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UKUTHWALA PRACTICE: CONFLICT OF CHAPTER TWO (BILL OF RIGHTS) OF SOUTH AFRICAN CONSTITUTION ACT 108 OF 1996 AND CULTURAL PRACTICE

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ABSTRACT: This article focused on “Ukuthwala” practice: A violation of Human Rights, societal norms and values in Mbizana Local Municipality. Ukuthwala practice seemed to be on the rise in Mbizana Local Municipality. The study used the social exchange theory. The study was qualitative in nature and employed the exploratory research design. The study collected data from 15 married and divorced females between 16 and 45 years, who were/are victims of “Ukuthwala” practice. The study used snowball non-probability sampling. It collected data using semi-structured in depth interviews. Thematic analysis was used to analyze the data that were obtained in the course of the study. The research findings show that there are a number of women and girls in Mbizana Local municipality who were in forced marriages.

Key words: Human Rights; Practice; Societal Norms; Ukuthwala; Violation; Victims

I. INTRODUCTION

According to Ndindwa (2014:1), “Many women face the violation of their dignity as they find themselves in the face of marriages they never dreamt of”. Jongizulu (2012:1) postulates that, the marriage of girls at a young age has deep traditional roots in dozens of countries around the world. In rural South Africa, even though the law specifies that marriage of girls younger than 18 is illegal if it is without their consent, knowledge of, and respect for, the law is limited. Experts in gender dynamics argue that early marriage is one of the most serious harmful traditional practices, as it usually terminates education, has negative impact on the health of the victims and their income-earning and decision-making capacities (Jongizulu,2012:1).

The practice of *Ukuthwala* in South Africa has recently received negative publicity, with numerous complaints being recorded. In the first and second quarter of 2009, the media reported that more than 20 Eastern Cape girls were forced to drop out of school every month to pursue the traditional custom of *Ukuthwala*. Girls as young as twelve years are forced to marry older men, in some cases with the consent of their parents or guardians (Ndindwa 2014:2). Petkou and Nyoni (2011) are of the same view that there is a growing concern in South Africa that some cultural practices are harmful to women and children. The above is supported by Le Roux (2009) who states that some traditional practices and values act as root causes for discrimination and violence against women and children. Although harmful cultural practices are common in some parts of South Africa than others, the Eastern Cape has been noted as having a high prevalence rate and occurrence frequency of harmful traditional practices (Pekou & Nyoni, 2011).

Furthermore, Ngcobo-Mbere (2009) indicates that the ukuthwala practice creates gender based violence. In the Eastern Cape, the practice of abduction and forced marriage is commonly referred to as “Ukuthwala”. The tradition originated from the Xhosa culture where families make marriage preparations for their girl children without the girl’s consent (Ngcobo-Mbere, 2009). Ngcobo-Mbere (2009) further indicates that the Mpondo clan has also adopted “Ukuthwala” from other Xhosa clans such as the “Mfengus”. Girls between the ages of 12 and 15 year are the most affected by the practice of ukuthwala. These girls are abducted and forced to marry adult males. Section 12 of the Children’s Act, number 38 of 2005, states that every child has the right not to be subjected to social, cultural and religious practices that are detrimental to his or her well-being

The researchers observe that the state of ukuthwala practice has increased terrifyingly in Mbizana Local Municipality. Apparently, *ukuthwala* denies women and young girls their basic human rights. Forced marriage describes a marriage that takes place without the free or valid consent of one or both of the partners and involves either physical or emotional pressure (Ngcobo-Mbere, 2009). Early marriage is related to forced

marriage because minors are considered powerless of giving informed consent and *ukuthwala* is regarded as a serious human rights violation (Jongizulu, 2012). Against this background, this study examines the *ukuthwala* practice in the South African context, with specific reference to Mbizana Local Municipality.

