

Deconstructing Characterizations of Rape, Marriage, and Custom in South Africa: Revisiting The Multi-Sectoral Campaign Against Ukuthwala

Nyasha Karimakwenda 

Abstract: A critique of multi-sectoral responses to the customary practice of *ukuthwala* (the isiXhosa term for abduction for purposes of marriage) in South Africa highlights attention to gendered tropes pertaining to marriage, custom, and sexual assault. Karimakwenda deconstructs how, in its inflexible framing of customary practice, the multi-sectoral campaign against violent forms of *ukuthwala* lacks historicization and silences women's narratives. By obscuring historical and locally-embedded linkages between marriage practices and rape, the myopic campaign energizes collective anxieties around representations of violence within Black communities, and fuels misconceptions surrounding marital rape. This critique contributes to debates about gender, violence, and state power by offering a counter-narrative to simplified characterizations of sexual violence and custom.

Résumé: une critique des réponses multisectorielles à la pratique coutumière de l'*ukuthwala* (le terme isiXhosa pour l'enlèvement à des fins de mariage) en Afrique du Sud met en évidence l'attention portée aux tropes sexospécifiques concernant le mariage, la coutume et l'agression sexuelle. Karimakwenda déconstruit comment, dans son cadre inflexible de la pratique coutumière, la campagne multisectorielle contre les formes violentes d'*ukuthwala* manque d'historicisation et réduit au silence les récits des femmes. En masquant les liens historiques et ancrés localement entre les pratiques matrimoniales et le viol, cette campagne à courte vue alimente les angoisses

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collectives autour des représentations de la violence au sein des communautés noires et alimente les idées fausses entourant le viol conjugal. Cette critique contribue aux débats sur le genre, la violence et le pouvoir de l'État en offrant un contre-récit à des caractérisations simplifiées de la violence sexuelle et de la coutume.

Resumo: Análise crítica das respostas multissetoriais à prática comum da *ukuthwala* (palavra xossa para designar o rapto com fins de casamento), na África do Sul, Karimakwenda sublinha a sua relação com o casamento, a tradição e a violência sexual. A autora demonstra que, devido ao modo inflexível como enquadra as práticas tradicionais, a campanha multissetorial contra as formas violentas da *ukuthwala* é desprovida de contextualização histórica e silencia as narrativas femininas. Ao ignorar as profundas ligações históricas e locais entre práticas de casamento e violação, a visão limitada da campanha potencia a ansiedade coletiva em torno das representações de violência entre as comunidades negras, e suscita vários equívocos acerca da violação marital. Esta análise crítica contribui para os debates acerca das questões de género, da violência e do poder do Estado, propondo uma contranarrativa para as caracterizações simplistas da violência sexual e da tradição.

Keywords: rape; custom; ukuthwala; marriage; South Africa; sexual violence

Introduction

The intricate meanings and origins of gendered violence are not always legible through the rhetorics of law and human rights. Fixated on whether acts are legal or not, rights-oriented depictions of violence can at times eclipse a much more complex picture of how violence is enacted and perceived within communities. The markers of “crime,” “harmful cultural practice,” or “human rights violation” characterize local practices in one-dimensional terms. This kind of language undoubtedly has practical applications, but concurrently it holds the potential of silencing or reframing survivors’ voices and experiences in reductive and stereotyped ways. Centering the visible multi-sectoral push in South Africa against a customary practice known as *ukuthwala* (which encompasses different forms of abduction for marriage), this article seeks to illustrate how law and policy-based descriptions and reactions to customary practices tell too simple a story.

For the past decade, violent forms of the practice of *ukuthwala* have been castigated as an extension of the uncontrolled gender-based violence that is inundating South Africa. From 2009 onward, television and print media have propelled the issue of coercive *ukuthwala* cases into the public space. There were disturbing accounts from rural areas of young girls (many of them impoverished and vulnerable orphans) in the provinces Eastern Cape and KwaZulu-Natal who were forced into customary marriages with older men through the acts of kidnapping, assault, and rape.¹ The sources put forward that these acts were being done under the guise of the almost extinct but now revived customary practice of *ukuthwala*, although in a distorted form.

Perceiving a re-emergence and degeneration of the practice, civil society groups, state bodies, and scholars mobilized to condemn and curb ukuthwala.²

By drawing from empirical research undertaken by the author as well as research by historians, anthropologists, and socio-legal scholars, this article offers a critique of how concerned sectors in South Africa have approached ukuthwala. It problematizes the ways in which the multi-sectoral drive has determined what the parameters of “authentic” ukuthwala are, and calls attention to the campaign’s detrimental consequences. I argue that in its lack of historicization and its reliance on culturalist arguments, the character of the campaign conceals that violent forms of ukuthwala are historically rooted and continue to hold cultural resonance. Moreover, by insisting that violent abductions are a new phenomenon, the movement invalidates the voices and experiences of women who were subjected to coercive ukuthwala many decades ago.

