

***Child marriage practice: a cultural gross violation of  
human rights of girls in a free South Africa***

**by**

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## Summary

In the post-apartheid South Africa, the recognition of customary law within the context of human rights application remains a stern challenge. This is evident in the constitution of South Africa which entails the universal individual rights in its Bill of rights whilst simultaneously embracing the tradition practices that violates the rights contained in the indicated Bill. Ukuthwala custom is but one of such adverse practice that could be taken as an example of such a contradiction. In particular, section 30 and 31 respectively in the South African Constitution embed respect for cultural diversity.

This paper looks at the Ukuthwala custom which is a child marriage practice that the Nguni tribe in South Africa is notorious of. It further vigorously and expressively makes it clear that this practise remains a gross violation of human rights of girls in a free South Africa. According to this practice a bride is forcefully abducted and taken to the man's home. In recent cases as reported, this has been done without the girl's parent's concern unlike before. The practice of this custom could be attributed to various reasons. For instance, the Ukuthwala would be performed in cases where the father did not approve of such envisaged relationship. At times it was meant to expedite the marriage process if the girl was found to be pregnant. The dissertation further scrutinize numerous causes of child marriage practice inter alia, gender inequality, culture and tradition and poverty. The adverse effect that child marriage has on the enjoyment of the fundamental human rights, in particular, the right to Health and Education are also outlined. In essence, women and young girls in particular, are, in an African culture, construed to be properties of their parents and not right holders (without rights) and so it is expected of them to adhere to values and norms as prescribed. South Africa has ratified numerous International Human rights conventions that condemns the violation of women and children's rights and as a consequent it is obliged to ensure that these rights are upheld, respected and protected.

D.S Koyana and J Bekker: The Indomitable Ukuthwala Custom In *De Jure* Vol 1 2007. Clark, S., Bruce, J. and Dude, A. (2006) Protecting young women from HIV/AIDS: The case against child and adolescent marriage. *International Family Perspectives*, 32(2):79-99

Constitution of the Republic of south Africa Act 107 of (1996)

## DECLARATION

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I declare that 'The Child Marriage Practice: A Cultural Gross Violation of Human Rights of Girls in a Free South Africa is my own original work. Where I have used other people's work, this has been properly referenced and acknowledged in accordance with Departmental requirements.

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## Chapter 1: Child marriages in South Africa

South Africa is one of the countries that are constituted of a variety of cultures. These cultures are also coupled with the multiplicity of race, ethnicity, religions, and languages that exist in South Africa. In terms of its population, it is estimated that it has about 50 million people. It is also estimated that 79.5% of this population is Black, while 9.2% is White, and 8.8% is Coloured people, Indian and Asian origin makes up 2.5%.

Black people are made up of different ethnic groups located in different **parts of the country**. In terms of languages spoken by these ethnic groups, only 11 languages are recognized as official languages. Of importance to note here is the fact that, the diversity of languages is/or, could be as a result of these various cultures that are directly linked to individuals residing in South Africa.

There are numerous ways of conceptualizing and defining culture e.g., Meriam Webster online dictionary defines culture as ‘the integrated pattern of human knowledge, beliefs and behaviours that depends upon man’s capacity for learning and transmitting knowledge to succeeding generations’ As the definition indicates, culture should be understood to include, ‘customary belief, social forms, and material traits of racial, religious or social groups’. The writer would therefore, want to make it clear from the beginning that, in the context of this paper, culture should be understood to mean the way people act, how people think and do whatever they do, as opposed to how it is done by other groups of people.([http://rhetoric.sdsu.edu/lore/1\\_3/progress\\_culture.htm](http://rhetoric.sdsu.edu/lore/1_3/progress_culture.htm))Accessed 01/02/2013)

The South African constitution of 1996, had been hailed to be the most progressive constitution thus far, due to the fact that, a Bill of rights contained in this constitution had covered a wide range of human rights as they are contained in the international human rights instruments. This Bill of rights had tended to include two sets of rights first, the Socioeconomic and cultural rights, second, the civil and political rights both of which are covered in the international human rights instruments.

The fact that the socioeconomic and cultural rights have been made part of the Bill of Rights could be attributed to the South African history where other race groups where denied the enjoyment of, and access to basic human rights. In addition to this denial, gross human rights violation was also encountered while social goods and services were allocated according to ethnic as well as one's race. (Grant, 2006: 8).

The imperatives that occurred under apartheid government culminated in a number of groupings having no access to the economic resources and wealth of the country. Furthermore, various cultures, especially those of non white people where not popular and were expressed in a distorted manner in different times e.g.: under Colonialism and during apartheid period. (Grant, 2006: 3).

In this paper the writer is going to briefly review the cultural practice of child marriage which is a gross violation of a child's human Rights as outlined in the international human rights instruments and the 1996, Constitution of South Africa. One of the most critical conventions that explicitly outlines human rights with regard to women and girls is the CEDAW Convention on the Elimination of All forms Of Discrimination Against Women. This convention serves as a bill of rights for women, as it covers a wide range of issues that are of paramount importance to women rights in general. The convention deals with amongst others, the very thorny issue of consent. It goes further to outline the minimum age of marriage which should be 18 for both girls and boys respectively. This means that any marriage that takes place between two people in which, both or one of the spouses is under 18 is unlawful and should be treated as such. This is also augmented by the South African Children's Act (2005).

A number of articles covered in the international literature as referred to herein, have made observations regarding the child marriage practice at an international level but less has been said in the South African context and this paper is purported to fill this particular gap.

The cultural practices referred to here, are also reflected in the unequal positions held by women in various sectors e.g.: economic, political and social structures in communities where they are practiced. This of course, is an overt way symbolizing the intention to impose man's control over women. (WHO 2008). A case-study on the

practice of Ukuthwala (forced marriage) would be utilized in order to illustrate and expose the literal existence and impact of this practice and how it grossly violates the human rights of a girl child. (Koyana (1980) 139).

Numerous causes of child marriage practice had also been outlined inter alia, gender inequality, culture and tradition and poverty. This was followed by the adverse effect that child marriage has on the enjoyment of the fundamental human rights, in particular, the right to Health and Education. In an endeavour to scrutinize the child marriage practice, several theoretical perspectives were sought. The first one is the theory of capabilities and functions which outlines value of one's capabilities and functions in the society. The second one is the theory of Social exclusion which is more concerned with the social exclusion aspect in the society. The Universalism of Human Rights as well as the Cultural Relativism narratives would also be discussed. All these theories are relevant in the context of this research report as they are meant to unravel the root-causes as well as practicable solutions of, amongst others, child marriage practice and discrimination in general.

The writer then concludes by making proposals regarding the minimization of the clash between the human rights and their violation deeply rooted in culture, tradition and religion in South Africa. The author has indicated that, legislation can only be part of the solution. However there is a need to expand the terrain in order to include crucial aspects e.g.: Education, women empowerment, Consultation, participation by NGOs and encouraging positive conduct that undermines the practices which violates the rights of women and girls. This means that the Commission for Gender Equality as well as the ministry for Women would have to be seen to be proactively advocating and championing this course.

