



**UNIVERSITY OFTM
KWAZULU-NATAL**

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An exploratory study on ukuthwala and crime: A perspective of inqaba kamvelinqangi cultural organization

By

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A dissertation submitted in fulfilment of the requirements for the degree of

Master of Social Science

In Criminology and Forensic Studies

Faculty of Humanities, Development and Human Sciences

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November 2021

Declaration

This hereby confirms that this dissertation is my own work, it has not been submitted to any other institution. The works of others have been cited accordingly and a comprehensive list of such references has been provided.

Signature of candidate

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Abstract

Ukuthwala evokes emotive responses, with those who either support or oppose the practice. Ukuthwala has also resulted in public debate due to abductions which are viewed as against the young women's consent, but not much has been done to investigate the practice of ukuthwala among the Zulus of KwaZulu Natal (KZN) in post-1994 South Africa. Therefore, this study investigates the original or real meaning of the culture of ukuthwala in the Zulu and its linkage to crime. The study is motivated by the misunderstandings or misinterpretations people have about the culture of ukuthwala. It has been labeled as abusive and as a crime by certain scholars while it is just a cultural practice that was meant to solve a problem between a young man and a young woman who were in a love relationship and intended to marry, but were faced with obstacles to realize their dream (Nyembezi & Nxumalo, 1995). It is a qualitative study.

This study highlights the ongoing debate as to whether ukuthwala may be practiced as a means to open up the marriage negotiation process, and concludes that both men and women understand ukuthwala as a Zulu custom which opens up marriage negotiation process. Accordingly, ukuthwala in this traditional form is understood as not violating the rights of young women and children. This study encountered the challenge that the South African laws fail to ensure that the abuse of the culture of ukuthwala is firstly eradicated and secondly that there are criminal sanctions for the violation.

Ukuthwala is a Zulu custom that opens up a space for women's agency where they can decide to marry a man they choose and end the relationship they do not want. In this way the women are able to command the men whom they love, and who have resources and therefore are also powerful to act in a way the woman wants with regard to initiating negotiations for the marriage. However, it can also be viewed as a Zulu custom carried out by powerful men who have resources and therefore can pay ilobolo (bride wealth), as a power display directed at other men who happen to be their competitors.

The study also conceives of ukuthwala as a cultural practice, and as a social construction that is gendered; it adopts zero tolerance to the abduction of young women. The study suggests that if all stakeholders work together through the process of collaboration, interventions are possible and criminals can be sanctioned. The study recommends further research of issues

pertaining to culture, sex, sexuality, gender, masculinities and ukuthwala, in order to support an intervention into the socialization of boys, to help them in making informed decisions before engaging in ukuthwala.

Acknowledgements

- I would firstly like to thank the Lord my God for granting me the strength and all support structures that have led to the completion of this Master's Thesis. I am forever grateful Lord.
- My heart felt gratitude to the following people:
 - To the selected participants for this study who willingly agreed to be interviewed, without their cooperation it would have been impossible to complete this study.
 - To all my friends who have been very patient with me and who were always willing and able to assist whenever I requested their assistance.
 - The University of KwaZulu Natal for accepting me in this University and providing fee remission for the duration of the year.
 - The Criminology Department for constructive criticism provided to me at the colloquium.
 - My supervisor Dr Mkhize for going above and beyond in assisting me by providing support and productive supervision from day one until the completion of my study.

Dedication

This dissertation is dedicated to my late father Ben Hlophe who believed in me since I was growing up, always supported me in every way he could, assisted me with my school work and he always wished that I would study until I become something big in life. How he always encouraged me, loved me and supported me has brought me where I am today. This one is for you Thumbeza ka Myeni, ntombezenia ngonyezi abafokazana benda ngobumnyama!!!!

Table of contents

1. Declaration.....	P2
2. Abstract.....	P3
3. Acknowledgements.....	P4
4. Dedication.....	P5
5. Chapter	
1.....	P9
5.1 Introduction.....	P9
5.2 Background of the study.....	P10
5.3 Rationale of the study.....	P10
5.4 Problem statement.....	P10
5.5 Objectives of the study.....	P11
5.6 Key research questions.....	P12
5.7 Significance of the study.....	P12
5.8 Conceptualization of the relevant concepts.....	P12
(a) Ukuthwala.....	P12
(b) Culture.....	P13
(c) Tradition.....	P13
(d) Human right.....	P13
5.9 Motivation.....	P13
5.10 Aim.....	P14
5.11 Structure of the dissertation.....	P14
5.12 Summary.....	P15
6. Chapter 2.....	P16
6.1 Introduction.....	P16
6.2 Ukuthwala in context.....	P17
(i) Historical context of the culture of ukuthwala.....	P17
(ii) The transition of ukuthwala in modern day society.....	P20
(iii) The effect of ukuthwala practice on both man and woman involved.....	P21
(iv) The effect of ukuthwala in the community.....	P22
(v) Ukuthwala as a custom.....	P22

(vi)	The global perspective of ukuthwala.....	P24
(vii)	The African or Sub-saharan perspective of ukuthwala.....	P25
(viii)	The South African perspective of ukuthwala.....	P26
6.3	Negative views on the culture of ukuthwala.....	P27
6.4	Media reports and various views about ukuthwala.....	P30
6.5	Global research reports about ukuthwala.....	P32
6.6	Research reports about ukuthwala in Africa.....	P36
6.7	Ukuthwala in the Xhosa context.....	P39
6.8	Ukuthwala in the Zulu context.....	P43
6.9	Legislation and human rights laws on ukuthwala.....	P43
(i)	Universal declaration of human rights, 1948.....	P43
(ii)	Convention on consent to marriage, minimum age for marriage and registration of marriages, 1964.....	P44
(iii)	African charter on the rights and welfare of the child.....	P44
(iv)	Customary marriages Act.....	P44
6.10	Summary.....	P45
7.	Chapter 3.....	P47
7.1	Introduction.....	P47
(i)	Labelling theory.....	P47
(ii)	Cultural theory.....	P51
7.2	Summary.....	P55
8.	Chapter 4.....	P56
8.1	Introduction.....	P56
8.2	Location of the study.....	P56
8.3	Research design.....	P56
(i)	Case study.....	P57
8.4	Research approach.....	P58
8.5	Sampling.....	P59
8.6	Data collection.....	P60
8.7	Data analysis.....	P61
8.8	Ethical consideration.....	P62
8.9	Summary.....	P63
9.	Chapter 5.....	P64
9.1	Introduction.....	P64

9.2	Definition of the culture of ukuthwala.....	P64
9.3	The idea behind the formation of the culture of ukuthwala.....	P67
9.4	Ukuthwala as a custom.....	P69
9.5	Causes of ukuthwala.....	P71
9.6	Difference of ukuthwala amongst different tribes.....	P73
9.7	How the culture of ukuthwala is done.....	P75
9.8	Is the culture of ukuthwala a crime.....	P79
9.9	Should the culture of ukuthwala continue to be practiced.....	P80
9.10	Measures that can be done to keep the practice pure and in its original state.....	P81
9.11	Summary.....	P83
10.	Chapter 6.....	P84
10.1	Introduction.....	P84
10.2	General conclusion.....	P84
(i)	The Inqaba kaMvelinqangi organization members understanding of the culture of ukuthwala.....	P84
(ii)	The process of ukuthwala according to the Inqaba kaMvelinqangi organization members.....	P84
(iii)	The traditional perspective on the link between ukuthwala and crime.....	P85
(iv)	The negative reports about the culture of ukuthwala and its effect to the practice and people practicing it.....	P85
(v)	The causes of the negativity around the culture of ukuthwala.....	P85
(vi)	Implementations that can be done to keep the cultures pure and in its original state.....	P8
	5	
10.3	Recommendations.....	P86
10.4	Summary.....	P86
11	References.....	P87

Chapter 1

Introduction

1.1 Introduction

South Africa is rich in cultural diversity and a democratic country, whereby culture plays an essence role in South African beliefs and traditions. Ukuthwala (pride abduction) is a form of traditional practice that is within the cultures in South Africa and commonly dominated in rural areas as a form of practice that necessitate marriages between women and men. The word ukuthwala is to carry and considered as cultural legitimated kidnapping of young girls where by a man will powerfully force a woman to his home in the initiation of marriage (Makho, 2009). Ukuthwala (bride abduction) prevail many different definitions that elucidate ukuthwala as a form of forced marriage that involves dehumanizing of human's rights and dignity (Maluleke, 2009). However, the practice of ukuthwala has changed from its original form and now leads to the constant violation of children's human rights (Kugara, Mathidze and Mdhuli 2017)

Ukuthwala is carrying of a young woman away to a young man's home with the aim of marrying her. This practice is sometimes referred to as ukuthwala intombi. Dent and Nyembezi (2009, p.1) refer to this practice as ukuthwala ngenkani (abduction). Ukuthwala among the Zulu people dates back to pre-contact times, or before the white man encountered them (Bryant, 1949; Msimang, 1991; Nyembezi & Nxumalo, 1995). Ukuthwala is a Zulu practice that opens up marriage negotiation process when it is difficult to have these started. Msimang (1991) explains the process of ukuthwala as it was taking place in traditional Zulu communities. Places where ukuthwala takes place and the times of occurrences vary, but it usually happens when the woman is not at home (for example, during traditional ceremonies, or when young women go to fetch water or firewood). It has been observed that whilst participating in cultural activities, people often go against the enshrined human rights embraced in national laws and international instruments (Kugara, Mathidze and Mdhuli 2017).

This study explores the original meaning of the culture of ukuthwala from the perspective of a cultural group called Inqaba kaMvelinqangi and aim to determine the link between ukuthwala and crime from a traditional perspective.

1.2 Background of the study

In South Africa, the custom originated from the Xhosa people, though the practice has expanded into different ethnic groups (Condit, 2011). The researcher will specifically look at ukuthwala and its linkage to crime from a Zulu cultural and traditional perspective.

The practice of ukuthwala occurs mainly in rural parts of South Africa, in particular the Eastern Cape and KwaZulu-Natal. Among the Xhosa and Zulu people, ukuthwala, or bride abduction, was once an acceptable way for two young people in love to get married when their families opposed the match (Dixon, 2012). Ukuthwala has been abused, however, to victimize isolated rural women and enrich male relatives (Dixon, 2012).

Ukuthwala practice has been viewed from several different perspectives by various people, institutions and bodies. Ukuthwala has also been described as a mock abduction or uneven proposal meant at achieving a customary marriage (Bennett, 2004). Ukuthwala is a customary practice that opens up marriage negotiation processes, and it means to carry away a woman (Msimang, 1991, Nyembezi and Nxumalo, 1995). Many researchers (Bennett, 2004) of ukuthwala have written on the notion of painting the practice as an abuse against human rights. Children's rights are protected at both international and regional levels. The international and regional instruments alike urge state parties to end harmful cultural practices (Centre for Human Rights 2018).

1.3 Rationale of the study

The reasons for undertaking the study were the following:

- Few researchers have focused on the original or the real meaning of the culture of ukuthwala and how does it link to crime.
- There is so much written work that labels the culture of ukuthwala as an abusive practice and as an act that should be abolished.
- The impact these negative labels have on the people who actually still practice the culture of ukuthwala.
- A study of this nature and its resultant findings and recommendations will make a positive contribution to the people who still believe in culture and cultural practice

1.4 Problem Statement

The practice of ukuthwala has of late regularly been in the news. This has spawned debates between traditionalists and modernists on various aspects related to the practice. It is apparent that the meanings people make about ukuthwala vary. Most importantly, it is imperative to distinguish the custom of ukuthwala from the abuse of the custom before one can make a judgement about the practice. Media reports show that some people are against ukuthwala and seek help from the law; this is a negative view of ukuthwala. On the other hand, traditional views, for example those of Msimang (1991), Nyembezi (1992), Nyembezi and Nxumalo (1995) and Vilakazi (1962), of ukuthwala are positive, where the practice is viewed as a custom.

Some people see the law as a solution for the practice of ukuthwala, and the moves by the South African Law Reform Commission aim to outlaw the practice. Yet embedded in the law are subjective meanings that people make, because people also make the law. There is a danger of the law ‘outlawing’ cultural practices without fully understanding them, or the law promoting a particular perspective about a cultural practice depending on whose subjective meanings become dominant in the making of it. In addition, while some people see the law as a solution, others in communities do not see the relevance of the law in this cultural practice. Hence the law might not be a solution where people regard ukuthwala as a cultural practice by consenting partners.

Due to these debates the researcher saw the need to conduct the study through the perceptions of a cultural group as these are people who are still holding on to their culture. These people live and practice their culture.

Many researchers (Bennett, 2004), (Diala and Diala, 2017) of ukuthwala have written on the notion of painting the practice as an abuse against human rights. Therefore, there is need for an in-depth understanding of ukuthwala and how it was done in the mechanical society as compared to the practice in the organic society.

1.5 Objectives of the study

The objectives of this are to:

- To explore the real and original meaning of ukuthwala
- To understand the process of ukuthwala
- To determine the traditional perspective on the link between ukuthwala and crime.

1.6 Key research questions

The questions that are driving this research are:

- What is the real or original meaning of ukuthwala?
- How is the culture of ukuthwala done?
- What is the traditional perspective on the link between ukuthwala and crime?

1.7 Significance of the study

This study is important because it will contribute to the body of knowledge on the issue of the culture of ukuthwala. It will give people a better understanding as to what exactly is the culture of ukuthwala, how was it originated and how it is done in a correct and acceptable way. It will also determine the link between the culture of ukuthwala and crime.

1.8 Conceptualization of relevant concepts

1.8.1 *Ukuthwala*

Different definitions of the concept of ukuthwala prevail. For example, the word ukuthwala means to carry something on your head, which can be wood, luggage, a bucket of water, a hat, iduku (a headdress), and so on. Sometimes when the word ukuthwala is used with another noun, it forms a blend. When this happens, its literal meaning (to carry) becomes subsumed. This usually happens in expressions or proverbial sayings. Dent and Nyembezi (2009, p. 500) give several examples of such expressions; for instance, ukuthwala amaphiko (to show off); ukuthwala ikhanda (to be rude); and ukuthwala ilunda (to be proud). When the word ukuthwala changes its form, the meaning can also change. For example, ukuzithwala, which literally means to carry oneself, functionally means to be pregnant or to be arrogant.

The second definition of ukuthwala is a practice of getting supernatural powers that enable one to be rich or powerful or have more dignity. In this practice a person (usually male) goes to a traditional healer, who will give him/her medication and let him/her undergo some rituals in order to acquire the dignity or riches she/ he wants. People who usually engage in this practice are those who want to be rich or who want to hold powerful positions in communities.

The third definition of ukuthwala is that of carrying a young woman away to a young man's home with the aim of marrying her. This practice is sometimes referred to as ukuthwala intombi. Dent and Nyembezi (2009, p.1) refer to this practice as ukuthwala ngenkani

(abduction). This dissertation deals with this concept of ukuthwala, which means physically carrying a young woman to a young man's home with the aim of marrying her.

1.8.2 *Culture*

Culture is a set of ideas, customs and social behaviors of a particular people or society, it can mean the forms of traditional behavior which are traits of a given society, or of a group of societies, or of a certain race, or of certain area, or of a certain period of time. Culture refers to studied, collected experience. A culture refers to those socially conveyed patterns for behavior characteristic of a social group (Keesing, 2008:22-).

1.8.3 *Tradition*

The transmission of customs or beliefs from generation to generation, or the fact of being passed on in this way (Oxford dictionary).

A tradition is a belief or behavior passed down within a group or society with symbolic meaning or special significance with origins in the past (Green, 1997). Common examples include holidays or impractical but socially meaningful clothes (like lawyers' wigs or military officers' spurs), but the idea has also been applied to social norms such as greetings. Traditions can persist and evolve for thousands of years—the word tradition itself derives from the Latin trader literally meaning to transmit, to hand over, to give for safekeeping. While it is commonly assumed that traditions have ancient history, many traditions have been invented on purpose, whether that be political or cultural, over short periods of time. Various academic disciplines also use the word in a variety of ways.

1.8.4 *Human right*

Human rights are the basic rights a person is born with. It is the general values of society that have been protected in the Bill of Rights contained in the constitution. Human rights are moral principles or norms that describe certain standards of human behavior and therefore protected as legal right in the Bill of Rights the (The South African Law Reforms, 2012).

1.9 **Motivation**

The study is motivated by the misunderstandings or misinterpretations people have about the culture of ukuthwala. It has been labeled as abusive and as a crime by certain scholars while it is just a cultural practice that was meant to solve a problem between a young man and a young

woman who were in a love relationship and intended to marry, but were faced with obstacles to realize their dream (Nyembezi & Nxumalo, 1995).

1.10 Aim

This study aims to explore the real meaning of ukuthwala from the perspective of a cultural group called Inqaba kaMvelinqangi and to determine the link between ukuthwala and crime from a traditional perspective.

1.11 Structure of the Dissertation

CHAPTER 1: This chapter is the blue print of the study, it informs the reader about what is to be encountered within take. It takes one through the aims of the dissertation, the objectives, the problem statements as well as the main questions of the study.

CHAPTER 2: This is the section that discusses in detail the culture of ukuthwala and the issues around it, the main objectives are addressed with supporting literature.

CHAPTER 3: This is the theoretical framework that is used to substantiate the research. Here, the researcher utilized the labelling theory as well as the cultural theory. Theory forms foundation to any academic deductions hence this section links literature with a theoretical framework that guides it.

CHAPTER 4: This section is a description of the academic technicalities that were applied in obtaining data for the study. It describes the research design as well as the methods that were used to conduct this research. This chapter explain the sample size, data collection technics, study area as well as the method of analysis. Ethical issues as well as limitations to the study are discussed in this section.

CHAPTER 5: This is the sections that presents and analyses the data that was obtained during interviews. Raw data is presented and analyzed, linking it with existing literature and theoretical framework. This section reflects where society stands regarding the culture of ukuthwala. The main research questions are addressed in this section through empirical data.

CHAPTER 6: This is the recommendations section. It provides the reader with possible solution to the issue being researched, these stem from both the participants and the researcher. This section is also a conclusion and sum up of the dissertation.

1.12 **Summary**

A brief outline of the study has been depicted in this section. The aims, objective and background are to illuminate to the reader what to expect within the paper. Theoretical justifications and Methodological choices and considerations are discussed in-depth within the dissertation.

Chapter 2

Literature Review

2.1 Introduction

Every societal group has specific traditional cultural practices and beliefs, some which are beneficial to the society and others which may be harmful to individuals and the society. Machaka (2018) states that Before customary marriages were recognized in South Africa the Cape Colonial Government prohibited the practice of customary marriage among African people. This government was of the view that customary marriages contained an element of ukuthwala which the government believed amounted to the crime of abduction. However, despite the criminalization, ukuthwala was and is still practiced in some of the communities in South Africa, in particular Xhosa communities Machaka (2018). In recent years, the practice of ukuthwala has come to be viewed as a form of gender-based violence or harmful cultural practice, it is nothing more than rape and forced child marriage (Scheepers, 2016)

Cooper (1998) state that one chief purpose of the literature review is to essentially describe, summarize, clarify and or assimilate the content of primary reports. The main purpose of this chapter is to provide a review of previous research that are relevant to this current study with the aim to educate people on the culture of ukuthwala and how it is linked to crime. Literature review is a way of building on the research of others, it helps to identify and strengthen the hypothesis or research questions (Ndindwa, 2014).

A researcher needs to understand what has been done before and what are the strength and weakness of other existing studies were and what are these strengths and weakness might mean (Boote & Baile,2005). This literature assists in terms of filling in the missing gaps of research study and provide a productive knowledge about the phenomena of the study where it reacts on strengthening the hypothesis provided by the study. According to Leedy (1989) the function of literature review is to look at the literature in an area, not necessary identical with, but collected to your own area of study.

This chapter therefore gives a description of the historical development of the culture of ukuthwala with the support of various sources of information. In addition, it also looks at the existence of ukuthwala but not only in South Africa but by exploring on the global view perspective of the culture of ukuthwala, whereby the researcher looks at the countries like UK that are still considering this practice, the researcher also deeply looks at the African

perspective usually addressed as the Sub Saharan and lastly briefly explore on the South African perspective on the culture of ukuthwala.