In conjunction, I explore the impetus behind the narrow depictions of ukuthwala. I propose that the current campaign represents an anxiety-ridden disowning of intra-communal violence, responding to the legacy of colonial and apartheid characterizations of Black cultures as uncivilized and violent. It also privileges racial cohesion at the expense of facing the reality of violence toward women and girls within their own communities. The campaign’s disavowal is indicative of how rape in marriage and processes leading up to marriage remains a marginalized and misperceived form of gender-based violence. This article contributes a different lens through which the present conversations on gender, violence, and race in South Africa can be deconstructed and reconceptualized.

Understanding and Misunderstanding Ukuthwala

Before delving into a discussion of the multi-sectoral push against violent forms of ukuthwala, a brief discussion of the practice is necessary. There remains much contestation around what ukuthwala is, and what it is not. In the Nguni languages of isiXhosa and isiZulu, the literal meaning of “ukuthwala” is to carry away. But it also refers to the customary practice of abducting or carrying off a girl or woman for purposes of precipitating a marriage. Variations of abduction marriage are found across South Africa amongst tshiVenda, siSwati, xiTsonga, sePedi and isiNdebele speaking groups, among others, each cultural grouping having its own terms and characteristics. Even within Nguni speaking groups, the term ukuthwala has distinct connotations in each community as it pertains to marriage processes. In other words, there is no one standard form of abduction for marriage, and the term ukuthwala must be understood in its local context. Notwithstanding the varying meanings and performances of ukuthwala, the term has colloquially come to be used as the collective label for customary forms of bride abduction. With increased attention given to violent abductions, ukuthwala is at times heralded as a harmful cultural practice and

described as forced marriage, child marriage, and/or trafficking (Monyane 2013; van der Watt & Ovens 2012; Mwambene & Sloth-Nielsen 2011).

From a local viewpoint, particularly within isiXhosa-speaking communities, forms of abduction marriage can generally be broken down into three broad categories. The most egalitarian form of ukuthwala is akin to elopement. In these elopements, the “abduction” is at times performed but is not real. Historically as well as currently, couples use ukuthwala to force their families’ hand in accepting their marriage, or utilize this customary mechanism to make a marriage occur quickly, where, for example, the girl or woman is pregnant (Soga 1931; Koyana & Bekker 2007; Wilson 1981). Ukuthwala is also a tool that a couple or intending groom can employ where they are unable to afford to engage in the lengthy and costly negotiations leading up to “regular” marriage (van Tromp 1947:71). Within parts of the Eastern Cape during the mid-twentieth century, the practice became a key means through which women could achieve greater independence. Women could choose their partners, expedite marriage, and minimize family control (Mager 1999:75–76; Wilson 1981:136–37).

The other two categories of abduction marriage utilize levels of violence and coercion, and are also documented in historiographies and ethnographic records, though to a lesser extent (Nkosi & Wasserman 2014). In the one, the marriage is arranged between two families, but without the chosen bride’s knowledge or consent. Under this form, the girl’s family consents on her behalf. The second, and most harmful, form of ukuthwala occurs where the families are unaware of the impending marriage, although sometimes the groom’s clan is informed and involved in perpetrating the abduction. In these latter two forms of ukuthwala, the abduction is actual. Here, various mechanisms are employed to force the girl to submit, including acts of physical and sexual violence (van Tromp 1947; Wood 2005). It is the coercive manifestations of ukuthwala that are at the center of the multi-sectoral campaign. Underlying the broad castigation of violent ukuthwala is the belief and assertion that it is not customarily authentic at all.

The Emergence of the Campaign Against Ukuthwala

Following the intense media coverage of ukuthwala and increasing concerns leveled by different sectors, in August 2009 the Gender Directorate in the Department of Justice and Constitutional Development instructed the South African Law Reform Commission (SALRC) to investigate ukuthwala. Additionally, the government, traditional leaders, and civil society actors spearheaded a host of activities and initiatives designed to curtail the practice. They included the following: an *imbizo* (community meeting) in Lusikisiki, Eastern Cape, in 2009, organized by the Minister in the Presidency; pledges and declarations made by traditional leaders in the Eastern Cape, including King Sigcau of the AmaMpondo; an Ukuthwala Provincial Task Team established in KwaZulu-Natal Province; calls made by the Minister of Police and Minister of Justice and Constitutional Development for stringent

prosecutorial measures to be taken; and seminars, capacity-building, and awareness-raising efforts by provincial and national government bodies.³

Alongside the actions taken by government, traditional leaders, and civil society groups, the heightened media and policy attention given to ukuthwala sparked a burgeoning of law and human-rights research.⁴ Foregrounded by Digby Koyana and Jan Bekker's earlier description of ukuthwala as a "charming" and "romantic practice" (2007:143), legal experts have worked from the assumption that violent forms of ukuthwala are distortions of the true, historical custom. From this premise, the legal scholarship tends toward examining how the violent forms of ukuthwala violate a host of laws and rights.⁵ The trajectory of law-centric analyses of ukuthwala encapsulates what Dorothy Hodgson has described as "the expanding embrace of law at the transnational level through the emergence and spread of human rights frameworks," resulting in the "categorization of almost every practice as either a right or a violation of a right" (2017:126). In addition to the legal categorization, the literature concurrently reinforces the idea that coercive ukuthwala is not customary (Bennett 2010; Mwambene & Sloth-Nielsen 2011; van der Watt & Ovens 2012).

