



## ***Harmful Social and Cultural Practices – Virginity Testing?***

**Children’s Bill [B70 – B2003]**

**Submission to the Select Committee on Social Services (NCOP)**

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### **Introduction**

The South African Human Rights Commission (SAHRC) as one of the chapter 9 state institutions supporting constitutional democracy is mandated amongst others to promote respect for human rights and a culture of human rights; and, to promote the protection, development and attainment of human rights<sup>1</sup>. It is within this mandate that the commission has observed the debates surrounding the prohibition of virginity testing in the Children’s Bill.

To date, the Commission has not presented at a parliamentary level, its views on this matter in any substantive manner<sup>2</sup>. Given recent developments in which it has become apparent that not all sectors of our communities agree with the current provisions in the

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<sup>1</sup> Section 184(1)(a) and (b) of the Constitution of the Republic of South Africa (Act 108 / 1996).

<sup>2</sup> Extract from SAHRC Written submission to the Portfolio Committee on Social Development (August 2004) and reiterated again in our written and oral submission at the Portfolio Committee’s Parliamentary Workshop of 12 April 2005.

#### **“ ... Harmful Social and Cultural Practices – section 12**

The SAHRC welcomes the provisions of this section that aim to protect children from harmful social and cultural practices. The section includes provisions protecting children from under age marriages and engagements; prohibiting female genital mutilation; and, creating the right to refuse circumcision or virginity testing.

The SAHRC supports the position of the Commission on Gender Equality (CGE) that virginity testing should be prohibited as the cultural practice is discriminatory against young women and girls, impinges upon their dignity, is an invasion of privacy and cannot be justified in terms of the limitations clause of the constitution.

Section 12(5) does not provide the requirement of consent for virginity testing. The section merely provides for a right to refuse.

The SAHRC submits that virginity testing should be prohibited in the Bill. ...”

Children's Bill, the Commission welcomes the participative process that Parliament has initiated in order to create a forum in which this matter can be further explored and debated.

The Commission is of the view that it is necessary to articulate our position on virginity testing. This view is informed by our constitutional principles and values and most importantly our Bill of Rights. We therefore welcome the invitation from the NCOP Select Committee on Social Services to present the Commission's views on this matter from a constitutional perspective.

### **Background**

The Preamble of the Constitution of the Republic of South Africa provides that the new post-colonial South Africa "belongs to all who live in it, united in [their] diversity," that the new South African society shall be one based on democratic values, social justice and fundamental rights and one in which the government is based on the will of the people and where every citizen is equally protected by law."

The challenge to our young democracy in the context of our history wherein indigenous cultural practices were for so long marginalized and distorted is to seek the appropriate balance between recognizing our wonderfully diverse cultural practices and respecting the constitutional framework which promotes the values of "... human dignity, the achievement of equality and the advancement of human rights and freedoms..." and of "... non racialism and non-sexism."<sup>3</sup>

Many African cultures have placed a high premium on the virginity of girls, especially for marriage purposes. In some cultures, the lack of such status could affect a marriage or the bride-price (bohali or lobola). In this regard, commenting on indigenous Basotho law, WCM Maqutu wrote:

"Where the girl was previously abducted or has an illegitimate child, bohali is reduced. This is usually by six or three head of cattle. Virginity is consequently highly priced and guarded in Basotho traditional society."<sup>4</sup>

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<sup>3</sup> Section 1 of the Constitution

<sup>4</sup> WCM Maqutu, *Contemporary Family Law of Lesotho*, Roma, National University of Lesotho, 1992, p 108.

Amongst the Zulu people, girls were examined by their mothers once a month to ensure that they were virgins. On this issue, Magma M Fuze wrote:

“In olden days a girl would have sexual intercourse [soma-sex without penetration] once a month, and then wait to ascertain whether she had got into trouble; after that she would do it again, if so desired. But they would be examined by their mothers every month, a spoiled girl being detected at once. It was not as things are today with all girls being in effect married women [abafazi], for today girls often get pregnant while still living at home, doing that which was not done in olden days and ignoring ancient customs.”

Fuze goes on to say:

“It was not permissible for a girl to get pregnant and to give birth at her home; that was a serious disgrace. Furthermore it was not permitted for a girl who had given birth at her home to go to a festivity and dance with the other girls who were taking part; it was a disgrace.”<sup>5</sup>

During the past 21 years there has been the re-emergence of mass based virginity testing particularly amongst the Zulu people. Virginity testing involves young girls being physically examined by traditional examiners to determine if they are virgins. Thereafter they are provided with certificates in a public ceremony and others attend the annual Royal Reed Dance sanctioned by King Zwelithini. The re-emergence of this cultural practice has led to concerns being raised about the potential invasion and violation of guaranteed constitutional rights of the young women who are tested. These concerns have also been voiced by the Commission for Gender Equality and the South African Human Rights Commission.

