "meetings between Kenyan mothers seeking alternative ways to user their daughters into womanhood without subjecting them to the ordeal and hazards of "facing the knife" (Ibhawoh, 2000: 858). Instead of the former practice of FGM, the new rite of passage, which preserves the underlying value system of the importance of initiation into womanhood, "still includes the traditional period of seclusion [where] adolescent girls are taught the basic concepts of sexual and reproductive health and are counseled on gender issues and other customary norms" (Ibhawoh, 2000: 858). As a way of legitimizing the new practice, certificates are received by instantiates rather than undergoing physical mutilation.

Changing the belief of needing to physically mutilate women in order to legitimize their rite of passage into womanhood has changed the practice of circumcision, resulting in a transformation of the traditional practice. It is important to note however that the underlying value system of celebrating of the rite of passage into adulthood is still keep in tact with the positive aspects of the practice preserved and thus still fostering a sense of cultural identity (Tamale, 2008). Reinterpretation of the underlying value system of FGM gave rise to new beliefs in terms of form the practice should take. Thus, engaging communities to find alternative and less harmful means of preserving the positive aspects and essence of the rite of initiation has proven more effective than outlawing FGM. As Ibhawoh points out, "in one of the communities where the alternative circumcision rites were introduced and where about 95 percent of the girls previously had to undergo circumcision, the rate of FGM is estimated to have gone down 70 percent" (2000: 858-59). Changing the practice of FGM requires a reinterpretation of value systems in order to transform the beliefs of how the value system should be upheld in terms of its practice.

The example of alternative circumcision rites replacing its harmful form is an example in which 'culture' is used strategically as a solution to women's oppression and subordination. However, arguing for the strategic use of positive aspects of 'culture' to advance women's rights is not to undermine the necessity that women's rights also exist within a legal framework. As Tamale points out, "while the top-down constitutional and legal framework is necessary as a foundational touchstone of women's rights…activism must begin from the

assumption that bottom up approaches anchored in local cultures and traditions are more likely to succeed than those working from without" (2008: 64). In order for 'culture' to be strategically employed to advance and legitimize women's rights within 'culture,' gender empowerment is required so that men and women can challenge existing beliefs that have given rise to certain practices. Because beliefs are the interpretation of value systems, it is important that men and women can participate in forming new beliefs based on existing value systems. As the example illustrated, while the value system remained in place, a reinterpretation of that system created new beliefs which changed the practice of [physical] circumcision.

3.5 Conclusion

This chapter has emphasized the socially constructed nature of 'culture' which brings to fore that 'culture' is in constant flux and subject to reinterpretation and reconstruction based on existing hierarchies of power within 'culture.' By arguing that 'culture' is socially constructed and that no one can claim to speak for [the true nature of] 'culture' and thereby blame human rights abuses on 'culture,' is not to deny that human rights abuses occur *within* 'culture.' Rather, as 'culture' is fluid and should be viewed as a process – a medium of action, interaction and communication -- it is important that all groups within 'culture' participate in this process. This chapter has argued that women have not always had an equal voice in validating and invalidating certain practices and behaviours as 'culture.' Because gender and 'culture' are a subject to relations of power, it is important that individuals are empowered to challenge domination and

oppression, which as the previous chapter has pointed out, is [and should be] the point and main aim of human rights. It is important that individuals and groups challenge certain oppressive cultural practices and behaviours within 'culture' in a way that can be accepted as culturally legitimate. The relationship between cultural practices, beliefs and value systems illustrates how cultural practices can be transformed and be accepted as culturally legitimate and thereby establish internal validity for the human right in question. The transformation of cultural practices in conformance with human rights can occur and be accepted as culturally legitimate if these new practices still retain the essence of the value system of the 'culture.' Alternative practices that are in conformance with human rights are more likely to succeed and be accepted as culturally legitimate if that new cultural practice is in conformance with underlying value system. Human rights can only be realized if individuals are empowered to validate and invalidate practices in reference to 'culture,' while these practices are deemed culturally legitimate in that they conform to the underlying value system. In sum, this chapter has argued that human rights and 'culture' need not be pitted as binary opposites as 'culture' can provide pivotal support and acceptance for human rights.

4: CHAPTER 4: SOUTH AFRICA: CULTURAL PRACTICES, WOMEN'S RIGHTS AND HIV/AIDS

The preceding analytical framework, which emphasizes the relationship between cultural practices, beliefs and value systems, suggests a possible avenue to examine specific cultural practices and behaviours that increase women's risk for HIV in South Africa, practices and behaviours that directly violate women's rights. This chapter provides an overview of HIV/AIDS and women in South Africa, and a description of the cultural practice of polygamy and bride wealth/bride price (lobola) in its traditional form as well its contemporary version. The chapter will identify certain risk factors which will be examined in the context of HIV and human rights in South Africa and thereby provide the means to operationalize the analytical framework developed in Chapter II as these risk factors will help expose and assess current beliefs underpinning polygamy and lobola. Examining specific HIV and human rights risk factors in relation to polygamy and lobola will also reveal how these practices have contributed to cultural legitimacy for behaviours that predispose women to HIV and human rights violations. This chapter begins with a brief overview of some statistics of HIV in South Africa, as well as the main behaviours and attitudes that have been identified in the literature as increasing women's risk for HIV. Next, specific risk factors will be outlined in terms of their impact on HIV and human rights, namely,

sexual autonomy, gender based violence and gender inequality. Although the chapter is largely descriptive in terms of polygamy and bride price, it provides the foundation for an analysis of the impact these practices have on women's rights and HIV in South Africa, a subject that will be explored in detail in chapter V.

4.1 South Africa's HIV/AIDS Epidemic: Factors Affecting Women's Risk of HIV Infection

South Africa is one of the most severely affected countries with HIV/AIDS in the world with 10 percent of the worlds known infections (Gouws & Karim 2008: 48). According to UNAIDS, South Africa has the world's largest number of people living with HIV with 5.5 million infected out of a population of approximately 48 million (UNAIDS, 2010). HIV/AIDS in South Africa is mainly considered a heterosexual type of epidemic (Gilbert & Walker, 2002; Mswela, 2009). According to South Africa's 2008 Antenatal survey report released in 2009, "the overall national HIV prevalence among antenatal women aged 15-49 years is 29.3% (Country Progress Report on the Declaration of the Commitment on HIV/AIDS, 2008). According to UNAIDS, "women in South Africa are disproportionately affected by HIV" as "young women (aged 15-24) are four times more likely to be infected with HIV than their male counterparts" (UNAIDS, 2010). It is important to highlight that "the vast majority of South African AIDS victims are black, and women suffer almost twice the infection rates as men" (Stacey & Meadow, 2009: 176). Due to the young age of onset of HIV infection for women, it is argued that there is a need to "focus our attention on young

African women and the factors underpinning their predicament" (Gilbert & Walker, 2002: 1106).

Poverty has frequently been singled out as the main cause of the spread of HIV/AIDS in South Africa as African women make up the poorest segment of South African society (Mbeki, 2000 in Gilbert & Walker 2002). However, additional and important factors have emerged prominently in analyses of the HIV/AIDS epidemic in South Africa. These factors include women's "subordinate role in the family and limited personal resources" (Gilbert & Walker, 2002: 1106). Women lack power within intimate relationships, exacerbated by the high incidence of "domestic violence, battery and rape" (Gilbert & Walker, 2000: 1106). Women's power inequity within intimate relationships, as well as the high incidence of intimate partner violence or gender-based violence has been continually cited in the literature as factors that increase the risk of HIV infection in young South African women (Jewkes et al, 2010; Dunkle et al., 2004). As UNAIDS points out, "the risk of HIV among women who have experienced violence may be up to three times higher than among those who have not" (2010: 2). The risk of violence is widespread in South Africa as up to 70 percent of women experience domestic violence in their lifetime, creating a reality in which most women are at risk of HIV/AIDS (UNAIDS, 2010). Thus, it is argued that the "quality of social life of a society is one of the most powerful determinants of health" (Wilkinson, 1996: 5 in Gilbert & Walker, 2000: 1106). Additional factors increasing women's risk of HIV are sexual-cultural norms and values, in particular, men and women's acceptance of a multiple sexual partners among

men (Gilbert & Walker, 2000: 1106). Accordingly, "there are wide-spread beliefs that males are biologically programmed to need sexual relations regularly with more than one women, and often concurrently, such beliefs are logically consistent with societies that were traditionally polygamous" (Leclerc-Madlala, 2000 in Gilbert & Walker, 2002: 1106). A commonly held belief among men and women is that a man has a right to force himself onto a women who displays "reluctance and shyness," with an HIV status not changing these practices (Leclerc-Madlala, 2000 in Gilbert & Walker, 2002: 1106).

Recent literature on HIV in South African regarding gender inequity in relationships has also drawn attention to the inability of women to negotiate condom use. Women's inability to assert their sexual autonomy with regard to condom use has serious implications for the exercise of effective HIV preventative behaviour. Although "national surveys in South Africa have found that condom use is high, it is rarely consistent among young women" (Shai et al., 2010: 1379). Studies suggest that male sexual partners predominately control sexual practices and sexual encounters and often resort to the use of violence (Jewkes et al., 2010; Dunkle et al, 2004; Shai et al., 2010). Thus, important connections exist between gendered power inequities, intimate partner violence and the use of condoms (Shai et al., 2010). Women who experience physical abuse from their main partner and women who have lower gender equity in relationships are less likely to suggest condom use (Shai et al., 2010). Therefore, gender inequality in relationships has negative effects on women's sexual autonomy. It is suggested that "women's agency in condom use can be

leveraged from being in gender equitable, monogamous or less conflictual relationships" (Shai, 2010: 1384). According to Delport (2006), gender inequality and power imbalances between women and men heighten the vulnerability of women to HIV infection. The existence of gender inequality and power imbalances renders many women unable to negotiate safer sex with their partners thereby undermining their sexual autonomy (Delport, 2006). Thus, there exists consensus within the literature on HIV/AIDS in South Africa that gender-based violence, gender inequality and women's inability to assert their sexual autonomy are the key determinants in increasing women's risk of contracting HIV (Jewkes, et al., 2010; Mswela, 2009; Dunkle et al., 2004; Mathews, 2008; Outwater, et al., 2005, Delport, 2006).

Although the research cited above highlights attitudes, behaviours and beliefs within South African society which place women at a disproportionate risk for HIV, the underlying [cultural] reasons for these factors have not been analyzed and thoroughly researched. It has been suggested that "the links between HIV/AIDS, gender inequity, and gender-based violence lie in the patriarchal nature of [South African] society" (Jewkes et al., 2010: 41). Although gender inequality, intimate partner violence, women's inability to negotiate condom use and the acceptance of multiple partners for men, constitute more broadly attitudes, behaviours or social norms, and not specific cultural *practices* that stem from historical tradition, these factors should be taken into account when examining specific cultural practices and the underlying belief system of those practices. In other words, while gender inequality and the inability of

women to negotiate condom use is not a specific cultural practice, the link between these attitudes and traditional cultural practices should be analyzed. It is not being suggested that gender-based violence and gender inequality are a direct result of specific cultural practices, but rather that certain cultural practices have provided [cultural] legitimacy for these attitudes and norms in South African society and are thus an indirect result of cultural practices. The patriarchal interpretation of value systems underpinning certain cultural practices has fostered certain attitudes regarding gender in current South African society. Women have not had an equal role in interpreting value systems of cultural practices and thus have not had an equal role in forming dominant beliefs. Current attitudes surrounding gender inequality, or the belief that men have the right to control sexual encounters, are beliefs that share similarities with certain cultural practices.

By assessing the traditional and contemporary practices of polygamy and bride price in relation to risk factors, it is possible to expose beliefs underpinning these traditional and contemporary cultural practices. In so doing, traditional and contemporary practices can be compared in terms of the risk placed on women for HIV and human rights violations. The following factors will be used to analyze polygamy and bride price in the context of HIV and human rights in South Africa: *sexual autonomy, gender-based violence,* and *gender inequality*. Thus, traditional and contemporary polygamy and bride price will be assessed in order to determine which versions have a greater [negative or positive] impact on women in relation to human rights and HIV. The purpose in making this

distinction is to test if the value system underpinning traditional practices is largely a positive value system that can advance human rights and HIV prevention. This objective ties into my broader thesis, which argues that grounding human rights and HIV prevention on positive cultural value systems underpinning practices can provide culturally legitimate support for human rights.

4.2 Risk Factors: HIV and Human Rights

HIV/AIDS is recognized as a human rights issue (Delport, 2006). Sexual autonomy, the absence of gender-based violence, and gender equality/the elimination of discrimination against women, are human rights concerns and important factors in preventing HIV. With regard to sexual autonomy, according to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol), women have "the right to self-protection and to be protected against sexually transmitted infection, including HIV/AIDS" (Article 14, Sec 1:b) As the above discussion argued, the inability to assert sexual autonomy such as negotiate condom use, is a major factor in increasing women's risk to HIV. Gender-based violence, or violence against women, is defined as "all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm" (Women's Protocol, Art. 1 j). The African Women's Protocol states that "State Parties shall enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public" (Article 4: 2a). With regard to HIV/AIDS, women who experience violence are less likely to suggest condom use due to fear of violence

and are less likely to have control over sexual encounters. Gender-based violence also hinders women's ability to refuse sex with their partner for fear of spousal abuse even when aware of a partner's HIV positive status. It is argued that even when women have evidence of infidelity, women are often unable to negotiate condom use, as women are unable to negotiate safer sexual practices in abusive relationships (Petersen, 2009).

Gender inequality, or discrimination against women, is widely argued to be at the root of the HIV/AIDS crisis. The African Women's Protocol defines discrimination against women as "any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedom in all spheres of life" (Art. 1:j). Thus, article 2(b) of the African Women's Protocol states that State parties shall "include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application." Gender equality has important implication for women in the context of HIV. For example, often gender stereotypes within 'culture' and "social norms dictate that women should be passive and compliant in sexual relations" (Delport, 2006). Cultural norms regarding gender and gender [in]equality widely affect sexual behaviour risk as cultural norms often promote male dominance in sexual relationship with men often portrayed as having a right to, often unlimited, sexual encounters. In sum, sexual autonomy, gender-based violence and gender inequality are critical risk

factors that influence women's human rights and risk for HIV infection. These risk factors pertaining to human rights and HIV/AIDS are important in the analysis of beliefs and value systems underpinning the practices of polygamy and bride price. Thus, a comparison between traditional contemporary versions of these practices can expose key differences in the interpretation of the value system in relation to these risk factors.