2.2 Ukuthwala in context

2.2.1 *Historical context of the culture of ukuthwala*

Ukuthwala in its traditional form is collusive strategy by the willing lovers to secure marriage negotiations. Mwambene (2011) state that ukuthwala has been described as innocuous, romantic and charming age-old custom. In this form, the word ukuthwala has a range of different meanings that are the description of isiZulu. According to (Wadesango, Rembe & Chabanga, 2011:121) in South Africa the custom originated from the Xhosas, however this practice has influenced other ethnic groups that include Zulu culture. Ukuthwala is a custom and customs are legal, as a result the term *yisiko* (customary) or phrase *yisiko lethu* it is our culture was foregrounded as means of explaining ukuthwala by these support of the practice (Seleona,2005). Ukuthwala in its traditional form played an important role in the traditional courting process, the community would intervene when the couple involved could not make progress with their relationship and the practice involved the intervention of both families and the community members together with the chief leaders of that village (Van der watt & Ovens, 2012).

Ukuthwala was practiced under the spirit of *ubuntu*, it is important to understand the foundation and to identify the spirit of *ubuntu* behind the practice (van der watt& Ovens, 2012). Nkosi& Wasserman, (2014) in empathy with the upright of the perhaps shy or uncertain suitor the community would take the initiative and kidnap the girl. Once the girl has been taken to a man's village her guardian or his messenger will then follow up on the same day and possibly take her back if one or more cattle are not handed to him as earnest promise for a future marriage (Bekker etal. 2006). There was a certain amendment rules that were followed and respected, everything was done in some formal traditional way and cattle were a sign of establishing ties and forming kinship between both families. A man who seduces the girls required to pay a seduction beast addition to the number of *ilobolo* cattle agreed upon and in addition to the ukuthwala beast where no marriages has been proposed (Kayana & Bekker, 2007). While traditionally the girl or woman would consent to the abduction, recently men are now abducting young girls and forcing them into marriage without their consent, ukuthwala is now used by older men to target and abuse vulnerable girls as young as 11 years of age (Scheepers, 2016).

Other safeguards that were put in place for protection of the practice and the girl involved were that the parents were immediately noticed after the thwala had occurred, if the thwala had not worked, a beast was supposed to be paid and finally if a girl fell pregnant consequent upon her seduction, then further additional penalties were also supposed to be paid (Wasesango, Rembe & Chabanga, 2011). During the negotiations process of ukuthwala kwentombi (abduction of a girl) the couple was restricted from engaging in sexual intercourse until the negotiations were finalized. Bekker (2005) cited in Koyana & Bekker, (2007:139) described the practice of ukuthwala as a more romantic procedure that was sometimes resorted to when an obstacle to marriage, not necessarily imposed by the girl's guardian, presented itself. The girl was generally a willing party to the practice and therefore the practice of ukuthwala was not necessarily synonymous with a forced marriage (Koyana & Bekker, 2007: 140). Msimang, (1991: 228) state that this is an indication that the man who had thwala the young women meant no harm, in other words ukuthwala was sort of game between two people that meant no harm but was committed out of love. The condoned practice of ukuthwala was targeted at girls or women who were of a marriageable age (Maluleka, 2009: 16).

Unlike today young girls between the age of 12 years are being forcefully abducted and forced to marry, however, over time the practice has mutated and taken on pernicious form in flagrant disregard of fundamental rights of the girl, in what the court termed ukuthwala in its aberrant form young women or girls are abducted and subjected to violence including sexual abuse and assault to coerce them into submission (De Rebus, 2015). Some authors have described ukuthwala as the act of stealing the bride, ukuthwala has also been described as a mock abduction or irregular proposal aimed at achieving a customary marriage (Bennetts, 2004). Ukuthwala may not be viewed as a formal marriage between two people or an engagement since it takes away freedom of speech or violate the rights of women because it takes place without the rightful consent of the girl. The cultural practice of ukuthwala is one of the forms of exploitation in the commission of the crime of trafficking. This practice is usually classified as exploitation, because the child is forced into a marriage, mostly with an adult.³⁴⁴ A girl child is regarded as a commodity which may be sold to any interested party in order to establish a family.³⁴⁵ Such children are deprived of their rights, which include the development of their personalities (Božić 2017).

The current practice of ukuthwala show that the practice has taken the form of a 'forced marriage' and is no longer merely a preliminary process undertaken in the lead-up to a customary marriage (Mwambene & Nielsen, 2011). It often occurs with the agreement of the

girl's parents and family, who paid a fee, improperly described as 'lobola' for permission to abduct their daughter. This is often the case where the family is trapped in a cycle of poverty and poor socio-economic circumstances. It is endemic in certain rural villages in South Africa. (De Rebus, 2015). For many other reasons ukuthwala is now viewed as a strategic act which allows families to reduce their economic burdens or poverty through selling off their daughters, as a way that symbolize this practice in today's world. This practice therefore is still common to those families who are living under impoverished situations. It is obvious that ukuthwala can serve important cultural purposes in those South African communities who live their lives according to cultural norms (Mwambene& Nielsen, 2011). Ukuthwala practice is a cultural custom that became part of the South Africa ethnicity groups in the early generations and it is still preserved and commonly used in other communities. Ndindwa, (2015) in Libode, some still hold such strong but negative attitudes towards young girls who try to free themselves from a practice that degrades their dignity. Ukuthwala however took place without the girl's consent, although today ukuthwala in South Africa has received negative publicity recently with numerous complaints being recorded (Mwambene& Nielsen, 2011). This practice violate the rights of women as it promote gender inequality patriarchal system, children between the age of 18 and younger are called out to marry and they are taught to limit themselves and bow down to men, young girls are forced to marry with strangers, older men old enough to be their grandfathers.

South Africa is rich in cultural diversity and a democratic country, whereby culture plays an essence role in South African beliefs and traditions. Ukuthwala culture is a form of traditional practice that is within the cultures in South Africa and commonly dominated in rural areas as a form of practice that necessitate marriages between men and women.

Ukuthwala is a Zulu practice that opens up marriage negotiation process when it is difficult to have these started. Msimang (1991) explains the process of ukuthwala as it was taking place in traditional Zulu communities. He states that a young man and his "sib-mates" carried the woman to the young man's home. On arrival, they would dress the young woman in an isidwaba (leather skirt). Professor Hulumende Maphalala of the University of Zululand says a thwalwa'd woman must not cry, because if she does, there will be izimpi zezigodi (faction fights). After a young woman was thwalwa'd, a message through abakhongi (marriage negotiators) was sent to her parents telling them that funelani nganeno (search from this side for your missing daughter), which is an expression that simply informs them about where she was. In this case, ilobolo (bride price) negotiations resume and the marriage

negotiation process becomes open. This is an indication that the man who thwala'd the young female did not mean harm. Places where ukuthwala takes place and the times of occurrences vary, but it usually happens when the woman is not at home (for example, during traditional ceremonies, or when young women go to fetch water or firewood).

2.2.2 The transition of ukuthwala in modern day society

Ukuthwala is a custom but because it is a modern society there is a lot of bad things that are involved in the practice which has impacted on the value and purpose of the practice. The concept of ukuthwala is a custom involving legal abduction of the bride to be (Kaschula at. el, 2013). Thus, due to the economic and political transition in the modern-day society this also had an impact on how culture is viewed, and this practice has changed over time. Ukuthwala practice is now associated with criminal activity and it is no longer respected as it used to be in the olden days. Girls live in fear of being abducted and married. Makaye (2011) state that young girls are not feeling safe in their communities since they are targeted by older men in their communities who are harshly violent and in favor of not respecting women as individuals.

Ukuthwala particularly in the Eastern Cape increasingly involves the kidnapping, raping and forced marriages of minor girls as young as twelve years old (Makaye, 2011). People uses force to marry and therefore they are now taken away without their parent's agreements or negotiating, meanwhile they also force them to have sex with them and all of this is done before the man pays *lobola* to the girl's family. People have lost the sense of self-morality, they have become monsters who are possessive on neglecting the rights of women and children. Back then ukuthwala was not about kidnapping, raping and violating of women's rights but everything was done formally using traditions and following protocols. Once the girl arrives at the young man's house, word is sent to her parents of the abducted girl together with the payment of an initial cow to indicate that ukuthwala had in fact taken place (Wood, 2005:314). People did not become sexual active whilst in the process of ukuthwala, they engaged in sexual activity when the man has payed lobola and done all the rituals to the girl's family unlike today many girls who become victims of ukuthwala are raped during the process and without the consent of the girl's parents and therefore that is a criminal act.

Bride abduction is coupled with sexual and domestic violence and the practice has gained the negative eye to the media where by people engage in this practice to uplift their economy status, families sell their daughters over money with an aim of reducing poverty in their families. The custom of bridal abduction ukuthwala was meant to solve problems between young man and

woman who were in a love relationship and intended to marry but were faced with obstacles to realize their dream (Nyembezi & Nxumalo, 1995: 115). One of the obstacle that the parents were not ready about was to involve their daughter into marriage but because the men showed the necessity of loving their daughter and did everything to show how willing he is to marry their daughter. Ukuthwala in the modern day allows one to abduct a woman without the consent of the family and of the girl and most of all force is used including physical abuse with brutality.

In the practice of the custom of bride abduction ukuthwala was not regarded as criminal offence because the young woman was not harmed in any way and often she would have colluded with the young man in that situation (Wood,2014). The practice has changed, the practice was denounced as an extreme fundamental violation of women and girls most basic rights including rights to dignity, equality, life freedom and security of the person (De Rebus, 2011). Violence against women intersects with other forms of violence including oppression and discrimination that manifest in politically, economically, social and culturally that also include gender inequality with patriarchal relations. Ukuthwala expose women and children to gender violence and domestic violence, over 30 young girls between the ages of 10 years to 14 years in KwaZulu-Natal are abducted every month and married through this practice (Nicole, 2011:1). During the process, they are beaten, and they become object of violence and very often raped to prevent their parents from initiating on allowing a girl to return home. Ukuthwala has been a radical shift whereby girls as 10 years are forced to marry older men and it now perpetuate the cycle of gender inequality and neglect consent and freedom of young girls.

2.2.3 The effect of Ukuthwala practice on both man and woman involved

The ukuthwala practice was meant to solve a problem between a young man and a young woman who were in a love relationship and intended to marry, but were faced with obstacles to realize their dream (Nyembezi & Nxumalo, 1995).The obstacles could be that the young woman's parents were not ready to let their daughter marry. It could also happen when a young woman who is about to marry someone met another young man that she loved more than the one who had paid *ilobolo* and was about to marry her. In this situation a plan would be made to break the love relationship with the man who has paid *ilobolo* by arranging that the woman is *thwalwa'd*. Those who have *thwala'd* the young woman would send a message on the following day to the young woman's parents to tell them to *funela nganeno*, which means search from this side. This is a cultural way of reporting to the young woman's parents about the whereabouts of their daughter. The family who had *thwala'd*

the young woman would then immediately pay *ilobolo* to her parents. This was done immediately so that the young woman's parents would be able to return the *ilobolo* that was paid by the first lover back to his family (Nyembezi & Nxumalo, 1995, p.115). The young man's family who had *thwala'd* the woman takes care of the woman. No sexual intercourse happens between the young man and woman until the marriage negotiations are finalized and the two are officially married. Hence the practice of *ukuthwala* was not regarded as a criminal offence because the young woman was not harmed in any way, and often she would have colluded with the young man in the situation.

2.2.4 *The effect of ukuthwala in the community*

Most of the people in rural areas are still praising over the practice of *ukuthwala* especially the older generations in the community and chief leaders who also do not see the value of women's rights and superiority. They are still living under the influence of patriarchal system whereby men superiority is still valued. They do not see the reasons to educate a girl child but only view them as marriage candidates, they believe that women should get married. *Ukuthwala* also perpetuate poverty in the community and fails to develop all this is caused by the uneducated people in the community and those who are limited to attain skills from certain professions, people are forced to drop out from school. This ultimately robs the child their own personal development which is the long run impacts on societal development (Maluleke, 2009).

Ukuthwala is also effective towards the community as it also contributes to the increase of teenage pregnancy and the rise of HIV and AIDS amongst young girls. This becomes a major issue on their health as this could also lead to death. *Ukuthwala* practice undermines a girl child to get access to different opportunities, many children do get exposed to this practice at any early stage of their lives and already this has caused them to become fearful over men and this also portrays a bad image towards men. This also outlines that women may also be afraid, insecure and psychologically affected due to the issues of *ukuthwala* as they may not feel safe in their communities or around their families. This practice may also destroy relationships that these girls may have with their families since in most cases families are the ones who becomes greedy and sell them over to stranger just for status and money. Harvey & Mayer's (2011) state that this contributes to the lack of confidence and low self-esteem which in turn increases their powerless and vulnerability to poverty, thus practice may also kill the spirit of *ubuntu* and peace in the community.

2.2.5 *Ukuthwala as a custom*

Huisamen, Nosilela and Kuschula (2010:1) defines ukuthwala as an old age Xhosa marriage custom which involves the legal abduction of the bride-to-be. The custom involves the abduction of the unsuspecting bride-to-be by the suitor's friends once marriage has been negotiated between the two families. According to Monyane (2013) Ukuthwala is an example of a traditional practice that reflects the values and beliefs held by members of a community for periods spanning generations, in most cases the community, is involved in an organizing an attempt to bring together a man and woman this also represents the spirit of *ubuntu* and a sense of shared responsibility amongst Africans. From these reasons, it is apparent that ukuthwala can serve important cultural purposes among those South African communities who live their lives according to cultural norms (Mwambene, 2009:6). Ukuthwala is therefore an act that allows families to make decisions on behalf of the couple.

These cases may be indicative of the changing dynamics of this practice (Mwambene & Nielson, 2011: 1). However, the writers strongly oppose this view and believe that these are merely the acts of individuals who are involved with the violation of women's rights and exploitation of children. In referencing to the abduction and rape of women and girls, the Commission for Gender Equality labels Ukuthwala as an unlawful practice disguised as a custom (The Commission for Gender Equality, 2010: 42). Ukuthwala involve the violation of women and perpetuate gender inequality including domestic violence. This practice also victimizes young children, these accounts contribute to the customary practice of Ukuthwala being weighed up against the provision of section 39 (3) of The Constitution South Africa 1996 which states that the Bill of Rights do not deny the existence of any other rights or freedoms that are recognized or conferred by customary law, if they are consistent with the Bill of Rights (Ndindwa,2014).Ukuthwala practice constitute on the gender base violence and this also adheres to the constitutional rights and presented as the criminal offense in court. It violates the principle of the freedom and autonomy of individuals. However, young girls continue to be forcibly married before the legal age for different reasons. This is sometimes done to settle some arguments between families or to earn money. Forced marriages are traumatic, can destroy people's lives and constitutes the violation of fundamental Human Rights (LAWSA2009:90).

Other authors, such as Doke, Vilakazi, Malcolm and Sikakana (1990), sometimes refer to ukuthwala as bride abduction. According to the Oxford Advanced Learners Dictionary of

Current English: New International Students' Edition (Soanes, 1995, p.2), abduction means 'to take away illegally using force or deception'. Based on this definition of abduction, Seleokane (2005) argues against referring to ukuthwala as abduction, which he explains is illegal from start to end; he states that ukuthwala is a custom, and a custom is legal.

Currently the custom of ukuthwala is still practiced in rural areas of KZN such as Zwelibomvu, Bergville and KwaNgqolosi, and more so in their surrounding rural areas, which include EMaPhephethweni, and at KwaNyuswa (EMaQadini). In these Areas ukuthwala is a normal, customary practice, as is the case in Olundi (EMahlabathini) in the district of Okhukho (EMaChunwini) and in the district of EZiKhumbeni (EBaThenjini).

2.2.6 The global perspective of ukuthwala

Forced marriage or abduction of young women into marriages is not only occurring in the African countries but also it has a great influence in the Western regions. According to Lee (2011) state that young girls forced into marriage is still a reality in many parts of the world and it not only happening in the developing countries. Millions of young girls found themselves being the victims prior to forced marriage before the age of 18 years. Research undertaken in Lurton also observed that forced marriage happens among other minorities as well, especially from Asia, the middle East and part of Europe (Khanum,2008:17).Although research in the UK has revealed that forced marriage predominately affects women from the Indian sub-continent, forced marriages affects not only South Asia but also people from diverse countries, cultures and communities and not only women but men as well including children (Tahirih Justice Centre &Gangoli.,et al. 2006).In such cases most women or young girls who undergo on this process experience gender violence in their marriages.

According to Pasion (2016) forced marriage persist in countries throughout the region particularly in India, Bangladesh, Nepal, Pakistan and Indonesia. The culture of forced marriages in these countries involves a woman forced to marry her distant cousin, some are forced to marry older men than them. The parents chose a husband for their daughter at an early age where she grows up knowing whose she will marry when she is old, women are not given opportunities to choose their rightful suitors instead their parents choose for them. Meanwhile Anita and Gill (2009) state that UK has a long-standing history of legal engagement on the issue of forced marriage. The issues of forced marriage are complex and multi-layered, depending upon the community, the culture within the community, the family situation and notions of tradition within the family Hester et al (2008). The United Kingdom has approved

the agreement on consent to forced marriage, marriage and registration of marriages has been proactive in addressing early and forced marriage through domestic legislation (Forced Marriage Act, 2007).

The motivation for early and forced marriage in the United Kingdom outlined by the forced marriage unit include controlling sexual behavior, perceived promiscuity or homosexuality (Ndindwa, 2014). Thus, forced marriages perpetuate also domestic violence whereby women are physical abused, threatened to be killed, emotional abused and some are threatened to be taken back to their home country. Most women are forced into marry people from other countries due to their wealth. In Bangladesh 32 percent women aged between 20 and 24 were married by the age of 15, the rate is 18 percent in India and 12 percent in Nepal (Mambene & Nielson, 2014). Two thirds of young girls in Bangladesh are married before their legal age, this practice differs from majority of sub-Saharan African societies that practice homogenous inheritance in which property is transmitted only to children of the same sex as the property holder (Goody, 2000). Half of the world's child brides lives in South Asia, accounting for more early marriages than in other regions (Ndindwa, 2014).

2.2.7 The African or sub-saharan perspective of ukuthwala

Forced marriages is the most common practice in African countries that existed both in the past and present time. In the period immediately after the end of slavery in Africa, the effective difference between the purchase of a female slave and payment of bride's wealth was often fraught with uncertainty (Sarich, Oliver & Bales, 2016). The existence of forced marriage in Africa commenced as a form of slavery to women, that suppressed them in a way that others lost their lives in the process due to the various of ill treatment they were experiencing African people value their culture and traditions and so to the culture of forced marriage is the most dominant practice amongst sub-Saharan countries. Due to poverty in Sub Saharan countries child marriage is seriously limiting girls the opportunities to attend and to a good access to education (Nsingi, 2016).

Studies found that women aged 20-24 worldwide who were married before the age of 18, 39% live in Sub Saharan Africa and this means that the problem of child marriage is a situation that is found mostly in the Sub Saharan Africa (UNICEF, 2014). The main causes of this practice are poverty which is one of the leading factor underdevelopment in Sub Saharan countries. In Sub Saharan countries, when girls are married before the age of 18, their opportunity for education and the prosperity for their future are limited they often experience violence from

their partners and are exposed to the risk for early and unwanted sexual contact, which can result in HIV and other sexually transmitted infections as well as unintended pregnancy (Nsingi, 2016). Furthermore, the phenomenon of child marriage is higher in the Northern West of Nigeria (Walker, 2012:231). Forced marriages is mostly driven by the social norms that restrict young girls to marry at any early without their consent. In Malawi, the process of forced marriage is performed by the families who cannot attract the wives and daughter in laws, either because they lack sufficient social standing or are unable to afford the bride, they then resort to abduction young girls (Ndindwa, 2014). Another very shocking example concerning marriage in Niger is that in the Northern city of Agadez, it was a marriage of young girls to rich men from neighboring Nigeria, whereby thousands of dollars have been paid and it is noted that the price varied according to the girl beautifulness (BBC News, 2015). Therefore, this state that forced marriages in the African or Sub Saharan countries is not only about the social norms but also about the money, as it benefits families of these young girls. It is noted that 21 percent of girls are married by the age of 15 and 56 percent at the age of 18 (Nsingi, 2016).

