

# A history of the practice of *ukuthwala* in the Natal/ KwaZulu-Natal region up to 1994

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## ***Abstract***

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. In this article we have tracked the reported history of *ukuthwala* in the Natal/Kwazulu-Natal, region up to the end of White rule in 1994. The purpose of the article was to understand the historical unfolding of the practice up to the arrival of black majority rule. The concepts of *ukuthwala intombi* and *ukuthwala ngenkani* as polar opposites in the practice were used as the conceptual framework for this study. The evidence for this study comprised of both archival evidence and secondary literature. This was read against the grain to gain an understanding of not only how the practice evolved but also on how it was reported. It was found that *ukuthwala* only appeared in the archives when equated to abduction while the predominantly White authored secondary sources presented it, for the most part, as violent free procedures in the lead-up to marriage. The reality is that *ukuthwala* up to 1994 were not done in a single one-dimensional manner but were, like any other cultural custom, not practiced in one agreed upon manner. This forms the root of the post-1995 legal debates related to the practice.

**Keywords:** *Ukuthwala*; Abduction; African marital practices; Marriage; Zulu traditions; Rituals.

## **Introduction**

1994 marked the start of tumultuous change in South Africa. White minority rule came to an end and the country was, after centuries of racial oppression, governed by a democratically elected parliament, dominated by an African majority, and underpinned by a liberal constitution which in a legal manner foregrounded human rights, social justice and personal liberties. The boundaries of Natal as a province, and that of the KwaZulu Bantustan

were also redrawn and the region was renamed KwaZulu-Natal. The post-1994 era also ushered in a period of cultural rethinking, liberty, renewal and openness. This was especially made possible by the then president of South Africa, Thabo Mbeki's African Renaissance speech and ideas. One practice that came to the fore during this time-period against the backdrop as outlined was *ukuthwala*.

Semantically the word *ukuthwala* has a range of different meanings in isiZulu. The word *ukuthwala*, for example, means to carry something on your head, because it is too heavy to carry in your hands. This can be wood, luggage or a bucket of water with an intention to transport something from one place to another. Whereas, the word *ukuthwala* also denotes wearing something on your head such as a hat, or an *iduku* (a headdress), with the aim of protecting your head from the sun or the rain or just for warmth especially during cold weather, or for whatsoever reason but even though you wear it, it is still referred to as *ukuthwala*. Usually, an *iduku* (a headdress) is worn by engaged / married women as compliance to the custom of *ukuhlonipha* (respect) of the in-laws. These women are not allowed to show their heads in front of their in-laws especially men hence they should wear or *thwala iduku*. Sometimes, when used alongside another noun it forms a blend. When this happens the literal meaning of the word, to carry, becomes subsumed. This usually happens in expressions or proverbial sayings. Dent and Nyembezi<sup>1</sup> give several such examples: *ukuthwala amaphiko* (to show off); *ukuthwala ikhanda* (to be rude) and *ukuthwala ihunda* (to be proud). Furthermore, when the word *ukuthwala* changes its form, the meaning can also change. For example, *ukuzithwala*, which literally means to carry oneself can also functionally mean to be pregnant or to be arrogant. Another meaning of *ukuthwala* is the practice of acquiring supernatural powers that enables one to become rich, powerful or to have more dignity. In this practice a person, usually a man, goes to a traditional healer who will provide medication and oversee the completion of certain rituals in order to acquire the power, dignity or the longed for riches.

But *ukuthwala* also has another meaning. It can refer to the act of forcing the opening up of the marriage negotiation process when it is proving difficult to do so under normal circumstances. In a crude sense this is done by the actual carrying away of a young woman by a group of young men to the

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<sup>1</sup> GR Dent and CLS Nyembezi, *Scholar's Zulu dictionary: English-Zulu, Zulu-English* (Pietermaritzburg, Shuter & Shooter, 2009), p. 500.