Virginity testing has both proponents and opponents. Some proponents see the practice as “a back- to-basics remedy for some of the country’s worst ills, including the growing AIDS epidemic”.<sup>6</sup> It is also viewed as a long over-due revival and appreciation of Zulu

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<sup>5</sup> Magma M Fuze, *The Black People: and whence they came*, Pietermaritzburg, University of Natal Press, 1979, p 29. (Translated by H.C Lugg) [“Abantu Abamnyama was the first work written in Zulu by a native speaker of the language and published in 1922] According to the author, the bride was also examined by the bridegroom’s family to ascertain whether she was still “a virgin unspoilt by a man.” (at p 37).

<sup>6</sup> Dean E Murphy ‘A time for testing for Virginity’ *The Los Angeles Times* –Thursday, July 15, 1999 at <http://ww2.aegis.com/news/Lt/199/LT990702.html>

culture, helping in detecting child abuse, minimizing teenage pregnancy and preserving and instilling a sense of good morals.

Some opponents of this practice see it as a violation of human rights, especially the right to privacy. Futhi Zikalala of the Gender Commission in KwaZulu-Natal is reported to have said: “We are trying to teach our children, ‘Your body is your body,’ and then we send them to a woman who invades it.” According to Zikalala, the doing away with the practice would be a positive move.<sup>7</sup> Other opponents see the practice as endangering the lives of girl certified as virgins in that many of these girls become easy targets for rapists, especially with rape incidents being so high in South Africa and coupled with the fact that there is a myth and a belief in some quarters in South Africa that having sex with a virgin cures AIDS.<sup>8</sup> Beatrice Ngcobo, a Durban-based Commissioner of the Commission for Gender Equality regards the practice of employing only virgins as “sick’ and a violation of women’s rights”.<sup>9</sup> Finally, some opponents of this practice see it as “an unnecessary throwback to a past better forgotten.”<sup>10</sup>

With the processing of the Children’s Bill, effect has been given to many of our international human rights obligations. Within the ambit of social and cultural practices, virginity testing was included in the Bill as a specific cultural practice to be prohibited<sup>11</sup> and criminalised<sup>12</sup>. It should be noted that the prohibition only extends to female persons below the age of 18 years.

The passing of the Children Bill by the National Assembly has led to protests and condemnation by supporters of this practice. King Zwelithini is reported to have also condemned those opposing virginity testing and was quoted as saying that “... he would “rather be thrown in jail than allow the tradition he revived 21 years ago to be

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Fred Khumalo ‘Virgin-only rule raises ire’ City Press May 21 2000.

<sup>10</sup> Ibid.

<sup>11</sup> “Social Cultural and religious practices

12. (1) Every child has the right not to be subjected to social, cultural and religious practices which are detrimental to his or her well being.

(4) Virginity testing of children is prohibited.”

<sup>12</sup> Clause 12(6)(a) creates the offence. Clause 305(6) provides for a penalty on conviction to a fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment.

abolished.”<sup>13</sup> The King is also reported to have said that “Culture builds a nation and the Zulu nation has earned respect through practising this culture.”<sup>14</sup>

Those in favour of the continuation of the cultural practice of virginity testing interpret this prohibition as a violation of their cultural rights while those in favour of the provisions interpret it as an important development in the promotion and protection of children’s and gender rights.

Parliament is thus faced with a very real conflict between recognizing and giving effect to cultural practices versus ensuring that the Children’s Bill is not in conflict with the Constitution as the supreme law of the land.

### **Culture in our Bill of Rights**

Our equality clause (section 9) in the Bill of Rights specifically provides that:

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

It goes further to specifically prohibit the State and all persons from unfairly discriminating both directly or indirectly against anyone on one or more grounds, including culture<sup>15</sup>.

The Constitution provides in section 30 that:

“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.”

In section 31, the Constitution provides that:

“31. (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community –  
(a) to enjoy their culture, practice their religion and use their language; and

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<sup>13</sup> The Star Newspaper, 13 September 2005.

<sup>14</sup> The Sowetan Newspaper, 12 September 2005.