II. PROBLEM STATEMENT

The South African constitution is one of the best in the world. Act 108 of 1996 is the corner stone and guides all citizens who reside in the country. This article outlines the conflict between chapter 2 Bill of Rights from the Constitution and cultural practices in terms of protecting individuals' rights. Human rights violations occur when actions by state or non-state actors abuse, ignore, or deny basic human rights. *Ukuthwala* practice is a violation of many rights of victims. The Sexual Offences Act (32) of 2007 (Section 17) prohibits the sexual exploitation of children by their parents and others. Parents, relatives or others who collude in, and assist the *Ukuthwalwa* of a girl child commit the crime of sexual exploitation of children. With all traditional practices like virginity testing, initiation school and *ukuthwala* (abduction) that are practiced in the Eastern Cape Province, the *ukuthwala* practice is the practice most performed in Mbizana Local Municipality.

According to the Recognition of Customary Marriages Act no 120 of 1998, both the bride and the bridegroom must consent to a marriage. *Ukuthwala* practice violates human rights of children and those of women. The *ukuthwala* practice seems to be on the rise in Mbizana Local Municipality in the Eastern Cape Province. The way *ukuthwala* practice is carried out currently is generally regarded as illegal and harmful to the wellbeing of young girls. Young girls usually suffer physically due to their bodies' response to premature sex, including pregnancy. They are also at risk of sexually transmitted infections and emotional disturbance and in some cases their educational development is disturbed too.

Ukuthwala of young girls was also prohibited in Transkei under the Transkei Penal Code 9 of 1983. The Penal Code 9 Act of 1983 criminalised the abduction (*ukuthwala*) and kidnapping of children under 18 years. An investigation into the *ukuthwala* practice was important in that it contributed to the holistic understanding of victims of *ukuthwala* as well as the views and experiences of the *ukuthwala* victims in their abductors' homes. The study sought to make it possible to critically understand the issue of *ukuthwala*, with an aim to minimize the practice. The researchers recognized that victims of the *ukuthwala* practice have little information about their rights in face of the practice and most of them are not aware that the practice is against the law. This necessitated the carrying of this study.

III. THEORITICAL FRAMEWORK

The study employed the social exchange theory, which serves as the theoretical framework of the reference to the study. This article is based on *ukuthwala*, which is viewed as a violation of human rights and societal norms and values.

The social exchange framework was formally advanced in the late 1950's and early 1960's in the works of sociologists Homans (1961) and Blau (1964) and the work of social psychologists Thibaut and Kelley (1959). The Social exchange theory advances that social behaviour is the result of an exchange process. The purpose of this exchange is to maximize benefits and minimize costs. According to this theory, people consider the potential benefits and risks of social relationships.

Jeriphans, Kudakwashe and Phinias (2004) state that the social exchange theory may be viewed as providing an economic metaphor to social relationships. The theory's fundamental principle is that humans in social situations choose behaviours that maximize their likelihood of meeting self-interests in those situations. In taking such a view of human social interactions, the Social Exchange Theory includes a number of key assumptions.

First, the social exchange theory operates on the assumption that individuals are usually rational and engage in calculations of costs and benefits in social exchanges. Secondly, the theory builds on the assumption that those engaged in interactions are rationally seeking to maximize the profits or benefits to be gained from those situations, especially in terms of meeting basic individual needs. Thirdly, exchange processes that produce payoffs or rewards for individuals lead to patterning of social interactions. Because of the competitive nature of social systems, exchange processes lead to differentiation of power and privilege in social groups. As in any competitive situation, power in social exchanges lies with those individuals who possess greater resources that provide an advantage in the social exchange (Jeriphans et al., 2004).

The concept of profits or benefits emerges as the driving force in promoting the *ukuthwala* practice in communities that uphold tradition where the girls who come from poverty stricken households are by far the victims of the *ukuthwala practice*. Due to impoverished circumstances of families, studies indicate that parents unwittingly send their children into forced marriages to settle family debts and as compensation. Although the rewards outweigh the costs, in a relationship characterized by social exchange (i.e. gifts for sex) forced females may feel less able to refuse sexual advances from their financial powerful sexual partners compared to those

adolescents who do not practice social exchange because they are financially dependent (Baumeister & Vohs, 2004).

