

THE SAME-SEX MARRIAGE COMPLEX IN SOUTH AFRICA: SOME CONCEPTUAL, GENDERED AND RIGHTS-BASED INTERPRETATIONS

*Prof. Vasu Reddy, Gender & Development Cross-
Cutting Research Unit, HSRC, Pretoria*

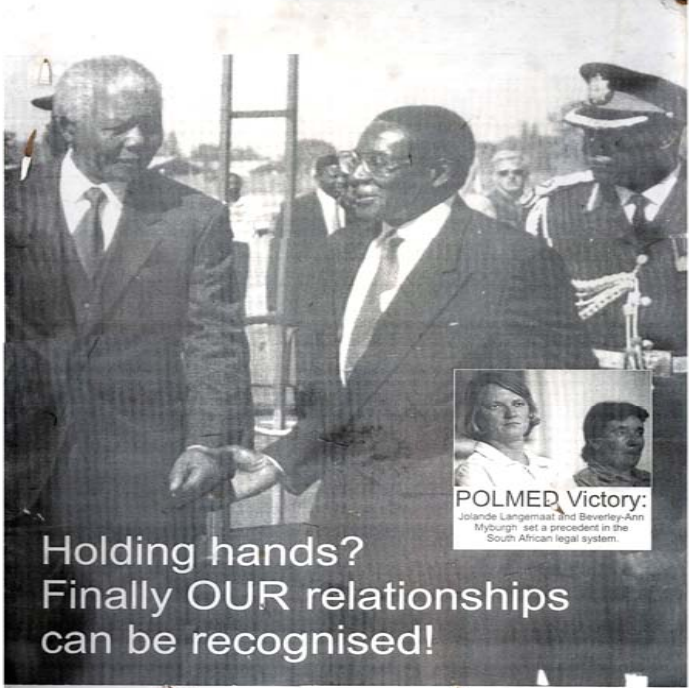
Social science that makes a difference



HSRC
Human Sciences
Research Council

THE SAME-SEX MARRIAGE COMPLEX IN SOUTH AFRICA: SOME CONCEPTUAL, GENDERED AND RIGHTS-BASED INTERPRETATIONS


Presentation for: *Is Same-Sex Marriage Ethical?* A One-Day Workshop, Unilever Ethics Centre, University of Kwa-Zulu Natal, Pietermaritzburg



POLMED Victory:
Jolande Langemaat and Beverley-Ann Myburgh set a precedent in the South African legal system.

Holding hands?
Finally OUR relationships
can be recognised!

Issued by the KwaZulu-Natal Coalition for Gay & Lesbian Equality
P.O. Box 30890, Mayville, 4058
Voicelink: 088-13-202-14



DURBAN MAGISTRATES COURT
THE MARRIAGE OF HENDRIK AND STEVE MAJOLA
2003 AD

Think independently.

THE INDEPENDENT
on Saturdays





SAME-SEX MARRIAGE OPENS UP TWO CENTRAL IDEAS

- The history and meaning of marriage



- The history and meaning of homosexuality

INFORMED BY:

- Arguments against:  about morality
- Arguments against:  based on religious doctrine
- Arguments for:  based on a rights – based model
- Arguments for:  based on recognition of difference, diversity and inclusivity



SAME SEX MARRIAGES

There were mixed reactions to yesterday's decision by the Bloemfontein Supreme Court of Appeal legalising the marriage of a lesbian couple. This is what our readers had to say:

OPPOSITE VIEWS

"Marriage is the union of two persons to the exclusion of all others for life."



Justice Edwin Cameron

"We still believe that marriage is supposed to be between a male and a female."



Anglican Archbishop Njongonkulu Ndungane



Jeanette Thedingwano (46) of Naledi said: "Biblically, it is wrong and immoral for people of the same sex to cohabit and to marry. I'm against gays and lesbians."



Phumlani Nxumalo (74) of Orlando West: "I'm appalled. Even animals of the same sex don't take this route. We have lost ubuntu bethu."



