



ISANGQA

Concept note of the
Second Edition of Isangqa-'The Circle' Newsletter, themed: '*can child, forced, under-age marriage be classified as a form of gender-based violence against girls?*'

1. Introduction and background

The Eugenia Nothemba Gxowa Foundation (ENGF) which is called the 'Foundation' in this text is a women's rights non-profit organisation established in May 2020. Its purpose is to ensure that in reality the girls and young women of South Africa do enjoy the rights and freedoms enshrined in the Constitution and the Bill of Rights.

The Second Edition of Isangqa Newsletter will explore *whether child, forced, under-age marriage can be classified as a form of gender-based violence against girls*. This edition will contribute to one of the Foundation's central programmes—'Knowledge production and application'—which focuses on child or under-age marriage and other forms of gender-based violence against women and girls (GBVAW/G).

Gender based violence (GBV) refers both to violence perpetrated against an individual as a result of their gender and/or violence stemming from internalised beliefs, values, and attitudes relating to gender (as traditionally conceived along a binary classification—i.e. men and women). GBV can be thought of as a broad, umbrella category, under which GBVAW/G falls. The ENGF focuses its work on GBVAW/G as women and girls are the predominant victims of both GBV and child marriage.

After a successful online panel discussion held on 26.03.2021 themed, '*Can child, forced, under-age marriage be classified as a form of gender-based violence against girls*,' the board, as a strategy to sustain the momentum resolved to have the above theme as focus for the Second Edition of Isangqa Newsletter.

2. About Isangqa Newsletter Second Edition

Isangqa Newsletter is published as an online biannual publication. The second edition will be published during the South Africa Youth Month June 2022. As an online newsletter, it will be accessible to the public and many stakeholders. Like the previous edition, it will carry articles from various experts on this subject matter including academics (see list of contributors below).

2.1 Rationale for the theme of the Second Edition of Isangqa

Child marriage is itself a violation of human rights—of the right to consent to marriage enshrined in the 1948 Universal Declaration of Human Rights—and leads to the violation of further human rights—notably the rights to education, reproductive freedom, and freedom from bodily and sexual assault.

We, at the ENGF, believe that ukuthwala constitutes a particularly egregious form of GBVAW/G, and in accordance with the findings of the Commission for Gender Equality believe that the practice 'violates girls' rights in terms of the South African constitution, the Children's Act (No. 38 of 2005) and international instruments such as the Convention on the Elimination of all Forms of Discrimination against Women, the Universal Declaration of Human Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003, the Revised Southern Africa Development Community Protocol on Gender and Development 2015, Nairobi **International Conference on Population and Development**, (2019)) 25 Commitments and the

Millennium Development Goals, all of which promote gender equality and empowerment of women and girls against any form of violence.”

‘Ukuthwala’ refers to a (cultural or customary) practice in which girls and young women are abducted from their homes (e.g. on their way to or from school, the river or well to collect water, and/or the forest to collect wood) and forced into customary marriage. It is accompanied by physical violence and rape. Child, forced and/or under-age marriage, as a broader phenomenon of which ukuthwala is an instance, is a widespread, global phenomenon, said to affect approximately 12 million girls every year or 25, 000 girls every day (UNICEF, 2018). While this practice often takes place without the consent of the abducted girl’s parents, this is not always the case. Indeed, child marriages—including ukuthwala—are often arranged by the girl’s parents or family.

Research conducted globally on the causes of child-marriage shows interesting results. The leading contributing factors relate to (i) poor economic conditions—child-marriage not only provides the child’s family with income in the form of a dowry or lobola (as well as sometimes social status) but is thought to ensure the financial security of a daughter—and (ii) various beliefs and norms embedded in patriarchal ideology—including ideas about women’s work, value and role, concerns about a daughter’s virginity and chastity, the belief that marriage will protect girls from sexual assault and harassment, and the stigma associated with, or fear of, a daughter remaining unmarried into adulthood.

Significant health risks accompany this practice, related particularly to young women and girls’ ability to negotiate safe-sex practices within these relationships, and resulting in, for example, domestic and sexual violence, the spread of HIV/Aids, unwanted and early pregnancy (and often death during childbirth), cervical cancer, and obstetric fistula. Child marriage also typically results in adverse mental health effects—often arising from domestic and sexual violence and isolation. Moreover, young women and girls who are the victims of this customary practice are typically denied access to education—perpetuating cycles of dependence and poverty that themselves contribute to GBVAW/G in the South African context. According to the US Department of State: “Child marriage undermines nearly every Millennium Development Goal. It is an obstacle to eradicating poverty and hunger, achieving universal primary education, promoting gender equality, and improving child and maternal health.”

In order to work towards eradicating child marriage, it has been suggested that efforts be multifaceted, targeting governments, families, and traditional and religious leaders. Practical interventions that have proved useful in other contexts include (i) working towards the economic empowerment of girls and women—it has been shown that child marriages are less likely when the girl child is able to bring in or is actively bringing in an income—(ii) keeping girls in school—this is shown to be the most effective strategy for reducing the incidence of child marriage, but is often complicated because of the costs / investment involved in doing so—(iii) strengthening and enforcing legal prohibitions and (iv) community-based educational interventions focusing on challenging the status quo that positions women and girls as second-class citizens and sees their value as connected (either purely or primarily) to domestic work and child-rearing. These interventions also serve to cultivate girls’ sense of agency over their own lives.