IV. SIGNIFICANCE OF THE STUDY

This study is significant in the South African context because it increases awareness of *ukuthwala* and the practicality of the situation in the community. It raises awareness among social workers, the police and other stakeholders working with victims of *ukuthwala practice* on the reality on the ground and all attendant impacts and effects. The article contributes to the creation of new information on the *ukuthwala* practice, which seems to be a serious problem in the Municipality. It also contributes to research conducted by other researchers on the same issue elsewhere. The outcomes of this study significantly add to an understanding of many issues relating to the *ukuthwala* practice. The study makes it possible to understand the issue of the *ukuthwala* practice, with an aim to minimize its various causes and outcomes. The information on *ukuthwala* practice in this study serves as a starting point for other researchers who might be concerned with carrying out studies on victims of the *ukuthwala* practice in future.

V. METHODOLOGY

The study used a qualitative approach.

5.1. Research design

The study used exploratory research in order to gain insight into the situation, phenomenon, community or individual. The study investigated victims' perspectives of the *ukuthwala* practice in the Mbizana Local Municipality.

5.2. Units of Analysis

Unit of analysis is defined as the person or object from which the social researcher collects data (Fourche, 2002). Individuals are the most common unit of analysis in many studies, including the this study. When a participant is used as a unit of analysis, the participants are chosen because they belong to a particular group. The study collected data from *ukuthwala* practice victims who were married and divorced females between 16 and 45 years. These units of analysis were selected because they were the inhabitants of the area of study and they were victims of the *ukuthwala* practice.

5.3. Sampling Method

The purpose of the study was to investigate *ukuthwala* victims' perspectives of the *ukuthwala* practice, their lives and the experiences they encountered in their thwala'd homes. In order to address or answer research questions, the study employed non-probability and Snowball sampling. The researcher believed that making use of snowball sampling in the study would enable the researchers to get participants faster. The researchers employed snowball sampling, which means that the researchers knew a victim of the *ukuthwala* practice and it was easier to get other victims. After interviews with the victim, the researchers asked the participant about other women who were undergoing the same fate (Victims of *ukuthwala* practice). The participant referred the researchers to other victims of the *ukuthwala* practice. This then allowed the researcher a ripple effect of gathering more and more subjects. This was done until the researchers reached the sample size of 15 participants. In the context of this study, only victims of *ukuthwala* were considered for participation.

5.4. Data Collection Methods

This study focused on perspectives, attitudes and opinions of the participants. The study made use of a semi-structured interview schedule that employed open ended questions as a method of data collection. Open-ended questions allowed respondents to give more information on feelings, attitudes and understanding of the subject. For the purposes of this study, the researchers used a voice tape recorder during data collection. The researchers first asked permission from each participant to use the audio recorder during the interviews and it was used only on those participants who consented to be recorded. A few participants gave permission to be recorded while others refused citing the sensitivity of the subject at hand. By using the audio recorder the researchers intended to keep the information as precise as possible.

5.5. Methods of Data Analysis

The study made use of thematic data analysis. In this study, individual responses were analysed, compared and categorised.

VI. ETHICAL CONSIDERATION

The study was granted ethical clearance by the University of Fort Hare Ethics Committee. The researchers also submitted a written request to the community leaders for permission to collect data within the

Municipality and community and permission was granted to collect data in the Municipality. Denscombe (2010: 74) states that “The fundamental ethical principle when conducting research, is simply that any person or individual participating in the study should do so willingly and with the knowledge of the nature of the study and its implications to them”. During the study, the participants were informed that they had the right to know what the study was all about, how it would help them, how it would affect them, and they were also informed about their right to decline at any time in the research process if they so decided.

The researchers ensured that the study participants participated voluntarily. The participants were provided with full information about their involvement in the research. The researchers also explained to the participants that the information received from them would be treated with confidentiality and that their names would remain anonymous to anyone who would access the information and even to other researchers and that it would only be used for the study purposes.

VII. STUDY SITE

This study was conducted in Mbizana Local Municipality, which is classified as having high rates of ukuthwala practices.