In the courts, the landmark Western Cape High Court decision *Jezile v. the State and Others* (2015) represents the prevailing legal standpoint on ukuthwala. The appellant Mvumeleni Jezile had "thwala-ed" fourteen-year old Nolutho Yekiso with the sanction of the male elders of both families. He transported Yekiso from the Eastern Cape to Cape Town, where he kept her in confinement in his brother's house. During this period, Jezile assaulted and raped Yekiso. The Western Cape High Court declared that the ukuthwala practiced by Jezile and his community was "aberrant" and affirmed the twenty-two-year sentence handed down by the trial court against Jezile for rape, assault, and human trafficking.

After years of extensive research processes, the SALRC finally released its findings and recommendations in a 2015 report. On the basis of consultations and submissions received, the SALRC reported that although some views varied, there was a "wide consensus that the practice of ukuthwala in its current form is distorted" (2015:25). Emphasizing the presence of a "social problem," the SALRC supported law reform to address ukuthwala, as "a distinction should be drawn between this known custom and the current practices, which are illegal distortions of the custom" (2015:53).

While citing the importance of non-legal measures at the community level to stem abductions, ultimately the SALRC reasoned that the "symbolic and educational merits" of "a new consolidated statute" would be the most effective means of "attacking those distortions that have crept into olden usages and which amount to oppression" (2015:54–55). The report presents a draft of the proposed legislation in the form of the Prohibition of Forced Marriages and Forced Child Marriages Bill.

There is certainly merit in the steps taken and proposed by stakeholders in regard to ukuthwala. The straightforward human rights legal application sends a clear and resolute message that the abuse of girls and women will not

be tolerated, irrespective of any cultural justifications. The creation of a statute would also compel authorities to prosecute ukuthwala cases, as one of the concerns put forward by communities is that authorities decline to prosecute cases, given that ukuthwala is viewed as constituting a customary practice (Mgidlana 2017). The extensive advocacy by state and civil society groups has also helped to sensitize communities about the detrimental impacts of coercive ukuthwala (SALRC 2015:22).

Though not without considerable value and effect, these multi-sectoral reactions do not present a balanced and contextual depiction of ukuthwala. The campaign does not fully answer the question of why coercive ukuthwala is often supported by families, as was the situation in the *Jezile* case. And while sweeping shifts in South Africa's economic, health, and social landscape have fueled gender-based violence in South Africa, these factors do not sufficiently account for the alleged sudden emergence of "distorted custom." Moreover, the campaign seems not to consider the diversity and fluidity of human practice. As the following sections convey, the dominant interpretation of ukuthwala too neatly depicts what ukuthwala has been and should be. This has significant implications for how customary practices, sexual violence, and marriage are understood.

A Lack of Historicization in Depictions of Ukuthwala

Sexual violence is rife in South Africa. Both in the media and in safe spaces of discussion, reports of rape and other sexual abuses abound. In 2018 and 2019, feminist and queer activists took to the streets to demand that the government take stronger action against the unrelenting abuses of child, queer, and female bodies. Violent ukuthwala is presented as a modern problem, as part of the crisis of gender-based violence in the country. The rape, kidnapping, and physical assaults that accompany abduction marriages are indeed part of the spectrum of contemporary gender violence, but it is still important to understand where these acts come from, and why they take place.

Historiographies of intra-African rape remain sparse. Elizabeth Thornberry notes the "peculiar place" that rape holds in histories of Africa (2018:19). Much research has remained transfixed on the "black peril," the colonial episodes of collective white fear of the sexual assault of white women by Black men (Shadle 2008:29; Thornberry 2018:19–21). Even in historical monographs that do concentrate on African women, Brett Shadle notes the trend of relative silence or brevity on the subject of sexual violence (2008:29). In South Africa, feminist scholars such as Pumla Gqola and Helen Moffett have lamented the myopia of critically-framed research on the histories and etiologies of sexual violence, particularly in the intra-communal sphere (Gqola 2007; Moffett 2006). The research of historians such as Anne Mager (1999), Elizabeth Thornberry (2016, 2018), and Emily Bridger (2018) draw from different representations of memory to center Black women's experiences of sexual violence in the past, although we still do not yet know

enough. As Shadle cautions, “we must ensure that until further research is carried out, we do not make unfounded assumptions about sexual crimes in Africa” (2008:30).

