
THE ENFORCEMENT OF THE PAYMENT OF *LOBOLO* AND ITS IMPACT ON CHILDREN'S RIGHTS IN SOUTH AFRICA

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SUMMARY

Various communities in South Africa practise the custom of *lobolo* (payment in kind or cash by a prospective husband or the head of his family to the head of the prospective wife's family in consideration of a customary marriage). These communities may be divided into two groups, those practicing *theleka* (the withholding of a wife by her father or guardian from her husband to coerce him to pay the outstanding *lobolo*) and those that do not. In the communities practising *theleka* the amount of *lobolo* is not fixed and the father or guardian of the wife may from time to time *theleka* the wife and demand one to three head of cattle from his son-in-law. The wife and her children, if there are any, may be held by their maternal grandfather until the payment of *lobolo* has been met. The main issue this article examines is whether the custom of *theleka* impacts on the custody of children or not. It also examines the concept of the best interests of the child and finds that *theleka* custom in its current form does impact on the custody of the child and conflicts with the child's best interests. The article suggests that *theleka* custom needs to be developed to conform to the *Constitution*. It also examines whether or not the custom of *theleka* constitutes abduction and family violence. The writer submits that it does not constitute abduction and family violence and advocates that *theleka* custom be allowed to continue.

KEYWORDS: customary law; *lobolo*; *theleka* custom; custody; best interest of a child; family violence

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