RESULTS OF THE STUDY

Biographical information of the participants

Table 1. Representation of the ages of the participants

Ages categories of participants	
16-25 Years	4
26-35 Years	5
36- 45 Year	6
Total Number of participants=15	

Table 1 above illustrates age groups of the participants who participated in the study. The ages of the respondents were categorized into three groups. Group one ranged from 16 to 25 years, group two from 26-35 years, and group three from 36-45 years. From the 15 participants, 4 participants were between ages of 16-25 years, 5 were between ages of 26-36 years and 6 participants were between the ages of 36 and 45 years.

Table 2: Illustration of marital status of participants

Marital status	
Married	11
Divorced	4
Total number of participants =15	

Table 2 above elucidates marital statuses of the participants of the study. The marital status was categorized into two groups (married and divorced participants). Most (11) participants were married and a few (4) were divorced.

Table 3. Depiction of educational levels of participants

Educational levels of participants	
Grade 4-7	7
Grade 8-10	5
Grade 11-12	3
Total Number of participants=15	

Table 3 above shows that out of 15 of the participants of the study, most (7) participants obtained Grade 4 to 5 while 5 participants obtained grade 8-10 and only 3 participants ranged between grades 11 and 12.

Table 4. Elucidation of Vocations of the participants

Vocation of the participants	
Employed	-
Unemployed	11
Self-Employed	4
Total Number of participants =15	

Table 4 above displays the vocations of participants who participated in the study. Most (11) participants were unemployed while 4 were self-employed. The study was interested in this information so that the researchers could be able to ascertain whether or not the respondents depended on their husbands as breadwinners. The reason was that the victims of the *ukuthwala* practice were abducted at an early age, before they even thought of employment.

VIII. ANALYSIS OF RESULTS

All participants were presented through the following codes, P1 – participant number 1; P2- participant number 2 up to participant number 15.

8.1. Perceptions of *ukuthwala* practice

Participants were asked about their views on the *ukuthwala* practice. The following are some of the responses from the participants:

Ukuthwala Practice is when a woman is taken to be a wife without her consent.

Young girls are the most targeted by the practice (P1).

It is a practice where a girl gets married to a person they never met and most of the time who is older than the woman (P5).

Ukuthwala practice is a practice where most of the times girls of 15 years of age are forced to marry men they do not know (P11).

P3 and P9 respectively revealed that:

Most of the time ukuthwala is practiced by family members who want to take lobola (bride price) money to settle their debts.

Ukuthwala practice is a practice where two/more people take decisions on behalf of a woman for marriage purposes .

Another participant added:

I am against the practice and the practice must be stopped because it infringes on the rights of women and those of children (P12).

The above perceptions about *ukuthwala* practice show that the victims are aware of the *ukuthwala* practice and they are against the practice. All participants criticized the practice, saying it must be stopped because it was against the law and most victims were abused in their marriages because of this practice.

8.2. Knowledge about violation of Human Rights

Participants were asked if they knew their rights in relation to the *ukuthwala*. Participants stated:

I knew that my rights were being violated because I did not give consent to the marriage, it was against my own will but my father said the marriage was a good thing for both families (P2).

I knew that my rights were infringed although I was afraid to disappoint my family (P7).

I was aware that my rights were being dishonoured but I did not know what to do, I was too young (P8).

My rights were of course being violated because I had to quit school and focus on my marriage (P11).

Other participants submitted:

I was too young and unaware about my rights and when I asked my mother she said they were doing what was best for me. I did not think my rights were violated back then (P15).

I had no idea about rights back then because I was told that it is my culture so I did not think that my rights were violated (P14).

It is evident from the above statements that most participants were aware of the infringement of their Human Rights but were afraid to disappoint their families. The participants were also deprived of their right to education. A few participants had been unaware about their Human Rights because they were too young and they did not think anything like that could happen to them. This shows the importance of human rights education to the South African community.

8.3. *Ukuthwala* Practice Experiences in victims' marriages

When participants were asked about their marriage experiences, different views emerged. Some participants uttered that:

In my marriage I am not happy because I depend on my husband who is working in the mines and does not come home sometimes. I am lonely, it is like I was taken to this marriage to be a house keeper (P2).