Carol Makhanya (48) of Emdoni: "These are the signs of doom and corruption. Man has indeed turned his face from God."



Nthabiseng Mokoena (29) of Zola: "Any person engaging in such a practice is cursed. God created man and woman for them to enjoy each other's company."



Malofi Mohautso (23) of Meadowlands: "I don't have a problem with any of this. South Africa is a democratic country and as such, people have a right to do as they please."



Johanna Bonoko (63) and Marla Makallma (52): "First it was the abortion law, now same-sex couples can marry. We're heading for disaster."



A lesbian couple, Mball Nkosi (19) and Joy Mbatha (18) said they were overwhelmed by the outcome: "We were thinking of eloping because we always felt that South African law was insular and unfair to us. But now we are relieved because it is no longer only about the so-called straight people," said Nkosi.

SAME SEX MARRIAGE

Opposition characterised as a debate, tirade, national convulsion, a moral panic that:

- is divisive socially, politically, culturally
- is viewed as a modern aberration
- is viewed as a subversive idea because gays and lesbians are seen to ‘invade’ a protected, sacred institution owned and promoted by heteropatriarchy and religious institutions

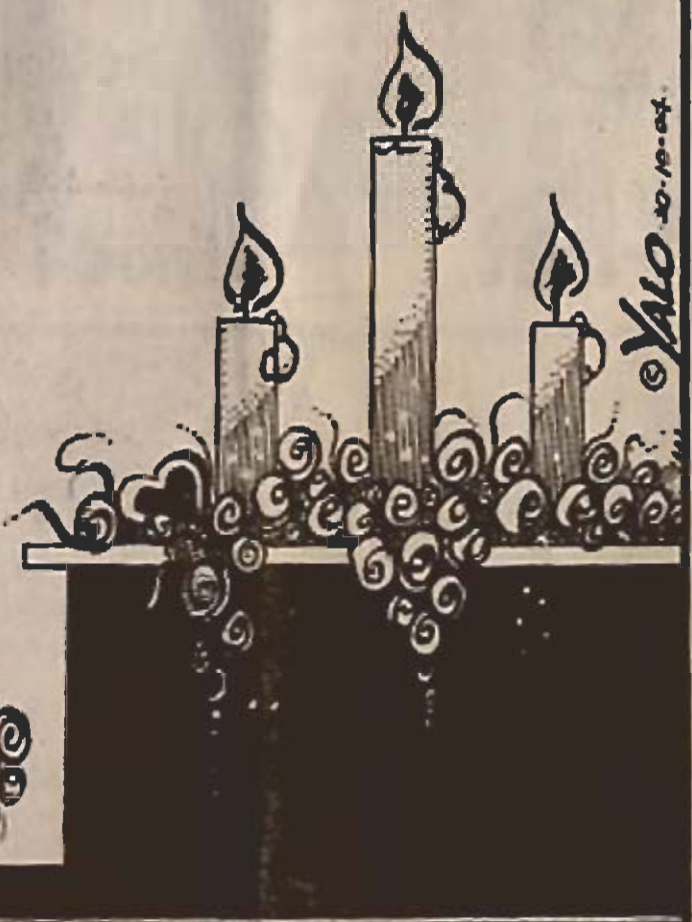


SAME SEX MARRIAGE contd.

- represents an inherent fear about understanding, acceptance, tolerance of homosexuality
- demonstrates a reluctance to accept homosexuality as an identity (because homosexuality viewed as a perversion, a chosen lifestyle, a *fabricated* personality and therefore a false identity)



I NOW PRONOUNCE YOUR UNION SUSPENDED TILL FURTHER NOTICE. YOU MAY NOT KISS YOUR SPOUSE



© YALO 10-10-07

MARRIAGE IS NOT A NEUTRAL INSTITUTION

- Viewed as a contract for life that develops into a bond
- Is a socio-sexual institution (induced by a sexual order: sexual intercourse is the seal of the marriage)
- An arrangement for procreation, nurture of children, motivated by patriarchy as a natural order requiring man and a woman
- An institution that regulates and controls sexuality (female sexuality especially): places heavy burdens on the gendered division of labour (although this is changing)



MARRIAGE IS NOT A NEUTRAL INSTITUTION cont.