4.3 Polygamy in Africa: Traditional and Contemporary Polygamy

Polygamy can be defined as "marriage to more than one partner at the same time" (Cook, 2007: 236). The original purpose of polygamy in traditional Africa was to ensure that all women in the rural community had a husband for the purpose of procreating (Mswela, 2009; Cook, 2007). Traditionally, polygamy also ensured that if a husband's first wife was barren or not able to provide a son, the husband could take a second wife (Cook, 2007; Mswela, 2009). Thus, polygamy "contributed to the continued existence of the community, particularly the black community, through a high fertility rate" (Mswela, 2009). According to Cook, in traditional and contemporary Africa, polygamy is a status symbol as it indicates a man's wealth; "a man takes a second or third wife because he can afford it" (2007: 238). Polygamy has traditionally been the "privilege of those who could afford to marry and maintain many wives and children" (Zeitzen, 2010). Thus, polygamy "contributed to a man's wealth, as well as displayed his status, ensured that all women were married and had children, and contributed to the survival of the community through a high fertility rate" (Cook, 2007: 238).

Another reason for the practice of polygamy is a lengthy post-partum sex taboo (Mswela, 2009). Accordingly, "a post-partum sex taboo is the bar against sexual intercourse for a prescribed period following an event such as the birth of a child [during which] the husband is prohibited from having sexual intercourse with his wife" (Mswela, 2009: 180). Therefore, polygamy can be viewed as a reaction against lengthy post-partum sex taboos, justifying the husband's access to other sex partners (Mswela, 2009). It is also argued that polygamy is practiced for the purpose of sexual necessity (Mswela, 2009). As Mitsunaga et al. point out, "the belief that men are sexually polygynous by nature is central to the justification of this practice" (2005: 479). It is assumed that males are "by nature endowed with a disposition for assortment in sexual partners, and supposedly not a characteristic feature among women" (Mswela, 2009:180). This is used to justify this reasoning for polygamy. However, "there no biological evidence supporting this theory" that men are by nature predisposed to multiple sexual partners (Mswela, 2007: 180). It is argued that in traditional society, polygamy was not accepted as "merely a means to satisfy male sexual lust" (Anozie, 1998: 82 qtd. in Nwoye, 2007: 384). Rather, "when viewed within the perspective of a specific cultural setting, the practice will exhibit a number of well-defined social functions and advantages (Anozie, 1998: 82 qtd. in Nwoye, 2007: 384).

When viewed as an adaptive practice, polygamy is largely underpinned by a positive value system. As mentioned above, traditionally polygamy helps prevent depopulation, and ensures that each woman has a husband for procreating, as well as an extended family. Also, by providing children, polygamy

ensures workers which add to a husband's wealth, which in turn, assists in providing for his wives (Cook, 2007). Thus, the value system of polygamy was originally based on the necessity of guaranteeing an extended family to ensure the survival of the community and maintain population growth. When examining population growth and fertility rates, Cook (2007) argues that polygamy has had a positive effect on these rates and has ensured survival of the group.

Interventive polygamy (Nwoye, 2007) has been recently coined to distinguish the positive aspects of polygamy, as described above, which was traditionally used in African society. Interventive polygamy helps to "demonstrate that in Africa certain anxieties of living, particularly those arising from family stress originating from the tragedy of childlessness or sonlessness in a given monogamous marriage are addressed and dealt with through therapeutic (interventive) polygamy" (Nwoye, 2007: 386). Nwoye argues that "the practice of interventive polygamy is, at least, for rural couples in Africa, what adoption and divorce, is for couples in the West" (2007: 416). Interventive polygamy is a solution to "childless or sonless wives in African societies" (Nwoye, 2007: 395).

Affluent polygamy has recently emerged and is practiced in most urban cities in Africa, including Southern Africa and is differentiated from its original interventive form as an irresponsive form of polygamy (Nwoye, 2007). Although traditionally, having more wives was also tied to affluence and power and thus modern affluent polygamy, polygamy in its traditional form came with many responsibilities. Practicing affluent polygamy and claiming that it is polygamy, does not represent conformance with the values of this African tradition. Rather,

affluent polygamy is a subversive practice practiced "by affluent middle-class men who, in engaging in it, try to appropriate its privileges while sharking its responsibilities" (Nwoye, 2007: 384). Affluent polygamy represents an example where modernity has changed the form of polygamy as a customary practice. According to Zeitzen, informal polygamous practices, such as "'outside wives,' where a man has both an official and unofficial wife, started springing up in the 1980s, particularly in urban areas" (2010). The merging of tradition and modernity represents a "creative hybrid allow[ing] men to appear monogamous and modern, while living de facto polygamous lives" (Zeitzen, 2010). Thus, affluent polygamy provides as an example in which "religious and traditional institutions are subverted by 'modernity'" through "dubious, selective and misleading exegesis of religious and canonical texts or traditional African tenets" (Nnaemeka, 1997: 186 qtd. in Nwoye, 2007: 397). According to Nwoye, "the reason why it is important to pursue the distinction between affluent and interventive polygamy is that doing so helps to address the fact that hitherto the emphasis in the literature on the phenomenon of polygamy practice in Africa has been largely one-sided, pointing attention solely to affluent polygamy" and have ignored the positive underpinnings of traditional (interventive) polygamy (2007: 385). Thus, African feminists critique analysis of polygamy in its focus on men and sex, in which "sexuality is inscribed as the criterion for measuring benefit with the result that the husband is cast as the major beneficiary because he gets more sex than each wife" (Nnaemeka, 1997: 188 qtd. in Nwoye, 2007: 398). However, according to African women critics, polygamy is not just about sex, but rather is

about human relations (Nnaemeka, 1997 in Nwoye, 2007). Arguments against polygamy, which posit that polygamy dehumanizes women as women are compelled 'to share one man', ignore that (especially in the case of interventive polygamy) much more is shared- "friendship, companionship, expertise, time, childcare, loss, misery, happiness, etc." (Nnaemeka, 1997:188 qtd. in Nwoye, 2007: 398). Thus, the distinction between interventive and affluent polygamy highlights that interventive polygamy is underpinned by a positive value system and is supported by positive beliefs on how to achieve this value system.

It is important to point out that there is no inherent problem with the institution of polygamy itself but rather with the "vagaries of *some* modern African men who abuse its provisions" by "misappropriat[ing] the institutions privileges while rejecting its responsibilities" (Nwoye, 2007: 394, 395). Thus, African women critics are not against the institution of polygamy per se but rather "men's polygamous instincts that inaugurate philandering, betrayal, infidelity, lack of trust, and abandonment" (Nnaemeka, 1997: 184 qtd in Nwoye, 2007: 396). Whereas traditionally polygamous arrangements showed "cohesion and shared responsibility," in contemporary urban Africa, [affluent] polygamy is characterized by "anarchy and irresponsibility" (Nwoye, 2007: 396). Accordingly, "in the urban milieu, because each wife and her children live in a separate location, the children have little contact with their father, whose vagrant lifestyle allows him during the day to move from house to house, villa to villa, and come home at night to sleep" (Nnaemeka, 1997: qtd. in Nwoye, 2007: 396). The husband no longer displays values of responsibility, caring and faithfulness towards the wives

but rather irresponsibility, negligence and infidelity. Also, the status of the first wife within the polygamous marriage is not respected as "more attention and honor is rather given to the newest wife (an approach that is a direct aberration to the mores of the traditional practice)" (Nwoye, 2007). Whereas traditionally the first wife used to participate in the decision of the husband to marry another wife and would also participate in the marriage ceremony, the first wife's participation is completely omitted causing the first wife to feel deceived and humiliated (Nwoye, 2007). In addition, in urban Africa, unlike the traditional arrangement where the husband lives in the same compound with his wives, "the affluent polygamist in the urban setting often abandons his first and senior wife" (Nwoye, 2007: 397). The husband's abandonment of responsibility reflects the manipulation and distortion of the institution of polygamy.

The current South African President, Jacob Zuma, is a practicing polygamist. President Zuma has had five wives over his lifetime and currently has three wives and one fiancée (Zietzen, 2010). Embracing his Zulu tradition, "polygamy is a key part of Zuma's political persona- and hence, his power" (Zietzen, 2010). Zuma defends polygamy as 'my culture,' which for Zuma, "marks him clearly as a Zulu and connects him to pre-colonial African traditions, an identity that could otherwise be lost in a globalized, Westernized blur" (Zeitzen, 2010). Thus, Zuma uses appeals to 'culture' to generate political support as well as justify his actions. For Zuma and other formal practitioners of polygamy, "to be an open and proud polygamist is to be openly and proudly African" (Zietzen, 2010). For Zuma, embracing African traditions like [contemporary] polygamy will

never be outdated as it provides a means to tap into prestige and power (Zeitzen, 2010). If in traditional Africa, more wives meant more power, in modern Africa, the status that polygamy provides still features, alongside its contemporary form. President Zuma can be viewed as a practicing affluent polygamist as polygamy is used as a means to display his wealth, status and power.

Thus, polygamy (interventive) traditionally contained a positive underlying value system, that is, the importance of an extended family for population growth and survival. Even though one could object on the basis that it operated within a patriarchal structure of gender relations, polygamy did ensure that women would not be maltreated or abandoned due to failing to produce children or a male heir. Polygamy also ensured the status of both men and women in society. Beliefs on how to realize the value system that underpin polygamy emphasize fairness, justice and equity not only between the husband and the wives but also between co-wives. Polygamy, both in its traditional and contemporary versions, is believed to be a reflection of men's wealth and therefore a status symbol as the more wives a polygamous male can support, the greater his wealth. Gaining status by practicing polygamy is still what motivates men and women to practice polygamy today (Zeitzen, 2010).

In contrast to the responsible and attentive behaviour towards wives and children in interventive polygamy, affluent polygamy has emerged and changed the practice of polygamy. As mentioned, traditionally polygamous marriage was a reaction to a lengthy postpartum taboo thus providing the husband access to other sex partners as well as the belief that men are by nature sexually

polygamous thereby justifying the need for polygamous marriages. However, in contemporary Africa, "polygamy does not preclude extramarital activity among men" (Mitsunaga et al., 2005: 479). This is supported by widespread beliefs in "regions of sub-Saharan Africa…that men are biologically different from women in their need for sex…[resulting] in the perception that men may have unlimited sexual freedom, whereas women are expected to be faithful to only one partner at a time" (Mitsunaga, 2005: 479). Within many South African communities today, double standards often apply where men are encouraged to actively pursue sexuality and multiple partners with women, while women are sanctioned for being sexually active, or constructed as loose and promiscuous (Shefer et al. 2005). Thus, new beliefs on how to achieve polygamy's value system have changed the nature of this traditional practice.

4.4 Lobola or Bride Price in Southern Africa

Bride price or bride wealth, also known as *lobola* in Zulu, Xhosa and Ndebele*,* is practiced in many parts of Africa including South Africa. Traditionally, "the groom's lineage brought cattle to the prospective bride's lineage as an indication of possible engagement" (Susser, 2009: 128). Lobola meant that in order for a man to officially marry and have a bride, a price of cows or goats had to first be paid to the bride's family (Wendo, 2004). Under the tribal system in Southern Africa, "no woman was rightly married without the form of the transfer of cattle to the bride's father's kraal from the kraal of the bridegroom's father" (Ballinger, 1938: 335). As Wojcicki states, "bridewealth is broadly understood as the exchange of resources between African families to finalize a marriage

transaction" (2010: 705). Payments are often made in instalments after the couple are co-habitating, sexually active, "with some payments made with pregnancy and children, as compensation that the woman is fecund" (Wojcicki, 2010:705). According to Posselt, "lobola is a custom in which the husband (or his family on his behalf) delivers or promises to deliver to the father (or guardian) of the wife, stock or other property, in consideration of which the legal custody of the children born of the marriage is vested in their father (or his family) to the exclusion of any member of the mother's family" (1926 in Chireshe, 2010, para. 1). Lobola therefore guarantees the possession of the children to the father and to his clan (Rawson, 1913). Thus, in traditional terms, lobola is directly related with children and family lineage (Wojcicki, 2010: 705). As Susser puts it, "marriage had more to do with defining legal succession and a place for children and less to do with biological or genetic definitions of kinship in the Western sense" (Susser, 2009: 128). It is important to point out that lobola was not a payment in the accepted sense of the word, but a form of "insurance, a fund in which the woman and her children might be maintained in the event of any failure on the part of the husband to treat her properly" (Ballinger, 1938: 335).

Lobola serves a multiplicity of purposes within society: "functions relating to the distribution of material resources; the establishment of relationships within and between lineages; the maintenance of social control; and the construction of social identity" (Ansell, 2001: 698). Materially, "lobola has served to redistribute both scarce consumption resources (cattle as meat, cash etc) and rights over productive resources: land, cattle and labour (the immediate labour of the young

people marrying, and later the labour provided by their offspring)" (Ansell, 2001: 699). Through lobola, both households secured both production and reproduction (Ansell, 2001). Lobola served as a means in which elders could extract labour from young men, who would work for their own lineage to 'earn' the cattle they gave in bride price (Ansell, 2001). Lobola also served as an important lineage function as it transferred wealth between lineages. For example, often the lobola paid for a daughter went to her elder brother to enable him to pay lobola for a wife (Ansell, 2001). Also, lobola serves as a "payment for children for a linage as it brings about the absolute transfer of rights in a woman's procreative capacity from the woman's family to her husbands family" (Ansell, 2001: 702). With regard to social control, lobola gave a considerable amount of control to the elder generation over the younger. Accordingly, "lobola gave elders not only a degree of control over their new daughter-in-law, but also their son- they controlled land, livestock, marriage and behavior" (Ansell, 2001: 702). Elders had a strong incentive to maintain their own alliance and the future exchange of cattle and thus would try to improve relations if the couple were facing difficulties and thereby avoid having to return cattle (Susser, 2009). Lobola also has important identity functions as it symbolizes the "transition to adulthood, the existence of a marriage, sexual identity and many other aspects of social identity and relationships" (Ansell, 2001: 703).