house of a young man who aims to marry her. In most cases during the process of *ukuthwala* the prospective husband is there with a group of his peers to identify the woman he loves and whom he intends to carry away with marriage as the intention. Sometimes he is not there on the day of *ukuthwala* but had already pointed her out to his peers, or if the woman is from the local area, she is already known. It is crucial to highlight that before *ukuthwala* is executed intensive research about the target woman is carried out by the prospective husband; for example, in order to locate the young woman's whereabouts, it has to be known how often and when she goes out, be it to the shop, to the river, to the fields or to school in order to locate her easily. Knowledge about her friends is also equally important as this works towards the prospective husband's favour in conniving with her friends and even with her sisters who would take her out of the home for her to be carried away without her knowledge. Furthermore, a prospective husband does so having prepared his own family, for example, regarding what will be done by his parents and sisters when the "bride to be" arrives at his home as there are rituals to be performed in welcoming the "bride to be". Rituals cannot be performed without the knowledge of his family. Furthermore, the following day he has to send *abakhongi* (the marriage negotiators) to the family of the 'bride to be' to tell them to *funela nganeno* (to inform a girl's family that their girl is safe and is with his family). Then, a girl's parents will send a messenger to the girl to get her consent if marriage negotiations could be opened up. If she agrees, then proceedings begin, but if she does not, then negotiators will only pay *inkomo yokuthwala* (the penalty fee) and leave. However, if the man who carried her away had sexual intercourse with her, as the case may be in contemporary times which is contrary to the traditional *ukuthwala* where no sexual intercourse would have taken place until marriage is consummated with the girl's consent, then he has to pay *ingquthu kanina* (penalty fee). This practice is referred to as *ukuthwala intombi* (to carry a young woman). A second more sinister meaning related to *ukuthwala* is when it refers to *ukuthwala ngenkani* (forcible bride abduction). In this sense it speaks of a performative act that is linked to coercive sex and sexual violence. *Ukuthwala* as a custom, however, be it from the perspective of the carriers, the one being carried away or the bystanders is not a one-dimensional practice experienced in a repeated similar manner. As a practice, like any other, it has morphed and evolved over space and time as political, economic and social circumstances have changed. As a result a grey area exists between the extremes of *ukuthwala intombi* and *ukuthwala ngenkani*. Indeed, it is worth reiterating that there is

a difference between *ukuthwala intombi* (which is characterised by traditional elements of Zulu culture, which is also consensual and characterised by a lack of violence and lack of sexual coerciveness) and *ukuthwala ngenkani* (which is the direct opposite of traditional *ukuthwala*, characterised by violence and physical assault of a woman, gross violation of a woman's rights and bodily integrity, lack of a woman's consent, sexual abuse and happens against the age of consent) and various reasons for the practice prevail which are determined by different contexts.<sup>2</sup>

Evidence for the grey area referred to above is to be found in the avalanche of reports that proliferated from the practice post-1994. Critical newspaper reporting had it that, "South African girls as young as 12 years old are being abducted, locked up, raped and forced into marriages under the pretext of an age-old custom of *ukuthwala*"<sup>3</sup> and "Parents sell girls as child brides ... teens as young as 14 are kidnapped, locked up and tradition is used as an excuse for 'horrific child rape'"<sup>4</sup>. As a result a range of commentators expressed their outrage and disagreement with *ukuthwala* as a practice and deemed it illegal.<sup>5</sup> Others pointed to what they viewed as the gender and human rights-based violations of the practice.<sup>6</sup>

Not all, however, necessarily shared the negative sentiments related to *ukuthwala*. Seleokane,<sup>7</sup> for example argued against referring to *ukuthwala* as merely abduction which to him was illegal from start to finish. To him *ukuthwala* is a custom and customs are legal. As a result the term *yisiko* (customary) or the phrase *yisiko lethu* "it is our culture" was foregrounded as a means of explaining *ukuthwala* by those in support of the practice. Strong backing for this kind of thinking about *ukuthwala* came from, amongst other traditional leaders, Mandla Mandela, the *Inkosi* (traditional leader) of the Mvezo traditional council and grandson of Nelson Mandela. He defended *ukuthwala* and cautioned that "when you are going to discuss culture do

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2 PM Nkosi, "Ingcwaba Lentombi Lisemzini: A socio-cultural and gendered construction of *ukuthwala* among the Zulu people in selected rural areas of KwaZulu-Natal" (PhD, UKZN, 2012), pp. 6-9.

3 T Thulo, "Lock up your daughters", *Sunday Tribune*, 9 March 2003, p. 3.

4 C Prince, "Parents sell girls as child brides", *Sunday Times*, 31 May 2009, p. 1.

5 L Mashile, *Ukuthwala* [Television documentary], *Latitude*, 11 April, 2006; Z Mfono, "The custom of bride abduction holds its own against time", *Agenda*, 16(45), 2000, pp. 76-80; JM Molapo, *A Christian analytic approach of marriage through abduction among the Basotho people of Lesotho: A challenge for pastoral care ministry* (MA, UP, 2004), pp. 81-82.

6 L Mashile, *Ukuthwala* [Television documentary], *Latitude*, 11 April, 2006; Z Mfono, "The custom of bride abduction...", *Agenda*, 16(45), 2000, pp. 76-80; V Reddy, "African feminisms, sexuality in Africa: Some trends, transgressions and tirades", *Agenda*, 62, 2004, pp. 3-11.

