

## **Womens' Parental Rights in Ulwaluko – A Parodox?**

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[1] My choice of topic is inspired by the role that the students of this institution have played in leading the fight against sexism and sexual vilolence and hetero-patriachal gendered norms. What has now become one of the largest annual protests against sexual violence, known as the silent protest, was spearheaded form this University. It has now grown to become one of most popular protest movements in the country. At times issues of sexism, gender discrimination and sexual violence have tended to be overshadowed by issues of race and struggles against racial discrimination. When these issues begin to occupy an uncompromisingly primary space in the discussions and women take and maintain charge thereof that can only be to the benefit of the society as a whole.

[2] Tonight I consider the idea that ulwaluko, the right of passage from boyhood to manhood, as practiced in the African culture

generally, and by AmaXhosa in particular, is the exclusive domain of men; that women have no right to express themselves on where, when, how and by whom their children will be guided and circumcised during ulwaluko; and that it is disrespectful for women and uncircumscised men to discuss the custom.

[3] It does appear though that this has not always been the case. In the olden days, in some communities, when the time came, before going out to discuss the a 'boy's impending initiation with close male family members, the father would first discuss the matter privately with the boy's mother. Preparations for ukungena komkhwetha (the ceremony marking the start of initiation) would be a joint project between the parents of the prospective initiate assisted by family, friends and other members of the community. The women would cut the grass for the building of ibhoma, in some community women were responsible for the building of ibhoma (also known as ithonto or isuthu) as they were said to possess the skill necessary to tie the idobo grass tightly such that ibhoma would be warm during the cold winter months.

[3] Although there is still some level co-operation between men and women in the practice of the custom, women are, by and large not an integral part of ulwaluko in a meaningful way.

[4] I have not been able to find any decent documented or oral explanation for the exclusion of women came from custom. What rings loud is that matters relating to ulwaluko are secret and any public discussion on the subject by women and uncircumcised men is driven by arrogance and disrespect for African culture.

[5] The little I know about the custom is that initiation consists of two components, the mental and physical preparation of a boy for the hardships of adult life. The endurance of physical pain from circumcision, the ability to withstand hunger, thirst and suffering symbolise challenges that a man will be confronted with in the adult life of a man. 'Kunzima ukuba yindoda'; 'It is hard to be a man' is the pronouncement often made to emphasize that the life of a man is particularly difficult (presumably as compared to that of a woman).

[6] Despite the strong advocacy for secrecy in the practice of the custom some have dared to discuss or give an open account of details

of the custom. For example, Nelson Mandela, in his book, ‘Long Walk to Freedom’ gives a graphic account of his circumcision whilst undergoing ulwaluko. Also, John Henderson Soga<sup>1</sup> in his book ‘THE AMA-XOSA Life and Customs’, sets out a comprehensive exposition of the custom. He opines that AmaXhosa adopted the custom from the Arabs, who, from the early times, had stations all along the shores of the Indian Ocean where it meets the East Coast of Africa. He writes that such South African tribes as have embraced the custom of circumcision have had an East Coast connection. From AmaXhosa the custom has passed onto neighbouring tribes; ABaThembu, AMaMfengu and AmaBomvana, all being neighbours of AmaXhosa. In early days the last two did not circumcise.

[7] The start of the initiation period is marked by certain rituals after which the Ingcibi (traditional surgoen) performs the circumcision. Thereafter umkhwetha (the initiate) is led to the place of seclusion where he remains secluded from the community for a period of about three weeks. At the end of the seclusion period the new man’s (ikrwala) relationship with the spirits of their ancestors is emphasised to him. He is given words of wisdom. His manhood is affirmed, according to Soga, in these words (more or less): ‘You are a

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<sup>1</sup> Published in 1932

man. (Uyindoda) Its for you to see to it that your mother's ointment pot is never dry', a proverbial way of saying that one of his religious duties is to see to it that his mother lives in comfort and honour and that in the event of the death of his father he will assume this important role. Failure to do so made him a man of no repute , a thing of naught', a man whom self respecting men and their families avoid.'<sup>2</sup>

[8] The question is given these altruistic and inspirational efforts in the preparation for manhood why is the process secret; and why are women excluded from it, many have asked. One can understand the need for privacy at times when observing or performing customs or matters spiritual. As affirmed in our constitution, every one has a right to privacy. And in this context privacy accentuates the the sacredness and dignity of the custom.

[9] Secrecy, on the other hand makes one uncomfortable, to say the least. It is a deliberate act of hiding information or action from another. It is motivated by fear of an anticipated reaction from the

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<sup>2</sup> At 248

one from whom information is hidden. And it engenders mistrust and suspicion.