Whereas traditionally cattle were transferred from the groom's family to that of the bride upon marriage, in contemporary times, bride price is paid in cash (Chireshe, 2010, para. 1). According to field research by Susser in South Africa,

"in 2003, the system of lobola was still strongly in place, especially among women from families that could establish the value of their daughter and the expectation of a customary marriage" (2009: 129). According to a study which examined Xhosa speaking graduate students' views at the University of Transkei in South Africa, the majority of respondents supported the practice (Mwamwenda & Monyooe, 1997). The students considered bride price an important part of African marriage because it heightened "the husband's gratitude for a good wife, his appreciation of the wife's dignity and worth and the wife's assurance of her husband's continued recognition and respect" (Mwamwenda & Monyooe, 1997: 270). These views on lobola share similarities with perspectives in other parts of Southern Africa. For the Basotho of Lesotho and the Shona of Zimbabwe, girls supported lobola as they viewed it as a demonstration of a man's commitment and love for his wife (Ansell, 2001). Many girls felt that "lobola offers security in marriage: a man who spends a large sum of money to obtain a bride is unlikely to leave her" (Ansell, 2001: 706). According to a study amongst Zimbabwe University students, a majority felt that lobola shows that the man loves and values his wife and that lobola links families (Chireshe, 2010, para. 8). Thus, there are positive elements to lobola as it represents a "significant gift and an acknowledgement of a priceless debt which the bridegroom's family group owes to the brides family group" (Chireshe, 2010, para. 3). These contemporary views support earlier research which points out that bride price functions as a payment of compensation (indemnity) to a group (family or clan) that loses a member (Radcliffe-Brown, 1929). Because marriage in African communities "involves an

infringement of the rights that a group of relatives or clansmen have over the members of the group, and the primary function of payment of cattle or other forms of wealth is to compensate the group for this infringement of its rights, this invasion, this disruption of its solidarity" (Radcliffe-Brown, 1929:131). Lobola is also viewed as socially beneficial as it legitimizes children and provides marriage status to women (Chireshe, 2010).

According to focus groups held in rural secondary schools in Southern Africa to assess students' interpretation of [contemporary] lobola, certain traditional functions of lobola were clearly absent (Ansell, 2001). Students understood lobola primarily in terms of its *material* function as it represented the exchange of money for a woman's labour. Thus, lobola is viewed as a "financial transaction, which implies that women are 'bought,' 'owned' or equated with a sum of money" (Ansell, 2001: 706). Boys equated lobola with buying labour because they felt that paying a substantial amount of money should bring a return, "generally understood to mean unpaid labour from women in the household" (Ansell, 2001: 706). Also, viewing lobola as a financial transaction implied that women became the property of her husband and thereby could be controlled because men had property rights over their wives (Ansell, 2001). These attitudes complement findings in Durban, South Africa where the "majority of semi-skilled workers believed that the payment of lobola gave the right to the man to control the women and tell her what to do and she was expected to be submissive and obedient" (Walker, 1992: 58). Accordingly, boys in the focus group discussions used lobola as justification for beating in the situation where a

wife was found sleeping with another man (Ansell, 2001). These views also support findings in South Africa where the majority of respondents believed that marital fidelity was expected of women due to the lobola paid, an expectation not of men (Walker, 1992).

Lobola serves to entrench a disempowered image of women as unequal in relation to men. As one respondent remarked: "if I have got the challenge of paying lobola and you will move for me, it means I am greater than you" (Ansell, 2001: 708). Lobola also serves an important function in defining cultural identity, as lobola is widely viewed as part of a valued 'culture' and thus creates a sense of belonging to African 'culture.' Importantly, and absent in contemporary views on lobola, are interpretations relating lobola to lineage and bonding between families (Ansell, 2001). Rather, lobola was "seen as a transaction between individuals- the wider extended family did not enter the picture, nor is establishing paternity highlighted as an issue by the students" (Ansell, 2001: 709). Although lobola remains an important part of Southern African 'culture,' it is understood by most students as a financial exchange, an interpretation that has negative implications for the "symbolic placement of women through the practice" (Ansell, 2001: 715).

The conception of lobola as financial exchange (Ansell, 2001) is also evident in earlier fieldwork by Hellman (1935). Research on the slum yards of Johannesburg, South Africa indicates that lobola had undergone significant changes after rural Natives, who used to live under tribal conditions, moved to Doornfontein in 1927, less than 2 kilometers from the city (Hellman, 1935).

According to Hellman, the attitudes of residents of this Johannesburg slum yard with regard to lobola had undergone "considerable modification" (Hellman, 1935: 53). It is pointed out that the "original functions of lobola of determining the legitimacy of the children and of acting as a guarantee of good and befitting conduct both by husband and by wife are no longer dominant" (Hellman, 1935: 53). Rather, lobola (in this Johannesburg slum yard in the early 1930s) is viewed as a payment-"purely an economic gain to the parents of the bride" (Hellman, 1935: 53). Thus, lobola transformed into a conception of purchase in which parents of the bride were recipients of wealth as a result of the marriage of their daughter.

Lobola is underpinned by a positive and noble value system. Lobola establishes relationships within and between lineages and fosters mutual respect between the families. The payment of lobola was the foundation on which families cared for another during times of poverty and thus served to forge a cultural and community network (South African info, 2004). Lobola represented a way of thanking the parents of the bride for raising their daughter and therefore symbolizes gratitude. As Cherishe puts it, "lobola was understood as a token of appreciation, a way of thanking the in-laws for bearing and rearing a wife for them" (2010, para.11). Lobola is underpinned by strong patrilineal values, namely that lobola paid to the bride's family ensures that offspring belong to the husband's family. The payment of lobola is therefore also to compensate the family of the bride for the loss of their daughter who now belongs of the "husband's family for purpose of bearing children and extending the husband's

clan" (Chireshe, 2010, para. 11). Traditionally, the payment of lobola symbolizes the husband's commitment to his wife. The purpose and function of lobola in its traditional form clearly contains positive underpinnings.

Lobola itself is not a problem, but rather the meanings that have become attached to it (Ansell, 2001). In other words, "women are not subordinate because of the *fact* of the exchange, but because of the *modes* of exchange instituted, and the values attached to these modes" (Ansell, 2001: 715). Families are less involved in the transaction, as lobola has become more of an individual transaction between two men, since commercialization in the late nineteenth century (Ansell, 2001). Lobola is no longer in the interest of the bride and her family, but rather is in the interests of the men in the family who charge and receive lobola, often using it as they wish (Chireshe, 2010). Thus, whereas lobola used to be a form of insurance for the wife and her children in the event that her husband failed to support her, lobola has literally become a transaction or payment for the bride. Due to the modes of exchange and the value attached to these modes, women are reduced to a purchased property, placing the husband in control of his wife's sexuality (Chireshe, 2010). Because lobola legitimizes marriage through monetary exchange, lobola implies a demand on women's labour (whether household or sexual) (Ansell, 2001). Due to the lobola paid, men believe that they have a right to control their wives (Ansell, 2001). Therefore, lobola casts women as property. It is argued that lobola is used as an instrument of patriarchy, breeding inequality and thereby places women in subordinate position (Kambarami, 2006 in Chireshe, 2010). However, it should

be emphasized that traditionally "bride price was not seen as a means to own woman as property but, as an indication of a man's commitment to his wife and her family" (Nzenza-Shand 2005: 76). Thus, the value system of labola has been interpreted through a patriarchal and commercialized lens, relegating women to the status of commodities. Current beliefs, which have evolved from this value system, have changed the practice of lobola, which as a result, have impacted views regarding men and women within marriage and society.

4.5 Conclusion

The comparison between traditional and contemporary polygamy and bride price reveals that 'culture' is not static and fixed in time. Rather, cultural practices have been transformed to a considerable degree, changing the impact and effect these practices have on women and men. Changes in these practices highlight that certain interests are fulfilled through these contemporary cultural practices under the veil of 'tradition.' It is necessary to question what purpose these traditions fulfil and who benefits at whose expense. Both polygamy and lobola have overall positive value systems but their current versions have been interpreted in a way in which men and women do not benefit equally from the practice. Traditionally [interventive] polygamy sought to increase population growth and ensure that each women had a husband for the purpose of procreating. Polygamy emphasized caring and responsibility between husband and wives as well as co-wives. Contemporary polygamy (affluent polygamy), while asserting that the practice constitutes true African 'culture' and 'tradition,' diverges from its traditional and responsible form. Affluent polygamy is often

interpreted to justify multiple sexual encounters among men. The affluent polygamist does not show traits of responsibility, fairness and caring.

Lobola contains a positive value system as traditional beliefs underpinning lobola have portrayed respect towards women. Paying lobola was a means to thank the parents for their daughter as well as a means to strengthen family ties and form a bond between lineages. The value system underpinning lobola is primarily that of maintaining patrilineality (lineage belonging to the father) and hence the payment of lobola is meant as a symbol of gratitude for women's reproduction. However, this value system of the importance of patrilineality has been interpreted to mean ownership of women due to the lobola paid. Ansell (2001) attributes this interpretation to the mode of exchange and the values attached to these modes. In other words, money has had an influence on the meaning of lobola as women are viewed as purchased by the groom, as the [individual] father exchanges his daughter for money. This mode of exchange influences the husband's view of his wife, namely that his wife has a duty to him due to the money he paid for her, whether it be a return in productive or reproductive labour or both. Thus, beliefs underpinning lobola are influenced by virtue of the fact that lobola has become a material transaction between two men and no longer represents a gift of thanks to wife's family but rather a transaction.

It should be noted that lobola and polygamy contain tenets of the African philosophy of Ubuntu. In its traditional form, polygamy and lobola emphasize interconnectedness as both practices highlight the importance that other human beings and community have on a person's identity and livelihood. Ubuntu holds

that a person is only a person through other humans. A formal definition is provided by South Africa's Archbishop, Desmond Tutu, "Ubuntu…embraces hospitality, caring about others, being able to go the extra mile for the sake of others" (Tutu Foundation UK, 2010, para. 3). The value system of lobola highlights the centrality of interconnectedness and community as lobola brings two families together. With regard to polygamy, the value system is based on the importance of an extended family for population growth and survival. The value system of polygamy and lobola reveal tenets of Ubuntu as both practices in its traditional form are pivotal in promoting and strengthening family, supporting the notion that each human is important for the identity and well-being of others.

It has been suggested that possible reasons for transformation of lobola and polygamy is liberation and the adoption of democracy in societies. Kometsi argues that "dominant groups tend to perceive calls (from the dominated and those that support them) to bring about social change as attacks (2004: 26). It is suggested that social change which transforms gender relations between men and women as equal threatens notions of masculinity and male identity. It is argued, "challenging men to change does not only address their position of ascribed privilege, but it can be perceived as challenging an important aspect of their identity" (Kometsi, 2004: 26). These challenges against hegemonic perceptions of masculinity and identity often result in violence against women. It is suggested that the "tension between inequality between women and men on the one hand, and the demands made by the global movement for the emancipation of women on the other, is one of the 'crisis tendencies' in modern

societies" (Kometsi, 2004: 30). That is, the effects of change have not occurred alongside development in personal relationships between men and women (Kometsi, 2004). In light of shifting masculinities and threatened identities, lobola and polygamy are reinterpreted in a way that is negative towards women as it serves to assert men's dominance.

With regard to South Africa, apartheid has had a negative effect on masculinity and identity. Apartheid placed men in an inferior social and economic position as Apartheid was "instrumental in promoting capital accumulation by restricting skill acquisition largely to whites and facilitating the exploitation of cheap black labour" (Simon, 1989: 190). Politically, black South African men were deprived of their citizenship and associated rights. Apartheid's racial segregation laws separated black from designated white residential areas often by means of forced removals. The systemic oppression of the black majority in South Africa threatened hegemonic constructions of masculinity of black South African men as men were stripped of their identity as male provider due to high unemployment rates and poverty. South Africa's migrant labour system, underpinned by racial segregation where black men served as a supply of cheap wage labour, facilitated the breakdown of traditional family life. Men would migrate closer to the major cities in South Africa, leaving their family behind in the 'homelands.' This provided social conditions in urban areas that fostered male promiscuity. Thus, the inferior position of men in society, coupled with rising poverty and their diminishing role in family life, negatively influenced 'culture' and cultural practices. 'Culture' was viewed as the only avenue in which men could

gain control over their identity using the private sphere as an arena to practice and reassert their dominance. In light of these political and economic circumstances, polygamy and lobola have been interpreted in a way that reasserts hegemonic constructions of masculinity.

Beliefs underpinning polygamy and lobola have implications for women's rights and HIV/AIDS. The next chapter will examine these two cultural practices in South Africa in light of risk factors which encompass key human rights and HIV variables. These risk factors, sexual autonomy, gender based violence and gender equality, will help assess the cultural practice and also expose key differences in beliefs between the traditional and contemporary versions. Examining contemporary polygamy and lobola in South Africa, will not only gauge surface differences in the practice, but will also expose current beliefs underpinning the contemporary cultural practice and reveal key differences in the interpretation of its value system. In so doing, my hypothesis can be "tested", -- that it is not the cultural practice as a traditional institution or the value system underpinning the cultural practice per se that puts women at risk for HIV and human rights violations, but rather the beliefs (current interpretations of the value system) that have modified practices that increases women's risk of HIV and human rights violations. My broader thesis is also assessed which argues that in order to ensure cultural legitimate human rights, cultural beliefs have to be challenged in order to change harmful practices through the strategic deployment of the positive aspects of the cultural value system which keeps the existing [positive] value system in tact.

5: CHAPTER 5: FIELD RESEARCH IN SOUTH AFRICA

5.1 Introduction to Field Research and Recapitulation of Thesis

The cultural practice of lobola and polygamy in the context of South Africa has given rise to certain beliefs, which put women at risk for HIV/AIDS and human rights violations, due to specific interpretations of the cultural practices' value system. This chapter grounds the analytical framework developed in chapter III and IV in the context of South Africa. The analytical framework seeks to operationalize the concept of an African cultural fingerprint in order to provide for the cultural legitimation of human rights. This analytical framework is put to test in the context of South Africa. My research seeks to examine the current practices of lobola and polygamy and their links to the human right and HIV variables of *gender inequality*, *gender-based violence* and *limitations to sexual autonomy*. That is, I examine whether these cultural practices are supported by beliefs that impact negatively on these variables. Chapter III argued that grounding human rights in an African cultural fingerprint is imperative in establishing the legitimacy of human rights and that women challenge specific beliefs derived from the value system underpinning the cultural practice that are harmful to their rights. The analytical framework is based on the idea that cultural legitimation of human rights can be achieved if harmful beliefs are challenged while keeping the existing value system in tact. As noted in Chapter III, because 'culture' is fluid and continually in flux, 'culture' is subject to relations of power

and that any claim to 'true culture' should be critically questioned and challenged as any claim to essentialism privileges a particular hegemonic conception of 'culture.'