In Zimbabwe, the practice of marrying young girls to elderly men is organized through the conservation spiritual and apostolic churches, after a man had a vision about whom he likes to marry (Ndindwa, 2014). Girls as 12 to 15 years of age sometimes are targeted and forced to marry older man through this practice with the consent of their parent (Koyana & Bekker, 2001).

2.2.8 The South African perspective of ukuthwala

Bekker et al (2006) observes Ukuthwala as something resorted to when there is an obstacle to a marriage, this practice became familiar in the Xhosa custom. Although the Ukuthwala custom is assumed to have disappeared in the face of change. It is still practiced among some rural Xhosa communities in the Transkei, which is in the Eastern Cape Province of South Africa, and possibly in other areas as well (Mfono, 2000). South African young women are the victims of ukuthwala whereby they are forced to marry without their consent. The South African version of arranged marriage popularly known as Ukuthwala has been observed as meaning that, when a man wants to marry a woman that he never proposed to love, he will tell the girls' family about his purpose and a plan to marry a girl (Nsingi, 2016).

This practice has a negative impact on the young girls as it has caused limitation in education as they are told to drop out from school and chose to conform to this practice, others have found themselves affected by HIV and AID and teenage pregnancy. Mfono (2000) states that the

discovery has been made that the practice of Ukuthwala is still happening in the areas of Pondoland which covers Libode, Ntabankulu and Lusikisiki and others. It has been reported that girls between the ages of 12 and 15 years are targeted for this practice, whereas in KwaZulu Natal, in one of the rural schools, girls have been abducted for Ukuthwala and turned into sex slaves. Ukuthwala practice therefore has a direct effect towards the human and women rights, the modern practice of ukuthwala is uniquely practiced compare to the oldest practice of ukuthwala whereby certain things were done in traditions and rules were followed, lobola was paid as a way of showing respect and tribute to the girl's parents. Ukuthwala today is presented as human kidnapping since it is done without the consent of the girl's family, usually related chores, issues of house hospitality and taking care of the sick have been culturally and socially assigned to the female gender, hence these young girls at times are targets to fulfil those roles through forced traditional marriages (Alston and Bowles, 2003).

Ukuthwala is a controversial term, both in terminology and in practice. Different countries of the world use different terms to refer to practices similar to ukuthwala (see, for example, Westermarck, 1926, p.110). Also, within each country different geographical areas use different names to refer to such practices. Some people view ukuthwala as an illegal practice and remain shocked about and disagree with it (see, for example, Mashile, 2006; Seleokane, 2005; Molapo, 2004; Thulo, 2003; Mfono, 2000). The shock emanates from the presumption that ukuthwala is said to have vanished during the social changes in KZN and elsewhere in Africa. The view of ukuthwala as an illegal practice emanates from the democratic principles of human rights protection and human dignity in the context of South Africa. On the other hand, other people see it as a custom (Bhengu, 2005; Msimang, 1991; De Jager, 1971; Vilakazi, 1962; Hunter, 1961; Krige, 1965; Kohler, 1933; Bryant, 1964, 1949; Soga, 1931). In addition, sometimes public debates about ukuthwala are projected with anger, especially by people who view the practice in terms of human rights violation and particularly as gender-based violence (GBV) (Reddy, 2004; Mashile, 2006; Mfono, 2000).

2.3 Negative views on the culture of ukuthwala

Forced ukuthwala marriage is illegal under South African law, as it is deemed a gross violation of rights to gender equality and bodily integrity as enshrined in the constitution yet is not common in many parts of the Eastern Cape Province (Mwambane & Nielsen, 2011). Ukuthwala can take place with or without the consent of the girl's family. This practice has gone under fire for its apparent conflict with women and human rights, a young girl is being

forced to marry meanwhile they are still enjoying their youthful lives. Ukuthwala practice allows men to take advantage of young girls since they are vulnerable, young and innocent. Eastern Cape is a rural patriarchal society where men are still under the notion of having more than one sexual partner, rape and sexual assaults become inevitable because young women find themselves in subservient position to men (Kheswa, 2014). This practice therefore dehumanizes the image of young black women in a way that it inhibits them from exploring the world and limit them from becoming independent. Ukuthwala has also been described as a mock abduction or irregular proposal aimed at achieving a customary marriage (Bennett, 2004: 212).

In this type of ukuthwala the girl gives her consent, the practice of ukuthwala is described by (Maluleke, 2009: 16) as a form of abduction which involves the kidnapping of a young girl by a man and his friends or peers with the intention of compelling the girl or young women's family to endorse marriage negotiation. Forced marriage violates a girl's right to get a brighter future and by doing so it affects the 'feminization of poverty' by denying the girl an opportunity for education and compromising their development in areas such as education, livelihood and personal growth (Thomas, 2009). Ukuthwala is abusive in a way that it prevents one's dreams and desires in life as it limit or forces young girls to drop out of school while they are trying to pave a way of success for themselves through education. This essentially brings about historical events where women were not allowed to go to school but were only viewed as slaves in their marriages, men were superior, and the world viewed them as the only dominated gender in the world and this practice portrays women as only individuals attained to only become house wives and take care of their families

Abducted girls are beaten if caught trying to escape and if they managed to get away, they are disowned for defying tradition. Woods (2005) states that the process of bride abduction involves having sex with the girl, and if she resists, force is used. Women may be raped during the process of ukuthwala and this could lead to one becoming pregnant at an early age and these relating issues also contribute to the increase of teenage pregnancy in South Africa. Ukuthwala is reported negatively by the media and is described as kidnapping, rape and abduction which are criminal activity (Thuso & Prince, 2009). Furthermore, this practice is described as way that involves the abduction of a girl child without their consent, the modern ukuthwala can be also described as kidnapping since a girl maybe taken away without the agreement with a girl's parents. This act is the violation of women's rights, many women are trapped in this culture and others may have found the way of escaping but still, so they have

nowhere to go but to seek refuges from other places, since in most cases their families tend to betray them by taking them back to where they were positioned to be marry.

Ukuthwala robs away the childhood, it causes an abrupt end to a girl's childhood and the care free existence that all children are entitled to. Suddenly the little girl is a wife with a husband and in most instances, children and in-laws to serve or look after (Ndindwa,2014). Thus this becomes effective in a way that it also affect the way they view the world as a whole, they become psychological and emotional damaged, they grow up under the impression of abuse and these issues leads them to have low self-worth, fails to value themselves as women, some blame themselves for being victims and therefore this contribute to the way they view themselves. Living under stressful situations can also cause one to become depressed and these events leads to people committing suicide, people may also experience posttraumatic stress, and these may influence a person to become socially isolated. Once a child gets exposed to such events that include sexual intercourse at a young age, already their childhood life has been robbed away from them and this could also contribute to the psychological disorders.

Ukuthwala and the cruelty it inflicts on the young girl by denying her of her right to be a child, among other things, are further inconsistent with the African value of *ubuntu* (department of Justice& Constitutional, 2010). Dropping out of school deprives the young girl education opportunities, including tertiary education and skill training (Ndindwa, 2014). Education is the key to success, a person cannot be anything in life without being educated, educated people are likely to get job opportunities and sustain themselves and their families this also help them to reduce poverty in their homes. Ukuthwala undermines the girl child access to these opportunities, furthermore research indicated that most of the girls and young women victims of ukuthwala come from poor families (The Department of Justice and Constitutional, 2010). Lack of education deepens poverty, ukuthwala then may deprive girl child's opportunities to educate and develop (Ndindwa, 2014). Ukuthwala practice perpetuate the gap of education between both genders as girls are forced to drop out of school meanwhile boys are instructed to go to school and achieve goals. This goes way back women were not allowed to go to school, this practice robs them their rights to education. Ukuthwala is a gendered practice that contribute to gender-based violence and violation of girls, and that there is a need for the practice to be evaluated (Nkosi, 2011).

Ukuthwala contributes to the social isolation, young girls that are victims of ukuthwala feel isolated from the society and their peers. The feeling of being socially isolated is evicted from

the way they tend to compare themselves with their peers whom are still in school, not married but sees the value of education in their lives, ukuthwala violate the women right's and increases domestic violence. Monyane, (2013) states that ukuthwala perpetuates the problem of gender inequality as it also an unlawful act that violate the children's rights Act 2005 (No. 38), sexual offences Act 2007 (Act 32) and the Recognition of customary marriages Act 1998 (No. 120). Ukuthwala therefore inflicts pain on young girls as it associated with many more other offences ranging from kidnapping, rape, sexist exploitation and human trafficking.

Mair (1969, p.13) define ukuthwala as forced marriage or bride abduction. Westermarck (1926, p.110) discusses marriages that facilitate choice, or to carry off, bride stealing, seizure of a girl, rape, marriage or forcible abduction. Monger (2004, p. 2) and Abrahams et al. (2004, p.7) define ukuthwala as rape. Monger (2004, p.3) also defines ukuthwala as wife stealing or arranged marriage (ibid: 13). Monger concurs with De Jager (1971), Soga (1931) and Molapo (2004) that there is forced ukuthwala, which is called bride abduction, and there is agreed ukuthwala, which is called elopement (Monger, 2004, p.2).

Labuschagne and van den Heever (in Bekker, Labuschagne & Vorster, 2002, p.99) and Soga (1931, p.271) define ukuthwala as 'delict' or to carry off. Ukuthwala is also known as kidnapping (Laubscher 1937, p.192; Soanes 1995, p.2). Ukuthwala is also known as forced marriage (George, 2005, p.1) or bride snatching (George, 2005, p.1) or jack rolling (Abrahams, Okumu & Rabenoro, 2004, p. 6; Vettan, as cited in Park, Fedler & Dangor, 2000, pp.45, 69). Ukuthwala is also known as bride abduction (Doke et al., 1990; Mfono, 2000; Molapo, 2004). Seleokane (2005) argues that commentators have spoken about ukuthwala as abduction: I am not sure that it is. Abduction is illegal from start to end. The ukuthwala custom is not" (Seleokane, 2005, p.1). Msimang (1991) states that ukuthwala is a Zulu custom that opens up the marriage negotiation process and it means 'to carry away'. Literally, ukuthwala means to carry something (Nyembezi, 1992; Nyembezi & Nxumalo, 1995).

2.4 Media reports and various views about ukuthwala

Media reports indicate that the practice of ukuthwala still exists in different parts of the country, and some present ukuthwala as similar to abduction. For example, the Sunday Tribune reported that the Bergville community in KZN frequently experiences ukuthwala practice. It reported that the abuse of ancient traditions has resulted in young women being kidnapped and raped in the Bergville district (Thulo, 2003, p.3). It further stated that South African girls as young as 12 years of age are being abducted, locked up, raped and forced into marriages

under the pretext of the age-old custom of ukuthwala. Reporting a specific incident, Thulo (2003) writes that Nomndeni Mkhulise's daughter, Impikayise, aged 15 and a Grade 7 pupil at Ikhali High School, is the latest victim of this type of abduction. The author reports that before Impikayise (whom she calls a 'victim of abduction'), was 'kidnapped', she told her mother that a man had proposed love to her and that she had told the man that she did not love him. The man then sent an older man to try to convince her but in vain. A few days later Impikayise disappeared. Later on her mother stated that girls sent by the older man informed her that Impikayise had been *thwalwa'd*. When asked why she did not contact the police Impikayise's mother said she had no confidence in them.

From the above discussion it can be seen that ukuthwala is reported negatively by the media and is described as kidnapping, rape and abduction, which are criminal activities. From the above report, a young man had proposed his love to Impikayise, an 'alleged victim', who reported the matter to her mother. She refused the love proposal and an older man tried to convince her to change her mind. Then she was *thwalwa'd*. Later on a message was sent to her parent about where she was. While the media reports this incident as a criminal activity, there is no evidence that the parties involved see this as such. On the one hand, it seems the man who *thwala'd* the young female did not mean harm, because he sent a message to inform the young female's parent where she was. This is part of the processes involved in the cultural practice of ukuthwala, referred to as *funelani nganeno*. On the other hand, the mother of the young female did not report the matter to the police, stating her lack of confidence in them. This might be an indication that knowing the cultural practice, she did not see the relevance of the police in this matter.

As documented by Bhengu (2005, p.3), another incident of ukuthwala was reported in Isolezwe, an isiZulu daily newspaper in KZN, under the heading *Kuthwalwe obeyingoduso kwaboshwa abakhongi* ('A fiancée was *thwalwa'd* and marriage negotiators got jailed'). In this case Bhengu (2005) gives a positive view of ukuthwala, indicated in the choice of words she uses to report the incident. In another example, in an article titled '*UKhanyile osolwa ngokuthatha u Vamisile*' (Khanyile who is alleged to have taken Vamisile), the terminology used does not refer to the incident as a criminal act. The report states that a 20-year-old female, Vamisile from Bhamshela, an area in KZN, who was engaged to Ntombela of Mthunzini, was *thwalwa'd* by another man, who was her new boyfriend.

After Vamisile was *thwalwa'd*, Khanyile sent *abakhongi* (the marriage negotiators) to Vamisile's home to pay *ilobolo* so that her parents could reimburse Ntombela, the original lover. The *abakhongi* were jailed because Vamisile's mother reported the matter to the local police. However, later on the *abakhongi* were released as they were not found guilty. According to Khanyile (the new lover), his relationship with Vamisile was two months old. He told the police that he was aware that *ilobolo* had been paid for Vamisile, but argued that "*Phela isiZulu siyasho ukuthi oseyishayile akakayosi*" (a woman does not belong to her man until the marriage is consummated, and they are a married man and wife).

Ukuthwala practice has been viewed from several different perspectives by various people, institutions and bodies. For example, in March 2009 the South African Broadcasting Corporation (SABC) News Online reported that:

Teenage girls in South Africa are still being forced into early marriages. In Eastern Pondoland in the Eastern Cape, children between the ages of 12 and 15 are living in fear of being abducted to marry adult men they've never met. In the past two years more than 200 school girls have been forced into marriages in the Lusikisiki area alone. The amaCele, amaBhaca and amaMpondo communities in the Eastern Cape used to believe in "ukuthwala" or forced marriage. In remote areas like Cede village at Lusikisiki it's still practiced.

Resident Lumka Mbutho says: "This is exactly what we call 'back to our roots'. I approve it because these young girls get pregnant at the age of 12, so it is better to have them married." Inkciyo, a cultural organization promoting virginity and education on the dangers of early sexual activity, believes virgins are being targeted. A victim of ukuthwalwa says: "When the people arrived at my home I was crying because I was thinking of the difficulties I would be faced with if I became a wife of someone. My mother locked me in a room and I hid there-that is how I escaped." The Congress of Traditional Leaders in South Africa and the Human Rights Commission have condemned the abductions. Police say they are acting against it. Police spokesperson Mzukisi Fatyela adds: "We do not have mercy towards people who violate other people's rights. So we arrest those who abduct children and force them into marriage." Human Rights Watch says it will conduct educational campaigns in the Eastern Cape to educate residents about the importance of children's rights.

In June of 2009 the SABC News Online asserted that “ukuthwala marriage custom has been declared illegal”. The then South African Minister responsible for Children and Persons with Disabilities, Noluthando Mayende-Sibiya, said forcing young girls to marry under the custom of 'ukuthwala' had been declared illegal and immoral by all government departments and traditional leaders. She was addressing traditional leaders and other government departments at Qaukeni Royal House in Lusikisiki in the Eastern Cape.

Meanwhile, the then South African Minister of Police, Nathi Mthethwa, instructed the police to apply the law and arrest the fathers and mothers of young girls in Eastern Pondoland who were forced to marry men unknown to them. Mthethwa described those marrying younger girls as rapists and accessories to such practice. He also labelled the practice as amounting to statutory rape.

Furthermore, in August 2009 the SABC News program online reported that the current South African Deputy President, Kgalema Motlante, had condemned the ‘abduction’ of young girls under the guise of traditional marriages. Speaking at the HIV Prevention for Women and Girls Summit in Kempton Park, he labelled the practice “a dead culture”.

2.5 Global Research reports about ukuthwala

Research reports show that ukuthwala practice is not unique to KZN and South Africa, although it is not referred to as such in other parts of the world. Westermarck (1926, p. 110) argued that “marriage by capture” was a global practice, and research shows that it is not unique to Africa. He mentioned different words used in different parts of the world that referred to this practice, and stated that the list was endless. Summing them up under “marriage by capture”, these words included to carry off; bride stealing; seizure of a girl; rape marriage; and forcible abduction. Ukuthwala and forced ukuthwala (bride abduction) can be added to the list. It is notable that Westermarck grouped violent practices and non – violent practices under one umbrella named “to carry off” or “marriage by capture”. Westermarck (1926) argues that what is common in these practices is that a woman is carried away. He further gives an example of a nonviolent marriage whereby he argues that by lifting up his bride at their wedding, the bridegroom symbolizes “carrying off”. He argues that carrying away a bride by her bridegroom has since become a norm such that even nowadays it had become a tradition amongst the marrying couples. He argued that the process varied from place to place; hence, different words. However, what was common across all communities was that a man or his relatives and friends carried off a woman with the intention to marry her.

Westermarck (1926, p.110) also gave details of places where the practice existed or was still prominent. He stated that in Tierra del Fuego it occurred among both the Yaghan's and the Onus. He further stated that marriage by capture occurred among the Brazilian tribes; South American Indians; Luiseno Indians on the coast of California; and among the Chuchee inhabiting the North East of Asia. He further reported that marriage by capture occurred among Samoyeds, Votyaks and Ostyaks, and also occurred among various other people belonging to the former Russian Empire, such as the Kalmucks. He also mentioned that marriage by capture occurred among the several tribes in India, among the Bhuiyas of the Orissa States as well as the Hos in Bengal. Thomas (1939, p. 71) also reported that evidence showed that marriage by capture existed in India.

Westermarck (1926) further stated that marriage by capture was also witnessed among the Chittagong hill tribes in general. He concluded by stating that it also occurred in the Malay Archipelago, Melanesia, and all parts of the Australian continent. Park et al. (2000, p.18) also state that coerced marriages occur in Thailand and in India. Monger (2004, pp. 1-2) mentions that forced marriages or bride abductions occur in Britain, China and among Australian Aborigines. Westermarck (1926, pp.111-113) further discussed "marriage by capture" as it occurred and is still happening in various African states, and stated that it occurs / occurred among Ancient Semites. He further stated that in Arabia it was common before Muhammad and it also occurred among the Hebrews, the Indo-European peoples as well as among Hindus (according to the laws of Manu – Rakshasa (forcible abduction)).

Westermarck (1926) further stated that marriage by capture occurred in Greece, Rome and Scandinavia, as well as in Irish Nennius (Picts from the Gael) and in Slovakia among Southern Slavs, in Russia among Cossacks and Ukrainians, in America at High Albania, among the Caucasian mountain tribes, the Akamba of British East Africa, the Roro of British New Guinea, and Mongols of Scandinavia. Furthermore, he argued that it also occurred in some parts of Morocco and Burma. Marriage by capture is also reported among Araucanians in Chile and in Greenland among Turkomans and Spartans. Olaniyi (2003) states that forced marriages and the trafficking of women occur in Nigeria. Westermarck (1926) claimed that this list of peoples among whom marriage by capture took place might easily be enlarged. He concluded that many of the people regard marriage by capture as the usual or normal mode of contracting a marriage.

Like Westermarck (1926), Monger (2004) concurs on bride abduction as wife stealing and seizure of the bride. Monger (2004) also highlights the practice of "marriage by capture" or

abduction as it takes place in different parts of the world. He gives an account of different forms of abduction throughout the world, and offers cases of abductions and places where they have occurred. He highlights that some abductions are arranged by the abductor and the abducted girl, while others are genuine cases of forcible abduction. In his book *Marriage Customs of the World: from Henna to Honeymoons*, Monger states that marriage by abduction was a theory suggested by some 19th century anthropologists, notably John F. McLennan (1865). He argues that others have considered this to be a rare form of marriage, and some have even doubted that it ever occurred as a widespread and valid marriage form.