7 M Seleokane, "King Mswati's actions unacceptable in modern times", *The Herald*, 21 April 2005, p. 5.

not even try to bring in White notions as such an approach will turn things upside down”.<sup>8</sup> Along similar lines it is argued by Thatcher that media reports confirm the view that contemporary societies often explain African cultures from a European perspective, and portray them as barbaric, primitive and oppressive to women, hence they need to be “identified”, “scrutinised” and “regulated or stopped” by law.<sup>9</sup>

Within the two schools of thought on *ukuthwala* the constitution; rights to culture and dignity; human rights; individual rights; customary law; the notion of Western and African views and the rights of children to be protected were, amongst others, used as ammunition in trying to justify the two main positions. Although it has been argued that the legal status of custom is not determined by history we wanted to find out what *ukuthwala* looked like prior to the openness of debate and practice it is experiencing post-1994.

The purpose of this article is therefore to track, in a chronological manner, the reported history of the custom of *ukuthwala* in the Natal/ KwaZulu-Natal region. In focussing on the historical unfolding of the custom we have employed both primary and secondary evidence. These were read against the grain – a process which was made easier by the fact that one of the authors is a cultural insider. This we did so as to develop a deep understanding of *ukuthwala* and how it has been reported over time. The focus of the article is therefore on understanding, in an interpretivist manner, whether the current practices of *ukuthwala* have historical claims to validity or if it has, as has happened to many other customs, been reimagined over time so as to suit the ever changing contemporary needs.

### **The practice of *ukuthwala* – from ancient times to ±1994**

As a first step in tracking the practice of *ukuthwala* we undertook an against the grain reading of the available primary and secondary sources for the period up to 1994. Thereafter the primary sources were compared and contrasted to the available secondary sources so as to draw some conclusions on the practice of *ukuthwala* during this period. To achieve such an understanding we have delineated our article into a distinct era – pre-colonial times to ±1994. We have decided to use ±1994 as the temporal beacon for this era because it was

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8 C van der Westhuizen, “When ‘culture’ clashes with gender rights”, *Mail and Guardian*, 2 December 2011, p. 1.

9 A Thatcher, “Some issues with ‘some issues’ in human sexuality”, *Theology and Sexuality*, 11(3), 2005, pp. 9-29.

then that the various legacies of the past, as it had played out geopolitically in the region, culminated in the end of Natal and White minority rule and the creation of KwaZulu-Natal and African majority rule. During the time-period up to 1994, Natal, or at least regions thereof, were at various times, independent African kingdoms, Boer republics, a British colony, a province of the Union and later the Republic of South Africa and part of the KwaZulu Bantustan. In most of these geopolitical constructions power, be it political, economic or social, was in the hands of the Whites and this had a distinct impact on how *ukuthwala* was viewed and reported on.

### ***Ukuthwala* and the archives - from ancient times to ±1994**

The archival collections of the various KwaZulu-Natal Archival Repositories were searched for evidence related to *ukuthwala*. Searches in the electronic database under the term *ukuthwala*, as well as other possible ways of spelling it, yielded no evidence at all and neither did soliciting the help of the archivists on duty. It was only when we equated *ukuthwala* to abduction that archival evidence related to the phenomenon was located. In the end our archival searches identified a limited number of cases that we confidently linked to *ukuthwala*, or aspects thereof, as a practice.<sup>10</sup>

The first archival case that had a clear semblance to *ukuthwala* was reported in 1889 in the Ladysmith district of the Colony of Natal. Zobila was arrested by the Natal Mounted Police at the insistence of Gomain who reported the former for “forcibly abducting” his daughter Nontokozi. All three individuals, with Zobila as a prisoner, were sent by train to Ladysmith for a hearing. This is, however, where the archival trail ends.<sup>11</sup>

The second case took place in 1900 in Pietermaritzburg. Nondhlini ka Sityuble, of the Umgeni Division, was charged, under Act 22 of 1896, in the Native High Court, before an all-White nine-man jury for the abduction and

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10 Three cases related to abduction during this period, against Henry Maulden, Ujantje and Umsutu respectively were located in the Pietermaritzburg Archival Repository. Close reading of these cases revealed that they had little to do with *ukuthwala* or any links were, at the best, tenuous. See, Pietermaritzburg Archival Repository (PAR), Secretary of Native Affairs (SNA), Vol. 1/1/54-1/1/55: Letters 301-400, Documentation related to the abduction of Nomvemu by Henry Maulden, April-September 1882; PAR, Bulwer Magistrate (1/BLR), Vol. 7: Minute paper JO Jackson, 22 October 1883 and PAR, Colonial Secretaries Office (CSO), Vol. 1482: Minute papers 6001-6200 1896, Application by RMK Chadwick for the release of Umsutu, 12 October -20 October 1896.