Establishing cultural legitimacy for human rights requires that all groups have an equal voice in validating and invalidating certain beliefs and practices as 'culture' through the process of contesting, debating and struggling. It is important that cultural legitimation draw strategically and creatively upon positive aspects of African tradition and values. Through the process of legitimation, cultural legitimacy can be established for human rights while simultaneously forming a part of 'culture.'

5.2 A brief note on Research Methodology and Data Collection

The analysis of field research in South Africa is based upon both deduction and induction; the former based on insights from the literature on human rights and 'culture,' and the latter on field research in South Africa. The main data sources include secondary sources such as published scholarly and policy literature and primary sources based primarily on interviews and focus groups in South Africa. The main research strategy entailed an in-depth case-study approach. Data analysis is based on triangulation in which at least two categories of sources are used in order to test the credibility and validity of the findings. The selection of interview and focus group participants aimed for diversity in order to capture a broad spectrum of 'culture' in South Africa. Interviews and focus groups were open-ended and semi-structured. With minimal input and interruptions on part of the researcher, questions allowed for

interpretation and freedom in terms of responses from participants. Interviews and focus groups are based on narration as participants drew upon personal experiences and understandings of the cultural practice and concepts in question.

Research was conducted in the province of Gauteng and the Free State. Subjects interviewed consisted of government officials, staff members at NGO's, academics, researchers, medical experts, university students and domestic workers. NGO's interviewed were the Centre for the Study of AIDS as well as HIV South Africa (HIVSA). Academics and staff members at research units were interviewed at the University of Pretoria and the University of the Free State namely the Centre for Health Systems Research, Centre for African Studies, Centre for Human Rights, School of Nursing, as well as a broad range of Social Science faculty members. Academics selected had community experience in the field of HIV and had worked with AIDS victims or were directly involved in educating the community or traditional leaders on HIV. For example, one academic interviewed trained chiefs on traditional leadership. Most academics interviewed identified themselves as belonging to one of the many black ethnic groupings in South Africa and could draw upon both academic knowledge and their experience living in South Africa. Government officials interviewed were at the Commission Responsible for Cultural Linguistic and Religious Communities as well as the Department of Cooperative Governance and Traditional Affairs. Medical experts such as nurses and doctors working in the field of HIV were also interviewed as well as HIV educators and counsellors. Male and female

domestic workers, or [uneducated] labourers in the informal sector working as gardeners and cleaners in cities for mostly white families, could draw upon personal experiences and could also provide an account of their community experiencing the effects of HIV. The inclusion of domestic workers helped to broaden the perspectives obtained, as domestic workers are much less educated and often hold more traditional views than the educated elite and those working in academia**.** I conducted approximately twenty-three interviews with no more than two participants in one interview. In addition, a series of eight lively focus group discussions were held separately with groups of male and female university students, were conducted in order to gauge conceptions of polygamy and lobola in South Africa as well as how these practices intersected with and shaped gender, sexuality and HIV.

Research conducted in South Africa was not free of limitations as the researcher had to consider South Africa's high incidence of crime and rape heavily experienced by the white population with females constituting a very high at risk group. Infrastructural constraints such as access to only very limited public transportation impacted freedom of movement as kombis, which are minibuses operating as public transportation, are considered unsafe for tourists. Due to the sensitive nature of the issues examined in South Africa, victims of AIDS and individuals living in poverty in the shanty towns on the outskirts of the cities were not interviewed. Although South Africa is home to 11 official languages, all participants selected could speak English or Afrikaans. All interviews were in

English except for domestic workers and some focus groups with university students which were conducted in Afrikaans without a translator.

This chapter will now provide an account of research findings by mapping out participants responses who are grouped into categories, namely, i) academics and researchers, ii) NGO's and government officials, iii) male and female university students, and iv) domestic workers. Participants that provided an account of why these cultural practices changed, including, but not limited to, medical experts and the Canadian International Development Agency (CIDA), will be incorporated into the discussion of the reasons for the transformation of these practices. Furthermore, the beliefs that lobola and polygamy promote will be assessed in relation to gender equality, gender-based violence and sexual autonomy as revealed in the interviews and focus groups by the above listed categories of participants. The key issue the interviews sought to explore was *whether changes in the practice of polygamy and lobola in South Africa had given rise to beliefs that fostered attitudes and behaviours that put women at risk for HIV and human rights abuses, using three variables -- gender equality, gender-based violence, sexual autonomy – as the principal indicators.*

5.3 Lobola in South Africa: Impact on Gender Equality, Gender Based Violence and Sexual Autonomy

5.3.1 Academics and Researchers

Academics and researchers agreed that the meaning of lobola has shifted. Lobola is no longer viewed as a practice which creates strong family ties by bringing the two families together with lobola payments initiating a long standing

relationship between the two family units. A professor of African human rights, who is also involved in training chiefs on traditional leadership, argued that "the purpose of lobola is not what is understood today…today it means purchasing a wife, it never used to mean this. Lobola was meant to recognize the dignity of women, women who is paid for will always remain proud in relationship" (Centre for Human Rights, February 4, 2011). When questioned about the role that lobola plays today in the context of women's rights in South African society there was a consensus that lobola no longer plays a positive role in the lives of women.

With regard to human rights and HIV/AIDS, Lobola was viewed as a practice that does not directly cause HIV but rather fostered certain attitudes and behaviours that put women at risk for HIV and human rights violations. Lobola promotes the idea that women are the weaker sex having negative implications for gender equality in marriage. According to academics, who spoke from observations and experience, lobola in contemporary South African society is viewed as purchasing a wife which creates a view of women as property and a man's asset. An Anthropologist at the University of the Free State stated that lobola was not traditionally about ownership but rather about creating a sense of belonging to the larger grouping (personal communication, March 1, 2011).

The objectification of women as property in today's interpretation of lobola has implications for gender-based violence. Lobola creates an impression that the woman has become a bought commodity, which the man can do with what he pleases. The commodification of women subjects women to domestic violence from their partners. Lobola fosters patriarchal beliefs of the role of men as the

dominant figure in the relationship with men often resorting to violence in order to express power. However, as a Professor of Human Rights argued, in the traditional practice, "If the lady was beaten, she would say you cannot beat me because your people will be in trouble, you will have to compensate" (Centre for Human Rights, February 4, 2011). Thus, lobola used to provide a channel of accountability, that being the extended family, in which the women could voice complaints should she be facing abuse from her husband. Also, because lobola meant the union of two families and not just two individuals, the wife could return to her parent's house if the husband did not improve after the confrontation from the family. Subsequently, the husband's family would have to provide the wife's family with money or a gift in order for the wife to return to her husband. With regard to sexual autonomy, it was argued that because lobola creates the view that women are bought commodities, the husband decides when and how to have sex. Women are unable to negotiate condom use which is exacerbated by the majority of attitudes held by men that do not support condoms use as it is believed that condom use reflects promiscuity on part of the wife.

5.3.2 NGO's

According to the Centre for the Study of AIDS, traditional practices like lobola have been perverted in South Africa (February 7, 2011). Lobola today is not about cementing family ties anymore but rather about getting the most money out of the negotiation, with the price being determined by the women's level of education as well as the level of affluence of her family (Centre for the Study of AIDS, February 7, 2011). Lobola creates a sense of ownership that the man has

over his wife (Centre for the Study of AIDS, February 8, 2011). Lobola has creates an impression that the women has become a bought commodity which the man can do with what he pleases.

With regard to the risk factors, it was argued that lobola is not in and of itself a cultural practice that puts women at risk for AIDS. Rather, it was argued that lobola is representative of the wider problem of paternalism and patriarchy in South African society (Centre for the Study of AIDS, February 8, 2011). According to HIV South Africa (HIVSA), it is the low status of women in society that put women at risk for HIV, women's lack of authority to ensure that their partners use condoms, as well as the high incidence of gender-based violence. Men feel entitled to sex with or without lobola. According to HIVSA and the Centre for the Study of AIDS, with gender inequality already existing in society, cultural practices like lobola just further entrench the low status of women and their inability to protect themselves from HIV. As one participant put it, "it's like putting dynamite and another explosive together" (HIVSA, February 18, 2011).

5.3.3 Male and Female University Students

When questioned about the purpose of lobola, both male and female students stated that lobola was a form of saying thank you to the bride's parents for raising the woman. Accordingly, lobola was viewed by male and female students as token of appreciation and form of remuneration. In addition, lobola also served as means for the man to assert his 'masculinity' by proving his "worthiness to the women" by illustrating his ability to provide financial support (focus group with male students, March 10, 2011). Female students viewed

lobola as an act of showing respect towards the bride (focus group with female students, March 4, 2011). The majority of focus groups with male and female students asserted that lobola is not meant to buy to a woman, although female focus groups pointed out that in practice, after lobola, men have a sense of ownership over their wife. This contrasts the expressed opinions held in focus groups conducted by Ansell (2001) where participants viewed lobola in primarily in terms of a material exchange, where the husband exchanges money in return for labour from his wife. Although, there was an awareness that lobola is sometimes interpreted to mean wife purchase rather than as a token of appreciation, lobola was recognized as containing a symbolic function, a view largely absent from focus groups held by Ansell (2001). As a male participant in a focus group pointed out "lobola is not what people think, buying the wife, it is like saying thank you to the family it is like appreciation, the bad part is people think they are buying the wife" (focus group with male students, March 10, 2011). Each focus group pointed out that the amount of lobola paid to the bride's parents increases if the woman is educated, is a virgin, and comes from an established family.

With regard to gender equality, focus groups with females all expressed the view that men do not view women as equals after the lobola has been paid largely because of the money they took out for lobola: "men have at their back of their minds, they think that they bought you" (focus group with female students, March 10, 2011). Because men paid lobola, female students argued that men have a sense of ownership over women after lobola as women are viewed as an

asset. As one female student put it "man can do what they want with you, he paid lobola" (focus group with female students, March 10, 2011). During focus groups with male and female students, the belief that the male is always head of the household was expressed. As one male student put it, "according to my 'culture' the man is head of the family, that means that I can do something that does not necessarily require your permission" (focus group with male students, March 10, 2011). In another focus group with boys it was believed that traditional 'culture' permitted that women must listen to her husband (March 10, 2011). Moreover, it was recognized by both male and female focus groups that although the South African constitution recognizes the equality of all persons, 'culture' supports gender inequality. As one participant put it, "in reality, there is no gender equality; the man owns 80 percent of the household and the women only 20 percent" (focus group with male students, March 10, 2011).

Gender based violence was spoken of as a common occurrence in marriage. Accordingly, a man will use violence in order to maintain obedience to his authority. According to one participant, violence is sometimes necessary to ensure compliance as "she [the wife] will be forced to do things that she does not want to" (focus group with male students, March 4, 2011). It was recognized that the constitution currently protects women from gender-based violence; however that this right was culturally acceptable was debated. Gender-based violence as 'culture' was a contested topic in focus groups. For example, one male participant stated that "it is rooted in our 'culture' to beat the women…so that they will understand that you are real man. But nowadays it is not acceptable. It is

rooted in our 'culture,' and men are still doing it" (focus group with male students, March 10, 2011). In response, another participant argued that "I disagree with this guy, because when both parties get married they are given rules, like the lady is told to respect the husband, to cook for him, how to treat children and the man is told to protect and respect his wife" (focus group with male students, March 10, 2011). Thus, the question if 'culture' tolerated or fostered gender-based violence was hotly contested. Because lobola puts men in a position of power, with most men viewing lobola as 'wife purchase,' gender-based violence occurs frequently in marriage due to the subordinate position of women.

Focus group discussions indicated that women's sexual autonomy was limited in marriage. Women were expected to have children due to the lobola paid. As one male participant put it, "I paid the lobola so that you will increase my family. You can't say you don't want to have children" (focus group with male students, March 10, 2011). According to a female participant, after the lobola is paid, "she must do everything the man says" (focus group with female students, March 10, 2011). Women's ability to protect herself from AIDS in the context of lobola was viewed as very limited due to the fact that the "husband forces her to have sex with him and he sleeps around (with other women) and the women does not have a say" (focus groups with female students, March 10, 2011). Although women were seen as having a right to protect themselves from HIV in both male and female focus group discussions, applying this right was expressed as a challenge (focus group with male students, March 10, 2011). Many female participants openly stated that men do not want to use condoms. Female

participants stressed that men see lobola as a license to do what they want with women's bodies. Although both men and women viewed protecting one self from HIV and controlling one's own body as a human right, when discussed in the context of lobola and marriage, challenges to this right were exposed such as the belief of entitlement held by men and the expectation that women should be obedient and comply with the husband's wishes. As one male participant eloquently put it, "most of the time the women is seen as a slave because the man has paid for it, its like buying a slave at a market- a mentality that goes into the head of many males" (focus group with male students, March 4, 2011).

5.3.4 Domestic Workers

In its traditional form, lobola was depicted as a contract where money is given to the bride's parents with the agreement that the groom will take care of the woman. Lobola is described as a reciprocal agreement where the woman and man both have duties in marriage. As one participant put it, "after the lobola, the man, he must look after, give food to the woman and children and look after them" (personal communication, March 9, 2011). As another put it, "the man must look after the woman and the woman must look after the man" (personal communication, March 9, 2011). When asked to describe lobola, there was a strong sense of pride amongst all the domestic workers with most participants referring to their parents practicing it and their grandparents. Despite the fact that their parents and grandparents practiced lobola, participants noted changes in lobola without the researcher even raising the issue. For example, on a few occasions when speaking about lobola, participants independently raised the

issue of gender-based violence, gender inequality and challenges to sexual autonomy. Thus, these attitudes and behaviours that lobola was being tested for at times arose organically out of discussions rather than as a response to an interview question.

