



**EMBARGO: FOR IMMEDIATE RELEASE**

**MEDIA STATEMENT: SA LAW REFORM COMMISSION: RELEASE OF REPORT ON PROJECT 138: THE PACTICE OF UKUTHWALA**

The SA Law Reform Commission (Commission) is a statutory body that is empowered in terms of section 4 of the South African Law Reform Commission Act 19 of 1973 to conduct research into all branches of the law of South Africa; to study and investigate such laws and to make recommendations for the development, improvement, modernization or reform thereof. The research and support component of the Commission is located within the Secretariat, a chief directorate falling under the branch: Legislative Development: Department of Justice and Constitutional Development.

In line with its powers, the Commission has, over the years, been engaged in the investigation of the practice of *ukuthwala*, its impact on the girl-child, the appropriateness and adequacy of the current laws on *ukuthwala*, and whether or not the laws uphold the human rights of the girl-child (taking into consideration the principle of “the best interest of the child”). *Ukuthwala*<sup>1</sup> involves the act of taking a marriage partner in unconventional ways, seemingly forceful ways, sometimes with the sanction of certain adults who have a stake in the possibility of formalising a resulting partnership. It is practised among indigenous African communities in Southern Africa, in various mutations, within the context of many other customary practices related to marriage. Many of these practices are aimed at satisfying the traditional standards or norms relating to marriage, and sometimes accommodate unconventional ways of doing so. Although often referred to as custom, tradition or even culture, *ukuthwala* can actually be seen as a strategy to counter the influence of extreme authority. Notwithstanding the logic of *ukuthwala* in its proper context, it is clear that there is abuse of this practice.

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<sup>1</sup>Also called *shobedisa* in Sesotho; *ukweba umakoti* in isiNdebele; *ukuthwala* in isiXhosa; *ukuthwala* in isiZulu; *tjhabisa* in sePedi; *tlhakisa* or *tlhaka* in Xitsonga/Shangaan; and *taha* or *tahisa* in Tshivenda

From the outset then, it became clear to the Commission that in addressing the abuse of this practice, the enactment of a new statute is required to deal specifically with the issue of forced marriage so as to send a powerful symbolic message to perpetrators and ordinary South Africans alike. The seriousness of problems associated with distorted *ukuthwala* is of such a magnitude that a clear law is necessary.

Following the Commission's investigation; the **Report on Project 138: The Practice of *Ukuthwala*** is released for general information. The **Report** is supported by a draft Prohibition of Forced Marriage and Regulation of Related Matters Bill and contains final recommendations for law reform.

### **Key findings and recommendations**

The investigation focused mainly on the distortion of the practice of *ukuthwala*. The main recommendation is the enactment of a new legislation called the Prohibition of Forced Marriage and Regulation of Related Matters Bill, which can be summarised as follows:

- 1 The creation of the following offences: the offences of forced marriage; child marriage. It is further recommended that it should be a criminal offence for anyone to attempt; conspire with any other person; or aid, abet, induce, incite, instigate, instruct, command, counsel or procure another person to enter into a forced marriage or child marriage.
- 2 Victims of forced marriage and child marriage or any person may apply for a forced marriage protection order which is a remedy that may contain such prohibitions, restrictions, requirements or other terms that the court may consider appropriate for the purposes of granting the order.
- 3 A court may, in addition to any punishment which it may impose in respect of any offence provided for in the Bill, order a person convicted of such offence to pay appropriate compensation to the victim of the offence for any damages suffered by the victim.
- 4 Victims of forced marriage and child marriage be afforded with a suitable accommodation and receive treatment until such time that they are fit and ready to face the world.
- 5 The Minister of Justice and Correctional Services make regulations for –
  - (a) the procedure to be followed in obtaining a forced Marriage Protection Order;

- (b) the procedure that must be followed when seeking an order for declaration of invalidity of forced marriage or child marriage;
- (c) national guidelines, instructions and training programmes that must be provided to various stakeholders to ensure effective implementation if the Bill.
- (d) the nature of facilities, conditions and circumstances under which victims of child marriage and forced marriage must be treated; and
- (e) the norms and standards of any place of safety or shelter.

6 The Report further recommends that public awareness programmes or other measures for the prevention of forced marriage and child marriage should be established.

The **Report** is available on the Commission website: <http://salawreform.justice.gov.za>. Printed copies can also be obtained on request, free of charge, and in this regard, Mr Jacob Kabini is contactable at [Jakabini@justice.gov.za](mailto:Jakabini@justice.gov.za) or 012 622 6346.

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**ISSUED BY THE SECRETARY: SA LAW REFORM COMMISSION: CENTURION  
DATE:**