While there is more research to be done, there is still sufficient historical evidence to refute the ukuthwala campaign’s assertion that the sexual violence of the abductions is novel. Prior to the media reports of 2009, the subject of ukuthwala did not feature significantly in research and public discourse. The media reinforced the idea that the abductions were never common in the past, that they had suddenly emerged out of obscurity in a mutated form. Contrary to the mainstream accounts, the literature demonstrates that in the early to mid-twentieth century, ukuthwala was in fact a common route to marriage in the Eastern Cape and existed in several different forms (Wilson 1981; Simons 1968; Thornberry 2016, 2018; Wood 2005). Empirical work by historians, anthropologists, and socio-legal scholars is expanding the study of ukuthwala by highlighting the multi-generational prevalence of the violence, as well as problematic representations of the practice in archives and secondary literature.⁶ In colonial Xhosa-land, Thornberry documented the internal contestations around which forms of ukuthwala were acceptable, and indeed, some elders expressed disapproval of the use of rape (Thornberry 2016). Though debates remained, coercive forms of ukuthwala did gain customary standing in some communities, so that girls who were subjected to rape could not rely on their families for rescue (Mager 1999; Wood 2005; van Tromp 1947).

Without acknowledging divergent sources, the multi-sectoral push is generally devoid of any historical contextualization aside from references to customary law texts or the testimonies of persons whose perspectives are aligned with the campaign. This one-dimensional framing in turn excludes the histories that demonstrate the variations of ukuthwala to which communities adhered. Consequently, in the public domain we are left with a misinformed understanding of history. For example, a Department of Justice and Constitutional Development brochures states that in “ancient Africa” ukuthwala was a “condoned albeit abnormal path to marriage targeted at certain girls or women of marriageable age. But it did not involve raping or having consensual sex with the girl until marriage requirements had been concluded” (DoJCD website). The idea of an “ancient Africa” illustrates the broad strokes with which the story of ukuthwala is painted, smoothing out diversities in customary practices as they were lived.

The Thread of Culturalism Throughout the Discourse

The ukuthwala campaign and accompanying literature exemplify the dangers of contorting customary practices into predetermined rules. A romanticized depiction of ukuthwala is found in customary law literature (Koyana & Bekker 2007) as well as in ethnographic research. As Makho Nkosi and Johan Wasserman conclude based on their assessment of secondary evidence concerning KwaZulu-Natal, the majority of ethnographies during colonial and

apartheid rule presented a “sanitised” and “one-sided” view of ukuthwala (2014:143). As W.J. Smit notes, even where observers recorded patent violence during abductions that took place decades ago, it is dismissed as being part of the mock abduction, and the matter of sexual violence is generally not commented upon, except as an illustration of customary anathema (2016:60–61). Only a minority of intellectuals squarely addressed the coercive forms of the practice and their significance.⁷

The narrowly constructed view of ukuthwala espoused by the campaign therefore continues a long tradition of essentializing Black customary practices. The homogenization is an expression of culturalism, the position that culture (and therefore the customs within it) “independently’ exists,” and that “cultural distinctions are necessarily real and rooted in the peoples being analyzed” (Mitchell 1995:108). Culturalism imagines practices as unchanging and bounded (Razack 2004; Engle Merry 1998). As is the case in South Africa, such characterizations are largely ascribed to peripheral populations—groups that are not white, or that live outside of the global West (Volpp 2000).

Despite the “scalar messiness of social interaction” (Mitchell 1995:12), the script of the ukuthwala campaign negates the variety of customary practices as lived by Black South Africans. The uniform language must also be situated within a larger regional and international framework. Child marriage, female genital mutilation, and honor-based violence are examples of forms of gender-based violence that continue to draw the attention of governments, non-profit organizations, and multilateral institutions. Though critical, efforts to protect women and girls from harm tend toward culturalism in framing practices and affected populations in one-dimensional and unnuanced terms for the sake of advocacy and public attention (Bunting, Lawrance & Roberts 2016:29).

Speaking of traditions in static and homogenous terms may facilitate solutions to human rights violations, but such methods also expose how the application of the “mantra” of custom “serves as a mask, or even a blunt instrument” (Peires 2014:19). The literature paints ukuthwala as an innately benevolent practice involving mock abduction, feigned displeasure by the bride, and the absence of sexual intercourse during the process (Bennett 2010; Koyana & Bekker 2007). The conclusions of the Western Cape High Court in *Jezile* align with the sanitized portrayal. On the basis of civil society submissions and expert witness testimony, the Court concluded that authentic ukuthwala has the following essential features among others: consent by both parties as well as the parents; the woman being of marriageable age; a mock abduction (with feigned resistance by the woman); and prohibited sexual intercourse during the abduction process.⁸