### 1.1. Statement of the problem

**The practice of child marriage is founded in a culture that orchestrates violation of human rights of women and girls, through the process of socialization into prescribed gender roles in South African society.**



## 1.2. Research question

How does culture influence the practice of child marriage and its consequences thereof and what mechanisms could be utilized to ameliorate it?

## 1.3. Research methodology

The information used in compiling this report has been sourced from various sources. The Desktop research has been employed as part of ensuring that useful data is secured. Other literature material for instance, the Constitution of the Republic of South Africa as well as books were sourced from the library. No interviews of any sort has been conducted as this has been a purely literature review exercise. The research is only constituted of qualitative approach and no quantitative data has been provided.

## **Chapter 2: South African constitutional context**

Upon the advent of democracy in 1994, the constitution of South Africa was adopted in 1996 which literally embraced a variety of perspectives, i.e. Socioeconomic, political, cultural, religious and linguistic rights. Sections 30 as well as 31 constitute cultural rights.

The individual's right to culture and language is found in section 30, "Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights," while section 31, covers the issues related to cultural, linguistic and religious rights and further indicate a critical aspect of collectivity thereby stressing the fact that individuals belong to their communities. "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, practise their religion and use their language; and to form, join and maintain cultural, religious and linguistic associations and other organs of civil society."

Section 31 concludes with the following limitation “The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.”

This could be attributed to the fact that the nature of cultural right is ‘group oriented since individual share their culture with other persons constituting group or community’ (Divenish, 1998: 422).

Section 185 of the same constitution recommended the establishment of a Commission for the promotion and Protection of the rights of Cultural Religious, and Linguistic Communities and as a result augmented the above indicated section 30 and 31 in the constitution. Furthermore, Section 2113(3), give permission to the courts of law to utilize customary law ‘subject to the constitution and any legislation that specifically deals with customary law’. Culture and customary law are subjected to the bill of right.

This was after the argument made, indicating that, the right to culture has more to do with, or, implies that customary law is recognized and therefore it should be applied.(Grant 2006: 7). It is important to note the fact that the cultural rights mentioned above are limited by section 36 in the constitution. This means that whenever they are practiced consideration should be given to other rights contained in the Bill of rights, meaning that, they could not be inconsistent with the Bill of rights.

So, nothing could be done in the name of culture, being against the equality clause, could be regarded as being constitutional. In essence, section 36; contain limitations to section 30 and 31. This general limitations as outlined, allows for limitations that are ‘reasonable and justifiable in an open and democratic society based on Human dignity, equality and freedom’.

The clash between human rights and culture should therefore be understood in this context. So, as shall be seen throughout the paper, human rights as contained in the Bill of Rights and cultural practices of child marriage continue to clash, as child marriage violates the human right of a girl child.

In South Africa child marriage appears to be the worst violation of human rights of women and girls that are violated on a daily basis thereby affecting their health as well as development. Even though there are laws that are meant to curb this violation, the SA government does not seem to be in position to enforce such laws.

Where discrepancies exist in such laws with regard to the actual age for marriage, the government seems to be reluctant to resolve them, probably because they would be tempering with the most crucial religious and cultural aspects that are deeply entrenched in such societies. This demonstrates the government's tolerance of cultural, religious and traditional norms regulating the marriage institution, even though they tremendously violate fundamental human rights of a girl child.

In general, government rarely acts promptly when such sort of violation occurs. In addition to this, the international development agencies do not seem to be concerned with this gross violation of human rights and as such, they do not focus their attention and other necessary resources required on resolving this scourge.

To this end, child marriage should be understood to be a critical social aspect in families and therefore, the fact that it undermines one's human rights through the championing of sexual abuse and exploitation of the girl child is often highly disregarded. It should be remembered that in societies where this form of marriage is arranged, it remains highly respected and any sign of its disregard is taken very seriously and could ultimately result in one being subjected to adverse consequences.

Research has found that, the adverse impact of child marriage is quite prevalent in the developing world and affects its development in general. These girl children's experiences are quite devastating, as girls are consequently denied access to education, health and economic opportunities crucial to their livelihood. Most of them carry a burden of assuming roles and responsibilities that are meant to be performed by wives and mothers.

This is what is expected from them regardless of the fact that they lack necessary support, capabilities as well as resources required to carry out such duties. Often than not, child marriage is facilitated by the parent of the girl child thereby exposing her to sexual abuse and exploitation. Research has found that child marriage is a risk factor for inter alia HIV-AIDS and as such it is important for it to be halted with immediacy.

Girl children are vulnerable to various health risks due to, first, restrained power crucial for taking decision on one's sexual behaviour, and second, the nonexistent of economic opportunities to such young brides. However, many people including parents and guardians of girl children continue to justify the practice of child marriage giving different reasons. Often than not, economic reason appear to be the most reason to justify child marriage as it is directly linked to poverty.

It is argued that, girl children enjoy no economic opportunities in the rural areas and as such, subjecting them to such marriages is regarded to be a valuable form of giving them a bright future. In this instance, girls are perceived as an economic burden to the family. Consequently, they are turned in to capital utilized for the purposes of exchange for amongst others, goods, money or even livestock.

In fact, arguments are made to justify child marriage based on cultural, traditional and religious conviction. Other such reasons that are deemed to be valid are, the perspective on premarital sex which culminates in it being stigmatized, a girl having children outside marriage, which is shunned upon by society and the family honour which is highly valued over an individual human rights.

Girl children are often stopped from attending school due to the fear of them being sexually abused on their way to, or, from school. These young girls are ultimately married off to somebody who might be of their age or too old, as it is not viewed as abuse.

Various levels of governance E.G: international, regional national and local must be proactively involved in addressing this devastating act of child marriage. Political will is of most importance in this process as well as the employment of multifaceted approach which could assist in this violation to come to a halt.

### **Chapter 3: What is child marriage?**

Child marriage is at times referred to as early marriage, it is defined as ‘any marriage carried out below the age of 18 years, before the girl is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing’. Marriage in its normal context should be understood as a socially binding contract which is conducted in a formal manner between two adults who had consented to it. (Mikhail, (2002) 43).

This social contract further sanctions for sexual relations with the outcome of legitimate children born of it. Marriage occurs in different cultures with varying forms throughout the world and has overtime enjoyed respect. Conversely, child marriage occurs where both or one spouse is a child and has not consented to it. Normally, this kind of marriage is not registered and is conducted under or, based on cultural, religious or tradition.

Thus, child marriage is recognized by customary laws and other religions which makes it difficult for it to be ended. Child marriage is viewed and used differently, for instance, in other provinces in South Africa it is used to ensure that the relations between families are tightened. Betrothals of young babies are not completely secluded from this practice.(UNICEF (2001).

The 1948 Universal Declaration of human rights asserts that, marriage is supposed to be ‘entered only with the free and full consent of the intending spouses’. However, when one looks at the child marriage, it occurs within a context of coercion where parents or guardians compel these children to get married to people who are at time twice their age. Children are taught the importance of child marriage and embrace it as a norm.

Thus, such children practice it, as they understand it to be their duty to get involved in to, while others engage in it as a demonstration of respect to their parents. It is important to note that, it could not be claimed that a child has consented to any form of marriage that occurs and involves such a child. Secondly, any of such kind of child marriages could not be said to have occurred in the best interest of the child.