11 PAR, Ladysmith Magistrate (1/LDS), Vol. 7, 3/3/9: Letter Lance-Corporal H Norris / Magistrate Ladysmith, 11 May 1889.

assault of Loliya, the daughter of Peni. The complaint of Peni was that his unmarried daughter was taken against his will and in the process Nondhlini did “knock down, drag along the ground, and carry [Loliya] away by force”. The court case lasted several days and a number of witnesses were called by both the prosecution and the defence. In the end the verdict of the jury was a unanimous one – Nondhlini was not guilty of abduction and assault.<sup>12</sup>

The creation of the Union of South Africa in 1910 heralded a major change in the constitutional position of Natal. It changed from a self-governing British colony to one of the four provinces comprising the Union of South Africa. As under the previous political dispensation *ukuthwala* as an identifiable practice could only be located in the archive via two court cases. Again it was, in both cases, described as abduction with rape added to the charge sheet in the second case.

The first such case involved none other than Solomon kaDinizulu who was to become the Zulu king. From the available court documents the following narrative could be constructed. Ngoye Gwala’s daughter, Nomapasi, who was engaged, resided near Eshowe with her guardian, Mdingi Gwala who was also her brother. While assisting at the wedding of her aunt, Mnyayaiza kaNdabugo, she was spotted by Solomon and he paid her considerable attention. The attraction seems to have been mutual for Nomapasi “though she was informally betrothed to a young man in the Eshowe division, (she) was prepared to give him his conge, and having done so, to accept Solomon as suitor for her hand in marriage”. Nomapasi had in the meantime visited a number of family members before returning home to Eshowe to ditch her fiancée in favour of Solomon. These procedural formalities Solomon accepted and once it was completed he was informed that Nomapasi would, as soon as his escort arrived for her, depart on her betrothal visit to him. The said escort arrived in the form of Khanyi Mzimela and Benjamini Magadini Ngema. Nomapasi then proceeded to accompany them along with a women escort of her own Ntombintombi. The party proceeded to the Nobamba homestead with the knowledge of Nomapasi’s mother but not that of her guardian brother. The reason for this was explained by Nomapasi as being “in accordance with Native marriage custom”. On her arrival at the homestead Solomon was contacted and informed that he needs to prepare himself for, after the usual engagement ceremonies, the marriage should be arranged.

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12 PAR, Supreme Court of the Colony of Natal (RSC), Vol. 1/1/60: Regina vs. Nondhlini ka Sityuble, March-September 1900.

Several weeks' later messengers with ten head of cattle as *ilobola* were sent to Nomapasi's guardian, Mdingi Gwala, to ask his consent for the marriage. To the Magistrate of Ndwandwe, who at some stage had to investigate the matter, this was normal and he explained: "no unusual suggestion of anything clandestine about this little romance, in fact, less than strict Native custom ordinarily demands". However, the Natal colonial authorities had a different view and saw it fit to charge Khanyi Mzimela and Benjamini Magadini Ngema, Solomon's designated escort, with abduction. The two men were convicted and fined £5 each by an assistant magistrate at Eshowe.

Solomon was outraged at what transpired and he respectfully asked to be enlightened on what legal basis his two followers were arrested and convicted. He also wanted to appeal the sentence since Nomapasi has testified to the Magistrate of Ndwandwe that she was not "carried away by force" but accompanied the men of her own accord. At this stage the Chief Native Commissioner of Natal became involved and asked for a full explanation from all participants. It emerged that a version of events which stated that Nomapasi was taken away "surreptitiously" appeared and that the men who took her away were therefore charged with abduction. Although the local authorities felt that it would be difficult to prove the complicity of Solomon in the affair the dominant sentiment was clear: "Solomon by virtue of his appointment [as King] now considers that he is entitled to the privileges enjoyed by his forbears who could command any maiden they desired." The key complainant in the case proved to be Nomapasi's guardian, Mdingi Gwala, who was also a police constable for the Natal colonial authorities. He reported the two women as having been abducted. This he did before the cattle offered as *ilobola*, and the accompanying messengers sent by Solomon, had arrived. In the interim, based on his complaint, Kambi Mzimela and Benjamini Ngema were arrested and convicted of abduction.

A furious Solomon then wrote an accusing letter to Mdingi Gwala asking him: "But what cause of hatred have you against me because your sister came to marry me, and then you proceed to charge me before the Whites. This your actions is very bad. Think it over and do not forget it; I shall not forget it. Why did you not wait and look forward to receiving cattle – and rest content. Of course you would have had course for complaint if I refused to give you cattle." Personally, however, Mdingi Gwala was not opposed to the wedding but wanted 15 cattle instead of 10.