This egalitarian form of ukuthwala did exist; however, my criticism of the narrative is that it fails to recognize other customarily accepted forms that have co-existed alongside the benevolent one. The legal sphere and older ethnographic sources present an idealized customary milieu. The following excerpt from a fairly recently published article displays this tendency:

It is important to understand the foundation of *Ukuthwala* and to identify the spirit of uBuntu behind the practise. *Ukuthwala* in its traditional form played an important role in the traditional courting process...At face value and especially when studying the harmful practise of the distorted *ukuthwala*, it is in contradiction to the social character of a traditional African society. However, the traditional form shows the caring and sense of social cohesion and solidarity which forms the basis of uBuntu. (van der Watt & Ovens 2012:14)

Legal commentary such as this propagates the idea that sexual violence is extremely rare, if not impossible, within the “genuine” African setting. Sweeping classifications such as “traditional African society” are perplexing. They “Other” Black communities and leave little room for agency, diversity, and conflict.

Even though South Africa’s highest court has endorsed the fluidity of customary practices in South Africa and has pointed to the limitations of scholarly texts, scholars and practitioners maintain a penchant for extracting customs from their highly localized, multi-textural, and continuously shifting nature.⁹ There is an inclination toward “skeletal systematizing” that straight-jackets local systems of order, distilling varied models of customary practice into discrete and fixed rules (Chanock 1991:63). Sindiso Mnisi-Weeks notes too that “the pull toward extrapolating positive, mechanically-enforceable” rules from living practices is “very strong...regardless of the fact that all evidence points to its being a trap” (2010:372). Moreover, scholarship tends to depict Black “customary” spheres as isolated from other parts of society, “thereby neglecting the dialogue occurring between them” (Diala 2017:155). Characterized by homogenization and simplistic renditions of local practices, the culturalist approach to *ukuthwala* represents a missed opportunity to understand the diversity of marriage practices in South Africa. It also occludes a recognition of why and how sexual violence in South Africa continues to flourish in familial and intimate partner settings.

The Silencing of Women

The histories of older women who were forcibly abducted in childhood and adolescence are peripheral in the media and literature of the campaign, as the sources are focused on present abductions of teenage girls. The mainstream responses to *ukuthwala* therefore enact a silencing of older women’s experiences, as well as a negation of the historical sources that record violent *ukuthwala*. This act of erasure thwarts a considered and critical engagement with histories and continuations of sexual violence in South Africa, a project that Moffett and Gqola have advocated for. For Black women in particular, silences and silencing have significant meaning. Questioning silences and retrieving women’s voices from obscurity is part of the Black feminist project (Gqola 2007; Motsemme 2004). Listening to and recording women’s

accounts provides more nuanced pictures of how they navigate violence in marriage and what resources they draw upon (Moore 2019).

The empirical research that I conducted in the Eastern Cape in 2017 further brings to light the insufficient attention given to survivors married through ukuthwala decades ago. I spoke to staff of Masimanyane Women's Rights International, an established women's rights organization that has a presence throughout the province of Eastern Cape. I also spoke to mature women whom Masimanyane has worked with who are survivors of violent forms of ukuthwala. When Masimanyane first began its ukuthwala work in specific communities of the Eastern Cape, the older women they consulted for permission to do the project said that they supported the project in terms of its engagement with younger women and girls, but they had a specific request: "You must start with us because we are still carrying the scars of this practice...we are still there in these marriages... because of our children" (Interview, East London, April 21, 2017).

The older women's requests gave Masimanyane insight into the fact that a youth-focused project did not fully meet the needs of the communities they were investing in. Masimanyane now assists older women who were *thwelwe* (the state of having been subjected to the ukuthwala process) in their youth and are still carrying trauma from the abuse. Asanda (not her real name), one of the survivors that I spoke with, shared how there was no one she could talk to during the trauma that she experienced as a girl (Interview, East London, April 20, 2017). She is now in her early sixties. Her father arranged for her to be abducted and married to a man she did not know when she was sixteen. After completing the abduction, her husband raped her and continued to sexually abuse her in the early stages of their marriage.

Despite her appeals to her family about the abuse, Asanda's family refused to help her. Her in-laws also remained impervious to her pleas. She was isolated. She explained: "But because I was really afraid of my father, I left and remained there. What would I go back to? At that time, we did not have rights as children." Her reference to the absence of children's rights evokes the vulnerabilities that girls such as Asanda and others experienced after being abducted. Asanda explained that the police could not be relied upon. "There were police, but they were not patrolling in our area to intervene in such cases. They would not come for ukuthwala or domestic abuse and we did not even know to report it to the police."