Both male and female domestic workers strongly stressed that men's behaviour has changed today, having an impact on the meaning lobola has in marriage. Women stated that for men, lobola no longer meant the same responsibilities in marriage. Male and female respondents argued that men no longer listened, referring to the fact that men no longer follow tradition as taught to them by their parents and grandparents but rather do as they please. Thus, the older generation of men were viewed as being better husbands. As one respondent put it, "some men look after the women care for them, money and clothes. These are the older men. The young people do not look after women, and they hit the women" (personal communication, March 9, 2011). With regard to gender-based violence, one domestic worker stated that the men of today, "they drink, they smoke, the shebeen (informal drinking places) they sleep there, they come back and hit the women" (personal communication, February 16, 2011). Within marriage, gender-based violence was spoken of as a normal occurrence today. For example, a woman who questioned her husband's behaviour was very likely to be beaten by her husband. As a male respondent stated "he hits the women because she asked why he is coming home so late…he does not want to say, so he hits the women" (personal communication, March 9, 2011). Older respondents described that their parents would discuss

matters. However, previously, men did not view the payment of lobola as a license to hit women. All domestic workers expressed the view that men walk around, or in Afrikaans "die manne, hulle loop rond." This implies promiscuity among most men today. Some women were even aware that their husbands were currently being unfaithful and had confronted their husbands. One woman, in particular, actually gave her husband a condom to use when engaging in extra marital sexual activity so she would not contract HIV, which the husband refused to accept. Women often stated that their husbands did not listen to them and sometimes resorted to violence.

With regard to sexual autonomy, due to their husbands' extra-marital sexual activity, women are at an increased risk for HIV. In addition, women cannot negotiate condom use even though they are aware that they need to in order to protect themselves from HIV. As one women put it, "if the man is very naughty (refers to promiscuity) you must use the condom…[but] he does not want to" (personal communication, March 11, 2011). Thus, knowledge of HIV and their right to health was present but women expressed that their ability to exercise their rights and protect themselves is very limited. When asked if a woman can refuse to have children after the payment of lobola, most respondents laughed and said that a woman must have children after the man pays lobola. Thus, lobola can be viewed as limiting women's sexual autonomy as lobola represents payment for offspring thereby implying that a woman cannot refuse to have children after lobola. As one respondent put it "we black people, if she does not want children she must because the man paid lobola" (personal

communication, February 16, 2011). When questioned about gender equality after lobola, there was a consensus that women and men are not equal within marriage today. For example, a female domestic worker stated that, "Well the white people are 50 50. We black people do not do that. If I am the man I take out the money not the women" (personal communication, March 11, 2011).

With regard to gender equality, certain gender roles were identified as traditional. One respondent stated that the old people taught us to "You must make the food for the man, you must listen to the man, you must be quiet" (personal communication, March 9, 2011). After paying lobola, there are also certain expectations for men such as providing financial support and care to his wife and children. Thus, "he cannot do anything with her if he pays lobola, he must show her love, has to speak to her nicely and care for her (personal communication, February 9, 2011). Therefore, despite clearly defined gender roles, it appears that respect and care underpins relationships between men and women as is symbolized in the act of lobola.

Few respondents believed that gender roles today were in accordance with tradition as practiced by their elders. An elderly male participant stated that men today have "changed the lobola, they don't want to make it the same. If you tell them then they say it's like this, they think they are clever" (personal communication, March 9, 2011). One respondent even stated that "men think women are beneath them" (personal communication, March 9, 2011). Men today were described as doing what they want, not listening to their elders and wife, not taking care of their wife and children, and moreover, 'walking around and taking

many women' (personal communication, February 16, 2011; March 9, 2011; March 11, 2011). According to an elderly male participant, "if the young people listened [to tradition] they would not have gotten sick" (personal communication, March 9, 2011) Therefore, men who departed from their traditional responsibilities and roles put their wives at risk for HIV. In sum, although traditionally lobola meant certain responsibilities and particular roles for men and women and thus implied a form of gender inequality, respect and sense of responsibility that men (and women) had for one another meant faithfulness and loyalty towards one another which could potentially reduce the risk of HIV.

With regard to sexual autonomy, although lobola traditionally meant that women had a duty to bear children, this does not automatically put women at risk for HIV. Rather, it is because men today believe that after the payment of lobola they can 'do what they want' and 'walk around and not use condoms' on their wife and other partners (personal communication, March 9, 2011) that limit women's sexual autonomy and ability to control their health. When asked if lobola is good practice that should be kept, all respondents agreed that it should continue. However, all respondents also expressed that men were 'naughty' and that the behaviour of men today was unlike that of their parents' generation. As one respondent put it, "The lobola, is good. The old people from 1901 is very good, and they had to lobola and the old people are not like the men born in 1950 and 1960, the men of the old people was with you forever, and they make 12 children, and the men were good" (personal communication, March 11, 2011). Thus, men in general were not written off as bad people but rather the current

generation of men was viewed as displaying bad behaviour. As one woman put it, "some men look after the women care for them, with money and clothes. These are the older men. The young people do not look after women, and they hit the women" (personal communication, March 9, 2011).

Gender-based violence, gender inequality and limits to sexual autonomy were present in participants' responses when asked about lobola today. However, when speaking of lobola as a traditional practice, these risk factors did not have such a negative effect on women. For example, whereas lobola implies certain duties of women such as providing children for her husband, the husband also had responsibilities such as providing financial support to his family. Current beliefs with regards to lobola have been perverted in that the lobola has been reinterpreted in a way that does not hold the same responsibilities for men but rather puts men in a position of power as they paid the lobola. When asked if lobola puts women at risk for HIV one participant stated that "if the women is good, no, but if the man walks around, he gets HIV, he gives it to the women. No it is not lobola's fault, men today are naughty, men yesterday were good" (personal communication, February 16, 2011).

5.4 Lobola: Why the Transformation?

It was argued by academics and researchers that lobola does not cause HIV and human rights violations but rather fuels pre-existing attitudes and beliefs that promote gender inequality, gender-based violence and hinders women's sexual autonomy. Thus, the attitudes and beliefs that lobola foster are viewed as symptomatic of the broader issues in society. For example, political and

economic changes such as apartheid and the migrant labour system disrupted the family unit (Centre for African Studies, March 2, 2011). According to an Anthropology Professor at the University of the Free State, male authority was threatened by political changes such as Apartheid and the recognition of women's rights in the new post-apartheid South Africa (personal communication, March 1, 2011). Thus, the political and economic changes that empowered women which enabled them to also be providers threatened male authority as head of the household. Because women's rights threaten lobola as a practice, men view lobola as an avenue in which they can reassert their dominance.

Socio- political and economic circumstances in South Africa were raised in interviews as having a negative affect on 'culture' and the black population in South Africa. Apartheid, migrant labour, which led to the breakdown of the family unit, religion, and modernization as well as patriarchal attitudes in society were raised as having a negative effect on 'culture' and masculinity among the black population in South Africa. With regard to lobola, because modernity has given rise to individualism, the value system of lobola has been interpreted through individualism. As a participant put it, "Because of modernization and selfishness, we see lobola as buying, we have departed from values, I want BMW from you, nothing to do with old values, it is a commercial contract, modernity has corrupted it." (Professor, Centre for Human Rights, February 4, 2011). It was emphasized that an analysis of 'culture' and HIV in South Africa had to be placed against a backdrop of a specific socio-political, economic landscape unique to South Africa.

According to HIVSA and the Centre for the Study of AIDS, it is not corrupted cultural practices that are the cause of the HIV epidemic but rather specific historical, political and economic forces have created an environment conducive for the spread of HIV. However, it could be argued that cultural practices have been corrupted because of the particular historical, political and economic background in which these practices take place rather than the cultural practice alone putting women at risk. Therefore, [corrupted] beliefs that the practice has fostered can be viewed as a result of contextual factors. For example, the "whole legacy of Apartheid, migrant labour, disintegrated families" all worked to destroy the family unit and black communities (HIVSA, February 18, 2011). In addition, colonialism and apartheid contributed to the "teaching that violence gets you respect and gets you obeyed" (HIVSA, February 18, 2011). It was stated that South Africa has a "history of de- masculinity of black men" as men have been stripped of their identity resorting to violence to assert their masculinity (Centre for the Study of AIDS, February 8, 2011). Often women are subjects of this violence due to their inferior status. As HIVSA pointed out, "What is there to use as punch bags, women, because of their low status" (February 18, 2011). Thus, the particular socio-political context of South Africa facilitates the existence of a patriarchal value system which impacts cultural practices and women's right to sexual autonomy.

According to a HIV clinic counsellor, previously, the bride and groom's parents were involved in the married couple's lives and could alleviate problems should they arise between the bride and groom (Medical Expert, March 1, 2011).

One of the reasons why this channel of accountability ended was due to migration to the cities. Formerly people lived in a communal situation and lived closer in proximity to one another. Because individuals are becoming more educated, elders who are often illiterate do not always generate the same degree of respect that was present in the past (Medical Expert, March 1, 2011). Thus, whereas in the past, advice and counselling to the couple could be provided by the bride and groom's parents, today advice is not always respected and followed. Also, according to a government commissioner, due to family breakdown, children often have no father which "has implications in terms of identity, discipline and the passing down of 'culture'" (Government Official, February 21, 2011). According to a government official working in traditional affairs, traditional practices are no longer properly followed because of the belief that African practices "are inferior" and need to be transformed (Government Official, February 4, 2011). Apartheid and colonialism contributed to the idea that African practices are inferior. Thus, the same pride and commitment to following tradition was challenged.

5.5 Polygamy: Impact on Gender Equality, Gender Based Violence and Sexual Autonomy in the context of HIV and human rights in South Africa

Before providing an account of opinions held by different groups, it should be pointed out that polygamy was a contested topic in terms of how it was defined and what was considered polygamy. Polygamy was viewed by some as directly related to multiple concurrent partners, a commonly found behaviour among South African men. According to this view, multiple concurrent partners

was a 'spill over effect' from the traditional practice of polygamy in which polygamous principles were used to justify multiple concurrent partners and thus was depicted as a 'corrupted' form of polygamy. However, other groups believed that polygamy and multiple concurrent partners were not related at all but recognized that polygamy as a cultural practice has changed from its traditional form. The following discussion will provide an account of participant's view of polygamy and multiple concurrent partners in terms of how it was described in relation to HIV. Participants views on polygamy and multiple concurrent partners are discussed in relation to gender equality, gender based violence and sexual autonomy.

5.5.1 Researchers and Academics

Although polygamy is not widely practiced within cities in South Africa, multiple concurrent partners, which is currently commonly practiced among men, was argued to stem from polygamy. As one researcher put it, "men are trading in traditional polygamous norms for multiple partners…putting a modern spin on polygamy" (Health Systems Research, February 28, 2011). Today many men "cannot afford to marry many wives for economic reasons, but can afford to date more than one woman" (Anthropology Professor, March 1, 2011). According to a researcher, polygamy and multiple partners are related as both are about status, the more partners you have the higher your status is perceived as being (Centre for African Studies, March 2, 2011). Men today often have many younger girlfriends which according to an anthropology professor is a "spill over from the older practice" of polygamy (Anthropology Professor, March 3, 2011).

Accordingly, [younger] women also gain status from dating older men, with men gaining status from having multiple younger girlfriends. Younger women often opt for dating older men for monetary and material reasons (Anthropology Professor, March 3, 2011). The reasons for multiple concurrent partners are the same as polygamous marriages. For example, according to a lecturer and researcher on HIV and sexuality education, "a man must show his manliness from having multiple sex partners, and women must show their fertility" (March 2, 2011). Similarly, "there is a cultural tolerance and pressure to practice multiple partners" (Centre for Health Systems Research, March 7, 2011).

Multiple concurrent partners are more likely to put women at risk for AIDS. As a professor put it, "a man who maintains several girlfriends, or serial polygamy which is de facto polygamy, is what we see in cities and is the main cause of AIDS…because you are not in a recognized relationship" (Centre for Human Rights, February 4, 2011). Accordingly, polygamy in its original form actually ensures the rights of women as a woman who is not married does not enjoy the same rights as a married women as she does have the same status (Centre for Human Rights, February 4, 2011). Married women are able to teach children and be role models in society as marriage ensures the respect of women.

With regard to HIV, because it generally accepted that men cannot stick to one partner, polygamy "is supposed to curb the spread of HIV because you are having sex in a safe space" (Professor, March 1, 2011). However, often times people within polygamous marriages engage in extra marital affairs. Thus, on the one hand polygamy can curb HIV, if partners are faithful, and on the other it

can rapidly spread HIV due to the increased sexual network involved (Professor, March, 1, 2011; Professor and Researcher on HIV and sexuality education, March 2, 2011). When compared, multiple concurrent partners and polygamy are both status symbols. In addition, the concept of men having many girlfriends or wives is based on the belief that men are by nature polygamous. In the context of HIV, both multiple concurrent partners and polygamy were viewed as putting women at risk for HIV. However, where strictly practiced without extra-marital affairs, polygamy could prevent the spread of HIV.

With regard to gender equality, polygamy removes women's right to equal partnership in marriage as men can have multiple wives. Sexual autonomy is compromised in the context of multiple concurrent partners as women do not know the status of their partners' girlfriends, whereas in polygamous marriages women can be informed of their co-wives status. With regard to gender-based violence, because marriage is the union of two families, within polygamous unions, because lobola was paid, the wife can go to her family if she is suffering and the two families have to negotiate (Researcher, February 4, 2011). Although, multiple concurrent partners and polygamy both involve a larger sexual network, it was argued that polygamy could prevent the spread of AIDS if all partners are faithful to one another.

5.5.2 NGO's and Government Officials

According to one individual working at an NGO, the traditional belief behind polygamy that men are entitled to have more than one partner justifies the practice of multiple concurrent partners (Centre for the Study of AIDS, February

7, 2011). In the context of HIV, polygamy can reduce the risk for HIV if no individuals within the polygamous marriage are having partners on the side. However, it was pointed out that faithfulness is often not present in polygamy as "a man in a polygamous marriage will still have relationships outside of the polygamous marriage" (Centre for the Study of AIDS, February 7, 2011). Gender equality in a polygamous marriage was not viewed as possible as "men have control over a group of women who are told when a new wife is coming" (Centre for the Study of AIDS, February 7, 2011). Thus, empowerment of women and gender equality in a polygamous marriage was viewed as problematic where a man still holds all the power in decision-making.