The final legal word on the matter came from the Chief Native Commissioner of Natal: “The action of Solomon in sending these two men to fetch the girl Nomapasi to his kraal without the knowledge or consent of her guardian was entirely irregular and cannot be countenanced. The girl’s willingness to take part in this escapade does not condone Solomon’s action. Under these circumstances no sympathy can be accorded to Solomon or his agents, who have run counter to the law and who must take the consequences”.<sup>13</sup>

The next case to be found in the archive occurred more than four decades later. This came in the form of a court case against Bhekempeto Radebe of the Ixopo district in southern Natal. He and two accomplices were accused of abducting the 18-year old woman to whom he had been betrothed for four years but for whom he could not meet the *ilobola* demands that her father commanded. The abductee eventually broke-off the engagement with Radebe. The accusation against the men read as follows: “On the 1<sup>st</sup> of May 1960 Radebe being the accused did wrongfully and unlawfully take and abduct Victoria Dlamini an unmarried Bantu girl of the age of 21 years out of the possession and against the will of Dhlamini her father and mother and guardians, for the purpose of having carnal connection with her.” It was argued that Radebe and his accomplices took the abductee to the homestead of his father where she was imprisoned under guard. He then, over a period of several days, raped her on several occasions. The abductee was eventually rescued by the police. In sentencing Radebe, Judge Caney indicated that he had considered the fact that he might have been frustrated with the long engagement and the demands made in terms of *ilobola* and it was “not the kind of case where a man waylaid a girl on the roadside”. Taking into consideration the relationship that existed between them Radebe was sentenced to three years imprisonment and three strokes with a cane. The latter part of the sentence was suspended for six months on condition that he is not found guilty of a sexual offence during that time.<sup>14</sup>

These four very different legal cases provide a clear indication that *ukuthwala* was a phenomenon present in the daily lives of the majority of people residing in Natal. However, the four cases merely surfaced when Zulu men in their patriarchal roles felt that they had to employ Western legal systems to regain

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13 PAR, Chief Native Commissioner (CNC), Vol. 310, Correspondence 5842/1917: Alleged abduction by Solomon kaDinizulu, 27 September 1917-12 December 1917. This court case against Solomon kaDinizulu does not feature at all in the biography on him by Nicholas Cope. S Cope, *To bind the nation. Solomon kaDinizulu and Zulu Nationalism 1913-1933* (Pietermaritzburg, University of Natal Press, 1993), pp. 120-130.

14 PAR, RSC, Vol. 1/1/368 – 290/301, Criminal cases 1960: Regina vs. Bhekempeto Radebe, 29 September 1960.

control over the women in their care. *Ukuthwala* thus only became a matter of contestation when fathers and guardians felt aggrieved and wronged on some level by what had transpired. They then, in the cases of Mdingi Gwala, further contributed to the unravelling of the practice by ignoring, for example, the traditional protocol whereby couples used *ukuthwala* to persuade a young woman's family to open-up the process of marriage negotiations. Instead, they subscribed to and used the patriarchal Western legal system and world view to try to exact some kind of justice for themselves. How the women involved felt was not revealed as their voices are hardly heard in the archival documents.

The image that thus emerges from the archive is not what the Magistrate of Ndwandwe called "strict native custom"<sup>15</sup> but rather a product of constructions and reinterpretations by White authorities in collaboration with African male patriarchs.<sup>16</sup> Subsequently a Western legal system, based on Western Christian beliefs and frames of reference, was allowed to pass judgement on what was for the most part a traditional African practice, as being harmful and barbarous. Scant wonder then the anger of Solomon kaDinizulu that what was part of the Zulu way of life was charged "before the Whites".<sup>17</sup> Consequently it would be easy to assume, at face value at least, that *ukuthwala* can only be equated to abduction as can be gleaned from the oblique references to it in the four court cases located in the archive.

At this point is where the power of the archive needs to enter the debate. It has been argued that little happened in Natal which did not leave a thorough paper trail. In the view of Robert Morrell this was brought about by the exactitude and reliability which characterized the Natal colonial administration.<sup>18</sup> However, it would smack of an arrogance of a bygone era to fully trust that what was found in the archive was all that the practice of *ukuthwala* constituted. For that the archive as a physical and mental construct is much too problematic. It is therefore with some justification claimed that, in the 21st century, archives have lost their sole authority on the design of the past. This is the case because archives as sites of power are limited in terms of the sources they keep. These sources tend to be descriptive inputs that may at times be ambiguous. It is consequently argued with justification that

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15 PAR, CNC, Vol. 310, Correspondence 5842/1917: Alleged abduction by Solomon kaDinizulu, 27 September 1917-12 December 1917.

