

**POLYGAMY / POLYGYNY - RESOURCES**  
**International Reproductive and Sexual Health Law Programme**  
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R. J. Cook, [State Obligations to Eliminate Polygamy under International Law](#), Expert Report for the Attorney General of Canada, submitted to the Supreme Court of British Columbia, July 16, 2010, 105 pages.

**Conclusions regarding inherent wrongs and associated harms of polygyny:**

- a. The patriarchal structuring of family life that enables men to marry multiple wives, but not vice versa, offends women's dignity, and thus is inherently wrong.
- b. The asymmetry of polygynous marriages is premised on sex and sex role stereotypes that subordinate women, thus facilitating the unequal distribution of rights and obligations in marriage.
- c. The harms associated with the inherent wrongs of polygyny vary across, and within, different legal and social contexts. They include harms to the health, understood as physical, mental and social well-being of polygynous wives, material harms and deprivations they are liable to suffer, and emotional and material harms to children of polygynous mothers, often with serious consequences for their welfare.

**Conclusions regarding state practice and Opinio Juris with respect to polygyny:**

- a. The dominant practice now common among states is to prohibit polygyny by criminal or family law provisions. Where polygyny is permitted, there is a growing trend among states to restrict its practice. Historically, prohibitions of polygamy were aimed at protecting a monogamous form of marriage, or preventing fraud against persons or the state. Increasingly, however, state practice now evidences a growing emphasis on prohibiting or restricting polygyny to ensure women's rights to equality in marriage and family life.
- b. Where court challenges to actual or proposed prohibitions or restrictions of polygyny have been brought in the past decade, they have been uniformly defeated, despite claims to religious or cultural freedoms.
- c. Recent prosecutions to enforce criminal prohibition of polygyny have been successful, despite claims that the prohibition violates the freedom of religion.
- d. Where polygyny is permitted in parallel religious or customary legal systems, there is a trend internationally to ensure that women in polygynous marriages are entitled to the same rights and benefits enjoyed by women in monogamous marriages celebrated under civil family law.
- e. Exclusion of multiple spouses is now the norm in the immigrations laws of most western states, in order that persons do not practice polygamy in the destination state. There is an emerging trend to provide that only the first wife of marriage can be potentially recognized for immigration purposes, and only if there is evidence that subsequent wives have been lawfully divorced.

**Conclusions regarding Canada's obligations to comply with international law regarding polygyny:**

- a. There is a strong consensus under international human rights treaty law that states are obligated to take all appropriate measures to eliminate polygyny, as one of the many prohibited forms of discrimination against women.
- b. States are further obligated to take all appropriate measures to dismantle the prejudices and harmful stereotypes that facilitate polygyny.
- c. While states have a margin of discretion in determining what measures are appropriate to eliminate polygyny and the prejudices and harmful stereotypes that facilitate it, the discretion is not absolute. Where polygyny is entrenched, states might well be obligated to use the criminal law as an appropriate measure to eliminate it. As states eliminate polygyny, they are obligated to take appropriate measures to protect the human rights of women already in polygynous unions.
- d. States are obligated to take all appropriate measures to discourage and prohibit polygyny to ensure equality in marriage and family law.
- e. States are obligated to take all appropriate measures to eliminate polygyny in order to ensure women's rights regarding their health and security of their persons.
- f. States are obligated to take all appropriate measures to eliminate polygyny in order to ensure the protection of children and young people.
- g. While the right to privacy and family life, the right to freedom of religion and the right to enjoy one's culture are important rights, they can not be successfully invoked under international human rights law to justify the practice of polygyny.

**Conclusions regarding Canada's obligations under domestic law to comply with international law regarding polygyny:**

- a. International human rights treaty law directly informs Charter interpretation.
- b. International customary law is incorporated in the historical common law, and evidences an international norm against sex discrimination. This norm can be directly applied by the courts to assess the criminal prohibition of polygamy.
- c. Canada is required to report to international human rights monitoring committees on the measures it has taken to eliminate polygamy, in order to comply with the international human rights law to which it is party. As a result of the ratification of the Optional Protocol to CEDAW, Canada is subject to complaint procedures. Individuals or groups of individuals who have exhausted all domestic remedies may bring a complaint where they claim that rights have been violated as a result of Canada's failure to take all appropriate measures to eliminate polygyny. In addition, Canada could be subject to an investigation for grave or systematic violations under the Convention for violations of rights of women and girls in polygynous marriages.

Lisa Kelly, "**Polygyny and HIV/AIDS: A Health and Human Rights Approach**". (2006), 31(1) *Journal of Juridical Science* 1-38.

Concurrent sexual networks have been identified in empirical studies as significantly amplifying rates of HIV transmission in comparison to sequential monogamy or sporadic sexual encounters. This paper examines how states' legal condonation of discriminatory, high-risk concurrent sexual networks, including polygyny, violates women's human rights and undermines their sexual and reproductive health. Because of its gender asymmetry and aggravation of marital inequality, polygyny places women at a greater risk of HIV infection and restricts their ability to insist on partner fidelity, negotiate condom use and leave high-risk relationships. The continued legal recognition of polygyny at the point of marriage formation by the majority of Southern African states violates women's equality, health, and dignity rights. This paper stresses states' international obligations to cease deferring to parallel legal systems that perpetuate inequality within marriage and family life. In moving to discourage polygyny, this paper posits an engagement approach that would continue to protect women's rights within existing unions while discouraging the practice at the point of marriage formation. Going forward, HIV prevention programmes can provide useful fora to advance social justice and equality within marriage and intimate relationships when they are evidence-based and respond to the diverse realities of women's lived sexual and marital experiences. Programmes that address social constructions of gender and sexuality will likely prove the most effective in discouraging polygyny and advancing transformative gender equality.

Lisa M. Kelly, "**Bringing International Human Rights Law Home: An Evaluation of Canada's Family Law Treatment of Polygamy**," 65 *U. Toronto Fac. L. Rev.* 1-38(2007)

Although polygamy remains a criminal offence in Canada, its regulation has been left largely to other areas of the law, particularly immigration and family law. This article examines Canada's family law treatment of polygamy because of the significant role that family law plays in family formulation and dissolution. The article begins by discussing the prevalence and nature of multiple-partner unions in Canada, with a specific focus on polygyny (a husband with multiple wives) the predominant form of multiple-partner unions in Canada. Polygyny is distinguished from other multiple-partner unions, including polyandry and polyamory, because of its gender-discriminatory and patriarchal foundations. These gender inequalities implicate Canada's international human rights obligations to ensure women's right to equality in marriage and family life. After showing why international human rights law can and should inform domestic family law, the article posits a dualistic framework for the Canadian family law treatment of polygyny. This framework would withhold formal marriage recognition at the point of family formation to discourage a gender-discriminatory family practice. However, even where formal recognition is withheld, a rights-based analysis must still account for the rights and interests of those in existing unions. Therefore, the framework also requires that polygynous spouses have access to relief at relationship breakdown, including child support, spousal support and matrimonial property division. The article concludes by analysing polygynous spouses' ability to access such relief within the present legal system and proposes appropriate reforms where access remains limited.

R.J. Cook & Lisa Kelly, [La polygynie et les obligations du Canada en vertu du droit international en matière de droits de la personne](#), Rapport de recherche, (Ottawa, Ministère de la Justice, Canada, Septembre 2006)