Asanda's narrative illustrates that in the time of her youth, girls who lived in her area who were forcibly *thwele* did not have an outlet to speak of the abuse, for their families and the families of the husbands were complicit in the violence. This is why the creation of safe spaces is so critical now. Still, there is the desire on the part of outsiders to declare that sexual violence is not part of custom, in the face of contrary evidence provided by survivors themselves. Masimanyane staff reported that when some of the older survivors that they work with testified before a government body, the women communicated that violent ukuthwala was the norm in their communities, that it was in fact custom (Interview, East London, April 21, 2017). Some of

the government commissioners seated on the panel flatly rejected the women's claims about the customary status of the violent practice. One commissioner bluntly retorted: "Call it something else. And what you are talking about here, it's not our ukuthwala."

The paternalism of the commissioners recalls Dorothy Hodgson's point that contestations over customary practices are not a "problem of culture" but instead "a problem of power, of the continued assumption by many Euro-American donors and activists, and increasingly by African elites, that they can speak for (rather than listen to) rural, poorly educated women or even well-educated African women who are deemed culturally 'other'" (2017:99). By silencing members of the very communities that they seek to help, ukuthwala campaign actors perpetuate a form of epistemic violence (Spivak 1988). They dismiss women who have lived this violence and who speak to how it was a norm in their localities when they were growing up. The accounts of mature women from rural areas of the Eastern Cape are shut out because they do not fit the culturalist and essentializing mold of the campaign.

Anxieties about Race, Culture and Violence

I have considered how the multi-sectoral movement against ukuthwala effaces the histories and continual enactment of culturally-sanctioned sexual violence. Having analyzed the "how" raises more questions. There is meaning in the adamant denial of the rooted-ness of ukuthwala violence by the ukuthwala campaign. The persistent conceptualization of sexual violence as new and violative of authentic custom is fueled by something deeper than the surface picture portrays. This begs the question of why the collective disavowal so strongly resonates. I argue that one of the central impetuses for the script (though perhaps not conscious) is a pushback against the long-standing notion—concretized through colonialism, apartheid, and slavery—that Black "cultures" are violent and uncivilized.

As recently as the 1980s People's War in South Africa, the "black-on-black violence" marker ascribed to the intra-communal violence formed part of the apartheid government's propagandist project. The "black-on-black violence" designation served to demarcate Black South Africans as incapable of ruling the country (Gobodo-Madikizela 2000). The characterization of blackness as violent surfaces in South Africa's present. In 2016, the country reacted with outrage to Judge Mabel Jansen's racist statement on a social media platform that rape is part of black culture (African News Agency). Melanie Judge's work on the "blackwashing" of homophobia in South Africa critiques the "broader trope in which blackness is 'naturally' violent (as the source of violence) and 'naturally injurable' (as the target of violence" (2018:53). This is captured by the statement of one of her study group participants, a white middle class lesbian, who asserted: "The black community, they are very very much into violence" (Judge 2018:53).

These perceptions of Blackness encapsulate why discussions about sexual violence and custom are so emotionally laden, for misconceptions about Black African ways of being are resilient. Sylvia Tamale writes that in literature on African women's rights "culture is viewed as being essentially hostile to women. Narrow interpretations of culture . . . collapse it with 'custom' or 'tradition' and assume these to be natural and unchangeable" (2008:47–48). Yet, African traditions are not entirely patriarchal and impervious to change. Just as there are various forms of ukuthwala, there are various models of tradition, not all of them androcentric and patriarchal, and not all of them heterosexual. Kopano Ratele reminds us that, "even though there are hegemonic hetero-masculine voices within traditions, traditions themselves are not exhausted by such dominant voices" (2013:147).

The ukuthwala campaign's expressions must be read against the long-standing notion that Black cultures are wholly patriarchal and exclusive of "human rights." The ukuthwala script is in part a reclaiming of respectability, a "saving face." The "it's not our ukuthwala" of the commissioner whom the Masimanyane member testified before is a performative declaration against the "stigmatised visibilisation of blackness as the source and object of violence." (Judge 2018:55). This performance of respectability comes at the cost of further obscuring the intersections between customary practice, sexual violence, and marriage.

Race and Culture Before Gender

In addition to the anxieties about race, culture, and violence, there are other discomforts that explicate the "why" of the ukuthwala campaign. These discomforts too have their roots in South Africa's history. Feminist scholars in South Africa have critiqued how the struggle against apartheid relegated women's issues to the margins. The general sentiments of the struggle demanded that race be prioritized above gender. Embodying this mantra, in 1971, during the era of the Black Consciousness Movement, one speaker at a South African Student's Organisation meeting had declared, "we are black first and then women" (Magaziner 2010:36). Even in the present day, women are afraid to speak out about their experiences of intra-communal sexual violence in the struggle against apartheid (Thlabi 2017).

Helen Moffett writes that the "legacy of apartheid has contributed two critical problems: our subsequent focus on race still tends to repress open scrutiny of gender issues; and the tendency of apartheid to drive violence into intimate and domestic spaces continues to fuel the epidemic of sexual violence" (2006:139). This is why Gqola calls for a revisiting of apartheid history, to bring into the open the acts of rape and kidnapping that women experienced in their own communities, on top of the atrocities committed by the racist state (2007:120). The silencing of older generations of women who were raped and abducted is an expression of the problems raised by Gqola and Moffett.