According to two other individuals at the same NGO, it was argued that polygamy does not put individuals at risk more than monogamy as it does not "demean women any more than monogamous marriage…there is an assumption that marriage protects it's not true" (Centre for the Study of AIDS, February 8, 2011). In a similar vein, HIVSA argued that it is not really polygamy that justifies multiple partners but really the gender inequality and power difference in relationships. Marriage was argued to put people at increased risk for infection as individuals within the marriage believe that are in a secure relationship when in fact they are often are not (Centre for the Study of AIDS, February 8, 2011). It was argued that multiple concurrent partners and polygamy should not be understood as putting women at risk for HIV but rather the issue of choice and the ability to use condoms provides more useful understanding of behaviour that put individuals at risk for HIV (Centre for the Study of AIDS, February 8, 2011).

According to HIVSA, the low status of women and the inability of women to insist that their partners use condoms as well as the high incidence of gender-based violence and rape is what put women at risk for HIV.

According to a government official, "polygamy or no polygamy, if people are careless they get HIV, if you do not stick to your husband you will get it" (February 7, 2011). That men have multiple partners outside monogamous or polygamous marriage was not mentioned as in the above examples. Rather, it was stressed that polygamy is a positive practice as it ensures that "men are not doing anything outside the polygamous marriage" (Government Official, February 7, 2011). It was pointed out that civil marriage should not be viewed as superior to polygamy because "most men and women who practice high class marriage (1 wife), outside of marriage they have a lot of mistresses" (Government Official, February 7, 2011). In sum, for some individuals at NGOs, polygamy could protect women from HIV if practiced within a closed relationship. For government officials, polygamy prevents HIV as it ensures that men do not have multiple partners outside of marriage. Other individuals at NGO's took a more critical stance arguing that neither monogamy nor polygamy protect against HIV pointing out that if women are not empowered to make informed decisions and use condoms then the likelihood of HIV increases. Apart from government, NGO's believed that if a relationship, whether polygamous or not, was informed by patriarchy and gender inequality, women would be susceptible to HIV.

5.5.3 Male and Female University Students

Focus groups with female university students, pointed out that men today do not realize that polygamy was really a lot of responsibility. Accordingly, by having a lot of responsibility, men acquired respect as they could take care of all their wives. Polygamy was spoken of as a negative practice for women rights during focus groups with female university students. Focus groups with males also expressed the view that in a polygamous arrangement, gender inequality is present as the husband holds most of the power in the marriage. Focus groups with female students pointed out that women's sexual autonomy was limited in a polygamous marriage, as women cannot protect themselves from HIV. Both male and female focus groups argued that sexual autonomy in polygamy is limited because the husband can go to another wife or even find another partner if the wife did not satisfy her husband. Female focus groups pointed out that with regard to gender equality, whereas traditionally the wives were involved in choosing the next wife, the husband now chooses a wife without consulting his wives. Equality was dismissed in the context of polygamy as it was believed that women could never be equal in a polygamous marriage.

It was pointed out that men have multiple concurrent partners within polygamy as well as outside polygamous marriage. Women are at risk for HIV because men often "sleep with younger women outside of marriage" (focus group with females, March 10, 2011). One participant stated that "if he is not really satisfied with the women who he marries, then he goes to another woman" (focus groups with females, March 10, 2011). Men use the values of polygamy to justify multiple partners. That is, men argue that there are more women than there are

men, so having more girlfriends is necessary (Focus group with females, March 10, 2011). According to another focus group, because multiple concurrent partners involve many women like polygamy, men justify it by claiming that "I have right to this because my ancestors have been doing this" (Focus group with females, March 10, 2011). In other words, men use polygamy as an excuse to justify multiple girlfriends. South Africa's current president, Jacob Zuma, was raised during focus groups in reference to polygamy. Accordingly, the president uses polygamy to display his wealth and status (March 4, 2011). Female students believed that the president influenced men's perception of status in that when multiple wives are unaffordable, men opt for multiple girlfriends or multiple concurrent partners in order to project a certain image.

While, all four focus groups with female students expressed the belief that multiple concurrent partners is justified by polygamous principles, male students' opinions were mixed regarding polygamy as well as its connection to multiple concurrent partners. Most of the focus groups with male students expressed the belief that there is no connection between multiple partners and polygamy but rather having multiple girlfriends and being faithful is only a matter of individual choice. As one stated, "every person has a choice, so you being you, if you feel one is not enough so you take more" (focus group with males, March 10, 2011). Another male participant stated, "if I am loyal to one store and I see candy in another store, I am not obliged by contract that I have to always go there" (Focus group with males, March 10, 2011). The same participant argued that "guys apply this rule in marriage, they don't feel like they have to die with one person, that's

how they have multiple girl friends" (focus group with males, March 10, 2011). In other words, the issue of individual choice and individual behaviour was used to justify multiple partners rather than polygamous principles. In another focus group with males, however, it was stated that "having multiple girlfriends is greedy and polygamy gets rid of that" (March 10, 2011). However, in the same focus group another participant also argued that polygamy cannot guarantee faithfulness, as faithfulness comes from a person (focus group with males, March 10, 2011).

However, another focus group argued that "we as African men, we have the credibility to date 1 to 4 women at a time" (focus group with males, March 10, 2011). Polygamy was argued to satisfy the "desire to have multiple partners, so I think that it is an excuse for dating multiple partners" (focus group with males, March 10, 2011). However, it was recognized that polygamy was a response to social problems and that today "people are using it for sexual desires, but it is no longer a useful practice" (focus group with males, March 10, 2011). According to another focus group, polygamy was a response to the need for a large population to work on the farm (focus group with males, March 4, 2011). Today, however, polygamy is not a cultural practice in response to social problems but rather shows the strength of a man (focus group with males, March 4, 2011). Multiple concurrent partners was not viewed as being linked to the practice of polygamy as it was argued that "those who do multiple sex partners feel insecure because they are scared that their girl friend is going to leave them…they feel that it's a game" (focus group with males, March 4, 2011).

All four focus groups with male students pointed out that men do not think about AIDS when they have more than one partner. Polygamy was also viewed as a practice that does not put individuals at an increased risk for AIDS. Interestingly, often it was stated that if a woman was not faithful to their partner, the man would get AIDS. However, it was never pointed out that if men are not faithful their risk for AIDS increases. Furthermore, in the focus groups it was pointed out that men often do not believe that they will get AIDS as the epidemic is viewed as something that would not happen to them. Focus groups with females also pointed this out stating that men feel that they are invincible in that the epidemic will not affect them regardless of their actions. As a male participant put it, "its all about ignoring it…only when I get infected do I realize it" (focus group with males, March 10, 2011).

5.5.4 Domestic Workers

Polygamy was viewed as something that was not properly followed today. As one elderly male participant put it, "they don't listen, they do what they want, they take a whole bunch of women and they don't look after them" (personal communication, March 9, 2011). Polygamy was portrayed as a practice that has changed: "polygamy, they make it different, the women have it hard, they (men) don't look after them properly" (personal communication, March 9. 2011). Most female domestic workers referred to President Zuma when speaking of polygamy and expressed the belief that President Zuma's actions are 'not right.' All female domestic workers made the point that if a person has many partners they will get AIDS.

Female domestic workers also stated that "the man, they don't believe that there is an epidemic so they just walk around (have multiple partners)" (personal communication, March 11, 2011). One female participant made the connection between President Zuma's actions and men today having multiple partners. All female participants argued that men today are not faithful to their wives and that it is very common for a husband to have affairs with other women. Transactional sex was mentioned as a common reason for extra marital affairs as men often pay young females money in return for sex. However, when confronted, their husbands deny their behaviour. As one stated, "he (the husband) says no, but you see the salary lower, he gives money to the other women" (personal communication, March 11, 2011). Interestingly, no domestic worker supported polygamy and no domestic worker argued that having multiple concurrent partners is justified by polygamy. All domestic workers lamented that men had multiple partners today and all agreed that this puts individuals at risk for HIV.

5.6 Polygamy: Why the Transformation?

According to academics, researchers, NGO's, government, students and medical experts, the reason why polygamy has deviated to multiple concurrent partners is due to transformation in South Africa. According to an NGO, Christianity and missionaries created a negative view of polygamy in society, namely that monogamy was the 'right form' of marriage and that polygamy was wrong (Centre for the Study of AIDS, February 8, 2011). As a professor put it, "church says you are not suppose to marry two, the bible has banned it, you must marry one" (Centre for Human Rights, February 4, 2011). Therefore, polygamy

has "slided" into multiple concurrent partners because polygamy as a cultural practice has been "demeaned by an outside or colonizing force" (Centre for the Study of AIDS, February 8, 2011). Similarly, a government official argued that the reason why polygamy has been corrupted is because African practices have been transformed into white practices (February 8, 2011).

In addition, economic transformation was argued to split the family unit, as men would leave their family behind in order to work on the mines (medical expert, February 23, 2011). This resulted in men engaging in extra marital affairs while away from home. According to an HIV counsellor, economic reasons can explain why polygamy transformed into multiple concurrent partners. Accordingly, "men are opting for cheaper, less complicated ways" to be polygamous (medical expert, March 1, 2011). In other words, having multiple partners is more practical due to monetary constraints and poverty as men cannot afford to support multiple wives. According to an academic, "Apartheid was very much seated in religious Calvinist values, which held the idea that polygamy was heathen and barbaric" (March 3, 2011). 'Westernization' was argued to have a negative influence on 'culture' as it was argued that 'culture' is no longer 'pure' (focus group with girls, March 10, 2011). Polygamy has been transformed due to the cross pollination of 'culture' as 'westernization' emphasized the 'white wedding' and monogamy, while disapproving of polygamy. The cross pollination of two very diverse 'cultures' resulted in men marrying one wife while still having multiple concurrent partners (CIDA, March 22, 2011). The concept of multiple concurrent partners and polygamy is very much rooted in notions of masculinity. Because polygamy

and the African cultural practices have been subject to colonization and oppression with the idea that polygamy is 'inferior', multiple concurrent partners has become a way to for men to reassert their identity and masculinity.

5.7 Assessment and Conclusions of the Analytical Framework in the Context of South Africa

As the responses above suggest, lobola and polygamy have been transformed which indicates the fluidity of 'culture' and that 'culture' is constantly in flux. The diversity of participants' responses with regard to polygamy and lobola suggest that the understanding and the meaning of cultural practices are diverse and plural. Thus, the beliefs, or interpretations of the value system, are constantly changing as research suggests polygamy and lobola were different in the past. The analytical framework reveals the fluidity of cultural understandings and interpretations of the value system underpinning these practices in South Africa. There is no homogenized conception of 'South African culture' but research indicates that there is some notion of South African 'culture' that is diverse, plural and in flux. In addition, research indicates that 'culture' is subject to relations of power as men and women hold onto different views and opinions of cultural practices. Men often interpret lobola to mean 'wife purchase' while women hold onto the positive values of lobola even though beliefs have changed. Discussions with all groups of participants suggests that women are the weaker sex in South African society as well as in 'culture' and that lobola and polygamy place challenges on gender equality, women's sexual autonomy and sometimes foster violent behaviour towards women [gender based violence].

Interestingly, lobola and polygamy need not always be accompanied by beliefs which put women at risk for HIV and human rights violations as there are diverse interpretations of the value system of lobola and polygamy. That 'culture' is subject to relations of power, is evident in the different interpretations of cultural practices due to the fact that the way in which lobola and polygamy are practiced are perceived to have departed from and to no longer be in accordance with its value system.

That 'culture' is subject to broader relations of power and domination is clearly evident in the context of South Africa. The research suggests that cultural practices and beliefs have been influenced by colonization and apartheid with the idea that African cultural practices are 'inferior' and need to be transformed or even suppressed. The corruption of polygamy into multiple concurrent partners was argued to stem from the idea that monogamy was the 'right' form of marriage and that polygamy was 'wrong' and 'barbaric.' Therefore, multiple concurrent partners is viewed as means for men to maintain the cultural practice of polygamy as it is pivotal to their identity and masculinity. Field research in South Africa pointed out that it is not the cultural practice in isolation that can be blamed for causing human rights abuses and behaviours that put women at risk for HIV, but rather broader historical and contextual factors which put women at risk for HIV. These contextual factors shape the direction and form of cultural practices and beliefs.

As the findings suggest, 'culture' is influenced by broader historical and contextual factors and 'culture' is embedded in specific relations of power. Socio-

political and economic circumstances have had a detrimental influence on 'culture' in South Africa as practices have been subject to processes of transformation. Current interpretations of lobola and polygamy have given rise to beliefs that put women at risk for HIV. Current conceptions of polygamy and lobola have led to beliefs that foster gender inequality, gender-based violence, as well as undermine women's sexual autonomy. However, the research also suggests that these practices did not always result in such harmful beliefs as these practices were more in conformity with positive value systems. Therefore, evidence strongly indicates that broader contextual issues in South Africa have had an influence in the way cultural practices are interpreted and practiced. As pointed out, cultural practices have become a means for men to reclaim their masculinity and identity due to political, economic and social changes that have stripped them of their identity, such as apartheid and colonialism. Gender inequality, gender-based violence and limits to women's sexual autonomy were argued to stem from broader contextual issues rather than directly caused by cultural practices. Rather, cultural practices contribute in further fostering these behaviours.

Thus, understanding changes in the relationship between practices, beliefs and values which inform this study's analytical framework, requires that 'culture' be placed within specific historical contexts, recognizing that 'culture' is embedded. 'Culture' cannot be viewed in isolation for it does not occur in a vacuum -- it is embedded in a broader historical context and needs to be situated in a specific political, economic, and social environment. In the case of South

Africa, contextual factors have had a major impact on cultural transformation and the pace of change for women's human rights and reducing the spread of HIV.