Monger (2004) presents cases of bride abduction as it took place in different parts of the world. He states that according to the Hindu laws of Manu, of eight forms of marriage recognized, four are considered “blessed”, and the other four are condemned as “blamable” unions. He states that one of these is known as *rakshasa*, a union by forcible abduction of a maiden from her home, either by stealth or by breaking into her house and slaying or wounding her kinsmen. Monger asserts this is not a genuine case of abduction (2004, p.1). He further argues that there are some cases in Britain that appear to have been genuine cases of abduction. He states that because abduction was a problem in Britain, legislation was enacted to prevent the practice, but they did not cease. Monger (2004) highlights the ineffectiveness of the law to control abductions, by stating that a statute of 1487 (at the time of Henry VII) ranked abduction as a felony, and an Elizabethan Act of 1596 denied those found guilty of abduction the benefit of the clergy.

Monger (2004) continues to state that there were some high profile cases of abduction, such as that of the daughter of Sir Thomas Puckering, Jane, who was abducted in 1649 while walking with her maid in Greenwich Park, London, by a group of mounted men led by one Joseph Walsh. Monger states she was carried off to Dunkirk and the law failed to secure her release, and presents several cases of abduction of young women with intent to marry from different parts of the world, where some were only 16 years old. He argues that the age of the couple at marriage varies among cultures according to religious and civil law and local customs (Monger, 2004, p.7). In one case Monger (2004, p.7) states that the abducted bride was returned to her parents, and the marriage (which had not been consummated) was annulled because there was no consent from the abducted girl.

Monger (2004) argues that there are occasional contemporary accounts of abduction of women for marriage, giving examples of where this takes place, such as China, Rome, Russia and

Greece. He argues that it is doubtful that there can be a true marriage by capture; rather, Monger claims forcible abduction and the subsequent unwilling consummation would be rape, and the relationship at best more like concubine (Monger, 2004, p.2). Monger vividly outlines the process of abduction and states that there is an outward sign of resistance on the part of the bride to going with the groom, so that there may be a ritualized battle between the groom and his followers and the bride's attendants. However, Monger also states that in some cases the bride might have been carried off by force, and there might have been some violence, but the abduction was planned by the couple. This author also observes that similarly, some form of reluctance and force on behalf of the bride and of the groom respectively has often been noted among the ancient Greeks, Romans, Spartans, Russians, Bedouins and Wahabys.

McLennan (1865) concurred with Westermarck and Monger on "marriage by capture", but his unique contribution was of giving the origins thereof. McLennan stated that many wedding customs and practices in different parts of the world included some form of ritual or mock battle, or the apparent abduction of the bride by the groom's family and friends. He argued that these practices gave rise to the 19th century theory of "marriage by capture" (McLennan, 1865), and says that others had considered that to be a rare form of marriage.

Discussing "marriage by capture" he used the same example used by Westermarck and Monger, the Hindu laws of Manu. Rakshasa was given as an example of "marriage by capture", and was regarded as a not acceptable form of union. McLennan further claimed that capture was also said to have been the means by which the founders of Rome obtained their wives from the neighboring Sabine women, and was the beginning of the Roman marriage rites. McLennan made no distinction between elopement and abduction, but did acknowledge that his contemporary accounts did not provide evidence that marriage by capture still existed in the 19th century (McLennan, 1865, pp.136 137). It was suggested by McLennan (1865) that the custom of lifting a bride over the threshold of her new home was related to the practice of "marriage by capture", making a link with the rape of the Sabine virgins, who did not go voluntarily.

According to McLennan's (1865) argument, even when there was agreement and willingness on the part of a young woman, she had to give an appearance of resistance. He claimed that this could be through modesty or the young woman's fear of an unknown future, although she might want to marry. For him marriage by capture was the norm for any woman who entered into marriage.

2.6 Research reports about ukuthwala in Africa

Bryant (1949) argued that Australians, Brazilians and natives of Central India still practiced marriage by capture. Bryant continued to argue that in Africa the custom was still going strong among the Congo Pygmies, the Mongala Forest tribes, the Bantu-speaking abaBua, baBati, and baLeu of the upper Wele, and the Bomokandi of the upper Rubi Rivers. He claimed that even the Nyasa Bantu were said to still indulge in the practice. Bryant further stated that mock capture enlivened the proceedings among the Kamba Bantu in Kenya, where he claimed that although marriage was by purchase, the groom might then “carry off” the bride by force or a stratagem. He also maintained that while the Hausa bride in Nigeria veiled and screaming, was carried off by her husband’s people.

In describing what marriage by capture (tshobeliso Southern Sotho, and chobeliso Northern Sotho) means among the Basotho people of Lesotho, Molapo (2004) indicates that there is no such thing as “agreed ukuthwala” in Basotho society. He maintains that a female is forcibly abducted to enter into a marriage with somebody she does not even know. She is being forced and dragged to enter into an unplanned new pattern of life which will make her totally dependent on her husband for her social and economic basic needs. Molapo (2004, p.5) claims that in his experience with abductions as a herd boy in Lesotho, he has evidence that abduction happens against a female’s will:

I could hear a piercing cry of a girl who was being captured when she was trying to resist the abduction. And a young girl will always try to free herself. She could be beaten like a dog if she was persistently resisting the abductors. When this drama takes place, the Mosotho girl would definitely know that she is being forced to enter into a marriage with somebody she does not even know.

According to Molapo ukuthwala is performed like a “drama”. He argues that his sister’s dream of becoming a teacher faded away as she got abducted and was denied her human rights to pursue her studies. He argues that this compelled him to investigate the practice. Reflecting on his past experiences with abductions in Lesotho he says (2005, p.5):

It has been always painful for me to experience this form of harassment and abusive violence done against the consent of the Mosotho girl, to force her to enter into unplanned marriage. Her career and dreams of a future life are being disrupted and completely jeopardized ...Basotho girls are denied the right of movement to any place at any time, let alone their choice.

The weakness in his study is that Molapo (2004) discusses the practice of tshobeliso (forcible abduction) among the Basotho people of Lesotho from a Christian analytical approach. He maintains that this practice is a challenge for pastoral care ministry. In his findings, Molapo

(2004) maintains that despite several attempts by missionaries to curtail African culture and traditions, which they regarded as paganistic, tshobeliso is still vigorously practiced among the Basotho of Lesotho, albeit in changed conditions at least for the people in urban areas. This approach of criticizing African cultures is problematic as it assumes all Africans should leave their cultures and adopt a Christian way of life. Despite some weaknesses, Molapo's (2004) study forms an important basis for other studies to follow.

An informant, who is the son of the soil of Lesotho, told me that Molapo's (2004) tshobeliso (forcible abduction) happened in the past and not in the 21st century. He further stated that tshobeliso was carried out universally among the Basotho of Lesotho, but by certain individuals from some of the deep rural areas. He also mentioned that tshobeliso (as used by Molapo, 2004) has a South African spelling with a British influence, as compared to chobeliso (Northern Sotho) which has a French influence and a genuine Lesotho spelling. However, the two refer to marriage by capture (personal communication, informant, 22 August 2011).

Molapo (2004) further stated that generally there are three ways to get married in Lesotho, namely: civil ceremony (district administration or court marriage); church weddings; and the traditional way of getting married (customary marriage). He indicated that these types of marriage are found in Lesotho, and added marriage by abduction (tshobeliso) as the fourth type (Molapo, 2004, p.10). However, my informant stated that tshobeliso / chobeliso is not a type of marriage but a way to open up the marriage negotiation process, where a young woman would agree to be carried away by her sweetheart in order to open up the marriage negotiation process, and this is called "agreed chobeliso". He claims this happens despite the parent's knowledge of both parties concerned. However, on arrival the young man introduces the young woman to his parents, who in turn, on the following day, send the marriage negotiators to go and report to the parents of the young woman who has been carried away with a penalty of six cows for tarnishing the young woman. If the young man has slept with the young woman, then "slept cows" would be paid equal to six cows.

The main aim of the young man's parents is to open up the marriage negotiation process. If they agree, then the process continues, but if they disagree then a penalty is paid. If the young woman's parents disagree to open up the marriage negotiation process, and the young man has slept with the young woman (perhaps the young woman has fallen pregnant), the six cows paid as a penalty serve as 'maintenance', and then there is no need for the young man to pay towards maintenance in the future. The informant claims chobeliso still happens today among the

Basotho of Lesotho but in a moderate way, and that it is a matter between a young man and a young woman who engage in “agreed chobeliso” so there is no beating of a young woman because she has agreed to be carried away (personal communication, informant, 22 August 2011). However, research needs to be done on chobeliso.

In his study focused on marriage preliminaries and marriages, Westermarck (1926, pp. 111-113) provided a list of places where marriage by capture occurs and / or occurred in Africa. He stated that it occurs / occurred among Ancient Semites, in Arabia was common before Muhammad and also occurred among the Hebrews. He further stated that it occurred among Mongols and in some parts of Morocco. Olaniyi (2003) states that forced marriages and the trafficking of women occurred in Nigeria. Westermarck added that his list of peoples among whom marriage by capture had been found might easily be enlarged (1926, p.113), and concluded that marriage by capture had never been a usual or normal mode of contracting a marriage anywhere in Africa. Ogutu (2007, p.4) states that forcible bride abductions take place among the Luo and Turkana of Kenya.

Marriage by capture is also mentioned in Kenyan fiction. Although fiction is not ‘truth’ in as much as research reports are, it might indicate that people in Kenya may have experienced this practice in one way or another. For example, in a story of Judy Mbugua and her struggle with the dilemmas of early marriage, with her education being cut short, and how she resolved to change the course of her life (*Judy: A Second Chance, She Refused To Give Up*), Mbugua and Kisuke (1997) write about marriage by capture as it takes place in Kenya. Mbugua narrates the story of how Judy’s grandparents got married through abduction, and her father was the product of a mixed marriage between a Kikuyu father and Maasai mother. His parents’ marriage was one of the occasional incidents during those days which used to happen during tribal conflicts between two tribes. During such confrontation the conquering tribe would not only capture the cattle but also beautiful young females who would be carried off to become wives to different men decided on by the tribal elders. Rarely did such women tried to find their way back home. This was one of the situations that women accepted as a reality of the day without question; however, this does not imply that women agreed to being given away, rather that they had internalized oppression.

2.7 Ukuthwala in the Xhosa context

In his work *The AmaXhosa: Life and Customs*, Soga (1931) outlined Xhosa culture and traditions. Certain rites de passage that marked the transition of the Xhosa people from childhood to adulthood are also presented. Discussing the custom of 'ilobolo' and steps in a Xhosa marriage, researchers such as Soga (1931) and Hunter (1961) brought the dimension of two forms of ukuthwala, namely: (1) ukuthwala as a custom; and (2) the abuse of the ukuthwala custom, which they term genuine cases of abduction by force. Soga claimed that ukuthwala customary practices were "faked cases of abduction" where both the young man and woman had agreed to elope, but the woman did not wish to appear to be 'flouting' her parents and preferred to disguise the elopement with abduction.

However, Soga (1931) maintained that forced marriages prevailed in the Xhosa culture and argued that forced marriages took place among civilized people. He asserted that a large number of "ukuthwala" cases among Xhosas were love romances, and that in many of these the term simply denoted that the couple had mutually arranged to elope so that the female's parents would be faced with a *fait accompli* if they were unfavorably disposed towards the young man. Soga (1931, p.31) concluded that the female agreed to this procedure in order to marry the man she loved, and escaped from the man which her parents sought to marry her to. According to Soga (1931) there was no intention on the part of the man to evade ilobolo, but he was determined to marry the woman of his choice.

Soga (1931) and Hunter (1961) maintained that real cases of forcible abduction also existed, but that this does not alter the fact that many cases of so called abduction were actually cases of mutually agreed upon elopement. Soga (1931, p.45) further asserted that "Many a female eloped with a worthless swain, so far as the character and material worth is concerned, and fled from a wealthy suitor because love was the impelling force". Soga further argued that if carefully scrutinized, it would be found that very often parents of a female who refused to marry a young man chosen by them for her privately advised the young man to carry her off by force, not from her home but from some spot at a distance off.

Soga (1931) further stated that after a woman had been carried away, some boy from the groom's kraal was sent to the young woman's people to tell them where she was. Hunter (1961) also reported that then ilobolo negotiations would begin. Hunter (1961) observed that to carry off a female to marry her was considered quite respectable, and there was no shame in such a marriage for either bride or groom. However, Hunter said that for a female to elope was rather shameful, because she should never admit that she willingly went to any man (*ibid*, 1961).

According to Hunter (1961) a woman would always weep and protest when getting married, and not to do so was immodest. He further reported that of the 26 marriages investigated in Pondoland, 5 were arranged, in 5 cases the female had been carried away, in 13 the couple had eloped, and in 3 cases the female was married off by her people and then had run away and married a lover (Hunter, 1961, p.189). Hunter therefore concluded that there is considerable freedom of choice in the selection of partners. Furthermore, Hunter concluded that a man was not forced to marry a woman he did not love, and although ideally a woman was supposed to submit to her father's choice of a husband for her, the number of cases of elopement shows that many disregarded their fathers' wishes.

De Jager (1971) included marriage by abduction (*ukuthwala*) in his account of the four types of marriage in the rural areas of the Ciskei. However, De Jager did not give a full account of the custom of *ukuthwala*, just briefly mentioned it. He stated that marriage by abduction (*ukuthwala*) dated from pre contact (with white colonizers) days. However, he claimed that it was never and is still not regarded as normal social behavior. De Jager (1971, p.160) observed that most often the underlying motive was to place before either the woman or her parents a *fait accompli*. Both Laubscher (1951, p.56) and De Jager (1971, p.192) claimed that *ukuthwala* was kidnapping by consent of the parents.

According to Laubscher (1951), in this form of marriage all arrangements were made as in the ceremony of *ukwenda* (traditional wedding), except that the woman was kidnapped before the cattle kraal ceremony was performed at her own kraal; He therefore concluded that this complied with the accepted customs of the Thembu people (Laubscher 1951, p.192). De Jager (1971) further argued that *ukuthwala* had to be legalized. De Jager (1971, p.160), like Mayer (1980), concluded that in this type of marriage the abduction was forced and brutal according to Xhosa values, whereas in traditional marriage procedures it was with the consent of the woman's parents and permitted symbolic and ritual behavior. Commenting on *ukuthwala* among Swazis, Seleokane (2005) also makes a distinction between the *ukuthwala* custom and the abuse of the custom.

According to Bryant (1949, p.534), among the Khoisan marriage by capture was more painful. In another related study Krige (cited in Schapera, 1946) discussed abduction or elopement as it took place among the Tonga, Venda and Lobedu. According to Krige abduction or elopement among the Tonga was not recognized as *ukuthwala*, and it was considered a disgrace. Krige found that these tribes had "*ukuthwala* as a kind of abduction in which a young man and his

friends carried away a young woman (sometimes even at the instigation of her own father)” with the aim of marrying her (Krige, cited in Schapera, 1946, pp.112-113). He observed that the thwalwa’d young woman would run away with her lover to some “indulgent” relative and the man's people reported the matter to her father who, among Venda and Lobedu, usually accepts the situation but demands ilobolo.

Several authors, such as Bryant (1949), Krige (1965), Vilakazi (1962), Schapera (1946), Msimang (1991), and Nyembezi and Nxumalo (1995), have reported on ukuthwala as an age old custom among the Zulus. Apparently the custom was carried out when the two people involved (that is, a man who thwala’d the woman and the woman herself) had agreed on it, although during the ukuthwala incident the woman would pretend not to like it. This therefore means that a young man would thwala a woman he had a love relationship with, and not just any woman.

Nyembezi and Nxumalo (1995) maintain that ukuthwala carried out by a young woman’s lover and his relatives or friends. It was used when the young man found it difficult to start marriage negotiations with the woman’s parents. The young man would resort to thwala of the woman so that the negotiations could start. Nyembezi and Nxumalo (1995) also state that sometimes it happened when the young woman had met someone that she loved more than her current lover, so, the new lover would thwala her to end her relationship with her current lover. Those who thwala’d the woman would send the marriage negotiator to her parents to officially tell them “funelani nganeno” (‘search from my side’), culturally, an official way of reporting that the woman has been thwalwa’d by that particular man’s family. The man’s family would immediately pay inhlawulo (penalty) and ilobolo so that the woman’s parents are able to return the ilobolo to the original lover’s family (Nyembezi & Nxumalo, 1995, p.115).

According to Bryant (1949), only in exceptional cases was a woman thwalwa’d against her will. In his book *The Zulu people as they were before the white man came*, Bryant (1949) discusses ukuthwala among the Zulu people as it took place during ancient days. He stated that he personally witnessed an “exceptional case” of a bridegroom “forcibly carrying off” on his shoulders (with her guardian’s concurrence) a “recalcitrant” female who was struggling wildly and unwilling to go to him. However, the female had previously consented to be thwalwa’d, and later on was found to be a happy and cheerful wife of the same man (Bryant, 1949, p.573). He asserted that “marriage by capture” was a great sport in olden times (Bryant, 1949, p.573).

Krige (1965) argued that among the Zulus ukuthwala took place when an engaged young woman or her father broke her contract relating to marriage negotiation processes. A penalty over and above ilobolo would be demanded only if the young man had no right to thwala the young woman. He further argued that from his study, there was no evidence whether ukuthwala obligated a woman's parents to allow their daughter to marry the man who thwala'd her, or if they would still refuse to consent to marriage. Furthermore, Krige (1965) did not clarify whose consent was sought, the young woman's or her parents'. Krige's contribution to ukuthwala is not substantive; nevertheless, his significant endeavor was in highlighting the practice of ukuthwala among the Zulus, although this is confused with abduction.

In contemporary Zulu societies some males forcibly marry unwilling women and abuse them under the name of ukuthwala. In such cases witchcraft is also practiced (Msimang, 1991) and GBV (Thulo, 2003) becomes part of the process of carrying the target woman away. Msimang (1991) partially addresses some aspects of traditional ukuthwala in contemporary Zulu communities; his book *Kusadliwa ngoludala* reports his study which examined traditional Zulu culture and traditions. Discussing courtship and betrothal among the Zulu, Msimang (1991) reports alternative ways embarked upon by izishimane (a derogatory term used to refer to young men who do not have skills in courtship and therefore end up not having love relationships with women), and he argues that ukuthwala is one such. He found that izishimane employ different forms of ubuthakathi (witchcraft) on target women.

Thulo (2003) states that "The abuse of ancient traditions has resulted in young women being kidnapped and raped in the Bergville district". Thulo (2003) confirms Molapo's (2004) assertion that the abuse of the ancient traditions has resulted in young women being raped and forced into undesired marriage unions in Lesotho, and states that a target woman is severely beaten with sticks and sometimes with sjamboks, her arms twisted, and even her body dragged on the rough paths and her clothes torn apart.

While Msimang (1991) admits that ukuthwala is a well-known patriarchal weapon or tool employed by some men (izishimane) to suppress women's interests, he nevertheless agrees that there is no unanimity regarding the exact meaning of ukuthwala practice as far as different societies in contemporary Zulu culture are concerned. He states that sometimes ukuthwala takes place when a young woman has jilted her sweetheart; the jilted lover then decides to thwala the young woman with the intention of marrying her. He claims in this case a woman is beaten and forcibly thwalwa'd (Msimang, 1991). Furthermore, Msimang claims that the

woman's brothers may come to rescue her, and this may result in a faction fight. He concludes that if the men who thwala'd the woman are victorious, the young woman would be married off (Msimang, 1991, p.228).

Describing the process of ukuthwala Krige (1965) maintained that a young man with a number of his sib mates arranged to secretly "carry off" the young woman to his home. On arrival there the young man's family dressed the young woman in an isidwaba (a Zulu leather skirt) which symbolizes that she is about to marry or is married.