- Is not simply about bringing up children; it has become a way for two adults to affirm an emotional commitment

- Integral to any change in it opens up a host of questions about what the union of two people mean, *what it has become, what it could stand for*
- Key to the institution is the notion of the *family* (viewed as a normative institution and less a focus on its actual operation or some of its limits)

MARRIAGE IS NOT A NEUTRAL INSTITUTION cont.

- Always represents a historical crisis of gender (steeped in patriarchy, governed by men, promotion of gender roles, masculinity and femininity, sexism and oppression: ownership, property and dominance): long the focus of radical feminist opposition
- As a civil institution (about the annexing of one family to another, used to settle dynastic disputes, and to distribute property)
- Provides an ‘insider status’ of a most powerful kind



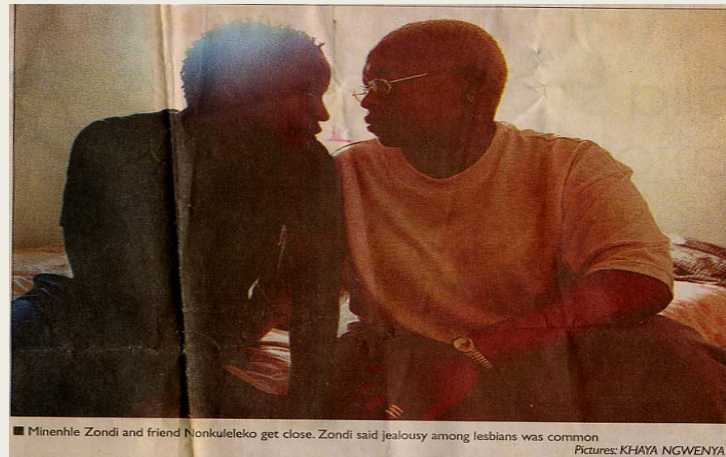
MARRIAGE IS NOT A NEUTRAL INSTITUTION cont.



- The heteropatriarchal tradition defines certain relationships more *valid* than all others
- Access/entry to marriage is also classed and raced (consider the history of apartheid and the State's opposition to interracial marriage)
- Comes with some practical benefits: ability to share insurance and pension benefits, medical aid, inheritance, protection of children from custody battles

HOWEVER, ALL OF THIS IMPLIES THAT MARRIAGE IS A STABLE, UNCHANGING INSTITUTION

- Never stable but dynamic
- Institution in transition



■ Minenhle Zondi and friend Nonkuleleko get close. Zondi said jealousy among lesbians was common
Pictures: KHAYA NGWENYA

- Lost some of its sacred appeal and increasingly becoming secularised
- A contested institution



Mari Fourie and Celia Bonthuys, the lesbian couple who brought the gay marriage case. Photo: Beeld/Felix Dlangamandla

SAME-SEX MARRIAGE IN SA

- Opens up debate about a small minority
- Symbolic meaning of marriage is deeper than citizenship
- Institution where public citizenship interfaces/intersects with private self-definition
- Represents a human and civil rights matter that is connected to *politics, culture, law and identity*



SAME-SEX MARRIAGE IN SA cont.

- About human equality, dignity and respect (a right to democratic citizenship)
- Underpinned and reinforced by constitutional values promoting respect for difference and diversity
- Equality jurisprudence over the last 13 years has clearly shown increasing recognition of same-sex sexuality as a legal identity to be protected (see handout)
- Case for marriage offers symbolic recognition of same-sex couples wanting to formalise union that places **NO BURDEN** on **RELIGIOUS INSTITUTIONS**



SAME-SEX MARRIAGE IN SA cont.