Sometimes I feel like I am in prison because I am not allowed to visit my family, as if I will escape. There is no freedom and this is not how I imagined my life will be like (P5).

My husband sometimes shouts at me. When he is drunk he beats me and says I am ugly (P10).

In my marriage I was not happy at all. I wanted to go back to school but my ex-husband refused. He said that he had paid lobola for me to be a wife not a student or learner. I thought the best way was to get out of the marriage and focus on my life (P15).

I was miserable in my marriage. I had no say in decisions but I had to endure the suffering (P14).

Another participant stated:

I am happy in my marriage, my husband and in-laws are good people; they are supportive but they are old-fashioned people. As a result they refused when I asked to go back to school, my husband guaranteed to take care of me and our children (P3).

while another said:

Now I am happy in my marriage because I decided to accept the situation because my parents are the ones who sold me (P4).

The above data shows that some marriages in *ukuthwala* practice are unhealthy because victims of the practice are too dependent on their husbands, which aggravates their vulnerability. The girls and young women married off through *ukuthwala* have no freedom to take decisions in their marriages and some are treated like prisoners.

8.4. Challenges in forced marriage homes

Regarding the challenges faced by the *ukuthwala* practice victims in their thwala'd homes, the following was conveyed:

1.4.1. Lack of respect and cheating

Most participants mentioned lack of respect from their husbands and their in-laws as the challenge that came with the practice. Participants revealed:

The only challenge that I have is that my husband always yells or shouts at me, even in the presence of our children (P1).

At times my husband does not sleep at home and when I ask about where he slept he just ignores me as if I do not exist in his life (P7).

My husband does not respect me and my in-laws are also giving me hard times (P15).

A very concerned and out spoken participant articulated that:

My husband was not showing any respect towards me (P12).

Other participants stated:

Lack of respect from my husband is the only challenge that I face in my marriage. There is no communication and we always argue (P6).

I always caught my husband with other women in my house, which shows disrespect because I decided to accept the situation of the marriage but cheating and lack of respect is giving me problems (P5).

8.4.2. Lack of financial support

Participants revealed that they had financial challenges in their marriages. A participant told the researchers that:

I am an unemployed mother of two children and my husband is the only one who is working. He hurts me because sometimes on his pay days he spends the money on alcohol and he expects me to do grocery with the child support grant (P8).

In my marriage my husband does support me financially (P1).

I am the only one who is buying grocery with my children's support grant money because my husband is not working (P5).

A very disappointed participant indicated:

My husband is the only who is working, but sometimes he disappears with the money and comes back when it is finished (P11).

I became a hawker to earn a living because my husband does not support me financially (P15).

In the beginning I was against the marriage but as time went by I realised that my husband is a good person, we are happy just like other couples (P3).

8.4.3. Domestic violence

Participants mentioned domestic violence as one of the main challenges that they had in their marriages. One participant revealed:

I was married to a 48 year old man who controlled everything, every action I took; I had no say in my marriage. I was told to respect my husband and follow his lead because he was the head of the house(P1).

Other emotional participants stated:

Sometimes when my husband is drunk he beats me but when he is sober he is sweet (P6).

I am afraid of my husband because when I do not do as he wishes he promises to beat me (P3).

It is evident from the data that *ukuthwala* practice marriages have many challenges. The above information shows that victims of *ukuthwala* practice are not respected and their husbands cheat on them and do so deliberately. It is also evident that most victims of *ukuthwala* practice are not supported financially by their husbands. According to these findings, it is highlighted that domestic violence was escalating everyday in *ukuthwala* marriages. They revealed that they were controlled in their marriages. Some victims of the *ukuthwala* practice conveyed that they were afraid of their husbands.

8.5. Knowledge of legality of the practice

The researchers also enquired if participants had any knowledge about the unlawfulness of the practice. The following revelations were provided by the participants:

I was aware of the illegality of the practice but fear to embarrass my family was the only reason that stopped me from reporting the practice to the police (P1).

*I am from a well respected family and I was aware that *ukuthwala* practice is not legal anymore but I had to do it for the sake of my family (P12).*

*If I were aware that *ukuthwala* was against the law, I would have reported it to the police because it was against my own will (P1).*

I did not see any need to report because I was not aware that it was against the law (P5).