The UN convention on the rights of the Child (CRC) has its definition of what a child is, 'every human being below the age of 18 years unless, under the law, the right age for marriage applicable to the child, majority is attained earlier'. The organ that is responsible for monitoring the convention on the elimination of all forms of discrimination against women (CEDAW) has made a general recommendation (recommendation 21) which is concerned with the equal relations in marriage and family.

It further, declares child marriage unlawful and asserts that 18 years must be applied to both males and females. This has been found to be the minimum age at which 'full maturity and capacity to act' could have been acquired. This strengthens the viewpoint that, any marriage that occurs before the age of 18 should be deemed invalid and improper. At times a girl may be sexually matured before the age of 18. However, such maturity would not be translated in to a girl's readiness to be a mother or a wife, or, even be able to carry a child successfully. That is, the psychological and physiological part of maturity is quite important in an endeavour to fulfil such required role in marriage.

It is important to note that the adverse effects of child marriage are not limited to the individual girl child but could also be felt by the wider society. The education and Health sectors are the most affected by this practice in the country. Despite young girls vulnerability to this practice, policymakers often than not, do not make any expression on this matter.(Krishnakumar, (2005) 2).

### 3.1. The case study of uku thwala

South Africa is a country that had ratified a number of conventions e,g Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It had also ratified the ICESCR. What appears to be a bit challenging is the fact that, it had entered a reservation on child or early marriage when ratifying the protocol on women's rights in Africa. However it continues to commit itself in its constitution and the Child Rights Act to respect, protect and fulfil human rights of all people. The act of child marriage referred as Uku thwala has been prevalent since ancient time.

However, with the human rights discourse occurring after the advent of democracy, people have become aware of their rights and cases of this practice are now reported and made known to the responsible authorities.

This practice is conducted in different ways depending on the family. As J. C. Bekker Rautenbach and N.M.I. Goolam, wrote in Introduction to Legal Pluralism in South Africa *ükuthwala* is not a customary marriage, but a method to force the girl's family to enter into marriage negotiations". In practice *Ukuthwala* is not as defined above, nonetheless this aspect as exposed, could be reflecting how it is conducted in other places. This was also addressed in the book called *Red Blanket Valley* wherein an Anthropologist Joan a Broster's description of the word *ukuthwala* offered its meaning as 'pursue and carry off in marriage'.

In fact, it is a culturally recognized abduction of a girl. Under normal circumstances the practice of *Ukuthwala* is usually carried out by the friends and relatives of the prospective husband. This practice had been conducted for various purposes that were all linked to the family. It is said that this act was often carried out when it was found out that the girl's parents did not want the girl child to be married by the prospective husband. Of important to note however, is the fact that, this practice vary according to tribe, ethnic group and geographical location.

There are however, instances where the girl's parents had consented to the act and in such cases the girl would then expect to be made part of the husband's family and to be treated with dignity as a wife. When she arrives as a bride, a girl was then offered the necessary respect and kindness. As culture evolves, this has since changed and had taken another form.

In his book T. W. Bennett *Human Rights and African Customary Law*, he observed that, in an African tradition, a home is basically the source and foundation of all aspects that are crucial in ones life. For instance, the socio-political as well as economic order were conducted based on the family values and norms which in turn, gave support to an individual member both financial, material, psychological and otherwise. Individual duties of members of the family mattered most as compared to individual rights.



So, automatically the interest of the family was taken to be the interest of its individual members. Bennett continues to assert that 'the powerful ethic of generosity towards all kin (especially women and girls) assured them nurtured protection and respect'. According to him, Ukuthwala was originally properly performed in a cultural manner that took into consideration the dignity of each participant according to his/her duties.

On the other hand, Broster asserts that there were girls who did not necessarily consented to the practice of Ukuthwala but still recognized its purpose. In her book *Red Blanket Valley* she indicated that when most of these girls were abducted in to marriage, they actually cried, but, the act of crying was part of the process and did not necessarily meant that they objected to it. So, crying was taken as part of a formal procession as most of those girls were happy to be a member of the receiving family.

She continues to say that, at times such girls may not have wanted to be abducted, but the fact that they were taught from childhood that their duties as girls was to be married and bare children, they somehow felt it easy to submit to the act. The cultural concept of a child and/or an adolescent was the basis upon which it was determined whether a girl was ready for marriage or not. In most cases, it was just after puberty when a girl was understood to be fit for bearing children and expanding members of the husband's family.

Indeed, culture is not static and a lot of such practices had since changed even to the worst. It has been reported that children aged 9 and 10 are now made part of Ukuthwala being married to men who are almost five or even six times their age. Such girls are beaten and even raped. This abuse is executed as a prevention method so that the girl's parent may not reclaim the girl.

Furthermore, since premarital sex is taken as a taboo in an African culture, rape was conducted so that the matter could not be reported to the police and other authorities and as such, the girl could not return to her parent's home since she would no longer be a virgin and that would have brought shame upon the family. So, another reason

for U kuthwala is that, an abducted girl would still be young and would have had not had sex before. Virginity is therefore one of the most important reasons for the practice. (<http://www.who.int/reproductivehealth/publications/fgm/9789241596442/en/index.html>) accessed 03 01 2013)

There is also a perception that, if an HIV infected man can have sex with a virgin woman, he would be cured. However, most man just does it because a woman is viewed as somebody who should be submissive, bare children and serve as sexual object. Thus, most people do this claiming to be practicing their culture. It is important to note that, the old concept of the family and the current one differs, since the current one is influenced by various factors inter alia, human rights discourse.

It should not be accepted, that the rights of women and children are compromised under the guise of culture. Indeed previously the practice was justified due to the role played by the family but things have turned around now, this has become the major cause of family breakdown. It is the writer's conviction that there is a need to reclaim culture in a more modernized fashion, as it would have to embrace the human rights of women and man and treat them as equals.

Although the writer acknowledges the changes occurring in many families especially in the urban areas, the same could not be said about the families in South African rural areas. Research has found that, girls who had been exposed to such practice of Ukuthwala, continue to live with deep scars that bring up anger, distrust and sadness towards their families as they feel that they had been betrayed.

Of importance to note however, is that the congress of traditional leaders has slowly but surely started to discourage this practice as the Commission for Human Rights is putting pressure on them to act. South African Police have also become more vocal against the act. However, this practice is still largely embraced by those who hide behind the love and protection of culture, claiming that democracy has brought with it immoral standard of living.

### 3.2. Trends of practice of child marriage

Even though, child marriage is widespread, the accuracy of its numerical data is quite hard to confirm. This is largely due to the fact that such child marriages are in many instances not recorded or registered. Where they are registered the information is deliberately falsified. The non-registration of such marriages could be attributed to the fact that, such practices are more prevalent in rural areas where birth certificates are not valued and often not registered.

There is also scarcity of data on marriages that occurs or had occurred before the age of 15. The data that could easily be accessed on child marriage are often outdated and could not be relied upon for the purposes of policy development or any official use. Although it has been reported that the scourge of child marriage is decreasing in South Africa, the fact that it still exists should be a matter of concern.

Child brides are compelled to enter in to sexual behaviour earlier than they should, which consequently lead to the violation of their rights as they ultimately become mothers unprepared. There are however, girls who are married off due to the conflicts that are taking place in such area and parents tend to think that by letting their children get married to the warlords they are protecting them from sexual abuses.(Wadesongo, (2011) P121).