2.8 Ukuthwala in the Zulu context

Marriage is important among the Zulus. As a result, the concept of marriage is thus introduced to children early on. At their developmental stages children are taught and mentored by older peers so as to prepare them for their adult life (Buthelezi, 2010; Msimang, 1991; Nyembezi & Nxumalo, 1995; Vilakazi, 1962). Youth leaders in Zulu societies are amaqhikiza (for females) and izingqwele, obhekeni and izinduna (for males).

In traditional Zulu culture a person's life is a concern of the family and society. Since marriage is valued, the society ensures that young people get their life partners and that an individual chooses the right person as a life partner (a husband or wife), and the society developed certain practices to ensure this. Ukuthwala is one such practice.

Nyembezi and Nxumalo (1995) maintain that ukuthwala carried out by a young woman's lover and his relatives or friends. It was used when the young man found it difficult to start marriage negotiations with the woman's parents. The young man would resort to thwala of the woman so that the negotiations could start. Nyembezi and Nxumalo (1995) also state that sometimes it happened when the young woman had met someone that she loved more than her current lover, so, the new lover would thwala her to end her relationship with her current lover. Those who thwala'd the woman would send the marriage negotiator to her parents to officially tell them "funelani nganeno" ('search from my side'), culturally, an official way of reporting that the woman has been thwalwa'd by that particular man's family. The man's family would immediately pay inhlawulo (penalty) and ilobolo so that the woman's parents are able to return the ilobolo to the original lover's family (Nyembezi & Nxumalo, 1995, p.115).

As argued by various other authors, the ukuthwala practice was agreed upon between the woman and the man involved, and there is therefore no clear evidence that the men used violence during the incidents therefor ukuthwala is not the same as abduction.

2.9 Legislation and human rights laws on ukuthwala

2.9.1 Universal Declaration of Human Rights, 1948

According to Article 16 (1) of the Universal Declaration of Human Rights, men and women of full age have a right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending parties and in the practice of ukuthwala scholars like Dent and Nyembezi (2009) have stated that both parties actually give full consent when entering the engagement with the intention to marry.

2.9.2 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964

Article 1 of the Convention on Consent to Marriage states that, no marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person as prescribed by law. State parties to the present convention shall specify a minimum age for marriage (not less than 15 years according to the nonbinding recommendation of this convention). No marriage shall be legally entered into by any person under this age.

2.9.3 African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child states that parties to the present parties shall recognize the rights, freedom and duties enshrined in this Charter and shall undertake to take the necessary steps in accordance with their Constitutional processes (Koyana and Bekker, 2007). Article 2 of the African Charter defines a child as a human being who is below the age of 18 years. Article 4 states that the best interest of the child shall be the primary consideration, every child who is capable of communicating her own views shall be assured the right to express her opinions freely in all matters. Article 11 also states that every child shall have a right to an education, promotion and development of the child's personality. Article 16 also states that parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or abuse, neglect, maltreatment which includes sexual abuse while in the care of the child. Article 21 also states that appropriate measures shall be taken to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child in particular those customs and practices prejudicial to the health or life of the child. Advocacy needs to be raised strong against those

customs and practices that are discriminatory to the child on the grounds of sex or other status (Curran and Bonthuys, 2005).

2.9.4 *Customary Marriages Act*

According to the Recognition of Customary Marriages Act, both the bride and the groom must consent to marriage. The age of consent is 18 years, if one of the parties is under that age of 18 years of age parental consent is an additional requirement for a valid marriage. If this cannot be obtained the permission of a child of commissioner or the Minister of Home Affairs must be sought, however this is subject to the provisions of the Sexual Offences Amendment Act of 2007, which sets the age of consent at 16 (Griffith, Myers and Harvey, 2006).

2.10 **Summary**

Some Sotho commentators (see, for example, Molapo, 2004) argue that ukuthwala is not a culture or a tradition and is also not a custom but “ke mokhoa lichomane” (it is the way of doing things by young men who do not have girlfriends) (talk show debate on Radio 2000, Tuesday 22 March 2011, 6pm-9pm, presented by K.G.). These commentators further argue that ukuthwala started as a practice that izishimane (young men who do not have sweethearts) did, then it became a norm, and consequently developed into a culture. The above media reports describe ukuthwala as “kidnapping”, “rape”, and “abduction”, which are criminal activities. The above media reports confirm a view that often contemporary societies explain African cultures from a European perspective, and portray them as barbaric, primitive and oppressive to women; hence they need to be “identified”, “scrutinized”, “regulated or stopped” by law (Thatcher, 2005). Buthelezi (2011, p.72) also raises this argument when she states:

Lacking a good understanding of local culture, the western missionaries and Colonizers, criticized and stigmatized African beliefs and practices, labeling them
As harmful, superstitious, and barbaric. Colonialism and Christianity (and apartheid in South Africa) - forcibly changed the Zulu way of life. Many Zulus
Abandoned their traditional beliefs, converted to Christianity, and assimilated
Western values. As a result, indigenous Zulu customs, tradition, and philosophy
Were lost.

Drawing from its historical context, the study argues that ukuthwala is a customary practice that has no evidence of criminality, as women involved collude in the practice to solve a problem relating to love relationships. However, the study identifies the illegal practice

of abduction or ubugebengu (criminality); in the words of participants, that is being practiced in the name of ukuthwala.

This study highlights the ongoing debate as to whether ukuthwala may be practiced as a means to open up the marriage negotiation process, and concludes that both men and women understand ukuthwala as a Zulu custom which opens up marriage negotiation process. Accordingly, ukuthwala in this traditional form is understood as not violating the rights of young women and children. However, the manner in which it is currently practiced by some men in some communities it exposes young women and children to harmful practices, similar to forced abduction and this was referred to as ubugebengu (criminality), which violates women's rights and was condemned by all. Communities are not yet empowered to manage these situations. Like many other Zulu cultural practices, information about ukuthwala has been mostly conveyed through the word of mouth and the original intentions at times have thus been distorted. This study encountered the challenge that the South African laws fail to ensure that the abuse of ukuthwala is firstly eradicated and secondly that there are criminal sanctions for the violation.

Ukuthwala is a Zulu custom that opens up a space for women's agency where they can decide to marry a man they choose and end the relationship they do not want. In this way the women are able to command the men whom they love, and who have resources and therefore are also powerful to act in a way the woman wants with regard to initiating negotiations for the marriage. However, it can also be viewed as a Zulu custom carried out by powerful men who have resources and therefore can pay ilobolo (bride wealth), as a power display directed at other men who happen to be their competitors. On the other hand, forced abduction is carried out by emasculated men and is a power display directed at women.

Chapter 3

Theoretical Framework

3.1 Introduction

This chapter presents a theoretical framework of the research, the research will be guided by the Labelling Theory by Howard Saul Becker's (1960s) and the second theory will be Cultural theory by Raymond Williams (1961). A theoretical framework is the guiding blueprint for every research study. Grant and Osanloo (2014:13) posits that it “provides the structure to define how the researcher will philosophically, epistemologically, methodologically, and analytically approach the dissertation as a whole.” Thus, a theoretical framework seeks to help clarify the argument of the study and provide an explanation for a particular thinking guiding the understanding and planning of the study. Thus, to strengthen the validity of any academic claim, there is need for a theoretical framework to help interpret and outline the concepts, ideas and definitions that are key in that study (Eisenhart, 1991; Lovitts, 2005; Grant and Osanloo, 2014). The theoretical framework of this study play a significant role as it provides a baseline or an anchor for the literature review. In research theories are chosen to address the questions of ‘how’ and ‘why’ a phenomenon occurs, to make simplification of the phenomenon, and to distinguish the limits to those generalizations (Ngubane, 2016).

3.1.1 Labelling Theory

Labeling theory, theorized by Howard Saul Becker's (1960s), provides a distinctively sociological approach that focuses on the role of social labeling in the development of crime and deviance. The theory assumes that although deviant behavior can initially stem from

various causes and conditions, once individuals have been labeled or defined as deviants, they often face new problems that stem from the reactions of self and others to negative stereotypes (stigma) that are attached to the deviant label (Becker, 1963; Lemert, 1967). These problems in turn can increase the likelihood of deviant and criminal behavior becoming stable and chronic. In the words of Lemert (1967), deviant behavior can become “means of defense, attack, or adaptation” (p. 17) to the problems created by deviant labeling. Thus, being labeled or defined by others as a criminal offender may trigger processes that tend to reinforce or stabilize involvement in crime and deviance, net of the behavioral pattern and the social and psychological conditions that existed prior to labeling.

Labeling theory has at times been hotly debated among deviance and crime researchers. The theory became widely accepted during the 1960s as a viable approach to crime and deviance, but a series of critiques that came out during the 1970s undermined its popularity. According to critics (Hirschi, 1980; Mankoff, 1971; Tittle, 1980; Wellford, 1975), labeling theory was vague, simplistic, and ideological, and empirical tests had failed to provide consistent support for the proposition that labeling reinforces deviant behavior. Since that time, however, scholars have pointed out that this critique led to a premature demise of labeling theory. According to these scholars (Palarma, Cullen, & Gersten, 1986; Paternoster & Iovanni, 1989), the critics of labeling theory overstated and simplified the claims made by labeling theory.

Moreover, a large part of the research that had undermined labeling theory was methodologically flawed, and thus did not constitute valid testing of the theory. During the past two decades, there have been significant attempts to improve the scientific rigor of labeling research. Researchers have clarified and elaborated the processes by which labeling influences deviant behavior, and they have attempted to overcome methodological flaws that have often plagued the research. The current paper aims are to extract a “current” account of labeling theory, incorporating the recent theoretical and empirical developments pertaining to the criminogenic effects of labeling.

Deviant Labels and Stigma

While social labels generally constitute a part of the cultural framework that people use to define and categorize the social world, deviant labels are special in that they are stigmatizing labels or markers. This assumption is fundamental to labeling theory. Deviant labels, criminal labels in particular, are associated with stigma, which means that the mainstream culture has attached specific, negative images or stereotypes to deviant labels (Link & Phelan, 2001).

Negative stereotypes of criminal offenders are manifested in the mainstream culture in various ways, for example in films, books, mass media, and even everyday language (Becker, 1963; Goffman, 1963; Scheff, 1966). Walt Disney's *Beagle Boys* provide an example of how criminals are often portrayed as innately immoral, devious, and fundamentally different from other people. Such examples remind us that the learning of criminal stereotypes is a part of childhood socialization.

Formal and Informal Labeling

Labeling theory is concerned with problems that emerge after the social environment has defined or typified the individual as a deviant, raising the question of how deviant labeling is imposed on individuals. After all, deviant behavior is common and often does not lead to labeling (Becker, 1963; Lemert, 1967). For instance, juvenile delinquency is often not considered particularly deviant by those who witness such behavior (other juveniles), and thus often does not lead to special reactions by the social environment. Such reactions occur only when there is a social audience that labels the behavior (and the individual) as particularly deviant—or criminal, in the case of criminal labeling (Becker, 1963).

In this regard, labeling theorists have emphasized that formal labeling, police and criminal justice labeling in particular, is a salient source of labeling. In contemporary society, the state has a formal monopoly over the sanctioning of criminals (Garfinkel, 1956). To be formally processed as a criminal or a delinquent therefore testifies to and brings attention to the person's immorality and inability to follow important social norms. Tannenbaum (1938) referred to such public reactions as the "dramatization of evil." Erikson (1966) has argued that formal reactions entail ceremonies ("rites of transition") that mark a change into a deviant status, such as "the criminal trial, with its elaborate formality and exaggerated ritual" (p. 16). Moreover, when punishment has been carried out, there are no analogous official ceremonies in place to cancel the criminal stigma, and thus bring the person back into society. Thus, the stigma of having been formally processed as a criminal offender tends to "stick" to the person.

It may be noted that by highlighting official labeling as a salient source of criminal labeling, labeling theory contradicts the classic notion of specific deterrence, namely, the notion that the pain of apprehension and punishment should deter the offender from deviation in the future (Gibbs, 1975). From the vantage point of labeling theory, this notion of rational decision-making ignores the reality of stigma and its consequences for individual development.

Although underscoring the salience of formal labeling, the notion of informal labeling is at the heart of labeling theory. As will be discussed below, labeling theory argues that formal labeling influences subsequent individual development largely because it triggers labeling and stigmatization in everyday social settings (Paternoster & Iovanni, 1989). For example, an arrest may have no impact on a youth's life if it is kept secret from school authorities and members of the local community. But, if school authorities are notified of the event or if it becomes widely known in the community, it can trigger exclusionary reactions by teachers and community members. Moreover, social audiences may impose deviant labels on actors in the absence of formal labeling (Paternoster & Iovanni, 1989; Matsueda, 1992; Triplett & Jarjoura, 1994).

Labeling and Discrimination

An important aspect of labeling theory argues that disadvantaged groups are more likely than other groups to experience labeling. Aggressive policing of lower-class communities raises the likelihood of lower-class people and minorities experiencing police intervention (Smith, Visher, & Davidson, 1984). Moreover, stereotypes of minorities and disadvantaged groups often entail images of criminality and dangerousness (Quillian & Pager, 2001), and hence members of such groups may be more readily policed, sanctioned, and stigmatized, even net of actual criminal offending (Warren, Tomaskovic-Devey, Smith, Zingraff, & Mason, 2006). Research has found that encounters between police and citizens are more likely to lead to an arrest if the citizen is a minority, net of the nature and seriousness of the offense (Worden & Shepard, 1996). Also, studies have found that minorities and individuals of low socioeconomic status tend to receive more severe sentences, net of the seriousness of the offense that they have been charged with and prior criminal record (Bontrager, Bales, & Chiricos, 2005; Steffensmeyer, Ulmer, & Kramer, 1998), but not all studies support this finding (Albonetti & Hepburn, 1996).

Minorities and impoverished individuals may be more vulnerable to informal labeling as well. Due to stereotypes that associate criminality with racial minorities and impoverishment, members of such groups may be more likely to be associated with criminal stigma. Bernburg and Krohn (2003) have suggested that formal labeling may be more likely to trigger stigma for members of racial minorities and the impoverished, because such groups are already associated with stigma to begin with. While direct research on this point is limited, there is research that

shows that African-American youths are more likely than white youths to be perceived as rule-breakers by their parents, net of their self-reported delinquency (Matsueda, 1992).

Application of the theory to Ukuthwala

This can be linked to the practice of ukuthwal. The practice has been labeled as abusive, which has resulted in others believing it should be abolished. The people who are practicing the culture are facing negative stereotypes due to this labelling. Hence the study at hand will attempt to explore the real meaning of ukuthwa and its real practice (Modus operandi if I can put it in criminological terms)

Labeling theory is concerned with problems that emerge after the social environment has defined or typified the individual as a deviant, raising the question of how deviant labeling is imposed on individuals. After all, deviant behavior is common and often does not lead to labeling (Becker, 1963; Lemert, 1967). This particular research also takes into consideration problems that are emerging as the ukuthwala practice is labeled as abusive and seen as kidnaping. For instance, because of the label people who are practicing the culture are ridiculed. This now means people are abused for believing in their culture, this is the aftermath of labeling. Further to that, this labelling is leading people who are committing crime in the name of ukuthwala practice to continue with the abuse of young girls in the name of these practices.

3.1.2 Cultural Theory

Culture theory seeks to define the heuristic concept of culture in operational and/or scientific terms (Raymond Williams, 1961). Historically these have involved arguments about the relationship between culture and society (including material social processes), the split between high and low culture, and the interplay between cultural tradition and cultural difference and diversity (Raymond Williams, 1961). Cultural theory has also been marked by an engagement with concepts which have often been taken to cover some of the same ground signified by the notion of culture itself. Prominent here have been the concepts of ideology and consciousness (particularly its collective forms).

Cultural theories of crime provide distinct frameworks to understand the influence of human agency, social forces, and peers on behavior (Raymond Williams, 1961). The dominant frameworks argue that culture is a set of values, beliefs, and actions that are learned through interactions with others. From this perspective, culture is primarily transmitted to individuals through intimate peer groups and across generations to provide support or encouragement for

actions that may be unacceptable in the larger society (Raymond Williams, 1961). In addition, cultural forces demonstrate what behaviors are valued and those that are perceived as unimportant or not supported. Subcultures may form in opposition to the dominant culture and support behaviors that deviate from larger social norms, or stem from differences between social classes, gender, or geographic locations. In some perspectives, the dominant culture may define the behaviors of another culture as criminal or deviant in order to protect their interests or marginalize a minority group. Thus, culture conflicts can lead to the identification or creation of criminal groups. Finally, societal responses to the media can foster the belief that a deviant behavior is rampant and force legislative action to identify and define an act as criminal. Regardless of the accuracy of media claims, larger cultural forces can stimulate the belief that criminal or deviant activities are a threat to safety. Thus, cultural theories encompass a broad spectrum of thought about crime and criminality (Raymond Williams, 1961).

Culture and society

To the uneducated man, culture and society might seem as the same thing. Even though they are connected and intertwined, they are hardly the same thing. It is true that one cannot exist without the other. There are some differences that make them differ greatly. We can see culture as a tradition that tends to create continuity and cohesion among people that find it mutual.

The culture had a lot of different interpretations throughout history and it still has different meanings even today. Many experts and sociologists think and share the opinion that culture is the traits of beliefs, values and behavior of one population. On the other hand, society can be viewed as a bigger social group that has some kind of cooperation and an organized sense of being related to one another in a particular way (Richard McCoy, 2017).

It is that sense of relationship that makes each person of one society feel that they belong there. The sum of people and their interactions must be taken into account if we want to answer what society and sociology are. And it is now completely safe to make an assumption that the relationship between culture and society is absolutely present and existing.

In fact, the culture directly affects society because it affects how the people react to changes and ideas. It is like the society is what we see on the outside whereas the culture is what we see on the inside (Richard McCoy, 2017). Now, many common people simply believe that the culture is just a way how people lead and manage their lives. It should contain arts, social norms and standards, social system, technology, religion and, most importantly, education.

Society, according to what scholars know so far, is any group of people who tend to share the same region, biological and cultural characteristics and have the same system of behavior and action. One society must be able to be self-sufficient in order to continue existing while the culture exists beyond the term of sufficiency.

Therefore, society cannot separate from its own culture simply because the culture makes it what it is. Both the culture and society are the terms which are all so overwhelming and encompassing to explain in simple words. Everybody know who they are and where do they come from. That is what definitely defines people.

Culture and society are co-existent. One does not or cannot exist without the other. Culture and society may have some common elements but the two are not the same; they are not identical (Richard McCoy, 2017). The essential difference is that society is composed of people while culture consists of knowledge, ideas, customs, traditions, folkways, mores, beliefs, skills, institutions, organizations, and artifacts (Richard McCoy, 2017). Society is the combination of people with different cultures. In the other hand, Culture deal with the behaviors, language, occupation, dressing, eating and festival of a particular people within a geographical area. Society is a group of people living collectively Culture is basically anything which is subsequently created by said people (Richard McCoy, 2017).

High and low culture

According to sociologist Herbert Gans, cultures can be divided according to various tastes. In his article *American Popular Culture and High Culture in a Changing Class Structure* (1986), Gans argues that “taste cultures” are the “array of arts, and forms of entertainment and information, as well as consumer goods available to different taste publics” (pp. 17–18). Taste cultures fall into at least five categories, each differing by preferences in literature, art, consumption patterns, hobbies, and other leisure activities. According to the author, the categories are different, but not implicitly unequal. However, empirical evidence suggests that not all cultures are equally valued. A stratification system exists in which some cultures are considered “high” cultures while others are considered “low.” According to Tia DeNora (1991), the differential valuation of cultures has been present throughout history in a variety of nations and is maintained through an array of institutional practices.

The difference between high culture and low culture is somewhat arbitrary. Both types of culture involve tastes in music, art, literature, and various material goods, for example, so the distinction generally revolves around specific types of tastes within those categories. High

culture, in general, involves an interest in classical music or opera, fine art, gourmet foods, and so forth. Low culture tastes, in contrast, fall outside of these particular preferences.