[10] My personal experience of the custom was as a young girl of about 7 or 8 years old. As very young girls we used to visit ebhomeni where an uncle of one of my friends was umkhwetha. I found it to be a friendly environment, equally welcoming to both young boys and girls, at least in my young eyes. The conversation would be vibrant, with a lot of story telling and teasing. At some stage the ikhankatha (the guardian to umkhwetha) would start testing everyone's knowledge of the special language known as 'ukuhlonipha', used ebhomeni. He would make us recite, just like our school teachers, the meaning of words for example: "inkwenkwe – inqalathi,inja – ikhanka, umfazi – isigqwathi etc" etc. Sometimes we would recite the words on our way from school in preparation for the visits to ebhomeni later in the afternoons and evening. No one ever warned us that what happens ebhomeni is secret and should not be repeated.

[11] Another source of attraction to ebhomeni was the chicken meat in the evenings. Part of the custom was that in the early evening the

young boys would go to the homesteads in the community to ask for isirhuza for umkhwetha. They would be given a chicken. And often, a number of chicken would be slaughtered, immediately cooked and eaten on any one night. There was also other delicacies such as umthubi, (milk from a newly calved cow) that would be sent from different homesteads.

[12] And so as we grew up as young girls ibhoma was a happy place. Although we knew that boys played the leading part in the custom of ulwaluko it was not a place from which we were excluded. However, even then there were indications that there were discussions that we, as girls (and perhaps even the young boys) were not privy to. For example, I came to know that on their return from ebhomeni, amakrwala (the young men) would be looking for girls or women with whom to have their first sexual encounter after returning from ulwaluko. Such a woman would be one of no worth to the young man, one whom he did not love, had no intention of holding a love relationship with and who would only serve to leave all the bad luck from the place of seclusion. Of course this did not make to some of us as we could not understand why ibhoma would be regarded as a source of bad luck.

[13] But this practice dates back a long time ago. Soga writes that 'amongst other things it was impressed upon the boys that in order to get rid of the taint of boyhood (inqambi yobukhwenkwe or izothe) they should, on conclusion of their seclusion period have sexual connection with some unattached female (idikazi) who may be either a widow or a deserted woman. Otherwise they would remain polluted by the retention of the taint of boyhood, and their children will not grow up healthy and vigorous'.

[14] These advices have carried through to this day. Describing their present day effects Nomboniso Gasa writes that: ' In many communities people fear for their lives of initiates. They also fear the violence brought by initiates on communities, especially young women. These are our sons who refer to their genitalia as Maseratis, Mercedes-Benz and BMW. They come back to 'test drive' their cars on women, often without consent.

This is interplay on the practice spoken of only in whispers. Ukukhupha ifutha (to get rid of the fat) or ukosula (to wipe yourself clean). It is young women, mostly girls whose bodies are used as rags or dumping grounds. In many instances this is rape. These are girls who are marked for life as being not good enough for marriage.' Could be the reason for the secrecy? It is difficult

to reconcile this with the dignity and respect which the young men are supposed uphold.

[15] The physical aspect of the custom has also gone ghastly off course. Every initiation season hundreds of men either die or sustain serious genital amputations and disfigurement. These crude aspects in the practice of the custom are what is often subject of criticism. And despite that fact that the custom is currently practiced within a rights and responsibilities context rooted in the Constitution the atrocities seem to escalate. Our Constitution recognises and protects the right of all to participate in culture.<sup>3</sup> It also recognises and protects the rights of all South African citizens to human dignity<sup>4</sup> and prohibits discrimination on the basis of race gender and sex.<sup>5</sup>

[16] But despite these affirmations the the number of botched circumcisions has not improved significantly, and the voice of women is stifled in the debates relating to ulwaluko. The childrens Act 38 of 2005 provides for parental rights and responsibilities in respect of their children. In terms thereof every child has the right not to be subjected to social, cultural and religious practices which are

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<sup>3</sup> Sections 30 & 31

<sup>4</sup> Section 10

<sup>5</sup> Section 9

detrimental to his or her well being.<sup>6</sup> Circumcision of male children under the age of 16 years is prohibited except in certain circumstances.<sup>7</sup> Of course the Act limits the definition of a child to the age of 16 years. But numerous instances of children as young as 12 years old undergoing ulwaluko are documented. And in essence the custom essentially requires facilitation by parents, even for the boys that have attained 18 year age limit. How then do mothers exercise their legal responsibilities in this context? Can assist or support their sons or should they resign themselves to helplessness as condemned by custom? The dilemma is that some boys are unable to express their true feelings about the custom and the manner in which it is performed and what their personal preference is, for fear of the stigma of not being a true man.

