

FOR IMMEDIATE RELEASES

MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION

PROJECT 138: THE PRACTICE OF *UKUTHWALA*

The practice of *ukuthwala* has been a burning issue for some time, reaching its climax in March 2009 when the SABC and eTV evening television news reported on the prevalence of “forced marriages” and the “sale” of young girls into marriages with older men. The practice reportedly occurred mainly in Eastern Pondoland in Lusikisiki, Flagstaff, Bizana and other areas in the Eastern Cape Province. The news coverage also revealed that:

- girls between the ages of 12 and 15 years are subjected to *ukuthwala*;
- such girls are at times forced to marry men who are HIV positive;
- some girls from the areas mentioned above were hiding in Gauteng and KwaZulu-Natal in fear of becoming victims of the practice;
- the practice of *ukuthwala* was defended as being a traditional cultural practice, with adherents claiming that the tradition allows a man to abduct a woman whom he wishes to marry, even if he has not proposed love; and
- such abductions mainly happen when young girls are on their way to school or are fetching water or wood.

The Department of Justice and Constitutional Development followed an outcry by requesting the SALRC to include in its programme an investigation into the practice of *ukuthwala*. The SALRC carried the mandate by developing a discussion paper on the practice of *ukuthwala* with the aim of developing customary law to promote the spirit, purport and objects of the Bill of Rights as provided for in section 39 of the Constitution.

The Commission has approved the publication of a discussion paper on the practice of *ukuthwala*, for public comment. The primary aim of Project 138 is to consider the need for law reform in relation to the practice of *ukuthwala*, and to identify alternative policy and legislative responses that might regulate *ukuthwala*. The secondary aim is to review the legislative framework which currently regulates customary marriages and to enhance its alignment with international human rights obligations for the country. Under South African

legislation, marriage has to be entered with free and full consent of the parties.

The aim of the discussion paper is to elicit comments, which will assist the Commission in preparing the draft Bill and report. In order to get comments from parties directly affected by the practice, the SALRC will conduct workshops in the provinces with specific focus in Eastern Cape, KwaZulu Natal because of the prevalence of *ukuthwala* in those areas.

Workshops are planned to take place between November 2014 and January 2015. An invitation to the workshop and the dates thereof will be posted on the SALRC website and parties are requested to complete such and return to the SALRC. The SALRC is going to work in conjunction with non-governmental and community based organisations advocating women and children's rights. There will also be radio and television interviews discussing the subject where listeners and viewers can give comments. There will also be questionnaires to be distributed in the workshops and can also be obtainable on the SALRC website.

The release of the discussion paper on the practice of *ukuthwala* will be followed by a draft Bill and / or proposed non-legislative measures to regulate the practice of *ukuthwala*.

Once approved by the Commission, the draft Bill will be published for comments. Comments on the discussion paper and the draft Bill will be incorporated into a report on the practice of *ukuthwala*. This report will contain the final recommendations of the Commission, accompanied by legislative proposals pertaining to the practice of *ukuthwala*. The report and draft Bill, once approved by the Commission, will be handed to the Minister for Justice and Correctional Services for consideration.

Copies of the discussion paper are available on the SALRC's website. Further copies are available free of charge from the South African Law Reform Commission (tel: 012 622 6300).

The closing date for comments on this discussion paper is **31 October 2014**. Comments and submissions are invited from any interested person or organisation, and should be addressed to:

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ISSUED BY THE SECRETARY, SA LAW REFORM COMMISSION

DATE: 01 SEPTEMBER 2014

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