With regard to cultural legitimacy of human rights, there is little evidence that suggests that greater gender equality, enhancing women's sexual autonomy and eliminating gender-based violence are occurring in South Africa. This is due to the fact that the kind of cultural legitimation that this study argues is necessary to advance human rights does not appear to be taking place in South Africa. Women and men are not participating in cultural legitimation by having an equal voice on deciding which practices and beliefs are consistent with value systems. What is needed in South Africa is that women and men contest, debate and struggle over the form and content of 'culture' with women being empowered to draw strategically and creatively on the positive aspects on 'culture' which support their human rights. Thus, to achieve culturally legitimated rights in South Africa women still need to obtain a legitimate voice to validate and invalidate practices as 'culture.' Spaces need to be created in South Africa in order for discussion and dialogue to occur. The absence of cultural legitimation in South Africa can be argued to be symptomatic of the specific socio-political climate of South Africa.

There is some evidence in South Africa that women are aware of the positive aspects of their 'culture' but need to be empowered in order to articulate how positive aspects of 'culture' can be used to advance and legitimize their human rights. For example, domestic workers and students emphasized that lobola is meant to bring families together with the payment of lobola as a token of

appreciation for the women. According to a domestic worker, this can be used in women's interests as if a woman is facing difficulties with her husband "the old people of the women [wife] can talk to the old people of the man [husband]. The women can say that man I do not want that man" and the two families will have to come together and reprimand the husband (personal communication, March 9, 2011). The value underlying lobola is that "you marry this women but she can go back to her family if she is not happy" (personal communication, February 4, 2011). Also, specific cultural values in general were raised as positive for women's rights. Domestic workers emphasized the value that African tradition places on listening to elders. As an elderly male participant stated, "if they just listen to the old people, to all the stories, if they just listened they would not be sick (personal communication, March, 9, 2011). Similarly, a female domestic worker stated argued that "young people must be brought together and be spoken to by older people and be told to look after themselves, go to clinic and not walk around outside [promiscuity]" (personal communication, February, 16, 2011). Furthermore, according to a male focus group, religion can be used to promote human rights. According to a focus group, religion in South Africa is comprised of Christianity, Islam and traditional worship. Because religion is based on making vows and promises to God or a higher being, breaking this promise comes with consequences. In the context of human rights, according to a participant, when you make vows and break it, it is sometimes believed that "something will go wrong and you will die" (focus group with male students, March 4, 2011). For example, in some marriage ceremonies, the couple share

food with the idea that if any one of them have an affair the spouse and partner will die (focus groups with male students, March 4, 2011). Thus, positive aspects of religion could be strategically used to support women's health rights.

Ubuntu was emphasized in focus groups and interviews with domestic workers, which is grounded in the idea that a person is a person through other persons. Domestic workers spoke of the importance of people being brought together and communicating, especially from elders. The importance of family and community for a person's well being was emphasized. Ubuntu was also raised by government and HIVSA as a positive African value system that can support and promote human rights. Ubuntu can support human rights principles as it is grounded on the African belief that "when I dehumanise you, I inexorably dehumanise myself" (Tutu Foundation UK, 2010, para. 3). As the interviews and focus groups revealed, it is breakdown of community and the family unit as well as the notion that individuals, especially younger men, who no longer respect and listen to their elders, is what is contributing to behaviour that fuel the HIV epidemic in South Africa. However, breakdown of the principles of Ubuntu is due to broader systemic factors such as the socio-historical and political climate of South Africa.

5.8 Conclusion

This chapter has provided an account of field research as well as an analysis of the application of the analytical framework in context of South Africa. The social constructionist view that 'culture' is in fluid and constantly in flux is evident in the context of South Africa. Research has shown that 'culture' does not

operate within a vacuum but is embedded in particular social, political and economic circumstances, which has an influence on the way cultural practices, beliefs and value systems are interpreted. Changing beliefs of cultural practices will not necessarily end the HIV epidemic. Rather, as findings suggests, cultural practices and beliefs do not cause or directly result in gender equality, gender-based violence and limitations to sexual autonomy. Rather these risk factors are symptomatic of the broader social and political climate in which these practices operate. This is not to suggest that cultural beliefs have no affect on promoting certain practices that put women at risk for HIV. Rather, the context in which these practices take place, have an influence on cultural practices, practices which can further fuel and foster these beliefs as 'culture.' These findings have significant implications for achieving cultural legitimate human rights as specific contextual conditions impact the ability of cultural legitimation. Cultural legitimation does not appear to be occurring in South Africa due to the complex and rapid changes in the broader contexts in which cultural practices are embedded. Women and men are not participating in the process of legitimation. This is partly due to the legacy of apartheid which stripped African women (and men) of rights and dignity and further entrenched their subordinate status in society and 'culture.' It is also partly due to the high degree of flux and instability in South African 'culture' in response to broader economic, social and political changes in the post-apartheid era. Further research is needed to investigate why legitimation is not occurring. Although my research indicates that positive aspects of African 'culture' can be used to promote women's rights, it is important that the

limitations of the context in which these positive values operate are taken into account which can prevent the use of these positive values. Cultural arguments can only take us so far in promoting human rights as 'culture' and human rights are embedded in a broader context. Thus, efforts aimed at achieving cultural legitimate human rights and preventing the proliferation of HIV/AIDS epidemic in South Africa, should take into account the broader social, political and economic context. Also, creating spaces in which cultural legimation can occur in South Africa is pivotal in achieving cultural legitimacy.

6: CONCLUSION: CULTURALLY LEGITIMATE HUMAN RIGHTS

This thesis questions the notion that the formal legal content of human rights treaties alone can ensure human rights protection for all peoples anywhere in the world. Utilizing an analytical framework that disaggregates 'culture' into values, beliefs and practices, I argue that human rights can only be realized if human rights are perceived as legitimate in the 'culture' in question. Conceptualizing 'culture' as evolving processes rather than a static entity, I argue that culturally legitimate human rights can only realized if women and men challenge harmful practices and beliefs while keeping existing cultural value systems in tact. Thus, in Africa, the process of legitimizing human rights helps to ensure that human rights contain an African 'cultural fingerprint'; or in other words, that human rights have a perceived resonance with existing value systems. Through the process of cultural legitimation, human rights become a part of 'culture.' This analytical framework was applied to a case study of gender relations, human rights and HIV/AIDS in South Africa. Primary evidence to substantiate the main argument was obtained through field research.

South Africa's HIV/AIDS epidemic reveals that human rights are not guaranteed in practice. Women are subject to conditions that violate their human rights, such as gender inequality, and gender-based violence. In addition, women face challenges in exercising their sexual autonomy and protecting themselves

from HIV/AIDS. The study analyzes the relationship between values, beliefs and practices. A value system is a set of core principles which society deems desirable and often provides as a rationale in explaining the status quo. Beliefs are an interpretation of how to achieve the value system. Practices give effect to beliefs. As noted in chapter III, however, in practice, the distinction between values and beliefs is not always clear-cut, but the distinction is useful for analytical purposes. Practices are the most 'visible' component of 'culture' and are manifest in actual behaviours, actions, rituals, etc. Viewed through a constructivist lens, values constitute the 'deepest' (albeit often hidden) level of 'culture.' Values are deep-seated cultural ideas on the good life, whereas beliefs and practices are surface level manifestations of values. Beliefs and practices are embedded in value systems. Understanding 'culture' and cultural change, and the processes through which certain practices become legitimized (or delegitimized) therefore requires that we 'scratch' beneath the surface (of visible practices).

At any given historical period, a single value system or set of values can give rise to different beliefs and consequently to different practices. The relationship between the value system, beliefs and cultural practice provides conceptual clarity in understanding 'culture.' This analytical framework provides a means to explain and analyze 'culture.' Furthermore, the analytical framework provides a prescriptive function in terms of how to achieve culturally legitimate human rights; that is, by targeting beliefs while keeping existing values intact. According to the framework, in order to realize culturally legitimate human rights

disadvantaged groups need to be empowered to validate and invalidate cultural beliefs and practices.

I ground this analytical framework in academic literature on 'culture' and human rights in the context of South Africa. In order to assess the ability of the framework to help understand and analyze 'culture,' I chose two cultural practices, namely, lobola and polygamy and assessed them in light of their impact on sexual autonomy, gender-based violence, and gender equality. These risk factors were analyzed with regard to the beliefs underpinning the practice of lobola and polygamy and assessed to see if these practices promote and support these risk factors. The framework assisted in drawing attention to fact that beliefs and practices are subject to change over time while value systems persist. Academic literature on the practice of lobola and polygamy suggest that there were positive values underpinning the traditional practice and beliefs supporting the practice. Academic literature suggests that cultural beliefs and practices changed as lobola and polygamy traditionally contained reciprocal benefits for men and women. Men paid an amount to the bride's family in return for women to continue her husband's lineage through child rearing. In return, women gained status through marriage while holding the privilege of returning to her family should the husband not fulfil his responsibility as a provider and husband. Today however, and as field research in South Africa reveals, lobola is viewed as purchasing a wife in which the wife provides her labour and surrenders to her husband in return for the amount paid for her. Polygamy, on the other hand, was a highly contested concept between men and women in South Africa as some

believed that the widespread occurrence of multiple concurrent partners was a manifestation of polygamy, while others believed that polygamy only meant marriage of one man to multiple women. In either case, there was little mention of positive aspects of traditional polygamy and positive values to assist in women's rights.

The analytical framework laid out in Chapter III helped to provide useful insights into 'culture,' human rights and HIV/AIDS in South Africa as it showed that the value system of polygamy and lobola have given rise to certain beliefs, which are not static interpretations of the value system, but rather reveal significant changes impacting the form that the practice takes. Chapter IV provided an historical overview of the traditional practice of lobola and polygamy and pointed out that these practices are underpinned by positive values which need not be harmful to women's rights. Based on published literature, it described these practices in their contemporary form and argued that current interpretations of polygamy and lobola have produced harmful practices for women's rights. Thus, new beliefs on how to achieve the practices' value systems have changed the nature of these traditional practices. It was also argued that negative beliefs of the contemporary practice of lobola and polygamy need to be transformed in accordance with the positive aspects of the practices' value system.

Chapter V analyzed the current practice of polygamy and lobola in terms of how the beliefs upholding these practices put women at risk for HIV/AIDS and human rights abuses in South Africa. The reinterpretation of cultural practices'

value system negatively affects human rights in South Africa, but not directly. Rather what the research findings suggest was that broader contextual factors influence interpretations of cultural practices' value system. Thus, practices are influenced by the 'lens' through which the value system is interpreted, a lens which is very much a product of the broader context. In the case of South Africa contextual conditions promoted behaviours that put women at risk for HIV/AIDS while the interpretation of the cultural practice's value system further promoted beliefs that put women at risk for HIV/AIDS.   'Culture' is not static and fixed in time and it does not operate within a vacuum.

Thus, research findings in Chapter V suggests that the impact of cultural practices and beliefs on HIV/AIDS and human rights abuses can only be gauged when situated within the broader socio-political economic context, as in the case of South Africa. As interviews and focus groups revealed, lobola and polygamy have changed as a result of the broader conditions in which these practices are embedded such as colonialism, apartheid and economic changes. While the analytical framework correctly posits that 'culture' is fluid and acknowledges 'culture' as an agent of change, in order to explain why cultural beliefs and practices change, the evidence shows that framework needs to be situated within specific historical contexts in order to examine the impact of broader socio-economic, political (and technological) factors on 'culture.'

The interview and focus group data provides little evidence in South Africa of the kind of cultural legitimation required to advance human rights outlined in Chapter III. Women still need to gain an authoritative voice to validate and

invalidate certain practices and beliefs as 'culture.' Women and men need to contest, struggle and debate over the role of 'culture' in the context of human rights and vice versa. African peoples need to feel empowered to begin the process of cultural legitimation, despite South Africa's complex history of oppression. Thus, the process of cultural legitimation depends on the empowerment of oppressed groups in society. Without such legitimation, human rights cannot gain the support of 'culture.' Human rights can seldom be advanced through legislation alone. What needs to be created is a space in which men and women can participate in the process of legitimation and thereby initiate the process of gaining culturally legitimate human rights in South Africa. Further research is needed to explore the conditions under which processes of cultural legitimation can be initiated in light of South Africa's complex historical and contemporary contexts. The nature of environment which supports the process of cultural legitimation where men and women are sufficiently empowered to challenge harmful beliefs and practices while validating and invalidating 'culture,' is an important issue that cannot be assumed to exist.

The HIV/AIDS epidemic in Africa requires that greater attention be paid to the context in which these rights are practiced in order to assess why human rights abuses are occurring. It is important that human rights contain an African 'cultural fingerprint,' which I have argued can come about through a process of cultural legitimation. Otherwise, human rights, as a product of the 'Western' world, will not be applicable to the needs of Africans. Research in South Africa suggests that it is not so much the practice of lobola and polygamy which gives

rise to beliefs that put women at risk for HIV and human rights violations but rather the changing context in which these practices take place that have promoted harmful beliefs. However, cultural practices often promote and justify these harmful beliefs in the name of 'culture.' In light of shifting circumstances in which cultural practices occur, women need to have a legitimate voice in validating and invalidating cultural practices, drawing upon positive aspects of cultural value systems which support their human rights while challenging negative beliefs and practices which are harmful. It should be pointed out that although this 'bottom up' approach is important for women to realize their human rights, it is also imperative that women target the state in order to enforce their struggles. Thus, a national problem concerning women's human rights requires a national response. In sum, although women need to be empowered to challenge 'culture,' it is important that women also target the state.

Thus, research findings have implications for my hypothesis, namely that it is not the cultural practice as a traditional institution or the value system underpinning the cultural practice per se that puts women at risk for HIV and human rights violations, but rather current interpretations of the cultural practices' value system. I argued that in order to change harmful cultural practices, cultural beliefs have to be challenged through a strategic deployment of the positive aspects of the cultural practices' value system. However, research findings reveal that a more complex relationship between practices, beliefs and value systems exist. The interpretation of the value system of polygamy and lobola have been subject to broader contextual factors unique to South Africa, facilitating beliefs

which very much reflect the patriarchy and inequality which underlies South African society. Thus, because cultural beliefs are influenced by broader societal forces, a more complicated relationship between practices, beliefs and value systems as suggested herein exists in reality.