One participant mentioned that:

*Even though I knew that the *ukuthwala* practice was illegal I did not have the guts to report the matter to the police officials because my father confused me and told me that it was a culture to save family honour (P7).*

Another participant revealed that she:

I was forced into a marriage because I was told that it was the only way to build family relations (P3).

It is evident from the above submissions that participants were aware of the illegality of the practice but they were afraid to disappoint their families because of the status of their families. Most participants of the study were not aware that *ukuthwala* practice is illegal. This shows the importance of human rights education to the South African community.

IX. GOVERNMENT INTERVENTION

Participants were also asked what they thought could be done to reduce/prevent the *ukuthwala* practice. The motive behind this question was to come up with a new system or method to deal with or address this cultural practice of *ukuthwala*. Below are the responses from the participants:

Police officials are the only people who can help us by arresting all those who are abusing us as women (P1).

*The police should arrest all the people who participate in the *ukuthwala* practice process (P3).*

P7, P10 and P14 agreed with P8 who conveyed that:

*To prevent *ukuthwala* practice, Police should arrest the perpetrators (P7).*

Other participants revealed:

*To prevent *ukuthwala* practice there is need for people to be empowered and educated about their own Rights (P7).*

*The government should do awareness campaigns where community members can be educated about dangers of the *ukuthwala* practice, how the practice can be prevented and who to report to when such occurs (P2).*

Other out spoken participants stipulated that:

Awareness campaigns can assist our communities to be knowledgeable about gender violence and the rights of girl children to freedom of choice and violation of their rights to access education (P7).

There must be community dialogues where the community members will exchange ideas regarding the practice and especially on how to prevent it (P12).

Teachers should teach about the illegal practices in schools to help children become aware of their rights (P9).

To prevent the ukuthwala practice (social development), social workers have to investigate any suspected occurrence of ukuthwala practice and report to the police (P10).

From the above data, it revealed that police officers are the victims' only hope to prevent the occurrence of the *ukuthwala* practice. Participants fingered awareness campaigns and community dialogues as the prevention of the *ukuthwala* practice. School teachers should report to the police officials and to social workers any suspected child abuse cases and incidents, including the *ukuthwala* practice.

X. DISCUSSION OF FINDINGS

The majority of the participants' perceptions about *ukuthwala* indicate that *ukuthwala* is a cultural practice that forces a girl child to get married to a person they do not know. It was also revealed that participants were forced to marry men who were old enough to be their fathers. All the participants criticized the practice, saying that it must be stopped because it was against the law and most victims were abused in their marriages because of this practice. These findings correspond with findings by Maluleke's (2012) study, where he concluded that *ukuthwalais* a form of abduction that involves the kidnapping of a girl or a young woman by a man and his friends or peers with the intention of compelling the girl or young woman's family to endorse marriage negotiations.

Further, most participants were aware of the infringement of their Human Rights but were afraid to disappoint their families hence they suffered in silence. The participants stated that they were deprived of their right to education. A few participants articulated that they had been unaware about their rights because they were too young and they did not think anything like that could happen to them. In Poku's (2009) study on forced marriages it was revealed that some parents did not ask their children for their opinion when they considered it proper for them to get married. This is most often the case where young girls are concerned, but also sometimes with young men, because parents consider marriage a social act that is a matter for the nuclear or extended family and even the community, and they consider it their duty to have their children marry.

Most participants described their marriages as unhealthy because they were too dependent on their husbands. They stated that it was like they were in prison because they were not allowed to do as they pleased. A number of the participants revealed that they were abused, emotionally and physically in their marriages. Other participants stipulated that they were happy because they had decided to accept the situation and had told themselves that their parents did not care about them. Divorced participants stated that they had been miserable in their marriages, leading to them quitting. They argued that that there was no freedom in *ukuthwala* marriages. According to the South African Domestic Violence Act, 116 of 1998, psychological abuse refers to a pattern of degrading or humiliating conduct towards women. This may include name-calling, to cause emotional pain, insults, integrity and security (Abrahams, Jewkes & Laubsher, 2010).