- Such a recognition will also reorder society's view of the family (alternative family arrangements have been a phenomenon of the 20th century)



- That said gay and lesbian community is heterogeneous. Many are opposed. Many believe same-sex marriage (1) forces assimilation of gays and lesbians into the mainstream; (2) will not transform society

- In some ways a rights claim is flawed as well: obtaining a *right* does not always result in *justice*

SAME-SEX MARRIAGE IN SA cont.

- Ironically instead of liberating gay and lesbians, same-sex marriage could “OUTLAW” all gay and lesbian sex that is NOT performed in a marital context (same sort of stigma faced by many sexually active nonmarried women)



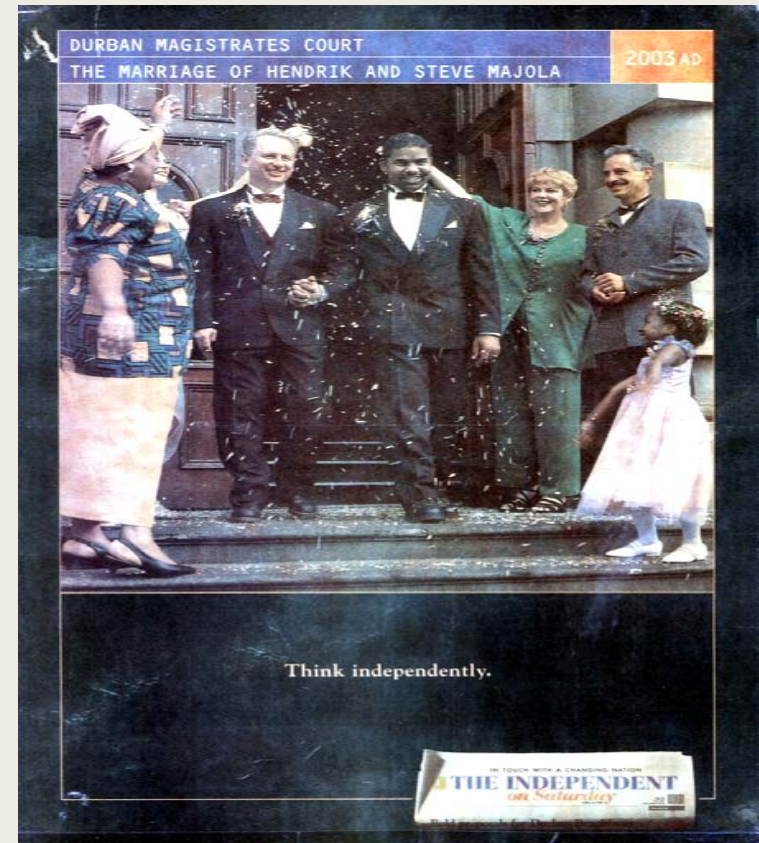
- Marriage in my view is NOT the SOLUTION to achieving full equality and recognition (merely presents a *choice* for same-sex couples) to legalise their unions and it should be promoted as a claim to becoming a full citizen

SAME-SEX MARRIAGE IN SA cont.



- Directed towards normalising homosexuality but it does not resolve the problem of stigma, prejudice and persecution that still persists, usually reinforced by religious and cultural intolerance

- The question should be: why are we reluctant to accept that legal recognition of same-sex 'marriage' (a symbolic word for what is in effect a union) should be denied to a minority of citizens in this country when it places no burden on religious and cultural institutions



EQUALITY

Newsletter of the National Coalition for Gay and Lesbian Equality

**RECOGNISE
OUR
RELATIONSHIPS**



*EQUALITY
MEANS
EQUALITY
FOR ALL*



**PRIDE
98**



*SCRAP
UNJUST
LAWS*

OUT
and proud

**EQUALITY
NOW**

RECOGNISE OUR RELATIONSHIPS

The NCGLE is supported by the EU Foundation for Human Rights, HIVOS and INTERFUND