Addressing the HIV/AIDS epidemic in South Africa requires that men and women "invoke the core values of societ[y] to engender transformation; find those values that resonate from indigenous 'cultures' that will speak to the rights repertoire" (Tamale, 2008: 60). As a result of South Africa's complex socio-political and economic circumstances which complicate the realization of human rights, it is important that core African values are used in response to these challenges. Positive aspects of African value systems can be used strategically to support women's rights and challenge harmful beliefs that put women at risk for HIV/AIDS. Men and women need to start the process of cultural legitimation as it is evident that the concept of 'culture' in South Africa has very much been subject to the negative influences of apartheid, colonialism and 'modernization', among others. Cultural legitimation can ensure that women and men reclaim their influence and direction over 'culture.' Thus, the formal legal content of human rights operates within highly contextual conditions as in the case of South Africa. It is evident that the concept of universal human rights is not in fact universal as many women in South Africa cannot access their [universal] human rights despite the existence of human rights treatises, such as South Africa's Bill of Rights, the African Charter on Human and Peoples' as well as the Protocol to the African Charter on Women's and Peoples Rights. As mentioned in chapter II, the validity

of human rights must be based on the ability of human rights to serve as a challenge to arbitrary power. I have argued in this thesis that this can only occur within a specific 'culture' where human rights have the support of 'culture' and vice versa. Thus, research findings have implications for social constructivism as research reveals that although ideational factors, such as the way in which the value system of a cultural practice is interpreted shapes the form of the practice, material conditions also have an impact on culture. Thus, social constructivism's approach to understanding culture needs to be supplemented by contextual influences as ideas are very much grounded in material conditions. As research reveals the context in which cultural value systems are interpreted are subject to material changes unique to South Africa.

Field research in South Africa strengthens the argument made that the debate between universalism and cultural relativism is guilty of abstracting human rights and 'culture' from the context in which 'culture' and human rights are practiced. By abstracting human rights and 'culture' from the specific context it claims to speak about, universalism and cultural relativism do not take into account contextual factors which impact the realization of human rights and diverse cultural experience. As field research reveals, specific contextual factors and experiences further impact the realization of human rights and the achievement of culturally legitimate human rights. Providing cultural support for human rights through the process of cultural legitimation still needs to occur in South Africa which can be achieved once women are sufficiently empowered to

start the struggle against harmful beliefs while drawing legitimacy and justifying their actions from positive aspects of African value systems.

7: COPYRIGHT STATEMENT

REFERENCE LIST

African (Banjul) Charter on Human and Peoples' Rights. (1981).
    http://www.africa-
    union.org/official_documents/Treaties_%20Conventions_%20Protocols/Ba
    njul%20Charter.pdf

African Union. (2003 July, 11). Protocol to the African Charter on Human and
    Peoples' Rights on the Rights of Women in Africa. Retrieved from
    http://www.africa-
    union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rig
    hts%20of%20Women.pdf

Ake, C. (1987). The African Context of Human Rights. *Africa Today, 34(1/2),* 5-
    12.

An-Na'im, A.A. (1990). Problems of Universal Cultural Legitimacy for Human
    Rights. In A.A. An-Na'im & F.M. Deng (Eds.), *Human Rights in Africa:
    Cross-Cultural Perspectives* (331-367). Washington, D.C.: The Brookings
    Institution

An-Na'im, A.A. (Ed.). (2002). *Islamic Family Law in a Changing World: A Global
    Resource Book.* New York: U.S.A.: Zed Books Ltd.

An-Na'im, A.A. & Hammond, J. (2002). Cultural Transformation and Human
    Rights in Africa Societies. In A.A. An-Na'im (Ed.), *Cultural Transformation
    and Human Rights in Africa* (13-37). U.K, London: Zed Books Ltd.

Ansell, N. (2001). 'Because it's Our Culture!' (Re)negotiating the Meaning of
    Lobola in Southern African Secondary Schools. *Journal of Southern
    African Studies, 27(4),* 697-716.

Ballinger, M. (1938). Native Life in South African Towns. *Journal of the Royal
    African Society, 37(148),* 326-338.

Barker, R. (1990). *Political Legitimacy and the State* Oxford: Clarendon Press.

Barker, R. (2001). *Legitimating Identities: The Self-Presentations of Rulers and
    Ruled.* Cambridge: Cambridge University Press.

Beetham, D. (1991). The *Legitimation of Power*. Basingstoke: Macmillan Education.

Brems, E. (1997). Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse. *Human Rights Quarterly, 19(1),* 136-164.

Busumtwi-Sam, J. (2002). Sustainable Peace and Development in Africa. *Studies in Comparative International Development*, 37 (3), 91-118.

Chanock, M. (2002). Human Rights and Cultural Branding: Who Speaks and How. In A.A. An-Na'im (Ed.), Cultural *Transformation and Human Rights in Africa* (38-67). U.K, London: Zed Books Ltd.

Chireshe, E. (2010). Lobola: The Perceptions of Great Zimbabwe University Students. *Journal of Pan African Studies (Online).* Retrieved from http://www.faqs.org/periodicals/201006/2132847191.html

Cook, C.T. (2007). Polygyny: Did the Africans Get It Right? *Journal of Black Studies, 38(2),* 232-250.

Delport, E. (2006). HIV/AIDS- A Challenge to Successful Implementation. In R. Musa, F.J. Mohammed, F. Moanji (Eds.), *Breathing Life into the African Union Protocol on Women's Rights in Africa* (pp.86-92). Oxford: Solidarity for African Women's Rights & African Union.

Donnelly, J. (2003). Universal Human Right in Theory and Practice. U.S.A., New York: Cornell University Press.

Donnelly, J. (1984). Cultural Relativism and Universal Human Rights. *Human Rights Quarterly, 6(4),* 400-419.

Donnelly, J. (2007). The Relative Universality of Human Rights. *Human Rights Quarterly, 29(2),* 281-306.

Dunkle, K.L. et al. (2004). Gender-based violence, relationship power, and risk of HIV infection in women attending antenatal clinics in South Africa. *Lancet, 363*, 1415-21.

Freemen, M. (2005). Human Rights. In P. Burnell & V. Randall (Eds.) *Politics in the Developing World* (237-252). New York: Oxford University Press.

Goodhart, M. (2008). Neither Relative nor Universal: A Response to Donnelly. *Human Rights Quarterly, 30(1),* 183-193.

Gilbert, L. & Walker, L. (2002). Treading the path of least resistance: HIV/AIDS and social inequalities- a South African case study. *Social Science & Medicine, 54,* 1093-1110.

Gouws, E. & Abdool Karim, Q. (2008). HIV infection in South Africa: the evolving epidemic. In S.S. Abdool Karim & Q. Abdool Karim (Eds.), HIV/AIDS in South Africa (pp.48-66). New York: U.S.A.: Cambridge University Press.

Hellman, E. (1935). Native Life in a Johannesburg Slum Yard. *Journal of the International African Institute, 8(1),* 34-62.

Hellum, A. et al. (2007). Paths are made by walking: introductory thoughts. In A. Hellum et al. (Eds.), *Human Rights and Plural Legalities, and Gendered Realties: Paths are Made by Walking* (xvii-xliv). Harare: Southern and Eastern Africa Regional Centre for Women's Law: University of Zimbabwe with Weaver Press.

Hollenbach, D. (1998). Development and Human Rights: The African Challenge. *Journal of Religious Ethics, 26(2),* 303-317.

Ibhawoh, B. (2000). Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the Africa State. *Human Rights Quarterly*, *22(3),* 838-860.

Ibhawoh, B. (2004). Retraining Universalism: Africanist Perspectives on Cultural Relativism in the Human Rights Discourse. In P.T Zeleza & P.J. McConnaughay (Eds.), *Human Rights, the Rule of Law, and Development in Africa* (21-39). Philadelphia, Pennsylvania: University of Pennsylvania Press.

Jewkes, R.K. et al. (2010). Intimate Partner Violence, relationship power inequity, and incidence of HIV infection in young women in South Africa: a cohort study. *Lancet, 376,* 41-48.

Kymlicka, W. (2002). Contemporary Political Philosophy: An Introduction (2nd Ed.). U.S.A., New York: Oxford University Press.

Marsh, D. & Furlong, P. (2002). A Skin, not a Sweater: Ontology and Epistemology in Political Science. In D. Marsh & G. Stoker (Eds.), *Theory and Methods in Political Science (2nd Edition) (*17-41). U.S.A., New York: Palgrave Macmillan.

Mathews, C. (2008). Reducing sexual risk behaviours: Theory and research, successes and challenges. In S.S. Abdool Karim & Q. Abdool Karim (Eds.), HIV/AIDS in South Africa (pp. 143- 165). New York: U.S.A.: Cambridge University Press.

Mitsunaga, T.M. et al. (2005). Extramarital Sex Among Nigerian Men: Polygyny and Other Risk Factors. *Journal of Acquired Immune Deficiency Syndrome, 39(4),* 478-488.

Mohan, G. & Holland, J. (2001). Human Rights and Development in Africa: Moral Intrusion or Empowering Opportunity? *Review of African Political Economy*, *28(8),* 177-196.

Mswela, M. M. (2009). Cultural Practices and HIV in South Africa: A Legal Perspective. *Potchefstroom Electronic Law Journal (PER), 12(4),* 172-231.

Mutua, M. (2002). The Banjul Charter: The Case for an Africa Cultural Fingerprint. In A.A. An-Na'im (Ed.), Cultural *Transformation and Human Rights in Africa* (68-107). U.K, London: Zed Books Ltd.

Mwamwenda, T.S. & Monyooe, L.A. (1997). Status of Bridewealth in an African Culture. *Journal of Social Psychology, 137(2),* 269-271.

Nwoye, A. (2007). The Practice of Interventive Polygamy in Two Regions of Africa: Background, Theory and Techniques. *Dialectical Anthropology, 31,* 282-421.

Nzenza-Shand, S. (2005). Take Me Back to the Village: African Women and the Dynamics of Health and Human Rights in Tanzania and Zimbabwe. In O. Nnaemeka & J.N. Ezeilo (Eds.), *Engendering Human Rights: Cultural and Socioeconomic Realities in Africa* (pp. 61-79). New York: N.Y.: Palgrave Macmillan.

Outwater, A. et al. (2005). Women in South Africa: Intentional Violence and HIV/AIDS: Intersections and Prevention. *Journal of Black Studies, 35(4),* 135-154.

Peterson, M. (2009). Cultural Practices, Gender and HIV/AIDS: A Study of Young Women's Sexual Positioning in the Context of HIV/AIDS in South Africa. In J. Baxen & A. Breidlid (Eds.), HIV/AIDS in Sub-Saharan Africa: Understanding the Implications of Culture and Context (pp. 100-116). Cape Town, South Africa: University of Cape Town Press.

Pityana, N.B. (2004). Toward a Theory of Applied Cultural Relativism in Human Rights. In P.T Zeleza & P.J. McConnaughay (Eds.), *Human Rights, the Rule of Law, and Development in Africa* (209-215). Philadelphia, Pennsylvania: University of Pennsylvania Press.

Preis, A.B. (1996). Human Rights as Cultural Practice: An Anthropological Critique. *Human Rights Quarterly, 18(2),* 286-315.

Radcliffe-Brown, A.R. (1929). Bride-Price, Earnest or Indemnity. *Man, 29,* 131-132.

Rawson, H.E. (1913). The Life of a South African Tribe. *Journal of the Royal African Society, 13(49),* 1-13.

Republic of South Africa. (2008, March 04). Progress Report on the Declaration of Commitment on HIV and AIDS. Retrieved from http://data.unaids.org/pub/Report/2008/south_africa_2008_country_progress_report_en.pdf

Schwartz, R.D. (1990). Human Rights in an Evolving World Culture. In A.A. An-Na'im & F.M. Deng (Eds.), *Human Rights in Africa: Cross-Cultural Perspectives* (368-382). Washington, D.C.: The Brookings Institution

Shai, N.J. et al. (2010). Factors associated with consistent condom use among rural young women in South Africa. *AIDS Care, 22(11),* 1370-1385.

Shefer, T. et al. (2005). Masculinities in South Africa: A critical review of contemporary literature on men's sexuality. In D. Gibson & A. Hardon (Eds.). Rethinking Masculinities, Violence and AIDS (pp. 74-87). Amsterdam, The Netherlands: Het Spinhuis.

Stacey, J. & Meadow, T. (2009). New Slants on the Slippery Slope: The Politics of Polygamy and Gay Family Rights in South Africa and the United States. *Politics & Society, 37(2),* 167-202.

Stammers. N. (1999). Social Movements and the Social Construction of Human Rights. *Human Rights Quarterly, 21(4),* 980-1008.

South Africa. info: Gateway to the Nation. (2001, November 22). *Lobola for a new South Africa.* Retrieved from http://www.southafrica.info/business/trends/innovations/lobola-homegrown.htm

Susser, I. (2009). AIDS, Sex, and Culture: Global Politics and Survival in Southern Africa. West Sussex, U.K.: Wiley-Blackwell.

Tamale, S. (2008). The Right to Culture and the Culture of Rights: A Critical Perspective on Women's Sexual Rights in Africa. *Feminist Legal Studies*, 16: 47-69.

Tutu Foundation UK Ubuntu (n.d). Retrieved from http://www.tutufoundationuk.org/ubuntu.html

UNAIDS. (2010). Fact Sheet: Women, Girls and HIV. Retrieved from http://data.unaids.org/pub/FactSheet/2010/20100302_fs_womenhiv_en.pd f

UNAIDS, (2010). Global Report Fact Sheet: Sub-Saharan Africa. Retrieved from http://www.unaids.org/en/media/unaids/contentassets/documents/factshee t/2010/20101123_FS_SSA_em_en.pdf

Walker, C. (1992). Attitudes to "Lobola": Findings from Some Student Research Projects. *Agenda, 13,* 57-58.

Wendo, C. (2004). African women denounce bride price. *The Lancet, 363,* 716.

Wojcicki, J.M. et al. (2010). Bridewealth and sexual and reproductive practices among women in Harare, Zimbabwe. *AIDS Care, 22(6),* 705-710

Zeleza, P.T. (2004). The Struggle for Human Rights in Africa. In P.T Zeleza & P.J. McConnaughay (Eds.), *Human Rights, the Rule of Law, and Development in Africa* (1-18). Philadelphia, Pennsylvania: University of Pennsylvania Press.

Zeitzen, M.K. (2010, March 12). The Many Wives of Jacob Zuma. *Foreign Policy.* Retrieved from http://www.foreignpolicy.com/articles/2010/03/12/the_many_wives_of_jaco b_zuma?page=0,0