Because high culture is valued more highly than other forms, several advantages are bestowed upon those who participate in high cultural activities. According to Pierre Bourdieu (1977), participation or interest in high culture leads to a form of capital that can be used to produce various types of “profits.” For example, several scholars have argued that children who possess cultural capital are advantaged in the school system because teachers may “communicate more easily with students who participate in elite status cultures, give them more attention and special assistance, and perceive them as more intelligent or gifted than students who lack cultural capital” (DiMaggio 1982, p. 190). Numerous empirical studies have supported this claim. Students with higher degrees of cultural capital tend to have higher grades, higher educational attainment, and higher educational expectations.

Theoretically, the opportunity to obtain cultural capital is open to all members of a society. However, there is a strong correlation between cultural capital and socioeconomic status. Since cultural capital is likely to be obtained through socialization, family background strongly influences whether or not individuals will have access to opportunities that could increase their levels of capital. According to Gans, “it takes money to buy culture” (1986, pp. 18–19). Those with low incomes may be unable to afford to participate in high culture activities. Other factors that can affect the accumulation of cultural capital include educational attainment and occupational status. To be able to understand and appreciate high culture, one may need to have a particular level of education. Because information about cultural events is likely to be transmitted through social networks, occupation status becomes important. Because the poor have lower incomes, lower levels of education, and fall into the lower levels of the occupational hierarchy, they may be excluded from opportunities to participate in high culture activities, which will limit the amount of cultural capital they, and their children, possess.

Members of racial and ethnic minority groups may also be excluded from opportunities to obtain cultural capital, partially due to those factors that exclude the poor in general. Members of minority groups are disproportionately represented in the lower classes of society, have lower levels of educational attainment, and are underrepresented in professional occupations. Therefore, like poor whites, they may lack opportunities to participate in high culture activities. However, minority groups may face further exclusion based on various unique circumstances they face as a result of racial or ethnic group status.

As high culture, to a great extent, is synonymous with Euro-American culture, those who are not Euro-American may be particularly disadvantaged with regard to access to cultural capital. According to Paul DiMaggio and Francie Ostrower (1990), historical practices involving overt discrimination excluded African Americans from fully participating in high culture activities. For example, various museums either denied or limited access to blacks, black artists and white artists were segregated, and audiences were often separated by race. Discrimination in education, the economy, and other institutions also played a role in limiting cultural opportunities.

Although opportunities for blacks have expanded since the 1960s, both past and present discrimination may continue to limit access. As noted earlier, race continues to affect socioeconomic status. Due to high degrees of educational and occupational segregation, blacks may lack access to important forms of economic and social capital that could contribute positively to participation in high culture activities. According to DiMaggio and Ostrower, blacks may also participate less in high culture because the benefits of doing so vary by race. For example, attendance at high culture events may be uncomfortable for blacks, as they may be less familiar with these environments, or may be subjected to “‘social slurs, unpleasant incidents,’ and discrimination” (DiMaggio and Ostrower 1990, p. 758). Therefore, the cost of attendance may outweigh the benefits.

Application of the theory to Ukuthwala

The researcher finds this theory to be suitable for this study because the study seeks to explore the culture of ukuthwala and its linkage to crime so a theory that explains concept of culture in scientific terms is relevant to the study.

Cultural theory argues that culture conflicts can lead to the identification or creation of criminal groups. Some cultures like the culture of Ukuthwala has been labelled as abusive and as a crime by scholars, while other scholars view it as a non-harmful cultural practice. These conflicts can confuse and send wrong ideas into the people and other people might end up misunderstanding and misusing the culture of ukuthwala that is why the researcher decide to use Cultural theory for the study because it explains culture in scientific terms.

Cultural theory also states that societal responses to the media can foster the belief that a deviant behavior is rampant and force legislative action to identify and define an act as criminal. The culture of ukuthwala has received very bad publicity in the media and regardless of the accuracy of media claims, larger cultural forces can stimulate the belief that criminal or deviant

activities are a threat to safety. Thus, cultural theories encompass a broad spectrum of thought about crime and criminality (Raymond Williams, 1961).

3.2 Summary

A theory discussed in this chapter and employed in the study will enhance an adequate theorization and explanation of the custom of ukuthwala. The idea and beliefs of ukuthwala practice is unpacked and argued using the Labelling theory together with cultural theory. Labeling theory is concerned with problems that emerge after the social environment has defined or typified the individual as a deviant, raising the question of how deviant labeling is imposed on individuals. After all, deviant behavior is common and often does not lead to labeling (Becker, 1963; Lemert, 1967). This particular research also take into consideration problems that are emerging as the ukuthwala practice is labeled as abusive and seen as kidnaping. Cultural theory has also been marked by an engagement with concepts which have often been taken to cover some of the same ground signified by the notion of culture itself. Prominent here have been the concepts of ideology and consciousness (particularly its collective forms).

Chapter 4

RESEARECH METHODOLOGY

4.1 Introduction

This chapter is intended to present the research design and the empirical methods used by the researcher to conduct the study. To unpack this, the researcher discusses the nature of the study; a profile of the area in which the study was conducted; the sampling techniques used; how the data was collected and analyzed and the ethical considerations made by the researcher.

4.2 Location of the study

The South Coast of KwaZulu-Natal (Port Shepstone) is a town situated on the mouth of the UMzimkhulu River, the largest river on the KwaZulu-Natal South Coast of South Africa. It is located halfway between Hibberdene and Margate and is located 120 km south of Durban (Mohr, 2008). It is the administrative, educational and commercial Centre for southern Natal. The main features of the economy are tourism and agriculture with some manufacturing centered around Port Shepstone (Mohr, 2008).

The researcher used this area (Port Shepstone) because it is where the Inqaba kamvelinqangi cultural organization is located since the researcher was looking at the culture of ukuthwala from their perspective. Majority of the people who are members of the organization are around the South coast although some are all over KwaZulu Natal. Thus, the researcher interviewed even members who are not from Port Shepstone, which is an advantage. The areas where the other participants resides has been reflected to in the interviews.

4.3 Research Design

Research design or configuration could be comprehended as the exact methodology or steps taken by a researcher in search for getting answers to the exploration questions (Fouché et al., 2011). Research configuration manages an intelligent issue and not a strategic one. Research design is consequently a work design with points of interest of what should be done to finish the investigation. Study design or configuration helps in guaranteeing that the data got amid the lead of the examination reacts to the underlying inquiries unambiguously (Fouché et al., 2011). This study utilizes a case study research design

4.3.1 Case study

The case study research design have evolved over the past few years as a useful tool for investigating trends and specific situations in many scientific disciplines. The case study has been especially used in social science, psychology, anthropology and ecology. This method of study is especially useful for trying to test theoretical models by using them in real world situations. For example, if an anthropologist were to live amongst a remote tribe, whilst their observations might produce no quantitative data, they are still useful to science.

Basically, a case study is an in depth study of a particular situation rather than a sweeping statistical survey. It is a method used to narrow down a very broad field of research into one easily researchable topic. Whilst it will not answer a question completely, it will give some indications and allow further elaboration and hypothesis creation on a subject (Martyn, 2008).

The case study research design is also useful for testing whether scientific theories and models actually work in the real world. You may come out with a great computer model for describing how the ecosystem of a rock pool works but it is only by trying it out on a real life pool that you can see if it is a realistic simulation.

A case study is a research strategy and an empirical inquiry that investigates a phenomenon within its real-life context. Case studies are based on an in-depth investigation of a single individual, group or event to explore the causes of underlying principles. It is a descriptive and exploratory analysis of a person, group or event. Case studies analyze persons, groups, events, decisions, periods, policies, institutions or other systems that are studied holistically by one or

more methods. Feagin et al. (1992) states that a case study is defined as an in-depth, multifaceted investigation using qualitative research methods of a single social phenomenon. They also pointed out that it is usually seen as an instance of a broader phenomenon as part of a larger set of parallel instances.

The researcher finds the case study design relevant for this study because as it has been stated that it is a useful tool for investigating trends and specific situations. Case study also investigate groups and since this study was looking at the perspective of Inqaba kaMvelinqangi cultural organization that is based in South Coast, KwaZulu-Natal using a design that analyze and investigate groups was suitable for the study.

4.4 Research Approach

Chetty (2016) explains a research approach as a plan and procedure that consists of the steps of broad assumptions to detailed method of data collection, analysis and interpretation. It is therefore, based on the nature of the research problem being addressed. Research approach is essentially divided into two categories: approach of data collection and approach of data analysis or reasoning. This study utilizes a qualitative research approach.

4.4.1 Qualitative Approach

There have been many attempts to define qualitative research in the social sciences, and to determine whether or not it can or should be differentiated from something called quantitative research (Bryman, 1988 and 2001; Hammersley, 1992; Silverman, 2001).

Qualitative research is a type of scientific research. In general terms, scientific research consists of an investigation that seeks answers to a question, systematically uses a predefined set of procedures to answer the question, collects evidence, produces findings that were not determined in advance and produces findings that are applicable beyond the immediate boundaries of the study (Bryman, 1988 and 2001; Hammersley, 1992; Silverman, 2001). Qualitative research shares these characteristics. Additionally, it seeks to understand a given research problem or topic from the perspectives of the local population it involves. Qualitative research is especially effective in obtaining culturally specific information about the values, opinions, behaviors, and social contexts of particular populations (Bryman, 1988 and 2001; Hammersley, 1992; Silverman, 2001).

Qualitative approach was identified to be a suitable approach for this study by the researcher because the approach seeks to understand a topic from the local population it involves and it is effective in obtaining culturally specific information about the values and social contexts of particular populations. Since the study was looking at the culture of ukuthwala and crime from an organization perspective, qualitative approach was found to be the relevant approach for this study.

The researcher also find qualitative approach to be appropriate for this study because of that use of open-ended questions and probing that gave participants the opportunity to respond in their own words, rather than forcing them to choose from fixed responses, as quantitative methods do. Open-ended questions have the ability to evoke responses that are: meaningful and culturally salient to the participant, unanticipated by the researcher rich and explanatory in nature (Bryman, 1988)

4.5 Sampling

Participant selection is an important part of data collection. According to Webster (1985), a sample is a finite portion of a population whose characteristics are studied to obtain data. Works of different scholars correlate in this regard. More explicitly, Fridah (2004:1) best describes sampling and its purpose as “the act, process, or technique of selecting a suitable and representative part of a population for determining parameters or characteristics of the whole population. The sample for this study was drawn from Inqaba kamvelinqangi cultural organization.

The researcher utilized purposive sampling for collecting data. Reasoning behind the utilization of purposive sample is that the researcher gets the opportunity to use candidates that are suitable and possess the characteristics that the researcher is looking for (Ritchie et al., 2013). In the case of this particular study, the researcher only needed participants who are members of Inqaba kaMvelinqangi. Participants who are above 30 years of age. The reasoning behind the age choice was to choose people with experience who can share insight regarding the practice of Ukuthwala. This is not to say people who are below 30 years do not understand the practice, however, the researcher needed those with more experience. And this was the criteria of selecting participants purposively.

The researcher had a sample size of 10 participants. The researcher chose this number because it is relatively efficient to analyze the data obtained for this smaller number of participants. And further to that, there were limited members of the organization who were above age 30 as

per the selection criteria of the researcher. There are recurrent debates about the question of “how many” when selecting sample size. Dworkin (2012), suggest that participants anywhere from 5 to 50 is adequate for qualitative study. This proves that the sample size for the particular study is adequate especially considering that this is a case study of a small cultural group.

4.5.1 Recruitment strategy

The researcher wrote a letter seeking permission to the organization. When permission was granted, the researcher requested the chairperson to help approach the participants that meets the criteria that the researcher is using. The researcher than met with the participants and thoroughly explained the research to the participants and what would be expected from them. The participants were above the age of 30 years and have been with the Inqaba KaMvelinqangi cultural organization for 5 years or more. Interviews were than arrange with the participants for the times that were convenient to them.

4.6 Data Collection

Data collection is the process of gathering the desirable information carefully, with least possible distortion, so that the analysis may provide answers that are credible and stand to logic (Sapsford &Jupp, 2006). There are two types of data which are the Primary Data and the Secondary Data.

Primary data is the data gathered by the researcher first-hand. The researcher collects such data on purpose, because no previous records of the data exist to be accessed by public. Primary data can be collected using a range of methods like surveys, interviews, focus groups, etc. Such data is considered to be highly reliable (Sapsford &Jupp, 2006).

The data that have been collected and compiled by someone, and are accessible to the public, are known as secondary data. It is the data used by the investigator from previous studies and other sources. The primary data collected for one research study, becomes secondary data when it is further used for another research. Generally, secondary data includes government reports, census data, departmental records, etc. Using such data is less expensive and faster in comparison to primary data (Sapsford &Jupp, 2006).

In the study the researcher employed both primary and secondary data collection methods. Secondary data was collected for the purpose of literature chapter, however it was also used expressively in the discussion of findings of this particular study. Primary data was collected through the semi-standardized individual interviews. Semi-standardized interview were used

as a method of data collection because they use an interview schedule for predetermined topics, they allow for unanticipated responses and issues to emerge through the use of open-ended questioning (Tod, 2006). The flexibility of the semi-standardized interview allowed the interviewer to pursue a series of less structured questioning and also permitted the exploration of spontaneous issues raised by the interviewee to be explored.

The researcher interviewed 10 individuals and the interviews were about 15 to 20 minutes long. These were telephonic interviews and the researcher used the call recorder app to record all the interviews. This was due to financial difficulties of travelling to different areas of South coast as the research was not funded. The recordings are still kept safe by the researcher and the supervisor.

4.7 Data Analysis

Data analysis is a process of inspecting, cleansing, transforming, and modeling data with the goal of discovering useful information, informing conclusions, and supporting decision-making. Data analysis has multiple facets and approaches, encompassing diverse techniques under a variety of names, and is used in different business, science, and social science domains. In today's business world, data analysis plays a role in making decisions more scientific and helping businesses operate more effectively (Xia, 2015). This study utilized thematic analysis when the data was analyzed.

Once the data was collected, the researcher transcribed it. Then the researcher utilized thematic analysis to analyse the data. Thematic analysis is a useful tool used in qualitative methods of enquiry for “‘identifying, analysing and reporting patterns (themes) within the data. It minimally organises and describes a data set in (rich) detail. However, frequently it goes further than this, and interprets various aspects of the research topic” (Braun and Clark, 2006: 79). To effectively utilise this method the researcher followed the 6 steps of analysis accordingly. The initial step was for the researcher to familiarise herself with the data. In this process the researcher immersed herself with the data. This was done by means of reading and re-reading the transcriptions or listening to recordings countless times. In this regard, the researcher induced ideas from the data.

Secondary to this, the researcher utilised the ideas noted from the data in the following which she generated initial codes. These codes are not themes, they are more specific. The third step was to interpret the codes that had been collected. Researcher then organised the codes in terms of their similarity of split them because of the differences. The fourth step was the Review

themes. According to Joffe and Yardley (2004) a review of the identified themes is done so that the researcher decides whether to combine, improve, separate, or reject initial themes. It is important to note that there must be distinction between the themes. The next step was to then create names for the themes. The names captured the very essence of the codes that exist under them. Finally, the researcher reported on the findings. The researcher interpreted and analysed the data and presented with empirical evidence that supported the research questions of the study.

The researcher employed thematic analysis for analyzing data for this study because thematic data analysis identifies patterns in the data that are important or interesting and use them to address the research which is much more than simply summarizing the data; a good thematic analysis interprets and makes sense of it and that is why thematic analysis was the best suitable for the study.

4.8 Ethical Consideration

The researcher obtained written permission from the Inqaba kaMvelinqangi cultural organisation. The letter gave authority for the researcher to conduct interviews within the organisation. The researcher was granted ethical clearance by the University of KZN College of humanities Ethics Committee. The researcher produced a letters to the participants which was the informed consent letter for participation, explaining the aim of the study and what was expected from the participants. This was done during the event that the researcher attended, where the participants were introduced to the researcher. To obtain the most quality data from the participants, the questions were asked in IsiZulu. This is because all the participants were Zulu speaking.

4.8.1 What do ethical considerations entail?

Ethical considerations are there to protect the participants. Several attempts have been made in trying to protect the participants during a study. The principle of research is that no individual taking part have been forced into participation. In assuring that the participants have not been forced, there is an informed consent form that needs to be filled by participants prior to the study. The research must not subject the participants to any form of harm. Oakes (2002) attests that "Harm can be defined as both physical and psychological." Anonymity is used as a means of assuring privacy and confidentiality. It is therefore important that the researcher explains to the participants that they have rights and may withdraw from the study at any point during the

interview. All of this was done by the researcher in this study. Ethical considerations are an essential part of any academic study and its guidelines should always be followed.

4.8.2 Informed Consent Letter

Informed consent provides participants with sufficiently detailed information on the study so that they can make an informed, voluntary, and rational decision to participate (Shahnazarian, 2013). An informed consent form is therefore an ethical guideline that is utilized by persons conducting research. This assures that the researcher has not breached any of the ethical requirements prescribed by the University.

Upon beginning this study, the researcher followed all the ethical issues that were embedded in the informed consent form. The researcher assured confidentiality. Participants were made aware that information they provided could not be utilised against them as it was collected for the purpose of research. The participants were made aware that they could withdraw at any point. This information would be stored for five years at the location known by the researcher and her supervisor. The participants were made aware that there would be no financial benefits for them. Lastly, those who chose to take part in the study were given a form to sign. Mlamla (2017) posits that “many misunderstandings can occur between the researcher and the participants that may be caused by some barriers. Such barriers may be related to gender, identity issues, and cultural aspects such as language differences and religious dogma. Most importantly, the process of informed consent was designed to protect and respect the participants.” As such, the researcher translated the Informed consent form into IsiZulu to accommodate the participants who are unable to understand English.

4.9 Summary

This chapter offered an analysis of the methodology applied in this research study. It has outlined the nature of the study, study location, sampling used in the study, data collection method, data analysis method and ethical considerations. The study is conducted using a qualitative research which aims to understand the experiences of the subjects.

Chapter 5

Data Presentation and discussion

5.1 Introduction

This chapter is an analysis, discussion and presentation of the data that was obtained during interviews with the members of iNqaba KaMvelinqangi cultural organization. A total of 10 participants aided the researcher in gaining knowledge about the culture of ukuthwala and crime. Interviews were done in IsiZulu as the participants were comfortable in this language. The researcher initially transcribed the interviews in their original language (IsiZulu) then translated the transcription into English. The researcher then objectively interpreted the data. Participants are not presented by their names due to ethical considerations. The data obtained from the interviews has been linked with the readily available data within the thesis hence corresponds with the objectives of the study. This chapter discusses the following themes:

- Definition of the culture of ukuthwala
- The idea behind the formation of the culture of ukuthwala
- Ukuthwala as a cultural practice
- Causes of Ukuthwala
- Difference of ukuthwala amongst different tribes
- How the culture of ukuthwala is done
- Is the culture of ukuthwala a crime
- Should the culture of ukuthwala continue to be practiced
- Measures that can be done to keep the practice pure and in its original state

5.2 Definition of the culture of ukuthwala

Ukuthwala is a Zulu practice that opens up marriage negotiation process when it is difficult to have these started. Msimang (1991) explains the process of ukuthwala as it was taking place in traditional Zulu communities. Places where ukuthwala takes place and the times of occurrences vary, but it usually happens when the woman is not at home (for example, during traditional ceremonies, or when young women go to fetch water or firewood). The practice of ukuthwala occurs mainly in rural parts of South Africa, in particular the Eastern Cape and KwaZulu-Natal. Among the Xhosa and Zulu people, ukuthwala, or bride abduction, was once an acceptable

way for two young people in love to get married when their families opposed the match (Dixon, 2012). Ukuthwala has been abused, however, to victimize isolated rural women and enrich male relatives (Dixon, 2012).