The above findings show that many victims' husbands were employed but sometimes did not support them financially. The participants also mentioned lack of financial support as a major challenge they faced in their marriages. Others indicated that they had ended up starting small businesses like tuck shops to help themselves.

According to these findings, domestic violence was escalating every day. Participants revealed that they were controlled in their marriages. According to the ICRW (2005), girls who were married early are more likely to be abused sexually, physically and emotionally. Mesatywa (2012) submits that some victims of gender based violence may suffer physical injuries that may lead to post traumatic stress disorder. This study shares the same opinion with the above researchers, because once a girl has been abducted and experiences all the physical harms, she loses control of herself and lives on carrying instructions from the perpetrator (husband) and the in-laws. Victims of the *ukuthwala* practice are usually afraid of their husbands

Participants were asked about the challenges of *ukuthwala* in their lives. The analysis on this question led to the following results as proffered

All the 15 participants of the study mentioned early school dropout as one of the major consequences of the *ukuthwala* practice in their lives.

- Therefore, victims of *ukuthwala* are deprived the opportunity to educate themselves and prospect for a better future ahead. According to 3rd Degree (November 10, 2010), the consequences of the *ukuthwala* practice, such as high dropout of girls from schools have been noted. In Lusikisiki for example, schools

have reported a dropout rate of up to 46%, largely because of 'ukuthwala'. Young girls who are still in schools live in fear for their future. They fear that they can be abducted or raped to force them to become someone's wife. Maluleke (2012) also states that the abducted child is removed from school, and dropping out of school deprives the child of education opportunities, including tertiary education and skills training. The rights that are infringed upon by this practice include right to human dignity, right to education and right to freedom and security.

- The findings of the study reveal that most victims of the ukuthwala practice were forced into marriage at the age when they were the ones to be taken care of instead of taking care of another person like a husband. That means that most participants were forced into those marriages when they were too young.
- Malhotra (2010) established that early marriage denied girls of their childhood. Malhotra (2010) further states that young girls are pushed into the full burden of domestic responsibility, motherhood and sexual relations rather than playing with friends, dreaming about a career or worrying about a school exam. Maluleke (2012) adds that the social development of the child is usually stunted as they enter into early marriage and are fast tracked into the adult world, skipping organic developmental phases.
- Research conducted by UNICEF (2007) found that girls who marry and give birth before their bodies are fully developed are more at risk of death or terrible injury and illness in childbirth. In 2007, UNICEF reported that a girl under the age of 15 was five times more likely to die during pregnancy and childbirth than a woman in her 20s.

From the question about the knowledge of legality of the practice below are the responses:

- The data that was gathered in Mbizana Local Municipality demonstrates that most of the respondents were not aware that *ukuthwala* practice is illegal. A few participants revealed that they were aware of the illegality of the practice but they were afraid to disappoint their parents. This shows the importance of human rights education to the South African community.
- Most participants mentioned fear of embarrassing their families as one of the reasons that stopped them from reporting the practice to the police officials. Participants articulated thus:
- Participants stated that they were not aware that reporting the practice could have helped them to get out of the marriage. Other participants did not see any need to report the practice. All participants stated that they were told by their parents that *ukuthwala* was their culture and as a result they did not see any need to report the practice. They also maintained that they were forced to marry men who old enough to be their fathers.
- Mwambene and Sloth- Nielson, (2011) stipulate that it may become obvious that *ukuthwala* can serve important cultural purposes among those South Africans who live their lives according to culture. Research by Ndindwa (2014) is of the opinion that cultural rules should not cause perpetrators to inflict pain on young women, but should influence communities to behave in an orderly manner, which helps them to understand each other.
- Participants were also asked what they thought could be done to reduce/prevent the *ukuthwala* practice. The motive behind this question was to come up with a new system or method to deal or address this cultural practices of *ukuthwala*.
- The South African Criminal Justice System, according to participants, seems to be the one letting down the community. All the 15 participants were of the same view that the police should take into custody every person indicted of the ukuthwala practice.
- Other participants avowed that all those who assisted in the *ukuthwala* practice, including parents and relatives, should also be charged. Other participants were interested in being educated about how to apply for protection orders and court interdict. In order to address the issue of reporting cases, the study below outlined awareness as a way of educating community.
- Most of the participants confirmed that there was a need to be empowered about their own rights as young women and also to be educated about human rights that may include the Domestic Violence Act, No 116 of 1998.