To allow a more survivor-centered telling of ukuthwala means, as Moffett states, rejecting the “knee-jerk response that in scrutinising the sources and purposes of rape, we are engaging in a racist project” (2008:143). However, the inflexible ukuthwala dialogue forecloses a direct confrontation of intra-communal gender violence, because to do so could be perceived as an indictment of Black customs and cultures. Currently, the mainstream engagement goes no further than attending to the present-day abductions of teenage girls. It doesn’t acknowledge that the perpetrators are ordinary men who are part of the communities. Instead the campaign characterizes them as “vagrant and loitering men who just want to satisfy their lust.” (SALRC 2016:20). This tone further positions the sexual violence of the abductions as foreign and irregular, so that the violence is transfigured as idiosyncratic and peripheral. This subjective articulation is a continuation of the “race before gender” mantra of the anti-apartheid struggle era.

Despite the denialism of the ukuthwala script, the relationship between rape and the institution of marriage is highly significant. Across many parts of the world, laws and practices have rendered husbands exempt from prosecution for marital rape (Yllö & Torres 2016). Marital rape as a criminal concept did not exist in many jurisdictions until relatively recent legal reform took place. For example, South Africa criminalized marital rape in 1993, undoing the long-held common law rule that it inherited from English and Dutch legal systems. The interviews I conducted in 2017 confirmed that rape in marriage in South Africa is common. Yet it remains under-acknowledged due to sociocultural norms as well as the influence of legal history. “This problem has been hiding,” declared a staff member at Mosaic, a women’s rights organization headquartered in Cape Town (Interview, Cape Town area, March 2, 2017).

In addition to the common law, certain customary frameworks within South Africa have also not recognized rape in marriage as a distinct crime. The subject of marital rape in standard texts remains a non-issue. Tom Bennett’s treatise on customary law, for example, states that customary law “remains untouched by controversies (like marital rape and wife-battering) ... that have been topical in the common law” (1991:228–29).

Historically, among some isiXhosa-speaking groups, “sexual assault was not consistently considered to be immoral, especially if it served a socially recognized purpose—such as precipitating marriage. The framework of marriage made it harder for the gravity of sexual violence against women to be recognised” (Karimakwenda 2013:249). Therefore, although the customary parameters of ukuthwala were heterogeneous, and were always contested by communities, recurrently the prospective marriage relationship transformed otherwise criminal acts of rape and coercion into behavior that was justifiable (van Tromp 1947).

Thornberry notes too that “the concept of marital rape would not have made sense to residents of precolonial Xhosaland, nor did it form part of the ideas about custom that circulated in the early colonial era” (2011:63). Though the behavior of husbands was moderated by protective mechanisms

such as the custom of *uteleko*, men still wielded considerable power over wives.¹⁰ Moreover, under both colonialism and apartheid, patriarchy was written into law, leaving less room for negotiation and contestation at the level of the community, and rendering Black women even more vulnerable in the eyes of the law and within their communities (Chanock 1991).

Given this history, it is understandable that a counselor at Masimanyane spoke about the invisibility of marital rape in cultural and racial terms, highlighting norms within the isiXhosa-speaking groups of the Eastern Cape province. "I think to us" she reasoned, "... you will find in our culture ... the other languages are understand that this is rape, like a white people they will understand that this is rape. But to us, you know, it will not be easy, especially those that are coming in rural areas" (Interview, East London, April 19, 2017). Although sexual coercion in marriage is not extraordinary within any South African cultural or racial group (Boonzaier 2001; Kottler 1998; van der Westhuizen 2017), the informant's insights point to the absence of a locally resonant and internally derived vocabulary for sexual violence in marriage in some Black communities. This explains why rape in marriage is particularly overlooked in marriages where *lobola* (bridewealth) has been exchanged (Singleton 2012:67).

This background of race, culture, and gender evinces that the unearthing of rape in marriage in a number of Black South African communities is complicated by the kinds of discourses that the ukuthwala campaign perpetuates. It entrenches an idealized depiction of customary practices that invisibilizes a form of violence that is already concealed and stigmatized. The reliance on tropes of custom and race, the imagined benevolence within customary settings, and sensationalist portrayals of the violence are all distractions that build upon pre-existing barriers to validating Black women's experiences of abuse.

Conclusion

Underpinned by anxieties about race, violence, and gender, the ahistorical and culturalist ukuthwala campaign remains disconnected from the more complicated reality of rape in marriage. Undoubtedly, the campaign has shed light on practices that were heretofore mainly hidden from outside scrutiny, and it has engendered community-focused advocacy. In spite of its meaningful intentions, the campaign could have served as a vehicle for more robust conversations and advocacy around rape in marriage and processes leading up to marriage, such as ukuthwala. The rhetoric emerging from law and policy is narrowly tailored to suit a legal positivist outlook of the extreme forms of this cultural practice. By insisting on uniformity and a reliance on racially essentialized and human rights-oriented archetypes of custom, the ukuthwala script eclipses the numerous ways in which abduction for marriage is practiced. It shuts out the voices which attest to the longevity and typicality of sexual coercion within familial and intimate partner settings.