<sup>15</sup> Sections 9. (3) & (4)

- (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.”
- (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

Commenting on these provisions, the Constitutional Court in *Prince v President of the Law Society of the Cape of Good Hope & Others* said:

“Our society is diverse. It is comprised of men and women of different cultural, social, religious and linguistic backgrounds. Our Constitution recognizes this diversity. This is apparent in the recognition of the different languages; the prohibition of discrimination on the grounds of, amongst other things, religion, ethnic and social origin; and the recognition of freedom of religion and worship. The protection of diversity is the hallmark of a free and open society.”<sup>16</sup>

Given our past in South Africa, it is important that we strive to protect our indigenous cultural practices. These were the subject of domination and subjugation during the colonial and Apartheid years. In our new constitutional dispensation we need to strive to seek to give recognition to cultural practices within our constitutional parameters. Culture however is not static, but dynamic. We therefore need to question many of our cultural practices and interrogate in a constructive manner the extent to which they conform with the constitution.

### **Founding values of our constitution**

The founding values of our constitution include amongst others, human dignity, the achievement of equality and non-sexism. The Commission is not convinced that virginity testing, as it is currently practiced, promotes these values.

The practice which intends to promote good morals and decrease sexual activity prior to marriage, thereby being an HIV/AIDS prevention mechanism, propagates sexism in that it places a high premium on the sexuality of girl-children in the form of their virginity and says nothing about the sexuality of the boy-children. The promotion of good morals and

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<sup>16</sup> 2002 (3) BCLR 231(CC), para 49.

a healthy approach to sexuality is in itself a good social value and ones, which should be promoted. The challenge is for communities to promote these values in cultural ways that are in line with our constitutional values. The response that the practice will now extend to boy-children does not address the deep-seated sexism against women and girl-children by men, many of whom still regard women and girls as sex-chattels and inferior.

Young girls, and not young boys, are subjected to an intrusive physical examination of their private parts by a traditional examiner to determine if they are virgins. It must be seriously questioned whether such an intrusive procedure is the only manner in which the positive aspects of this cultural practice can be achieved. It also needs to be questioned why boys are currently excluded from the practice and how they could be included in a manner that does not conflict with the constitution.

Girls who are tested and then declared to be virgins are provided with certificates in a public ceremony. It is not clear how girls who have been the victims of rape, incest and sexual abuse are dealt with in this procedure. Given the unfortunate alarmingly high levels of sexual violence in our country, at any virginity testing ceremony there must be young girls who are survivors of such horrendous deeds. Declaring these young women not to be virgins potentially exposes publicly what has happened to these young girls. This raises serious concerns about secondary traumatising and stigmatising of these young girls. This gives further rise to serious concerns regarding these especially vulnerable young girls' dignity.

## **Bill of Rights**

### *Equality*

Section 9 (1) of the Constitution provides that:

“Everyone is equal before the law and has the right to equal protection and benefit of the law.”

In addition, section 9(3) of the Constitution provides that the state

“May not unfairly discriminate directly or indirectly against anyone on one or more grounds, including gender and sex.”

Section 9(4) makes a similar provision for non-state parties.

This should also be read with section 8(d) of the Promotion of Equality and Prevention of Unfair Discrimination Act<sup>17</sup> (PEPUDA), which provides:

“No person may unfairly discriminate against any person on the ground of gender, including any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child.”

Those who carry out virginity testing and those communities and families that ensure that girl-children are subjected to this practise are violating the right to equality of those girl-children that are examined. It must be noted that only girl children are tested. The state has a duty in terms of section 7 of the Constitution to protect the rights of these girl-children and the intended prohibition of this practice is what the state is obliged to do by the Constitution.

### *Dignity*

Section 10 of the Constitution protects the right to dignity:

10. “Everyone has the inherent dignity and the right to have their dignity respected and protected.”

Every girl-child has the right to have their dignity respected and protected as provided for by section 10 of the Constitution. The dignity of those who refuse to be tested or those who do not pass the test for various reasons including being raped is also violated. Furthermore, the process of the examination and its’ invasive nature is certainly not one which promotes dignity.

### *Freedom and Security of the Person*

Section 12(2) of the Constitution provides that:

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<sup>17</sup> Act 4/2000



“Everyone has the right to bodily and psychological integrity, which includes the right to security in and control over their body.”

The practice of virginity testing violates this right for many of the girls being tested. The test is a highly invasive of a girl-child private body. Human rights jurisprudence indicates that such an invasion would have to be compellingly necessary in order to be justified as a justifiable limitation of the right<sup>18</sup>.