[17] This often results in frustration and resentment on the part of mothers. And the feelings of resentment may continue long after the celebrations are over; when women, some of whom are single parents, are left to pick up the pieces deriving from habits and conduct acquired during initiation confronted.<sup>8</sup> But even the resentment is expressed in hushed tones: “ayithethwa into

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<sup>6</sup> Section 12(10)

<sup>7</sup> Section 12 (10) to (12)

<sup>8</sup> Relating, in the main to sexism, sexual violence, alcoholism and drug addiction.

yasesuthwini” (the affairs of ulwaluko are not for public consumption).

[18] However it does appear that women may not be as helpless as they we have they have been in the past. The authorities recognise that the situation cannot continue. Although no results are yet showing, various pieces of legislation have been promulgated in an attempt to fight the scourge of botched circumcisions, eliminate unacceptable teachings, promote accountability and ensure participation of both parents in the custom. The latest of these endeavours is the Customary Initiation Bill which was tabled by the Minister of Co-Operative Government in parliament just over two weeks ago. In its preamble the Bill highlights the constitutional right to life and affirms protection of culture and protection of children from maltreatment, neglect, abuse and degradation.

[19] The Bill sets out the problems that necessitate regulation of the manner in which ulwaluko is practiced and emphasizes the need to transform the customary practice to reflect Constitutional principles . It interfaces with other pieces of legislation such as the Childrens Act, the Criminal Procedure Act, the Traditional Leadership and

Governance Framework Act<sup>9</sup>, the National House of Traditional Leaders Act<sup>10</sup>, the Health Professions Act<sup>11</sup>, the Traditional Health Practitioners Act and the Liquor Act<sup>12</sup>.

[20] The Bill proposes establishment of National and Provincial Initiation committees which will play an oversight role in relation to compliance with the Act. It envisages that the committees, particularly the provincial committees, will co-ordinate the activities and practices conducted in initiation schools. They will consider and approve the opening of initiation schools, maintain a register thereof, determine the number thereof within a province and the number of initiates to be admitted at a specific school, consider the proposed 'curriculum of a prospective school, investigate alleged abuses and monitor and evaluate the general functioning of initiation schools during the initiation period. The National Committee will guide the provincial committee in the implementation of the provisions of the Act. All this will be done with the administrative support of the relevant National Government Department.<sup>13</sup>

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<sup>9</sup> Act No 41 of 2003

<sup>10</sup> No 22 of 2009

<sup>11</sup> No 56 of 1974

<sup>12</sup> No 59 of 2003

<sup>13</sup> Sections 9 and 15 of the Bill.

[21] Traditional leaders will play a leading role in screening traditional surgeons, care givers and traditional health practitioners.

<sup>14</sup> Performance of circumcision without registration as provided for in the Traditional Health Practitioners Act will be a criminal offence which will carry a sentence of a fine or a term of imprisonment for a period of up to 5 years or both the fine and term of imprisonment.

[22] The committees will include members of national and provincial parliament respectively, representatives of national and local government, representatives of emergency services (in respect of provincial committee), representatives of the Traditional Health Practitioners (National and Provincial Committee), representatives of the South African Police Services and representatives of the National Prosecuting Authority (National Committee). Notably, at least two members of the national committee will be women.<sup>15</sup>

[23] At certain intervals the Ingcibis (surgeons) will have to regularly provide financial reports showing details of their income and expenditure, keep records of particulars of initiates and their parents or guardians, the dates on which the circumcision was done,

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<sup>14</sup> Section 20(2).

<sup>15</sup> Sections 4 and 11 of the Bill.

and records relating to the pre-circumcision health condition of initiates. It must be said that in some communities these prescripts have already been embraced and have been implemented.

[24] Importantly, section 22 of the Bill places specific obligations on the parents or legal guardians of a prospective initiate. It will be their duty to decide, together with their child whether the child should attend an initiation school or not. In the case where male circumcision forms part of the initiation process, they will be obliged to decide together with the child whether he should be circumcised medically or traditionally or not at all. It will also be their duty to obtain a certificate from a medical practitioner, indicating whether a prospective initiate is fit to participate in the initiation practices and that he has no medical, physical or psychological condition that may cause complications during or after initiation.

[25] Therefore, preparations for ulwaluko will be a joint legal responsibility of both parents of the prospective initiate. Women's parental rights will therefore not only be affirmed, but women's obligations to play an active role in safeguarding the well being of their children in the practice of the custom will also be reinforced.