The direction of the campaign invokes the words of Sherene Razack, who maintains that “(u)ntil we can actually see . . . communities in all their complexities, we have little chance of making spaces less violent” (2004:162). Rape in marriage is not extraordinary; countless wives carry the physical and imperceptible scars of sexual abuse as they fulfill their quotidian roles and responsibilities. In framing the rapes of ukuthwala abductions as atypical, the campaign hides that sexual violence is not uncommonly countenanced prior to and within marriage. This is why families so vehemently protect the practice of ukuthwala in its violent forms (Mwambene & Kruuse 2017).

The violent abductions that take place in contemporary times are the expression of historical, cultural, and legal precedents around marriage, familial control, and husbands’ sexual access to wives. There never existed a “non-conflictual and homogenous Africa,” and the desire to return to pure African traditions is a “fantasy” (Ratele 2013:136). The dogmatism of the ukuthwala campaign perpetuates a dangerous fiction about the benevolence and homogeneity of customary practices. By yearning for a past that never existed, the current ukuthwala perspective dominating policy and law developments disregards women’s realities. The fiction exacerbates the already conspicuous silence around marital rape in literature and public dialogue. There is much to be gained from a more subtle and critical analysis of the violence that accompanies ukuthwala. The more one moves away from the inclination to categorize, polish, and tuck existences into discrete boxes, the greater room there is for the unearthing of women’s voices hitherto unheard and phenomena previously distorted or concealed by outsiders as well as insider elites.

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Notes

1. This includes sustained media coverage, for example: Mia Malan (2011); Lesley Odendal (2011); Clive Ndou (2015); Lizeka Maduna (2017); Zine George (2018).
2. For example, strategic litigation (the *Jezile* case); a South African Law Reform Commission (SALRC) project researching ukuthwala and identifying methods for stemming the practice; a Draft Bill proposed by the SALRC to address ukuthwala; numerous academic articles; a taskforce set up in KwaZulu-Natal province; and community consultations by non-profit and state institutions.
3. The AmaPondo are an isiXhosa speaking group mainly originating from the former Transkei, in present-day Eastern Cape.
4. For illustrations, see Marcel van der Watt and Michelle Ovens (2012); Chelete Monyane (2013); John Cantius Mubangizi (2012); Lea Mwambene and Julia Sloth-Nielsen (2011); Joyce Maluleke (2012); Hlako Choma (2011); Diana Mabasa (2015); and Newman Wadesango, Symphorosa Rembe, and Owence Chabaya (2011).
5. For example, looking at constitutional and legislative provisions, Chelete Monyane (2013:79) concludes that ukuthwala is a form of forced marriage. Joyce Maluleke explores how ukuthwala prohibits girls' development and also outlines the various legal provisions under which victims can secure protection (2012:8–9, 11–12). Marcel Van der Watt and Michelle Ovens (2012) look at ukuthwala in the context of child trafficking cases.
6. See the work of Makho Nkosi and Johan Wassermann (2014); Kate Rice (2014, 2018); W.J. Smit (2016); W.J. Smit and Catrien Notermans (2015); Elizabeth Thornberry (2011, 2016); Kate Wood (2005); Lea Mwambene and Helen Kruuse (2017). An interesting piece that pre-dates the campaign is Zanele Mfono (2000).
7. See, for example, the legal ethnography by J. van Tromp (1947); and the work of Harold J. Simons (1968) on the status of African women, which was banned during the apartheid era.
8. In the *Jezile* case, the seven amicus curiae were: The National House of Traditional Leaders, The Women's Legal Centre Trust, The Centre for Child Law, The Commission for Gender Equality, The Rural Women's Movement, The Masimanyane Women's Support Centre, and the Commission for the Promotion of Rights of Cultural, Religious and Linguistic Communities. The Court also relied heavily on the expert testimony of customary law scholar Professor Thandabantu Nhlapo.
9. This is one of the central concerns in Sindiso Mnisi-Weeks's research. She also points out the ironies of the Constitutional Court's approaches. She writes: "Yet, contradictorily, they subordinate customary law to a conception of law that emphasises a legal certainty that is to be found in formalism as well as the formally conceived human rights (found in the Bill of Rights) that dominate their liberal discourse" (2010:6).
10. The uteleko custom, described by J.H. Soga as essentially meaning, "don't you dare" to a husband, acted to "guarantee...considerate treatment" of wives (1931:273). The wife would go to her own family's home where she would stay until the husband had done enough to appease them, typically by paying a fine.