

UKUTHWALA NOT A DEFENCE AGAINST RAPE OF A CHILD

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The Western Cape High Court gave judgment in the matter of *S v Jezile*, which had been termed the “first Ukuthwala conviction”. Jezile, who, had been found guilty of abduction, rape and trafficking of a girl who was 14 years old at the time of the offences had appealed his conviction and sentence to the High Court. As part of his defence and as a ground for appeal, Jezile stated that he had acted in accordance with the customary practice of Ukuthwala.

The Western Cape High Court invited organisations, including the Centre for Child Law, as *amici curiae* to assist the court in determining what the practice of Ukuthwala entailed and whether it could validly be raised a defence against the criminal charges for which Jezile had been convicted. The Centre for Child Law made specific submissions pertaining to the need to protect the girl child as entailed in our Constitution, the Children’s Act, the Sexual Offences Act and various international treaties that South Africa is signatory to.

The Centre for Child Law welcomes the Western Cape High Court’s dismissal of Jezile’s defence of Ukuthwala and the confirmation of the 22 years prison sentence that had been imposed on him by the court a quo. In relation to the practice of Ukuthwala, the Western Cape High Court made it clear that consent of both parties is a central requirement and on the facts before the court consent from the complainant was absent. The Centre for Child Law is, however, of the view that the Western Cape High Court could have been stronger in condemning the practice of Ukuthwala where children are concerned.

This case highlights areas of child law that need urgent legislative attention, those being:

- The need to strengthen the provisions that protect children against harmful cultural practices;
- The need to have a clear and harmonised minimum age of marriage;
- The need to rethink allowing child marriages; and
- The need to clearly criminalise forced marriages.

Apart from the legal findings in the Jezile matter, Karabo Ngidi of the Centre for Child Law notes that it is important to keep in mind that:

“the facts of this case are an important reminder of our obligations as a society to protect our girl children and to raise awareness about how education can be a way out of poverty. The victim of Jezile’s crimes was in her school uniform when she was

told to change into “makoti” (brides) clothes and in that moment she was forced to relinquish all her children’s rights and become an adult. This is a sorry tale of failure by family, community and society to protect its own children.”

Ends.

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