It has been found that child marriages takes place within poorer communities. However, where such practice is prominent, such marriages could be found to be practiced by even wealthier people. The level of education has also been found to be a major aspect where child marriage takes place. For instance, the lower or nonexistent of the level of education the higher the practice. Research has found that child marriage on average tend to affect girls more than it does to boys.

## **Chapter4. Factors that promote and reinforce child marriage**

### **4.1. Gender inequality**

Gender inequality is a scourge that continues to occur in every country regardless of the pronouncement made by countries on their commitment to empower women and accord them equal status with men. In many countries including South Africa patriarchy is still rife and this is reflected in the societal structural system which is male dominated and biased.

This system makes it difficult to stop child marriage as it reinforces the perspective that the current social norms that undermine women are desirable. It further makes sure that through its measures and agencies women's role remain a domestic one and they are restricted from exploring anywhere else except in the home. The end-result of this is the perpetual dependency of women on men. Meaning that, women remain powerless.(Bwakali (2001) 270).

In fact, if government would want to seriously engage and install measures that would ensure the practice of gender equality, marriage would be the best place to start with, since it is the one that entrenches and embraces gender inequality. Thus, gender inequality is an integral component of the marriage system whose practices, attitude and norms resist the new culture of human rights.

### **4.2. Poverty and economic survival strategies**

Traditionally families were taken to be the source of labourers of people who would be used in the food production process. For instance, women would be encouraged to bare a lot of children who would work in the field, regardless of the health consequences to the woman. Even though pressure could be mounting especially for getting finance to fund for children education, most families in the rural areas still believe in having many children, since they are less affected by the external influences that are felt more in the urban areas.(Hill, 2004) 113).

It is also a conviction to many that, if one has a lot of children they would serve as a social security when the parents get old. Child marriage in such communities is still perceived as a very serious and critical component of economic coping strategy that is meant to assist in the survival of the family.

This is because it gets the family to spend less on the daughters as opposed to the sons. For this reason, poverty is understood as the major reason for engaging in this practice of child marriage since by marrying off the child it is thought that the family as well as the daughter are well-off, that is, it is assumed that they both benefit.

In most cultures where, for marriage processes to be concluded, there should be a payment of a dowry or Lobola in most SA cultures, such payment is also given as a reason for child marriage. The reason being that, the older the girl and the further she achieves academically the higher the dowry price. So, such expenses that could have been paid, are reduced decimally by having the child married earlier.(Mcquoid (1978)

Poor families often marry off their girls so that they could get the bride price and use it for other important things. Unfortunately, it at times gets worse. In some communities in South Africa for instance, when a man cannot afford the bride price they resort to abducting and/or raping such a girl.

This is a serious violation of women rights and should be condemned at all costs. The challenge however, is for the government to come up with new strategies that would replace such adverse survival strategies applied by people who believe in such cultural norms. Creating an enabling environment which empowers women through education and employment opportunities could assist in discouraging child marriage practice as it could serve as an alternative desirable option. In this instance, girls would be perceived as people who can economically contribute by generating income for their families and themselves.

#### 4.3. Control over sexuality and protecting family honour

Child marriage is deemed to be important for various reasons as indicated above, amongst them, is for the purpose of having control over a girl's sexuality. Furthermore, the reproductive function is not viewed to be her right but her husband's right. In such societies the religious and cultural understanding of a girl's virginity is of most importance to the family's prestige and honour. Therefore, families find it proper to marry off a young girl since she might engage in sexual activities before marriage and shun the family.(Shelly, (1993) 1944).

Clearly, girls are viewed as properties, unable to think for themselves and with no rights. The girl's body belongs to the father, brother or husband with the sisters, mothers or aunts serving as agencies in the process. In other cultures, girls are stopped from attending school as soon as they start menstruating as part of controlling their sexuality.

This is also linked to the fact that a girl is not supposed to be educated since she is going to be married. So, attending school by girls is a waste of time and resources that could have otherwise been spent elsewhere especially on the boy child.

#### 4.4. Tradition and culture

Many societies wherein the child marriage practice is valued, a family is fully convinced that they have to conform to the cultural norms. This means that the family should try by all means to conform, even if whatever is conformed to is detrimental to a family member. This is done for protecting the family from shame, ridicule and disapproval by other members of the society.

Local customs and social norms serve as a source of the child marriage practice, influenced by perceptions held by the community members. Amongst others, there are perceptions about the proper age for girl to be married as well as the understanding that a woman should be submissive, which is why she should be married young.(Senyonjo, (2007) 39).

Perceptions on the family structures and a number of children as well as the meaning of the dowry price. All these, have influence on child marriage practice and other norms and values that seeks to undermine women's capacity to be themselves. In reality, girl children as well as women in many rural areas, subject themselves or are compelled to surrender their lives for dictation by customary laws other than the national laws.

This reality presents us with both a challenge and an opportunity. First, to urgently address the scourge of child marriage and gender inequality and women empowerment in its entirety. Second, the opportunity is to analyse the persisting culture and see how we could apply a human rights discourse as an alternative in resolving the disjuncture that exist between cultural and religious values as well as those enshrined in human rights discourse. The Cultural relativism perspective as well as Universalism of human rights perspectives are sequentially discussed next in order to assist in the contextualization of the whole cultural and human rights discourse outlined in this paper.

Cultural relativism generally refers to the fact that human rights as understood are based on one's culture. In other words, this theory promotes the perception that all human beings are culturally conditioned. So, whatever one does would be shaped or moulded by the basics that he or she solicits from their native culture. In practice, the Ukuthwala practice that has been illustrated in this paper and all the activities enclosed herein, that demonstrates the cultural notion of doing things, albeit suppressing females, is according to this theory correct as long as all these occurrences are founded on the cultural and traditional ideology.

In essence, the main aim of cultural relativism is to challenge the concept of universal morality which it deems inapplicable. Its proponents argue that, this theory promotes tolerance amongst various cultures. Thus, the argument is that, people would focus on their cultures and restrain themselves from interfering with other people's cultures whether the culture in question exhibit respect to human rights or not.

On the other hand, its opponents argue that, not every cultural aspect should be tolerated, as some of them may be harmful. By its nature, cultural relativism is aimed at weakening the ideals of universalism. That is, it wants to ensure that cultural differences are retained regardless of them perpetuating oppression of other groups within such societies.

Furthermore, it is argued that in reality, there is no one culture which could be perceived as being universal as there exist a myriad of cultures. Therefore, it would be impossible for there to be a single standpoint upon which moral issues could be universalized and validated. Essentially, this theory puts forth the notion that human rights are correlated to "moral entitlements" and therefore it would not be possible for them to enjoy universal state.

Instead, it is understood that they ought to differ in accordance with the culture within which they emerge and that is the only culture that could validate such moral. Thus, human rights are understood to be a western initiative and as a result their practicability in the non western cultures need to be scrutinized. Lets now turn to the theory of Universalism of human rights.

The notion of human rights being universal as spelt out in the international declaration of Human Rights and other related UN instruments, is put forth and premised upon the assumption about the nature of all human beings. This theory stems from the fact that, all human beings own similar crucial qualities and so, they ought to, ultimately possess equal dignity. So, according to this theory, it does not matter whether one is a woman or a man, as long as they are both human beings, their rights should be protected and applied equally regardless of their cultural differences or insinuations.