Data gathered through the interviews revealed that ukuthwala is a legitimate cultural practice where a woman is carried to a man's home with intentions to marry the woman. The responses from the participants also revealed that this only happen when both parties has agreed to it, where the woman has given consent to marry the guy. This is what the participants had to say:

Ukuthwala is actually an agreement between a man and a woman who are in a romantic relationship and want to get married but have some problems doing so, it could be that the woman's family does not approve of the man the woman has chosen or the woman has fallen in love with someone else and doesn't want to continue to be in that relationship,, a woman with her current lover would then arrange for the woman to be thwala'd. p1

Ukuthwala in its traditional form is collusive strategy by the willing lovers to secure marriage negotiations. Mwambene (2011) state that ukuthwala has been described as innocuous, romantic and charming age-old custom. Ukuthwala in its traditional form played an important role in the traditional courting process, the community would intervene when the couple involved could not make progress with their relationship and the practice involved the intervention of both families and the community members together with the chief leaders of that village (Van der watt & Ovens, 2012). This is what one of the participants had to say:

Ukuthwala sometimes it is used by a woman so save herself from a relationship she no longer want to be part of. Back in the days a woman was not allowed to date a guy after she has dated another guy before, a woman was allowed to only qoma once and then after that she should become someone's bride, so sometimes it happens that with the person they dated first things are no longer going well in the relationship and they want to move on with someone else, now because women were not allowed to date more than once, they would arrange with the second person that they have met to have her thwala'd so the lobola negotiations can begin and they could get married. P2

Research has shown that sometimes people confuse the culture of ukuthwala with crimes like kidnapping. That has led to many people thinking that the culture of ukuthwala is bad and should be abolished of which the data collected through the interviews has shown that it is not true. It has been mentioned that in the Zulu tribe a man is not allowed to thwala a woman that they are not in a relationship with because before the culture of ukuthwala could happen, both

parties should agree to it and nobody should be hurt in any way. Here are some comments from the participants:

“Ukuthwala is a culture amongst Zulu cultures that happen if a man wants to take a wife and there are obstacles that are disturbing the plans, they then talk with his lover and they agree to go the route of the culture of ukuthwala. It is more like a solution when there is anything standing in the way of two people who wants to get married” p6

A lot of rules existed back in the days that sometimes limited women on their life decision, for example it has been said that back in the days a woman was not allowed to go through the process of *ukuqoma* more than once, after she has said yes to a certain man the next step should be the lobola negotiations and the process to marriage. It happens then where one finds that the first relationship of the with her lover does not work out or for some reasons it comes to an end, now because the woman is not allowed to go through the process of *ukuqoma* again if she finds herself a new lover they would then have to go with the route of the culture of ukuthwala.

“For the culture of ukuthwala to be done, a man and a woman has to be in a relationship first. Once a man and a woman after facing some problems or having to obey certain rules like the one where the woman is not allowed to qoma twice then they would agree to have the woman thwala’d. Sometimes a woman would plan the whole thing, she would tell her lover that at a certain time she is going to pretend like she is going to fetch water by the river and then the lover with his friends or brothers would then thwala the woman to the man’s home. The next day the man’s family sends abakhongi to the woman’s home to tell them to funela nganeno which means that the woman is with them. The woman’s family would then send someone to go get the woman’s consent about this matter then after the lobola negotiations would begin”p6

Ukuthwala is a custom and customs are legal, as a result the term *yisiko* (customary) or phrase *yisiko lethu* it is our culture was foregrounded as means of explaining ukuthwala by these support of the practice (Seleona,2005). Ukuthwala was practiced under the spirit of *ubuntu*, it is important to understand the foundation and to identify the spirit of *ubuntu* behind the practice (van der watt& Ovens, 2012). Ukuthwala practice is a cultural custom that became part of the South Africa ethnicity groups in the early generations and it is still preserved and commonly used in other communities.

Ukuthwala is a Zulu practice that opens up marriage negotiation process when it is difficult to have these started. Msimang (1991) explains the process of ukuthwala as it was

taking place in traditional Zulu communities. He states that a young man and his “sib-mates” carried the woman to the young man’s home. On arrival, they would dress the young woman in an isidwaba (leather skirt). Professor Hulumende Maphalala of the University of Zululand says a thwalwa’d woman must not cry, because if she does, there will be izimpi zezigodi (faction fights). After a young woman was thwalwa’d, a message through abakhongi (marriage negotiators) was sent to her parents telling them that funelani nganeno (search from this side for your missing daughter), which is an expression that simply informs them about where she was. In this case, ilobolo (bride price) negotiations resume and the marriage negotiation process becomes open. This is an indication that the man who thwala’d the young female did not mean harm.

5.3 The idea behind the formation of the culture of ukuthwala

South Africa is rich in cultural diversity and a democratic country, whereby culture plays an essence role in South African beliefs and traditions. Ukuthwala culture is a form of traditional practice that is within the cultures in South Africa and commonly dominated in rural areas as a form of practice that necessitate marriages between men and women.

In the practice of the custom of bride abduction ukuthwala was not regarded as criminal offence because the young woman was not harmed in any way and often she would have colluded with the young man in that situation (Wood,2014). This is what one of the participants had to say about the idea behind the formation of the culture of ukuthwala:

“As I have mentioned before, according to my knowledge you find that the father of the woman wish that his daughter would be married to another family maybe because they are rich and well known but you find that the woman has already fallen in love with someone else, then they agree and arrange with the man the woman loves to have the woman thwala’d and then in the next morning people will be sent to the woman’s home to let them know that the woman was thwala’d so (abafunele nganeno) meaning that they know about the whereabouts of the woman

According to the responses from the participants one would conclude that the formation of the culture of ukuthwala actually helped women in many ways as one of the participants mentioned that sometimes even parents end up wanting to choose a husband for their girl regardless of whether the child wants to marry that person or not, if they even love the person so the culture of ukuthwala now gives them the option to actually arrange with the man that they really love that the man would thwala the woman and they would live happily ever after. This is what other participant had to say:

“As I have mentioned before, according to my knowledge you find that the father of the woman wish that his daughter would be married to another family maybe because they are rich and well known but you find that the woman has already fallen in love with someone else, then they agree and arrange with the man the woman loves to have the woman thwala’d and then in the next morning people will be sent to the woman’s home to let them know that the woman was thwala’d so (abafunele nganeno) meaning that they know about the whereabouts of the woman

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“It is a legitimate and harmless cultural practice aimed at everyone ending up being with the person they want to be with” p5

Once the girl has been taken to a man’s village her guardian or his messenger will then follow up on the same day and possibly take her back if one or more cattle are not handed to him as earnest promise for a future marriage (Bekker et al. 2006). There was a certain amendment rules that were followed and respected, everything was done in some formal traditional way and cattle were a sign of establishing ties and forming kinship between both families. A man who seduces the girls required to pay a seduction beast addition to the number of ilobolo cattle agreed upon and in addition to the ukuthwala beast where no marriages has been proposed (Kayana & Bekker, 2007). This is what one of the participants had to say:

“I am not sure why it was created in the first place but by looking at how it is practiced I think it had something to do with giving a woman a chance to be able to be with a partner they chose themselves and also to be able to build and expand a man’s home” p5

The Zulu tribe have been said to be people with respect, love and humanity and their cultures also encourages that and does not harm or hurt anyone in any way. Some of the participants stated that not even one Zulu culture abuse or harm women and children in any way, which means that the formation of all their cultures are always for the good reasons to improve their way of life and being able to find solutions in certain issues that they may come across, just like how the culture of ukuthwala does.

“I do not know why it was created but I do believe that it was only for good reasons because our culture as the Zulu tribe encourages only the good, like respect, love and humanity” p7

The custom of bridal abduction ukuthwala was meant to solve problems between young man and woman who were in a love relationship and intended to marry but were faced with obstacles to realize their dream (Nyembezi & Nxumalo, 1995: 115). One of the obstacle that the parents were not ready about was to involve their daughter into marriage but because the men showed the necessity of loving their daughter and did everything to show how willing he is to marry their daughter.

5.4 Ukuthwala as a custom

Ukuthwala amongst the Zulu tribe is known as a legitimate cultural practice that is done without breaking any law, there is no crime involved. The data gathered through the interviews revealed that when this culture of ukuthwala is practiced, both parties agree upon it and a woman gives consent and nothing harmful is done to the woman and nothing is done without their consent. The Zulu culture is known for the respect it has for women so they would not practice a cultural practice that abuses women. These are some of the comments from the participants:

“The Zulu culture is well known for respecting women and treating them right, the culture of ukuthwala does not harm women or children in any way. It is a legitimate and harmless cultural practice aimed at everyone ending up being with the person they want to be with” p5

According to Monyane (2013) Ukuthwala is an example of a traditional practice that reflects the values and beliefs held by members of a community for periods spanning generations, in most cases the community, is involved in an organizing an attempt to bring together a man and woman this also represents the spirit of ubuntu and a sense of shared responsibility amongst Africans. From these reasons, it is apparent that ukuthwala can serve important cultural purposes among those South African communities who live their lives according to cultural norms (Mwambene, 2009:6).

“All in all a woman does give consent so it is not a criminal act” p5

The culture of ukuthwala has been said to be an innocent and pure cultural practice that does not involve any criminal behavior. What the participants have emphasized is that when the culture of ukuthwala is done both parties should know one another and be in a relationship and they have to both agree on taking the route of the culture of ukuthwala. It has been said also that even after the process has started and the man family have sent *abakhongi* to the woman’s

family, the woman's family also sends someone to go get consent from the woman before the *lobola* negotiations could begin and that shows that it is a legitimate and harmless cultural practice.

“In the Zulu tribe the culture of ukuthwala is known as a harmless cultural practice where two people are doing it so they can be together regardless of whatever is trying to get to their way. What most important about the culture of ukuthwala in the Zulu tribe is that both parties agree about it, no one get to be taken without their permission, it is an agreement between two people who are already in a romantic relationship” p6

Huisamen, Nosilela and Kuschula (2010:1) defines ukuthwala as an old age Xhosa marriage custom which involves the legal abduction of the bride-to-be. The custom involves the abduction of the unsuspecting bride-to-be by the suitor's friends once marriage has been negotiated between the two families. Other authors, such as Doke, Vilakazi, Malcolm and Sikakana (1990), sometimes refer to ukuthwala as bride abduction. According to the Oxford Advanced Learners Dictionary of Current English: New International Students' Edition (Soanes, 1995, p.2), abduction means 'to take away illegally using force or deception'. Based on this definition of abduction, Seleokane (2005) argues against referring to ukuthwala as abduction, which he explains is illegal from start to end; he states that ukuthwala is a custom, and a custom is legal.

“The Zulu tribe are very respectful people with so much humanity and respects a person's dignity. Most of our cultures encourages that. The culture of ukuthwala is a cultural practice that is not harmful and does not hurt or abuse women and children. No one is taken without their permission and no one is hurt in any way when the practice is done. So the culture of ukuthwala is just a pure and harmless cultural practice that only make two people who love each other find their way to be together forever” p7

Currently the custom of ukuthwala is still practiced in rural areas of KZN such as Zwelibomvu, Bergville and KwaNgqolosi, and more so in their surrounding rural areas, which include EMaPhephethweni, and at KwaNyuswa (EMaQadini). In these Areas ukuthwala is a normal, customary practice, as is the case in Olundi (EMahlabathini) in the district of Okhukho (EMaChunwini) and in the district of EZiKhumbeni (EBaThenjini).

5.5 Causes of Ukuthwala

Bekker et al (2006) observes Ukuthwala as something resorted to when there is an obstacle to a marriage. In traditional Zulu culture a person's life is a concern of the family and society. Since marriage is valued, the society ensures that young people get their life partners and that an individual chooses the right person as a life partner (a husband or wife), and the society developed certain practices to ensure this. Ukuthwala is one such practice. It is still practiced among some rural communities.

Data collected through the interviews shows that there are various situations that could lead to a woman being thwala'd. Participants stated that sometimes parents stand in a way of two people who want to be together and get married and then the two people man and woman end up arranging for the culture of ukuthwala to happen. Sometime it is the rules that existed back in the days that could make a man and woman to decide and agree on having the woman thwala'd. This is what the participants had to say:

“Sometimes the father of the woman feels very strongly that he does not want his daughter to be married to that family that is the way the culture of ukuthwala use to happen. Not to take a woman without her consent” p2

Nyembezi and Nxumalo (1995) maintain that ukuthwala carried out by a young woman's lover and his relatives or friends. It was used when the young man found it difficult to start marriage negotiations with the woman's parents. The young man would resort to thwala of the woman so that the negotiations could start. Nyembezi and Nxumalo (1995) also state that sometimes it happened when the young woman had met someone that she loved more than her current lover, so, the new lover would thwala her to end her relationship with her current lover. Those who thwala'd the woman would send the marriage negotiator to her parents to officially tell them “funelani nganeno” (‘search from my side’), culturally, an official way of reporting that the woman has been thwalwa'd by that particular man's family. The man's family would immediately pay inhlawulo (penalty) and ilobolo so that the woman's parents are able to return the ilobolo to the original lover's family (Nyembezi & Nxumalo, 1995, p.115). This is what one of the participants had to say:

“The culture of ukuthwala is the way people used to live back in the days where a woman was already dating someone else, while dating that person they would maybe have problems between them and maybe it could be that the woman no longer loves the man they are with and they have decided to move on to date someone else, because back in the days a woman was not

allowed to qoma more than once, then the woman would plan and arrange with the recent boyfriend that she should be thwala 'd" p3

The culture of ukuthwala has been said to be a harmless cultural practice that is not a criminal act mostly because both parties actually agree on practicing this culture and the woman does give consent so one may conclude that anything where the woman is taken without her consent is not the culture of ukuthwala.

"Ukuthwala is a practice that used to be practiced back in the days, some other areas of KwaZulu still do practice it. It was when if a man and a woman are in a relationship, a romantic relationship and want to get married and maybe the family of a woman does not approve of the man, maybe the father does not want his daughter to marry that man because of whatever reasons he has and sometimes he would go to extent that he chases away abakhongi if they come to ask for his daughters hand in marriage and then the two people who are in a relationship would discuss this and would agree that a woman should be thwala 'd. A woman would then tell her lover that at a certain time she is going to pretend to be going to the river to fetch water or to the forest to collect wood and then her lover with his friends or brothers would then thwala the woman. It is a very interesting cultural practice and it does not harm a woman in any way" p7

The rule of women not being able to *qoma* twice has been one of the causes of the culture of ukuthwala to happen because if their first relationship do not work out, the only way to be with another person and get married is if they agree with her new lover that the woman should be *thwala 'd*. Also back in the days all Zulu parents dreamed of was for their daughters to marry rich and highly respected men who will treat them right, sometimes you find that maybe parents already have someone in their minds that they want their daughter to marry. The problem now start when a woman has found herself someone else that they love and they want to be with and the parents do not approve, now they will have to arrange with their lover to have the woman *thwala 'd* so that the parents will have no choice but to accept this person and let the *lobola* negotiations begin.

"As I have said before that the culture of ukuthwala is a solution to problems that are standing in the way of two people who wants to get married and be together and it also gives women a chance to be with the person they want to be with. Back in the days it would happen that the father of a woman would ruin the lobola negotiations because he does not want his daughter to marry that man or maybe he already has a person in mind that he would like his daughter

to marry, many that person comes from a rich family or a highly respected family, after that has been happening the two lovers would then decide to have the woman thwala'd and by so doing the woman get to be with the person they want to be with and also the lobola negotiations commence so the culture of ukuthwala aids in situations like that" p6

Krige (1965) argued that among the Zulus ukuthwala took place when an engaged young woman or her father broke her contract relating to marriage negotiation processes. A penalty over and above ilobolo would be demanded only if the young man had no right to thwala the young woman. He further argued that from his study, there was no evidence whether ukuthwala obligated a woman's parents to allow their daughter to marry the man who thwala'd her, or if they would still refuse to consent to marriage. Furthermore, Krige (1965) did not clarify whose consent was sought, the young woman's or her parents'. Krige's contribution to ukuthwala is not substantive; nevertheless, his significant endeavor was in highlighting the practice of ukuthwala among the Zulus, although this is confused with abduction.

As argued by various other authors and the responses from the participants, the ukuthwala practice was agreed upon between the woman and the man involved, and there is therefore no clear evidence that the men used violence during the incidents therefore ukuthwala is not the same as abduction but it is a legit cultural practice.

5.6 Difference of ukuthwala amongst different tribes

Research has shown that different tribes also has and practice the culture of ukuthwala though it is not done the same way. Some scholars have even made a conclusion that the culture of ukuthwala was originated from the Xhosa tribe and then spread to other different tribes namely the Zulu and the Sotho tribe. Data obtained from the interviews has shown that the culture of ukuthwala vary amongst different tribes and it is also different at how they practice it. This is what participants had to say:

"I would say it is different from how other tribe's practice it, in other tribes it happens that a woman is taken without her consent but in the Zulu tribe something of that nature has never happened or I have never heard of it" p2

Soga (1931) maintained that forced marriages prevailed in the Xhosa culture and argued that forced marriages took place among civilized people. He asserted that a large number of "ukuthwala" cases among Xhosas were love romances, and that in many of these the term simply denoted that the couple had mutually arranged to elope so that the female's parents

would be faced with a *fait accompli* if they were unfavorably disposed towards the young man. Soga (1931, p.31) concluded that the female agreed to this procedure in order to marry the man she loved, and escaped from the man which her parents sought to marry her to. According to Soga (1931) there was no intention on the part of the man to evade *ilobolo*, but he was determined to marry the woman of his choice.

“Ukuthwala in the Zulu tribe needs both parties to have some sort of a relationship, one cannot thwala a person if they do not have a relationship with, so how they do it in other tribes like the Xhosas and the Sotho’s is not right, they just thwala a person without their consent and without being in any kind of a relationship with them. The culture of the Zulu clan encourages man to “shela” women and win them over with words, not to force them in to anything they do not want so they would not allow a cultural practice that doesn’t respect woman’s dignity” p4

The variety in the culture of ukuthwala amongst different tribes or different cultures has caused a confusion about the Zulu culture of ukuthwala. Some people have copied what other tribes do and then commit crime in the name of the culture of ukuthwala.

“Taking a woman without their consent and without being in a relationship with them is a crime but the original culture of ukuthwala is not a crime” p4

Commenting on ukuthwala among Swazis, Seleokane (2005) also makes a distinction between the ukuthwala custom and the abuse of the custom.

“The Zulu culture is well known for respecting women and treating them right, the culture of ukuthwala does not harm women or children in any way. It is a legitimate and harmless cultural practice aimed at everyone ending up being with the person they want to be with” p5

Many people have confused the Zulu culture of ukuthwala in many ways, mostly because they would compare it to the culture of ukuthwala that is practiced by other tribes and also with the crimes that people commit in the name of the culture of ukuthwala. It has been said that the Zulu tribe have a lot of respect for women and their dignity therefore they would not practice a culture that hurt women or that degrade their dignity as women.

“In the Zulu tribe the culture of ukuthwala is known as a harmless cultural practice where two people are doing it so they can be together regardless of whatever is trying to get to their way. What most important about the culture of ukuthwala in the Zulu tribe is that both parties agree about it, no one get to be taken without their permission, it is an agreement between two people who are already in a romantic relationship” p6

Several authors, such as Bryant (1949), Krige (1965), Vilakazi (1962), Schapera (1946), Msimang (1991), and Nyembezi and Nxumalo (1995), have reported on ukuthwala as an age old custom among the Zulus. Apparently the custom was carried out when the two people involved (that is, a man who thwala'd the woman and the woman herself) had agreed on it, although during the ukuthwala incident the woman would pretend not to like it. This therefore means that a young man would thwala a woman he had a love relationship with, and not just any woman.

“The Zulu tribe are very respectful people with so much humanity and respects a person’s dignity. Most of our cultures encourages that. The culture of ukuthwala is a cultural practice that is not harmful and does not hurt or abuse women and children. No one is taken without their permission and no one is hurt in any way when the practice is done. So the culture of ukuthwala is just a pure and harmless cultural practice that only make two people who love each other find their way to be together forever” p7

In another related study Krige (cited in Schapera, 1946) discussed abduction or elopement as it took place among the Tonga, Venda and Lobedu. According to Krige abduction or elopement among the Tonga was not recognized as ukuthwala, and it was considered a disgrace. Krige found that these tribes had “ukuthwala as a kind of abduction in which a young man and his friends carried away a young woman (sometimes even at the instigation of her own father)” with the aim of marrying her (Krige, cited in Schapera, 1946, pp.112 113). He observed that the thwalwa'd young woman would run away with her lover to some “indulgent” relative and the man's people reported the matter to her father who, among Venda and Lobedu, usually accepts the situation but demands ilobolo.