Mothers may find themselves guilty of failure to perform their parental duties under the Act.

[26] Traditional surgeons who circumcise initiates without a proof of a medical certificate or consent from parents will risk conviction for a criminal offence (kidnapping), attracting a fine or a prison sentence of up to 15 years or both the fine and the term of imprisonment.

[27] Other parental obligations will include communicating with the relevant principal (ingcibi) and care giver (ikhankatha) regarding the pre-initiation medical condition of the prospective initiate, satisfying themselves that the contemplated initiation school is duly registered with the relevant authorities and that the contemplated health practitioners have been screened and found to be suitable in accordance with the relevant provisions of the Act, and ensuring that the academic education of an initiate is not compromised as a result of attending the initiation school.

[28] Section 22 (4) will probably elicit vibrant debate. In this section it is proposed that parents or legal guardians of initiates have

the right to 'attend to an initiate who falls sick and to remove from an initiation school an initiate who falls sick or asks to be removed' therefrom. How this will actually be effected is not clear. For example, does it mean that entry into an initiation school will be open to both parents at all times? And how will parents obtain reports on the health of their initiate? These and other aspects require that parents interrogate the Bill and submit their comments as invited by the legislature, particularly as that the policy in terms of which the Bill is crafted still provides that: '... the mother has to accept that she will not have unlimited and unreasonable access to the child and that she may not attend initiation services if attendance is not allowed in terms of customs'.<sup>16</sup>

[29] As would be expected, strong dissent has already been expressed in relation to the Bill by some traditional leaders. Nkosi Mwelo Nonkonyana is reported to have protested that: ' Our custom will now be the subject of public debate by women, even by people who are uncircumcised, in Parliament. I think it is really sensitive

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<sup>16</sup> Clause 7.6© of the policy on the Customary Practice of Initiation in South Africa

because the issue of traditional circumcision can only be discussed by people who themselves are circumcised'.<sup>17</sup>

[30] Interestingly, when male circumcision goes awry, it is, in most cases, women who treat injured young men. Some initiates return to seclusion after medical treatment. There is no record of calamity befalling them as a result of having accessed modern medicine and having been treated by women.

[31] Not all traditional leaders and men are averse to women's voices on ulwaluko. Amongst others, Nkosi Ngangomhlaba Matanzima, the leader of the Eastern cape House of Traditional Leaders has been a constant voice of support and encouragement for women to express their dissatisfaction openly about the manner in which the custom is practiced.<sup>18</sup> It is under these conditions that Imbumba YaMakhosikazi Akomhulu (IYA) constituted by queens and

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<sup>17</sup> City Press 15 April 2018, at p8

<sup>18</sup> See for example as quoted by Mthetho Tshemese, clinical psychologist serving at the Nelson Mandela Academic Hospital in Mthatha in the Sunday Independent of 4 August 2013. The article shows that at a summit convened by the Eastern Cape House of Traditional Leaders together with the provincial Department of Health and the Department of Local Government and Traditional Affairs in East London in July 2013. The summit was attended by traditional surgeons, traditional nurses, health professionals, traditional and religious leaders and non-governmental sector. All male voices at the summit acknowledged the validity of the criticism by the women that Eastern Cape men had failed to provide the best care for their children.

wives of traditional leaders have levelled strong criticism against the harmful practices that are attendant in ulwaluko currently. They condemned male traditional leaders of failing to facilitate the change necessary in order to prevent deaths, assault and emotional trauma during ulwaluko. They advocate, amongst other things, male medical circumcision in identified areas of the Eastern Cape. The president of the organisation, MaDosini Ndamase complained that women raise their sons from birth and when they reach 18 years they die within eight days of being in men's hands.

[32] Off course these remarks drew the ire of some male traditional leaders who accused the women of trying to undermine their kings. I may also say that it is not only men that believe that women should not speak on matters pertaining to ulwaluko; some women are of the same view. However despite efforts to stifle the voice of women in relation to the custom, indications are that there is increasing determination by women to assert their rights and responsibilities.

[32] It cannot be disputed that like other customary practices ulwaluko is not static. It has changed. Initiates no longer go to the mountains. The period of seclusion is no longer three to six months.

And initiates no longer hunt or learn about herbs while in seclusion. There can be no valid reason to resist further change in circumcision in the face of harmful commercialisation of the custom, the carnage resulting from botched circumcisions, assault and emotional trauma experienced by young initiates. Suggestions that women should maintain silence defies logic. Duly interrogated and strengthened, the Customary Initiation Bill can effectively promote accountability and safeguarding of the interests of the initiates in ulwaluko. For this reason women need to speak out even louder.

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