This means that they should have the same value as well as enjoy similar rights. In accordance with the UN system that governs human rights, it is stipulated that all human beings have equal dignity and worth and similarly, they ultimately have to enjoy equal human rights. This means that, in all means possible, human rights possess a universal character regardless of one's traits or geographical location.



This is the notion which has been clearly outlined in amongst others, the Vienna Declaration and Programme of Action 1993. It has been further, augmented by the human rights instruments particularly in provisions dealing with non discrimination. For instance, Article 2 of the Declaration of the Human Rights asserts that "everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property birth or other status".

It is important to note that, in its absolute terms, the principle of universality does not compromise in the application of human rights. That is, all rights are supposed to be enjoyed equally by all people regardless of their status. This is the stance taken by the Vienna Declaration and Programme of Action which observes that human rights are "indivisible and independent and interrelated". This means that there is a need for the international world community to ensure that these rights are offered equal treatment in a manner that is fair, and the emphasis should not be varied in all instances.

In essence, all human rights are on the same level, meaning that their relationship is not in a manner or form of hierarchy and so no single right shall be enjoyed at the expense of another right. so, human rights should be viewed to coexist in an integrated form and being horizontal while simultaneously being mutual in their nature. This makes it clear that the argument put forth by other authors, that other human rights must precede others in terms of priorities, is completely invalid as they are all similar in nature whether civil, political or socioeconomic or cultural.

Given the two theories discussed above which is Cultural Relativism as well as that of Universalism there is a need to make clear the position supported by the author of this paper. The writer has all throughout this paper argued that, the culture and tradition prevailing has been one sided, which is patriarchal thereby disadvantaging all those who are by definition non masculine. This means that, all females regardless of age and other traits are oppressed and their human rights undermined.

This is the view that is supported by Cultural Relativism which the author of this paper is completely resentful of, as it does not appreciate that women are human beings too, with equal rights as their male counterparts. So, Universalism of the application of human rights to both man and women as equals, in all respects should be upheld and promoted. Thus, all various cultures should ensure that they reshape their activities and ideologies so that they could fit into the human rights perspective engineered by the theory of universalism and not vis a versa. Having had discussed the causes of the practice of child marriage I now turn to the negative impact this practice has on the lives of these children in particular and women in general.

## Chapter 5. The effects of child marriage on human rights

### 5.1. Health consequences of child marriage

Research has found that there are many children who die from health reasons especially when conceiving. Many others are however, left to live with their adverse health status and suffer for the whole of their lives. For instance, chronic disability has been noted to be prevalent in such young married girls after giving birth.(Mswela, (2009) 180).

The worst that could happen to such children is called obstetric fistula. This is an injury that occurs in a woman's birth canal, its consequences are devastating as it renders a woman to lack control of her and leak urine and/or faeces. Most young women under the age of 20 are said to be vulnerable to fistula, particularly if they had not been attended to, properly during labour.

Impoverished areas in the country are the once that bears the most brunt. Child marriage makes young girls prone to a variety of health risks. This could be attributed to amongst others, the lack of services rendered for the purpose of reproductive health information as well as their inability to access and make use of contraception. (<http://www.womenandaids.unaids.org> (Accessed 3/07/2013)).

As these children are married, they are often than not subjected to frequent sex. This result in them being pregnant for more than once even before they could be psychologically and physiologically ready. Obstetric fistula is preventable and treatable; nonetheless, most girls continue to suffer from its devastating effect. Pregnancy related births had been reported to be the major cause of high mortality in South Africa especially for girls between 15 and 19 years old.

In addition to this, it has been found that young mothers tend to lose their infants more than old mothers. While other young girls could access the contraceptives in SA Health Centres, they are often discouraged to use them by their in-laws and husbands as they are expected to prove that they can give birth.

Indeed, the fact that married children are economically dependent on their husbands or in-laws also affect their decision making powers regarding the use of reproductive services. That is, many young brides may know about contraception but be scared of negotiating them for fear of the consequent violence that may occur.

Young girls who had not been to school or with low levels of education, without necessary resources, have been found to be powerless and, as they are often married to older man, violence is always common within such relationships.(World Health Organization. (2005) 8).

Married children are also not mobile as they cannot make decisions affecting their lives. What makes matters worse is the fact that, these girls, in many cases, lack social support base for offering assistance when required. The physical violence perpetrated towards young brides often lead to sexual abuse and even when this happens they are less likely to leave such an abusive husband.

HIV/AIDS has also been found to be prevalent in young married girls. There is a widespread believe that marriage is good as it protects young girls from HIV infection. Contrary to that belief, young brides are often literally exposed to HIV. This is due to the fact that marriage serves as a young girl's practical transition from virginity to frequent sex.

Regardless of the fact that the government has expanded access to HIV prevention and treatment measures, HIV remains prevalent in young girls. It should be noted that the conviction that, marriage could help protect women from HIV could be responsible for condoning child marriage.

The conventional strategies that have been widely relied upon by the SA government and other health practitioners, has been that of ABC (Abstinence, Be faithful and Condomize). In reality, married children do not have a luxury of abstaining and so is the use of condoms. What is more impossible is for them to be in control of their husband's sexual behaviour outside of the home. Susser, Ida and Zena (2000) 1042).

It is therefore important to see ABC's application in the context of deeply gender/rooted violation and discrimination. Research has found that there are amongst others, three most critical aspects that are responsible for the high infection of HIV to married children. First is the fact that such young children are silent in their families on matters of sexuality. Second is the transactional sex which inevitably includes intergenerational sex which is often exploitative.

The third important aspect is that of violence that is perpetrated against women, which is a real and frustrating one. The above mentioned factors coupled with poverty and gender inequality are inter alia, responsible for the widespread of HIV AIDS in the families and largely on women and young married children. What makes the matter worse is the cultural belief that, in order for a man to be free of HIV he should have sex with a virgin woman and in this case; young girls become victims.

There are however, other cultural convictions that are not helping the situation. For instance, the culture of widow cleansing in various parts of South Africa subjects women and girls to adverse situations. In this culture women are expected to have sex with a stranger or a relative. While in others, a woman is expected to get married to the late husband's brother. Such practices are forced upon married children since they could not resist the social pressure put upon them. (Centre for Reproductive Rights. (2000) 58)

Indeed there is a need to acknowledge the fact that, most of the strategies that had been used thus far in the prevention of HIV and AIDS had not been much of help to the vulnerable women and young girls. Values and norms surrounding gender relations and conduct on sexual relationships, discrimination on the basis of gender and gender inequality always worsens the adverse situation of married children and other women. Furthermore, married children who are infected with HIV and AIDS may find it difficult to access the required assistance in a form of treatment even though it is freely offered by the state.

## 5.2. Child marriage's consequences on education and development opportunities

When early marriage occurs to girls, they tend to miss important aspects of their lives particularly education and development. Research has found that there are various aspects that girl children are expected to attend to, that are deemed to be more important to them, other than schooling. For instance, girls are expected to perform domestic chores and other responsibilities that lead them to being married at a very young age.(Anunobi (2003) 61).