16 F Fanon, *Black skin, white masks* (New York, Grove Press, 1959), p. 23.

17 PAR, CNC, Vol. 310, Correspondence 5842/1917: Alleged abduction by Solomon kaDinizulu, 27 September 1917-12 December 1917.

18 R Morrell, "The family man and Empire: Sir Albert Hime, 1875-1903", *Journal of Natal and Zulu History*, 8, 1998, pp. 37-38.

researchers should seek out how official documents silence and exclude certain voices.<sup>19</sup> It was therefore necessary to turn away from the archive to secondary sources so as to gain a different understanding of the practice of *ukuthwala* in Natal up to 1994. As a result a different perspective of *ukuthwala* emerged when compared to the archive.

### ***Ukuthwala* in secondary sources - from ancient times to ±1994**

Several authors, including Bryant,<sup>20</sup> Krige,<sup>21</sup> Vilakazi,<sup>22</sup> Schapera,<sup>23</sup> and Msimang,<sup>24</sup> agreed *ukuthwala* was an age-old custom in the Natal region. The earliest identified secondary source that dealt with *ukuthwala* is the work by John Henderson Soga, a Xhosa Presbyterian minister. Soga claimed that the practice of *ukuthwala* were “faked cases of abduction”. In such cases 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. Such cases, according to Soga, were love romances and the term *ukuthwala* simply denoted that the couple had mutually arranged to elope so that the woman’s parents would be faced with little choice if they were unfavourably disposed towards the young man. In the view of Soga women agreed to this procedure in order to marry the men they loved, and escaped from the men to whom their parents sought to marry them. For his part the young man in question had no intention of evading *ilobolo* as he was determined to marry the woman of his choice.<sup>25</sup> Although not from Natal the perspectives of Soga are useful as they provide a view from an insider. This view was that *ukuthwala* was nothing more than a harmless game of love.

A different perspective is provided by Bryant<sup>26</sup> who claimed that *ukuthwala* was a form of marriage proposal. He claims that he personally witnessed an “exceptional case” of a bridegroom “forcibly carrying off” on his shoulders,

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19 AF Isaacman, P Lalu and TI Nygren, “Digitization, History and the making of a postcolonial archive of Southern African liberation struggles: The Aluka Project”, *Africa Today*, 52(2), 2005, pp. 55-77.

20 AT Bryant, *The Zulu people as they were before the white man came* (Pietermaritzburg, Shuter & Shooter, 1949), pp. 572-575.

21 EJ Krige, *The social system of the Zulus* (Pietermaritzburg, Shuter & Shooter, 1969), p. 125.

22 A Vilakazi, *Zulu transformations: A study of the dynamics of social change* (Pietermaritzburg, University of Natal Press, 1962), p. 65.

23 I Schapera, *The Bantu speaking tribes of South Africa: An ethnographical survey* (Cape Town, Maskew Miller 1946), pp. 112-113.

24 CT Msimang, *Kusadliwa ngoludala* (Pietermaritzburg, Shuter & Shooter, 1991), p. 228.

25 JH Soga, *The Ama-Xosa: Life and customs* (Lovedale, Lovedale Press, 1931), p. 31.

26 AT Bryant, *The Zulu people as they were...*, p. 573.

with her guardian's concurrence, a "recalcitrant" woman who was struggling wildly and was unwilling to go to him. The women had previously consented to be *thwalwa'd*, and was later found to be a happy wife of the man who carried her away. Writing from the White perspective of the time Bryant proclaimed that "marriage by capture" was "a great sport in olden times" and only in exceptional cases was a woman *thwalwa'd* against her will. On this Bryant is clear - during what he calls ancient times no man would abduct a woman without having made an attempt to woo her first.<sup>27</sup> Schapera,<sup>28</sup> writing in the roughly the same era as Bryant, described *ukuthwala* as a form of marriage. The problem with Schapera's argument is that not enough emphasis is placed on the practice to distinguish it from marriage. Nevertheless the works of Bryant and Schapera, each with its own biases, provides some insight into the complex world of *ukuthwala* in the context of the time.<sup>29</sup>

The social anthropologist Eileen Jensen Krige argued that among the Zulu *ukuthwala* took place when a young engaged woman, or her father broke the contract relating to the marriage negotiation process. A young man with a number of his friends would then 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. This symbolises that she is about to marry or is married. According to Krige there was no evidence available to indicate whether under *ukuthwala* a woman's parents were obligated to allow their daughter to marry the man who *thwalwa'd* her.<sup>30</sup> What Krige also does not reveal is whose consent was sought, the young woman's or her parents', and if consent is not given if *ukuthwala* then becomes abduction.