Encouraged by the 1977 UN Proclamation the ENG Foundation seeks to highlight and discuss the issue of child, forced, and/or under-age marriage with the intention of seeking sustainable solutions.

2.1 Objectives of the Second Edition of Isangqa

- a) deepen awareness about the state of child marriages in South Africa;
- b) deepen readers'/practitioners'/lawmakers' and activists' understanding of child, forced and/or under-age marriage in South Africa as a form of gender-based violence against girls (GBVAW);
- c) explore strategies that can be employed, towards its classification as notifiable criminal offence - encourage further research on GBVAW/G. This includes learning from African and global best-practice case studies that will:
 - i) contribute to the Foundation's programme on knowledge production and application and
 - ii) lead to evidence-based policy change and the implementation of support services for those affected by this form of abuse.

2.2 Contributors

Lead contributor: Dr Mispa Roux: Former Deputy Director of the South African Institute for Advanced Constitutional Public, Human Rights and International Law; University of Johannesburg; her contribution will be from Public and International Criminal Law and International Human Rights perspective, guide the Foundation on what it needs to do to elevate the issue to be a notifiable criminal offence, specifically GBVAG. Her contribution should take into consideration Project 138 of the SA Law Reform Commission, which has prompted the Minister of Justice and Correctional Services to consider criminalising the practice. For ease of reference, the report is attached herein. The contribution should, where possible, share 'best practice' global and local case studies. Other important links can be found in the email message coming with this correspondence. As a lead contributor, an article of +-1600 is requested, which should be submitted **on or by the 16th June 2022**.

Other contributors (each will contribute an article of 600-800 words):

- **A representative of the ENGF:** Ms Nomso Kana ENGF's Theory of Change for ending child marriages; Ms Kana is an additional Member of the ENGF.
- **Advocate Dr Nyaradzayi Gumbonzvanda:** CEO of Rosaria Memorial Trust in Zimbabwe; African Union Good Will Ambassador on ending the Child Marriages; will provide the Africa Region perspective and practices including role of traditional leaders and 'best practices'.
- **Dr Shakira Choonara:** an award-winning public health practitioner, former African Union Youth Councillor and Operation Smile Ambassador for South Africa; as a public health specialist, she will look at how patriarchy compromise young women's control over their bodies, how these affect health of survivors of this practice, where possible provide evidence; explore whether categorising 'ukuthwala' as a notifiable criminal offense will have positive outcomes; and
- **A representative of the SA Government, Law Reform Commission:** Ms Maite Modiba, State Law Advisor in the Department of Justice and Constitutional Development (South African Law Reform Commission). Previously worked as a senior lecturer in Corporate Law at Unisa for 12 years ; provide update about this issue, its prevalence, government response to it, what needs to happen to categorise it as a notifiable criminal offence.

3. Draft time lines:

Activity	Due date
Terms of reference to all contributors	04/04/2022
Submission of all articles by contributors	31.05/2022
Editing, design and layout	16/06/2022

4. Background to the ENGF

The Eugenia Nothemba Gxowa Foundation (ENGF) is a women's rights non-profit organisation established in May 2020. Its purpose is to ensure that in reality the girls and young women of South Africa enjoy the rights and freedoms enshrined in the Constitution and the Bill of Rights.

4.1 Vision statement

The ENGF envisions a safe and secure South Africa, where young women and girls can realise their full potential and enjoy their rights as enshrined in our Constitution.

4.2 Mission statement

We are a women's rights non-profit organisation working in South Africa to eliminate gender-based violence against young women and girls (GBVAW/G), especially child/forced marriages ('ukuthwala'). We do this by collaborating with interventions and organisations, specifically community-based women's organisations that seek to eliminate GBVAW/G. To this effect we conduct research; produce and apply knowledge; engage men and boys as allies; and mobilise support and resources for victims of child/forced marriages in particular and GBVAW/G in general.

4.3 Objectives:

The organisation's primary objectives are to:

- a) Produce knowledge concerning the extent of, and issues surrounding, child / forced and under-age marriages (ukuthwala) as well as instances of gender-based violence against young women and girls (GBVAW/G) in South Africa;
- b) Initiate, support and collaborate with interventions that seek to curtail and support victims of child / forced marriages in particular, and GBVAW/G in general;
- c) Collaborate with men in leadership positions in South Africa (who are able to influence societal norms, values, attitudes, and practices) to advocate against GBVAW/G in general and child / forced marriages in particular;
- d) Collaborate with and build the capacity of women's community-based organisations that respond to GBVAW/G in general and child / forced marriages in particular.

4.4 Programmes:

- a) Knowledge production and application;
- b) Collaborating with men and boys to curb gender-based violence against women and girls;
- c) Work with organisations and interventions that seek to eliminate GBVAW/G in general and child / forced marriages in particular; and
- d) Provide support to survivors of child marriages and GBVAW/G.

4.5 Governance

The ENGF is governed by a group of seasoned professionals with relevant skills and competencies which will continue contributing enormously to the organisation's vision.

www.engfoundation.org.za