Often than not, young girls are viewed as first and foremost, mothers, wives and daughters and as such, they are not thought of, as people who should be educated and get decent employment like man. This is more prevalent to girls who are from poor families and has little or, no education. Such girls are usually married much earlier in their lives.

Research has found that there is a strong positive correlation between a girl's level of education and the usage of knowledge of reproductive and sexual health services. In this regard, secondary education plays a major role in improving girl's status. At this level, girls are more likely to delay being involved in marriage. Their level of decision making in terms of their reproductive status is also augmented.

On the other hand, women who are from poor background coupled with little or no education find themselves having being married earlier on and continue to have a number of children in a short space of time. Their children are also more likely to resemble their parent's level of education, thereby affecting the opportunities in life. Of importance to note here is the fact that, children marriage robs the society of its intellectual capabilities as well as financial participation of girls, as well as their children.

Child marriage, domestic chores as well as pregnancy have been noted to be the three critical aspects that make girl children not to participate and be successful educationally. As a result of these above indicated aspects, the international and national targets set for gender equality in education are compromised badly. As a cycle, the low level of literacy culminates in the little or no chance of participating in

the employment and/or income generating activities which in turn, disables a girl's ability to acquire and use the necessary information.

Their autonomy is also compromised and as such they end up in a powerless position such that, they are unable to make crucial decisions that would affect their well-being and that of their children. The fact that married girls are denied educational opportunities means that, they are ultimately bound to their homes and lack the information on what is happening outside their homes. This lack of exposure to the external environment results in lack of self-confidence thereby making them more vulnerable as they would become powerless and consequently perpetuate poverty.

There are a variety of educational benefits that get lost whenever a child is made to leave school early for the purposes of getting married. It further affects the transition process from adolescent to adulthood, as they would not have had a chance or opportunity to explore and apply some of the crucial fundamentals that are part of growing up. That is, if the processes of transition had been undergone properly and successfully, girls and women tend to acquire necessary skills that make them to be real and fulfilled women, mothers, daughters, wage earners and active citizens.

It should be noted that there is a need to appreciate the fact that, girl children have the right to enjoy their childhood without disruption but when child marriage comes to play such disruption is encountered. Below is the theoretical perspectives that would assist us in the analysis and understanding of the discrepancies outlined above.

## Chapter 6. Theories for scrutinizing adverse aspects of culture

### 6.1. The theory of capability and functioning

Sen is one of the theorists who are more concerned about the conceptualization of poverty with the purpose of innovatively contributing towards its resolution. According to him, poverty is 'a capability deprivation (that is poverty seen as the lack of the capability to live a minimally decent life)'. It is interesting to note that this writer has actually managed to avert the temptation of defining poverty using the perspective that views poverty along the lines of lack of income and/or commodity only, thereby coming up with a new way of understanding and defining poverty. According to Sen, what matters most in the perception of one's element of wellbeing' when addressing poverty is not what one has but what an individual can eventually achieve with what she possesses. His main attention is actually paid to the potential and ability to get to realize ones objectives and taking advantage of it and achieve more. In this regard, poverty is perceived not only as the lack of income but also critical, is the fact that it also serve as a barrier to a girl's ability to fulfil her vision. That is, due to poverty a girl is deterred from fully engaging her capabilities.(Robeyns, (2003) 371).

It is also fascinating to note the manner in which Sen had managed to congest or rather reduce every other aspect that symbolizes the disadvantageness down to poverty including one's wellness. Women and married girls endure what Sen is referring to as poverty, as they are disadvantaged in every aspect of their lives due to the fact that they are not meant to be in control of themselves. They are barred from achieving what they could as they are perpetually denied opportunities by the society. The capabilities that they could have been utilizing for furthering their lives get shuttered before they could be employed. This is what makes Sen's theory so relevant to this discourse of child marriage and the discrimination against women in general.



In outlining his theory, Sen utilizes two concepts that are critical in understanding his approach. The two crucial guiding concepts in his theory are: Capability and Functioning. Capability refers to a person's ability to achieve something and the effective opportunities an individual possesses with regard to the type of life that, that individual can lead. Functioning represents an individual's actions and 'states'; the things that a person can be or do in life, such as eating well or participating in the community" (Sen, 1999, p.75). To simplify it, functioning should be understood as an end result, whilst capability refers to the means of achieving the end result. Functionings are therefore, aspects that have a lot to do with a girl's living conditions. On the other hand, capabilities is an element of freedom which is more about actual opportunities a girl has, that could assist her lead her life.(Sen, 1987, p.36)

It is the freedom that Sen refers to, which all the married young girls lack or are denied. This makes it impossible to realize their dreams. Sen also referred to freedom to participate. Married children are not allowed to freely participate in the activities of their choice albeit at school, work or leisure.

Whatever they do, it has to have been decided by their husbands or their in-laws.

The definition of poverty indicated above has been derived from the Aristotelian perspective whose understanding was that, an impoverished life is a life where one is not free to carry out the important activities one has reason to choose (Sen, 2000). That is, poverty should literally be perceived to be an absence of freedom. Freedom permits one to expand and explore her capabilities in an attempt to live a desired lifestyle which, in this case, is made absolutely impossible by poverty. Freedom is a means and an end at the same time, since the process has to be liberated which ultimately frees an end result (chosen destiny).

Indeed, impoverished lives are what married children encounter in their everyday's lives. Their freedom to do anything is curtailed other than that, that of doing as their husbands say. So, the lack of choice renders them non-persons, almost property like.

Sen observes that freedom as a way of realizing development gets multiplied in many other freedoms that are inextricably correlated in one way or another. He makes a list of five different kinds of freedom which are: economic opportunities, political freedoms, social facilities, transparency guarantees and protective security”. These different rights and opportunities play a very pivotal role of enhancing a girl’s capability.

This variety of freedoms from Economic to political does not mean anything in a girl’s life. As demonstrated throughout this paper, when married girls engage in economically related matters, it is because they are permitted to do so by their husband. The reality is that, when they engage in that, they do not do it for their own benefit but it is for other people’s benefit. The fact that they are not allowed to further their studies simply means that their freedom is curtailed. They can’t work for themselves or do anything meaningful. So they are not fulfilled at all.

According to Sen a criteria for defining a living standard is not supposed to be measured in terms of what one owns and/or access to commodity. He asserts that, there are various ways of transforming such abilities in to functionings, ‘but each person has different initial endowments, defined as the initial set of possessions or properties that a person or family has (i.e. workforce, land, tools, commodities, money)’.

As illustrated above, married girls are not allowed to own anything, instead they themselves are owned. They are even exchanged for money as if they are commodities. So, married girls are unable to think of an end results since even the means of getting them are not made part of what they should own or even access.

Sen, also introduces the concept of entitlement. Individuals who are living in a community that has a social structure that affords its community members entitlements to social resources achieve such members more satisfiers compared to the community that doesn’t. The above indicated entitlements could for instance be: unemployment insurance, free education, health care, social security all of which are important in a girl’s life.

The state does offer most of the entitlements indicated above, however these entitlements are not able to free a married child. For instance, if a girl has to apply for social security in a form of child-grant, it gets to support the husband when he wants to drink liquor instead of supporting the child. So, in every respect the availability of entitlements are still in themselves a challenge to a married girl. Unemployment insurance is out, since a married child will never be allowed to be employed in a meaningful way.