A partial answer to the question emanating from the work by Krige is provided by anthropologist, EJ de Jager. He argued that that there were two forms of *ukuthwala*, the forced version which was called bride abduction (*ukuthwala ngenkani*), and agreed-upon *ukuthwala*. Most often the underlying motive behind agreed-upon *ukuthwala* was to place before either the woman, or her parents, marriage as a *fait accompli*. As far as bride abduction was concerned he argued that it was not regarded as normal social behaviour.<sup>31</sup>

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27 AT Bryant, *The Zulu people as they were...*, p. 573.

28 I Schapera, *The Bantu speaking tribes of South Africa...*, pp. 112-113.

29 PM Nkosi, "Ingcwaba Lentombi Lisemzini: A socio-cultural and gendered construction of *ukuthwala* among the Zulu people in selected rural areas of KwaZulu-Natal" (PhD, UKZN, 2012), pp. 21-22.

30 EJ Krige, *The social system of the Zulus...*, pp. 165-170.

31 EJ de Jager, "Traditional Xhosa marriage in the rural areas of the Ciskei, South Africa", EJ de Jager (ed.), *Man: Anthropological essays presented to O.F Raum* (Cape Town, Struik, 1971), pp. 160-192.

A different perspective, be it from a geographical area bordering the then Natal, is mooted by Hunter. He argued that to carry off a woman to marry her was considered quite respectable and there was no shame in such a marriage for either the bride or groom. It could also be a signal for the *ilobola* negotiations to begin. Reporting on 26 marriages investigated in Pondoland he concluded that five were arranged; in five cases the women was *thwala'd*; in 13 the couple eloped, and in three the women were married off by her people and then ran away and married a lover. Hunter does, however, explain that for a woman to elope was rather shameful because she should never admit that she willingly went to a man.<sup>32</sup>

The secondary works reviewed thus far were all produced in the period up to the 1990s. What all the authors agreed upon was that *ukuthwala* was a long-standing custom in Natal. While Bryant romanticized it as an adventurous and exotic Zulu practice, Schapera conflated it with marriage. Krige in turn related it to marriage contracts and negotiations but was not clear on if actual consent was given for the act of being *thwala'd* and what this meant in terms of abduction. In the view of Hunter *ukuthwala* was a legitimate practice around marriage negotiations and the relative freedom young people had in choosing spouses. Only de Jager hinted at the possibility of the existence of both *ukuthwala intombi* and *ukuthwala ngenkani*. However, he provided no detail on what it entailed. All these works were produced by White anthropologists and historians in an era of White rule underpinned by Western perspectives. Consequently these works should be read against this backdrop. The exception amongst the authors was Soga. As an African he presented *ukuthwala* as a nuanced interaction at the junctions of love and parental consent masked as abduction. In presenting *ukuthwala* in this manner the mission-educated Soga hardly strayed from the quixotic ways of thinking of his White counterparts in the era leading up to 1994, namely that *ukuthwala intombi* was the absolute norm.<sup>33</sup> In so doing the secondary works reviewed with the exception of the passing reference by de Jager, contradicted the existing archival evidence that more contested forms of *ukuthwala* existed. The reviewed secondary works also did something else – they presented a

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32 M Hunter, *Reaction to conquest: Effects of contact with Europeans on the Pondo of South Africa* (London, Oxford University Press, 1961), p. 189.

33 With reference to Soga it is probably fair to ask how much of an insider he was. For a theoretical engagement with a similar question, see: K Narayan, "How Native Is a "Native" Anthropologist?", *American Anthropologist*, 95, 1993), pp. 671-686.

sanitised White anthropological view of what the magistrate of Ndwandwe called “strict Native custom” as it related to *ukuthwala*. In so doing it proved to be as one-sided as the archival sources in masking variations present within the practice.

Deeply engaging with the idea that both *ukuthwala intombi* and *ukuthwala ngenkani* existed, and in so doing giving credence to the court cases found in the archives, only happened in the early 1990s. By that stage the end of White rule was in sight and it was more acceptable to challenge conservative patriarchal positions about African cultural practices. Gordon and Spiegel referred to this time period, with specific reference to anthropology, as a sense of disarray as South Africa moved from apartheid to black majority rule.<sup>34</sup> Msimang, writing about *ukuthwala* at this time, explained that while in agreement that there is no accord regarding the exact meaning of the practice in contemporary Natal, it also had a dark side related to patriarchy and the suppression of women’s rights. Msimang argued, in line with the idea of *ukuthwala ngenkani*, that it sometimes took place when a young woman has jilted her sweetheart. The jilted lover then decides to *thwala* away the young woman with the intention of marrying her. He claims in this case a woman is beaten and forcibly *thwalwa’d*.<sup>35</sup> Furthermore, Msimang argues 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 is victorious, the young woman would be married off.