From the above data, participants fingered awareness campaigns and community dialogues as the prevention of the *ukuthwala* practice. They stated that in order to prevent the practice of *ukuthwala*, school teachers should report to the police officials and to social workers any suspected child abuse, including *ukuthwala* practice. Participants also mentioned that teachers should teach about the illegal practices in school to help children become aware of their rights. Other participants declared that to prevent the ukuthwala practice, social workers have to investigate and report to the police any reported or suspected child abuse, including *ukuthwala* practice.

- Research by Wadesango, Rembe & Chabaya (2011) states that there is need in the legal arena for arrests of the perpetrators and advocacy to the abducted women. These may include policy formulation on the needs of young African Women and children.

XI. CONCLUSION

Violation of human rights has been noted in ukuthwala practice. Many women and children are against the practice. Parents play a major role in the practice of *ukuthwala* and remain an essential part of the *ukuthwala* practice. Lobola (bridal price) and financial gain have been identified as having been the conditions within which *ukuthwala* continues to increase. Most victims are unaware that ukuthwala practice is illegal. Those who are aware are afraid of disappointing their families. Victims do not report the occurrence of the practice because they are told that it is their culture. Ukuthwala practice is a violation of Human Rights because within these marriages victims face many challenges in other words victims of the practice are abused because they have no freedom to do as they please.

The findings of the study show that the community members are keen to help stop the practice. Women should be empowered to have skills that assist them to navigate the criminal justice system. The participants indicated that the police officials were supposed to arrest everyone participating in the process of ukuthwala. Further, social workers should provide services, support and empathy for the benefit of the survivors of *ukuthwala* while the government was encouraged to do awareness campaigns to educate the communities on the *ukuthwala* practice; a massive drive to educate people in the community. The researchers realised that the different stakeholders and the communities needed to work together to help combat the *ukuthwala* practice.

XII. RECOMMENDATIONS

Based on the findings of this study, the following recommendations are proffered for perusal:

The study recommends that the police should to take into custody every person accused of *ukuthwala* practice. It is recommended that Department of Social Development, with assistance of social workers should investigate and report to the police any reported or suspected child abuses, including the *ukuthwala* practice. Furthermore, The Department of Education, with the involvement or assistance of teachers, should also report to the Police and social workers any reported or suspected child abuse cases, including the *ukuthwala* practice. It is also recommended that teachers should teach about illegal practices so that children may be aware when their rights are violated. Communities should report violations and monitor law enforcement processes to end impunity, provide life skills education for men to obtain spouses legally, assist child orphans to ensure that they do not become prey to male predators and relatives seeking to shun responsibility or to cash in on 'lobola'. Moreover, the study also recommends that officials from the Department of Home Affairs should assist victims of *ukuthwala* to secure the necessary documents regarding their status and that of their children to facilitate access to appropriate social services and justice. The department must monitor marriage status of victims of *Ukuthwala* very often.

This study holds that persons exercising public power have a duty to prevent child abuse within their area of control. This includes traditional leaders, who have the power to help the government combat the ukuthwala practice. Traditional leaders should monitor the practice of *ukuthwala* thoroughly in order to avoid forced marriage of young girls. The government should conduct more awareness campaign programs where community members will be educated on dangers of ukuthwala practice, how to stop *ukuthwala* and who to report to when such practices occur. It is recommended that government departments must distribute pamphlets to local shops so that people can read about the illegality of the ukuthwala practice, so that it can be prevented. The study recommends support groups for women and children who have experienced the same fate in order for them to advice each other on how to manage the phenomena and how to deal with emotional strain from the abuse. Community dialogue that can educate community members should be implemented by the department of social development, the South African Police Services and other departments.

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