Indeed, Max-Neef (1993), concurs with him in this regard. He contends that, there is a distinction between needs and satisfiers. This distinction is essentially based on the fact that, Needs never changes, that is, they remain the same regardless of context or period. However, the processes, ways and means that are applied in an endeavour to realize the satisfaction of such needs might depend on one's culture or any other relevant aspect. It should be noted that, the 'culture' that the author refers to is the same culture that disengages young girls from having their needs satisfied. Max continues to indicate that, by the mere fact that an individual possesses commodities which are herein, referred to as satisfiers cannot serve as a criteria with which one's wellbeing could be judged, given that this only symbolizes a means that could be employed in achieving wellbeing. It should be noted that, there exist a number of personal attributes and social factors between the means and the end result. These unknown factors vary individually, however, they definitely play a critical role of ensuring fulfilment. (Salcedo, 2008). So, it is clear that, material means coupled with person's capabilities, functionings as well as entitlements are critical in this regard, all of which are made to be far from reach by married children. What these theorists, Sen and Max are referring to here, are human rights, whose fulfilment requires a change of mindset and the overall of the entire system so that child marriage and discrimination against women in its totality is ended. It is only when the culture that disempowers women had been stopped that the social and other personal attributes could be fully realized.

## 6.2. Social exclusion theory:

Social exclusion is a concept that most writers have engaged thoroughly and some of them had indicated its similarity to the understanding of 'social division which was the term that was mostly preferred in politics in the 1980s. Social exclusion refers to 'a portion of the population that is becoming increasingly deprived relative to the rest of society'.(Anderson, E. (1999) 133). In this case, women and girls are socially excluded which makes them not to enjoy their human rights as do men.

Most people who had entertained this, in various academic literature, had put it as being equivalent to poverty. However, (Jehoel-Gijsbers 2004) asserts that social exclusion covers a broader spectrum than just material exclusion only. Concurring with him is Sen (1985): who approaches social exclusion at a different angle. According to him *'Social exclusion is a multi-dimensional concept that covers economic, social and political aspects. It deals with the failure to attain adequate levels of various functionings* In addition to deficits in terms of material dimensions, the concept also refers to such relational and socio-cultural aspects as a lack of housing, social participation, education and healthcare'. As it has been made clear throughout this paper, women and girls are made not to fully participate in the societies in which they live. They are subjected to semi-slavery at times, in the name of culture thereby denying them the right to be who they are or could be.

In addition to this, there are other writers who had put an emphasis on the fact that social exclusion may be resulted from other aspects which are not of a financial nature, but, that are related to discrimination, poor living conditions or disability.(Frankfurt, (1987). 24). The writer had made it clear that, girls who are married young are meant to live in conditions that are not conducive for their status in the family. They are even discouraged from going to school and acquire education.

According to Jehoel-Gijsbers (2004) there is a need to differentiate two chief dimensions, which are: First, an aspect of sociocultural which deal with the non-material dimensions. The second aspect is, that which is more concerned with the economic and structural elements. The first one, socio-exclusion aspect would, in

general, focus on issues regarding lack of *social participation*. This clearly means that women and girls are not able to extensively participate in social gatherings and are even less involved in the society. This results in a lack of information that they so need, to respond to their every day challenges as married girls who are meant to perform various duties that are normally performed by matured wives.

Second, *'insufficient normative integration'*, is concerned with the lack of adherence by people to certain norms and values as expected by the community.(Barry, (2002) 53). This could be directly linked to how people fail to adhere to the principles of human rights and continue to believe in the cultural aspects that undermine, dehumanize and discriminate against women and girls.

The last two elements are exclusions that are of an economic as well as structural nature. *'Material deprivation'* refers to having limited financial resources encountered by people (in this case women and girls) when comparing themselves with what the rest of the community has as a standard. As demonstrated, due to the fact that girls are made to quit schooling while they are still young, the lack of education and necessary skills required to take advantage of economic opportunities further disadvantages them. In addition to this, girls are discouraged from seeking employment as it is believed that man are the once who should take care of, and provide for them economically and otherwise, while they remain at home engaging in home chores and baring children.

Finally, inadequate access to one's social rights. This last aspect is concerned with the lack of access to socioeconomic rights such as, healthcare, education. The writer has pointed out throughout the paper, that women and girls are treated as if they do not have human rights. Under the guise of culture, tradition and religion, women and girls are suppose to abide by the cultural values and norms that does not uphold and/or respect their rights as human beings. They are compelled to leave school early so that they could be married and be submissive to their husbands and his family. They are also denied the most important right of accessing the health services even when such assistance is free. They are made to feel useless in the cultural context, they have no control over their sexuality and their bodies as a whole. This is social exclusion at its best.

Jehoel-Gijsbers (2004) emphasizes the fact that it is crucial for public policy to actually capture and resonate the real people's encounters reflected in their every day lives and refrain from being too abstract. It is important to note that when people experience negative feelings and discrimination posed to them by their fellow human beings, they experience exclusion. Thus they feel as if they do not form part of the society. Women are by cultural dictates, not part of the society except when they are required to bare children and perform home duties. However, their developmental right is not taken in to account as they are not considered human being who can take critical decision pertaining to their lives.

Social exclusion should be understood to be a process in which a particular group of people are excluded from society. As in this paper, the term social exclusion is applied in reference to the actual *process as well as the condition* of social exclusion. However, Silver (1994: 545) prefers to make clear the difference between the condition and/or process and speaks of a 'state of social excludedness'.

In addition to this, Jehoel-Gijsbers (2004) makes observation regarding the distinct nature of 'manifestations of social exclusion (i.e. as a condition, such as material deprivation) and risk factors that can lead to social exclusion (e.g. low income)'. Notably, the first manifestations referred to above, could be perceived to be a consequent of social exclusion while the second is a cause of social exclusion. Both manifestations and risk factors were dealt with when outlining the implications of the discrimination posed against women and girls and the effect of such on child marriage.

## **Chapter 7. Critical human rights framework ratified by South Africa**

It is quite critical to have, and utilize the human rights framework as it is crucial in curbing adverse human rights abuse that occur on a daily basis, especially to vulnerable groups like young girls who are now and then exposed to risks of child marriage. As indicated above, governments that had ratified the UN conventions are bound by the content enclosed therein, which unequivocally discourages the violation of human rights.

That is, such countries have a legal duty of ensuring that their citizens are fully protected through amongst others, the prevention of violation of such human rights. Of important to note is the fact that, child marriage is not directly committed by the states. However, the state has a responsibility of ensuring that it does not occur through the utilization of its various agencies for instance, the Legislative, Executive as well as the judiciary.

In South Africa, the international human rights laws are now taken advantage of, and more and more applied in the national courts of law. In addition to this, South Africa had eventually ratified the UN convention on the Economic Social and Cultural Rights in 2015, which would hopefully make this country to ultimately fully respect and honour its human rights obligations. This will assist in the process of strengthening South Africa's commitment and to make sure that social justice occurs in the country. Furthermore, the monitoring bodies are also becoming proactive in dealing with such issues, with the main objective of improving the human rights of women and girls.