But Msimang also wrote about the second form of *ukuthwala* which is a traditional Zulu practice that opens up the marriage negotiating process when it is difficult to have it started otherwise. Under this form of *ukuthwala* a young man and his “sib-mates” carried the woman to the young man’s home. On arrival, they would dress her in an *isidwaba*. After a young woman was *thwalwa’d*, a message through the *abakhongi* (marriage negotiators) would be sent to her parents informing them to *funelani nganeno* (search from this side for your missing daughter). This is an expression that simply informs them about where she was. In such cases *ilobolo* negotiations resume and the marriage negotiation process becomes open.<sup>36</sup> According to Msimang this is

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34 RJ Gordon and AD Spiegel, “Southern Africa revisited”, *Annual Review of Anthropology*, 22, 1993, pp. 83-105.

35 This resonates very strongly with the court cases against Nondhlini ka Sityuble and Radebe respectively. See PAR, Supreme Court of the Colony of Natal (RSC), Vol. 1/1/60: Regina vs. Nondhlini ka Sityuble, March-September 1900; PAR, RSC Vol. 1/1/368 – 290/301 criminal cases 1960: Regina vs. Bhekempeto Radebe, 29 September 1960.

36 Compare to the case against Solomon kaDinizulu PAR, Chief Native Commissioner (CNC), Vol. 310 Correspondence 5842/1917: Alleged abduction by Solomon kaDinizulu, 27 September 1917-12 December

an indication that the man who had *thwala'd* the young women meant no harm.<sup>37</sup>

Msimang not only challenged the romanticised notions of the other authors regarding *ukuthwala*, but also placed in context the court cases found in the archives. In the process he provided a clearer picture of *ukuthwala intombi* and *ukuthwala ngenkani* and the grey area in-between. In so doing he both confirmed continuities and changes in the practise and challenged the silences and the conflicting ideas that exist around it. Writing in this manner in the early 1990s served to set the scene for the post-1994 debates about *ukuthwala* which were then, for the first time, conducted publically by the people of whose culture it forms part and not by White academics and government officials. As such the liberation experienced in 1994 not only freed the black majority but also freed *ukuthwala* as a practice from the Western discourses to which it was bound. Consequently, all the various positions related to the phenomenon can now be openly supported or challenged. Finally, however the debate about *ukuthwala* is still very much a legal one.

As part of a continuing legal debate, The South African Law Reform Commission has envisaged hosting a workshop on the practice of *ukuthwala*. The purpose of the workshop is to discuss the proposals contained in the discussion paper on the practice of *ukuthwala*<sup>38</sup> and to focus on law reform initiatives in this regard. The Commission will consider inputs made and use insights gained during the deliberations in drafting the Bill and report on the practice of *ukuthwala* and its recommendation to the Minister of Justice and Correctional Services. However, research has proven that the law is not the solution to the contradictions and debate about *ukuthwala*.<sup>39</sup> Furthermore, moves by the South African Law Reform Commission to outlaw *ukuthwala* practice started on 30 November 2009 in Pretoria whereby the statutory body was tasked with reviewing and reforming South African law but up to now, there are no remarkable changes.

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1917.

37 CT Msimang, *Kusadliwa ngoludala...*, p. 228.

38 South African Law Reform Commission, Discussion paper 132, Project 138, "The practice of *ukuthwala*", November 2014.

39 PM Nkosi, "Ingcwaba Lentombi Lisemzini"... , pp. 9-12

## **Conclusion**

At the outset it was stated that the focus of the article was on understanding whether the contemporary practices of *ukuthwala* had historical claims to validity. The answer to this is both yes and no. Yes in the sense that some aspects of the core, or more correctly the multiple nuclei, that hold the various forms of the practice together are still identifiable, still contested and clearly not composed of a single narrative. However, when considering the primary and secondary evidence, as well as the emerging contemporary evidence, then it is clear that *ukuthwala*, as with many other customs, has been reimagined over time so as to blend-in with the changes happening in society. In this fast changing contemporary society *ukuthwala* finds itself locked in a legal wrestling match between Zulu traditions and Western modernity. If the arguments to decide the outcome of this match are going to be gender and human rights-based, then the answer to claims of historical validity is probably going to be no.