5.7 How the culture of ukuthwala is done

Nyembezi and Nxumalo (1995) maintain that ukuthwala carried out by a young woman’s lover and his relatives or friends. It was used when the young man found it difficult to start marriage negotiations with the woman’s parents. The young man would resort to thwala of the woman so that the negotiations could start. Nyembezi and Nxumalo (1995) also state that sometimes it happened when the young woman had met someone that she loved more than her current lover, so, the new lover would thwala her to end her relationship with her current lover. Those who thwala'd the woman would send the marriage negotiator to her parents to officially tell them “funelani nganeno” (‘search from my side’), culturally, an official way of reporting that the woman has been thwalwa'd by that particular man’s family. The man’s family would

immediately pay inhlawulo (penalty) and ilobolo so that the woman's parents are able to return the ilobolo to the original lover's family (Nyembezi & Nxumalo, 1995, p.115).

All participants that were interviewed for this study explained how the culture of ukuthwala is done. It has been mentioned that sometimes it is the woman who actually come up with the idea of having her *thwala'd*. She would tell her lover that she will leave at a certain time and pretend to be going to fetch water from the river and then her lover with his friends or his brothers will *thwala* her to the man's home. Here are the comments from the participants:

"In most cases after a man and a woman have agreed that the woman will be thwala'd, the woman will then tell a man that at a certain time she will pretend like she is going to fetch water from the river and then a man with his friends or his brothers will then thwala the woman to the man's home. The next day the man's family will send abakhongi to the woman's family to tell them to funela nganeno which means that the woman is with them or they know where the woman is. After abakhongi have arrived with the news, the woman's family will now send someone to go get the consent from the woman and then the lobola negotiations would begin"
p5

In the ukuthwala process a woman is physically carried away, being taken from somewhere (usually on the way to school, shop, to fetch water from the river or to fetch firewood from the bush) by a young man who is helped by friends and relatives, to the man's home where she is incorporated into the family that awaits her arrival. This process is arranged with the thwalwa'd woman herself. Then through abakhongi (marriage negotiators), a penalty plus ilobolo (bride wealth) is immediately sent (usually in the early morning of the following day) to the woman's home to 'alert the young woman's parents of her whereabouts'. Her parents would then seek her consent or confirmation by sending a messenger to the thwala'd woman to ask her if she likes where she is. On getting her confirmation/ consent, then marriage negotiations start and ilobolo is paid by the marriage negotiators on behalf of the prospective husband, and consequently marriage follows soon.

"As I have explained it happened in two ways, either if two men are fighting for a woman and then one of them would thwala the woman and pay lobola for her to the woman's family. The other way would be if the woman's parents actually thwala their child themselves and give her to the man they see fit to marry their daughter" p4

Sometimes when the culture of ukuthwala is done one could find that the mother of the woman already know what is going to happen depending on the relationship the mother has with her

daughter and this shows that a woman has agreed and has given consent for ukuthwala to happen. Even when the woman goes to the river or anywhere where ukuthwala will take place, she asks her sisters to actually go with her and she tells them everything that is going to happen which means she knows and she has agreed. Anything besides that is not the culture of ukuthwala. This is what participants also had to say:

“Women would go together to the river with “amaqhikiza” knowing what is going to happen and sometimes the mother of the woman also knows what is going to happen, the women would then go to the river as planned and by the time they are supposed to be back home they do not come back but they go to the home of the man that the woman is supposed to marry. They normally arrive in the evening. Then early in the morning they would go to bath in the river and then go back to the man’s house. After four days “Umkhongi” with people accompanying him would go early in the morning to the woman’s family to tell them to “funela nganeno” which means that they know where the woman is. After that then the lobola negotiations would begin” p3

The cultural practice of ukuthwala shows women’s agency regarding their own sexuality; that is, it shows women’s capabilities to make choices and decisions about and for themselves. Women are asserting themselves using their bodies. The reasons for ukuthwala show women as being powerful enough to make their own decisions, and to manipulate situations to their advantage, using ukuthwala.

“As I have said before that a man reach an agreement with the woman that a woman is going to be thwala’d, a woman would sometimes tell a man that on a certain day please come by the river I will come with my sisters, and then you will take me and carry me to your home. When a man takes a woman to his home they will then send abakhongi to the woman’s home to tell them to funela nganeno which means that the woman is with them, then the woman’s family would send someone to go confirm the woman’s consent after that the lobola negotiations would begin” p1

It has been said by some participants that sometimes it happens that after the man and a woman have agreed that the woman will be thwala’d, when the process is halfway the suddenly changes her mind. If the person that the woman’s family send to get the woman’s consent comes back with a different answer and not a yes, a man is expected to pay a fine of a cow because though they both agreed in the beginning but now to the parents it will appear like the man took a woman by force or without her permission and that is not allowed in the Zulu tribe.

“For the culture of ukuthwala to be done, a man and a woman has to be in a relationship first. Once a man and a woman after facing some problems or having to obey certain rules like the one where the woman is not allowed to qoma twice then they would agree to have the woman thwala’d. Sometimes a woman would plan the whole thing, she would tell her lover that at a certain time she is going to pretend like she is going to fetch water by the river and then the lover with his friends or brothers would then thwala the woman to the man’s home. The next day the man’s family sends abakhongi to the woman’s home to tell them to funela nganeno which means that the woman is with them. The woman’s family would then send someone to go get the woman’s consent about this matter then after the lobola negotiations would begin”
p6

Furthermore, evidence shows that not every young woman can be targeted for ukuthwala, but only strong women. Almost all research participants confirmed that when a woman is thwala’d, consent is given and chances are she is the one that plans the whole thing and that they are already in a relationship with the man before she can be thwala’d.

“It most cases it is the woman that comes with a plan, as I have said before that sometimes she would tell her lover that she is going to pretend like she is going to go by the river to fetch water at that certain time that they will agree with and the lover with his friends would thwala the woman to the lovers home. After that, maybe on the next day the man’s family will then send abakhongi to the woman’s home to tell the woman’s family to funela nganeno which basically means that the woman is with them and that they would like to ask for their daughters hand in marriage. The woman’s family would then send someone, could be an aunt or an older sister to go ask for the woman’s consent about this matter and then after that the lobola negotiations would begin. If it happens that by the time the whole process takes place maybe a woman has changed her mind or has seen someone else, the time her older sister or her aunt comes to get her consent she would then say that she does not want to continue with this and then the man will have to pay a cow as inhlawulo and the woman would go back home” p7

Ukuthwala is also about power play between men. A man contemplating ukuthwala should be a strong or powerful man in terms of resources, that is money and cows, because he should be able to pay the penalty and ilobolo immediately after ukuthwala has been done. Such men are therefore accorded the status of ‘real men’ in the communities where they live.

It has also been said that before engaging in the process of ukuthwala, the man who is going to thwala a woman uses ubulawu (love charms). All young people (men and women) in Zulu

communities use love charms to cleanse themselves (Msimang, 1991) so that they are more attractive and are loved and liked by peers. This is because social life with a person's peer group is important, as an individual spends more time with peers of the same and/or opposite sex.

5.8 Is the culture of ukuthwala a crime

Ukuthwala is a Zulu practice that opens up marriage negotiation process when it is difficult to have these started. Research has shown that people sometimes confuse the culture of ukuthwala with kidnapping and women abuse. They lack knowledge about this culture and how it is done. Data gathered through the interviews revealed that the culture of ukuthwala is not a crime because no one is abused and both parties agree about this culture being practiced and the woman gives consent before anything could happen.

“The real or original culture of ukuthwala has no link to crime only that people has a misunderstanding or lack of knowledge when it comes to the culture of ukuthwala” p5

As argued by various other authors and the study participants, the ukuthwala practice was agreed upon between the woman and the man involved, and there is therefore no clear evidence that the men used violence during the incidents therefor ukuthwala is not the same as abduction.

“As I have mention before that the culture of ukuthwala only happen when two people who are already in a romantic relationship agree about it and reach a decision. No woman is taken without her consent and nothing harmful is done to the woman and no sort of abuse happen. Anything else other than this is not the actual culture of ukuthwala. The actual culture of ukuthwala has no crime involved, it is a harmless and pure cultural practice” p6

It has been stated also that in the Zulu culture no man is allowed to thwala a woman he is not in a relationship with, they have to be in a relationship and then because of certain issues that they come across, it could be the parents who are against their relationship or if the woman has found someone else other than her first boyfriend so for her to be able to be with the man she wants to be with they would then arrange with her current lover for her to be thwala'd. Even if the parents do not want to commence with the lobola negotiations because they do not want their daughter to marry that person, the man and a woman in a relationship would then agree and have the woman thwala'd after that the lobola negotiations will commence because now the woman is already at the man's home about to become a bride.

“What has happened nowadays sis is that people have misunderstood the culture of ukuthwala and committed different kinds of crime in the name of the culture of ukuthwala. The original culture of ukuthwala is not a crime, everything is done with both parties and having agreed about it and plan it together. So no one is kidnapped and raped after that, it is just an innocent cultural practice” p7

Ukuthwala is a Zulu custom that opens up a space for women’s agency where they can decide to marry a man they choose and end the relationship they do not want. In this way the women are able to command the men whom they love, and who have resources and therefore are also powerful to act in a way the woman wants with regard to initiating negotiations for the marriage.

“Let’s look at this looking at what happens nowadays and what happened back in the days, back in the days there was a saying that says “ubuhle bendoda izinkomo zayo” sometimes you would find that a woman would say I do not want this person, he is ugly then the parents and amaqhikiza would say the woman should go and get the cows from that family, there was something like that.... In nowadays the culture of ukuthwala will not be a good thing because people do not understand how it is practiced. If you taking a woman and she cries showing that she does not want this or she did not give her consent that is not the culture of ukuthwala but it is a crime. There is an awareness that says when a person says “no” it means “no” and not something else, so it won’t be possible to say in nowadays the culture of ukuthwala is a good thing because if a person’s shows signs of not being happy with what is happening at that time you cannot continue to take the person, that would mean you are actually kidnapping that person, even if you said she did agree. If we would define with what happens nowadays, the culture of ukuthwala is not a good thing but back in the days it was a good culture because it was practiced correctly and the woman gave consent, she agreed to marry that particular person” p2

5.9 Should the culture of ukuthwala continue to be practiced

The culture of ukuthwala has been said to be a very interesting and beautiful culture. With the change of times in some other places it has become irrelevant and impossible to continue practicing it. Research has shown that in some other places this culture is still being practiced with success. Some scholars like have argued against the culture of ukuthwala and have stated that it should be stopped. If the researcher looks at their work it could be concluded that they actually do not understand the actual culture of ukuthwala in the Zulu tribe, how it is practiced.

The culture of ukuthwala is not a crime and there is nothing wrong with it. These are the comments from the participants:

“It is indeed a beautiful and interesting cultural practice so to those places where it is still relevant it can continue to be practiced” p5

“Yes definitely, most of our cultures have vanished because they were misinterpreted and ended up being abolished because people did not understand that culture clearly so there is nothing wrong with the culture of ukuthwala so I think it should continue being practiced” p6

Sometimes with the change of times and everything that is changing some other cultural practices become no longer relevant and sometimes even impossible to continue practicing it. The culture of ukuthwala due to the change of times, in some areas it has become impossible for it to be continued being practiced. Also that it has been said that people sometimes copy the culture of ukuthwala and practice it in a wrong way that involves crime.

“Yes I see no problem in this culture being continued because there is absolutely nothing wrong and no crime in the culture of ukuthwala” p7

The fear people have of those that actually misuse the culture of ukuthwala has led to some people feeling that it should stop being practiced.

“Eish sis in these days children are being taken without their consent and many bad things are being done to them so I would say it should end because there is no one making sure that the culture is being practiced correctly. There is nothing written that guide people when it comes to different cultures and how they should be practiced” p1

“With everything that is happening nowadays, the killing and kidnapping of women I would say the culture of ukuthwala should not continue to be practiced because it would make it hard to actually implement measures that fights against the killing and kidnapping of women if we would say the culture of ukuthwala should continue to be practiced” p2

5.10 Measures that can be done to keep the practice pure and in its original state

Cultures change all the time and sometimes people do not truly understand culture, could be the originality of that particular culture, reason behind its creation and how it is done or practiced. The same has happened in the culture of ukuthwala and these are the comments from the participants on how the practice could be kept pure and its original state:

“I think that lies with us as the youth some of us who actually still studying especially those in universities that when they are done as much as one cannot own culture, one cannot say how culture should be but there should be something more like a constitution that will guide the culture in terms of how the culture should be practiced, and the importance of that particular culture” p1

Research has shown that the Western laws have misinterpreted some of the Zulu cultures including the culture of ukuthwala. Even the constitution itself sometimes argues against certain cultures and even states that they should be abolished without having a clear understanding or knowledge about those cultures. Here are some of the comments from the participants:

“I think there should be something more like a constitution that will guide our cultures in that way everyone will have knowledge about our different cultures and how they are done” p5

“There are things that one can see that it is possible to practice them nowadays but that doesn't mean that people should not be educated about those things, one of things that could preserve this culture is that people should be educated about it so they will understand clearly the culture and why it was created in the first place, when was the culture practiced and what is to be expected when it is practiced” p2

Research has shown that majority of the people sometimes really do not understand culture and cultural practice. Cultures existed back in the days before the constitution and the western laws, now one cannot judge a cultural practice that existed maybe in 1906 with a constitution that is recent. Participants stated a few measures that can be done to keep the practice pure and in its original state:

“There is nothing else except being united, to understand and to revive different cultures. There should be organizations that will be able to educate young people about the importance of culture” p3

“All the cultures under the Zulu tribe should be reviewed not just the culture of ukuthwala, there should be times where we all sit down as communities and our leaders and talk and customary law should be revised and upgraded, educated people should upgrade the customary law to the level of the western laws, for it to be proper” p4

Culture has been said to be the way of life for all, therefore it is important for one to truly understand their culture, its originality and how it is practiced. Sometimes cultures do change

but it is important for one to be educated about their culture and made sure that cultures remain the same and they remain pure

“I think Ungangezwelakhe (King Zwelithini) as the head of the Zulu tribe should create something more like an organization that is going to educate people on our different cultures, their originality, the reason behind their creation and how they are practiced. We should have something more like a constitution that is going to guide and protect our cultures in that way they will always remain pure and in its original state” p6

“Educated people sis who are academics should research and publish about our culture so that people will have knowledge about our different cultures and how they are done and in that way there won't be any confusion about any culture and people would know the truth. If that could happen our cultures would remain pure and in their original state” p7

5.11 Summary

This chapter has discussed raw data that was obtained from the field. It was then analyzed through the utilization of a thematic analysis approach. Research findings indicate that ukuthwala is a centuries-old isiko (custom) among the Zulu people, and it is still practiced today. The key theories of the study cultural theory and labelling theory were utilized to reflect on the findings for effective analysis of the outcomes. The analysis of this data disclosed that the culture of ukuthwala is indeed an innocent and legit cultural practice that has no crime involved. Findings of the research reveal that sex, sexuality, physical attributes and femininity of a woman as well as her social background serve as characteristics of a good woman who can make a good wife.

Chapter 6

Conclusion and Recommendations

6.1 Introduction

This study was conducted to investigate the original culture of ukuthwala and the link between the culture of ukuthwala and crime. After critical consideration of the data, some conclusions emerged in terms of the research questions formulated in Chapter One. Based on the findings as outlined in the previous chapter, this chapter presents the conclusions and appropriate recommendations including the limitations of the study.

6.2 General Conclusions

The main conclusions were reached in terms of the objectives of the study:

- To explore the real and original meaning of ukuthwala
- To understand the process of ukuthwala
- To determine the traditional perspective on the link between ukuthwala and crime.

6.2.1 The Inqaba kaMvelinqangi organization members understanding of the culture of ukuthwala

The research revealed that the culture of ukuthwala is a cultural practice where if two people who are in a relationship and have challenges getting married, they would then both agree and arrange for the practice of ukuthwala to take place. It was also stated that before the practice could take place both partners give consent and no harm is done to any of them. Even after the practice of ukuthwala has happened, the woman's family also send a person to confirm the woman's consent before the lobola negotiations would begin.

6.2.2 The process of ukuthwala according to the Inqaba KaMvelinqangi organization members

The study found that before the process of ukuthwala could happen the two parties involved should be in a romantic relationship because in the practice of ukuthwala a man cannot thwala a woman without her consent. The process of the practice was said that it begins when the two people are planning it, a woman would tell her partner that maybe she will pretend like she is going to the river to fetch some water then the man with his brothers or friends would thwala the woman to the man's place. Since the reason behind the culture of ukuthwala is to assist

with commencing of the lobola negotiations, the following day the man's family would send the lobola negotiators (abakhongi) to go to the woman's family to tell them to funela nganeno to alert them that they know where the woman is and that she is with them. After the lobola negotiators have come, the woman's family would then send a person to go confirm the woman's consent before the lobola negotiations would begin.

6.2.3 The traditional perspective on the link between ukuthwala and crime

The research revealed that the culture of ukuthwala is an innocent cultural practice that does not involve any criminal act and it has no crime that is involved at all. The man and the woman that practice the culture of ukuthwala it is always their decision to do so without anyone forcing them and they both agree to undergo the practice which means that they both give consent and neither of them is harmed or hurt in any way.

6.2.4 The negative reports about the culture of ukuthwala and its effect to the practice and people practicing it

The study found that there are many negative reports that have been written about the culture of ukuthwala and that has negatively affected the practice in such a way that many people ended up thinking that it is a crime and whoever practices it is doing a criminal act and it should be abolished, whereas it is just an innocent cultural practice. People practicing the culture suffered because in some areas they were even instructed to stop the practice due to the negativity around it.

6.2.5 The causes of the negativity around the culture of ukuthwala

The research revealed that many scholars do not understand the culture of ukuthwala, they do not know what it is exactly so they end up confusing it with other criminal acts that people commit in the name of the practice. People lack knowledge around different cultures including the culture of ukuthwala, their lack of knowledge results in some cultural practices being misunderstood and sometimes even practiced in a wrong way.

6.2.6 Implementations that can be done to keep the cultures pure and in their original state

The study found that there is not much research that has been done and reported about different cultures especially about the Zulu cultures. This kind of information not being available means that people are not going to have enough and correct information about cultural practices and that could have a negative effect on the practices including the culture of Ukuthwala. It has been

discovered as well that there are no laws that protect these cultures and there is no constitution that governs these cultural practices and that means that even when people misuse the cultural practices there is nothing that can be done about it because there are no laws around cultural practices. The government should create laws or a constitution that is going to govern cultural practices and there should be events like seminars where people are going to be educated about different cultural practices, in that way cultures can always be pure and in their original state.

6.3 Recommendations

- More research should be done about cultural practices especially the Zulu cultural practices and facts should be reported and made available to the public so that everyone is going to know facts about different cultural practices so they will all be practiced correctly and they won't be misunderstood.
- The government should implement laws that are going to protect and govern cultural practices, more like a constitution. Having these kind of things will make cultural practices to be taken seriously and to be respected. That could decrease the number of people who misuses cultural practices and who commit crime in the name of culture. According to The Cultural, Religious and Linguistic Rights commissions persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community to enjoy their culture, practice their religion and use their language and to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

6.4 Summary

The culture of ukuthwala is an innocent cultural practice that was created to assist with starting the lobola negotiations if there are challenges with them and also to allow a woman to choose the man that they want to be with or to marry, there is no crime involved in the practice, both partners give consent so anything else that involve crime and that allow men to take women without their consent is not the Zulu culture of ukuthwala and whoever does that should be punished because they would be breaking the law. Cultural practices like the culture of ukuthwala need to be understood clearly so that one can practice it correctly and no one can commit crime in the name of this practice. Zulu cultural practices are very interesting and beautiful, one just need to get more information about them, study about them and do them correctly.

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