One of the most critical conventions that explicitly outline human rights with regard to women and girls is the CEDAW Convention on the Elimination of All forms Of Discrimination against Women. This convention serve as a bill of rights for women, as it covers a wide range of issues that are of paramount importance to women rights in general.

The convention deals with amongst others, the very thorny issue of consent. It goes further to outline the minimum age of marriage which should be 18 for both girls and boys respectively. This means that any marriage that takes place between two people in which, both or one of the spouses is under 18 is unlawful and should be treated as such.

The Protocol on African Charter on Human and People's rights on the rights of women in Africa also referred to as the Maputo protocol, asserts that all marriages of people above 18 years should be registered. The critical issues are clearly outlined in Article 2 and 16 of CEDAW which focuses in particular areas regarding, marriage, and discrimination and family relations.

Unfortunately, even though South Africa had ratified this conventions, it at times, continues to disregard these articles. In essence, South Africa did ratify the conventions and also has a very progressive constitution and other national laws and human rights monitoring bodies. However, human rights violation of women and girls continues to spread unabated, which is why there is a need to establish additional measures in order to strengthen the existing once.

The weak protection of women rights in South Africa could be due to lack of political will, lack of resources for enforcement purposes and/or the fear of contradicting the right to culture which is also embedded in the SA constitution. Nonetheless, the international Human Rights Monitoring bodies have become proactive in dealing with states that does not seem to be curbing this violation or a girl's right (child marriage).

In essence, no one single strategy could be identified to be effective in dealing with issues of human rights protection and the prevention of discrimination and gender inequality especially child marriage. So, there is a need to utilize a combination of all the instruments and mechanisms we have in our position, in tackling this scourge. For instance, the international human rights laws, national laws, the monitoring bodies. This seems to be the best way of meaningfully addressing child marriage in particular, and as a multifaceted approach, it is more likely to bring about a sustainable change.



## Chapter 8. South Africa's obligation to its citizens

The commitment made by most of the countries through the ratification of various conventions meant that they are acceding to the fact that they would be bound by the content as prescribed in such conventions. In clear terms, the governments that have done so, are expected to investigate any matter that is related to abuse of human rights as stipulated in those conventions and further make sure that whatever has been found to be violated is redressed.

So, victims would have to be protected as justice is unleashed and measures put in place that would ensure that the same error does not recur, through the application of necessary remedies. As part of these measures, the issue of ensuring that all crucial documents are translated in to all eleven languages so that even those people who cannot read or write in English would be able to access such documents is of paramount importance in this regard. (Sagade 2005 113). Indeed the fact that one is a citizen to a country for instance, South Africa, actually means that one has to be protected by the laws of the country or even the constitution. So, women and girls expect the same protection that is provided to every other citizen in SA and their rights should be respected and acted upon as required.

The human rights standards and norms clearly articulate the observations made by conventions, especially targeting the vulnerable groups indicating that, their rights must be protected, respected and fulfilled. In practical terms, this would mean that, child marriage should be done away with as it violates women and girls rights. The laws as well as the constitution should be made to ensure that such practice is deplored and discouraged and whoever continues to engage in it is punished accordingly.

Other institutions that are meant to protect citizens within the country e.g.: South African Human Rights Commission, (SAHRC ( /Commission For Gender Equality as well as the Ministry for Women Etc, should also be taken advantage of in this regard. Fortunately, a lot of international and national laws had attempted to outline and address this scourge of child marriage. So, the government have no choice but to ensure that such international agreements are customized in to our national laws

and are fully domesticated. That is, it is important for South Africa to act upon what it has acceded to. This should be done through the introduction of relevant legislations that would ensure the successful implementation of such laws.

## Chapter 9. Conclusion

In this paper we have outlined the practice of child marriage which is found in various South African cultures. A case-study of Uku thwala has also been included so as to give a practical sense of what is happening on the ground. The writer went on to illustrate the negative effect which the practice of child marriage has, on the human rights of such children, especially the girl child. The right to health and education has been clearly discussed as the most compromised ones. The causes of child marriage were also exposed which include, gender inequality, culture and tradition and poverty. The critical human rights obligation of the South African government towards its people was thoroughly discussed as well as the human rights instruments that South Africa has ratified thereby binding itself to their content. As it has been demonstrated throughout the paper, the practice of child marriage is in conflict with the human rights of children and women in general, as it undermines their wellbeing and enforces stereotypes and discrimination against them. Indeed, there is a need to change from adverse cultural aspects that do not value women as human beings with rights and embrace the human rights culture that values life and everyone as equal.

Given the information provided throughout this paper it is clear that, for people to change their attitude and embrace the human rights culture, it would require a number of things that could not be attained within a short period of time. For instance, there is a need for a multifaceted approach that would ensure that a new culture, which doesn't necessarily replace the old one altogether, but address those aspects that seem to be in conflict with the desired one, is put in place. It would not be assistive for the nation to only entirely rely on the current legislative framework as well as the constitution; However, they will continue to be valid for the purpose, once paired with other relevant measures. (Ako, (2009).

The writer should also make it clear that he is not in favour of criminalizing the practice, as this might also bring along undesired consequences. For instance, once the practice has been criminalised its proponents may choose to continue practicing it secretly which might be too dangerous. In order for the communities that practice child marriage to abandon such practice, there is an urgent need to make such

communities aware of alternative desired practices that would not be harmful to any member of the society. That is, they need to know that their practice is offensive and be taught a new way of reaching a similar goal without hurting anyone. (Mackie and LeJeune (2009).

The ultimate result of the new learned behaviour could be a 'positive deviation'. The process of disengaging communities from practicing their offensive cultural aspect should be treated the same way as the process of instilling the human rights culture. This process could be completely offensive if not handled with care and therefore, there is a need to have it carefully facilitated. This would call for respect for the cultural values and norms while at the same time carefully making sure that the practice is halted.(Greunbaum, (2001).

Thus far, it is clear that the pre-requisite for change would be through the empowerment of communities by educating them, on aspects of their culture, that is no longer viable and making them understand the reasons underpinning the perspective. This should help in minimizing the disjuncture that is so apparent between the human rights and the cultural practices that are more offensive. In a society which is so diversified such as South Africa, education could be utilized as a vehicle toward the proper achievement of human rights discourse. The main objective of education in this endeavour should be 'the establishment of a culture where human rights are understood, respected and promoted'. The issue of ensuring that all crucial documents are translated in to all eleven languages so that even those people who cannot read or write in English would be able to access such documents is of paramount importance in this regard. (Ssenyonjo, (2007 39).

In reality, the educational aspect is the one that has been missing all along in South Africa. In essence, there is a need for the public to be made aware of the Bill of Rights and any other mechanism of its enforcement that is meant to assist them in the process of inculcating change. This could be augmented by other programmes that are designed to roll-out and/or implement awareness on other deeper and substantial aspects that might be not easy to realize. The other aspect which is of utmost importance is the human rights advocacy that is more focussed and directed towards addressing gender. This means that a number of various NGOs and Civil

society organization will be required to play a very pivotal role alongside the government. That is, the NGOs and CBOs as well as institutions of higher learning, would be crucial in working with various communities in rural areas. Essentially utilizing all strategies, including the consultation so that, they could both work toward the same goal of finding a solution on how to bring about and instil the culture of human rights which values life and all people as equal.

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