“Girls are made to lie on a straw mat, undress and part their legs for a vaginal examination by a female inspector”.<sup>19</sup> The “traditional tester” or “female inspector will then insert her finger in the girls’ private area to find the hymen, with the feel of a closed membrane.

The argument by supporters of the practice that the test is voluntary is not acceptable in the context of subtle coercion many of the girls are subjected to by their families and communities. The refusal to go through the test in many communities and in many families is regarded as an admission of not being a virgin - a taboo in communities and families where virginity is regarded as a virtue and even influences the bride price (Lobola / bohadi) that can be obtained.

The practise furthermore could also constitute a psychological punishment for girl-children who engage in pre-marital sex (either voluntarily or involuntarily). Boy-children are not subjected to testing and thus do not receive the same treatment.

There is a myth that if a HIV Positive man has sexual intercourse with a virgin, he will be cured of the virus. Since the virginity testing results are announced publicly, everyone in the community knows the information. There have been incidents where these young virgin girls are targeted and raped by men who wish to be cured of the HIV virus. Such incidences constitute a severe violation of the child’s’ right to freedom and security of the person.

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<sup>18</sup> De Waal, Currie, Erasmus, 3<sup>rd</sup> Ed, Bill of Rights Handbook, p237

<sup>19</sup> See Dean E Murphy ‘A time for testing for Virginity’ The Los Angeles Times –Thursday, July 15, 1999 at <http://ww2.aegis.com/news/Lt/199/LT990702.html>

### *Privacy*

Section 14 of the Constitution states:

14. "Everyone has the right to privacy, which includes the right not to have-
  - (a) their person or home searched; ..."

Virginity testing violates the right to privacy of the girl-child. A person's body is private and what a person does or does not do with her body privately within the confines of the law is your own private matter. Matters of a sexual nature are also private matters. Particularly for young persons who are grappling with their developing sexualities.

Those who choose not to participate in the practice may feel ostracised or alternatively may be stigmatised within a community as not being virgins. In this way, their sexual privacy concerning their bodies is also violated.

### *Children's Rights*

Section 28 of the Constitution provides that children have the right:

- "28. (1)(d) "to be protected from maltreatment, neglect, abuse or degradation"

And that

- "28. (2) "[a] child's best interests are of paramount importance in every matter concerning the child."

Linked with the discussion on human dignity and the freedom and security of the person above, the practice of virginity testing may constitute in certain instances maltreatment or even abuse. At the very least it would amount to degradation and is therefore not in the best interests of the girl-child.

### **International Human Rights Law**

South Africa is party to a number of international human rights treaties that protect the girl-child from discrimination and violation of human rights. Some of the treaties South Africa is party to include:

- The International Covenant on Civil and Political Rights (ICCPR).
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

These treaties require the state to promote and protect the rights amongst others, to life and to security of the person without distinction of any kind, including gender.

The United Nations Committee on the Rights of Children, a treaty monitoring body for the Convention on the Rights of the Child has condemned the practice of virginity testing in South Africa. In its concluding remarks on the report prepared by the South African government on the implementation of the Convention on the Rights of the Child in South Africa, the Committee stated:<sup>20</sup>

“...The Committee is also concerned about the traditional practice of virginity testing which threatens the health, affects the self-esteem, and violates the privacy of girls. The practice of female genital mutilation (FGM) and its harmful effects on the health of girls is also an issue of concern for the Committee....

The Committee recommends that the State party undertake a study of virginity testing to assess its physical and psychological impact on girls. In this connection, the Committee further recommends that the State Party introduce sensitization and awareness raising programmes for practitioners and the general public to change traditional attitudes and discourage the practice of virginity testing in light of articles 16 and 24(3) of the Convention. The Committee recommends that the State party strengthen its efforts to combat and eradicate the practice of FGM and to carry out sensitization programmes for practitioners and the general public to change traditional attitudes and discourage harmful practices.”

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<sup>20</sup> Committee on the Rights of the Child *Concluding Observations of the Committee on the Rights of the Child: South Africa (unedited version)* Twenty-Third Session CRC/C/15/Add.122 January 2000 (para 33).

In its report on honour killings in Jordan based on virginity testing, a leading international human rights NGO, Human Rights Watch stated:

“Virginity exams reflect the presumption that families, communities, and the state have a legitimate interest in a woman’s sexual conduct. They involve pain, humiliation, and intimidation. These exams constitute cruel and inhuman treatment and are a violation of women’s rights to physical integrity, sexual autonomy and privacy.”<sup>21</sup>

### **The constitutional limitation on the right to culture**

The former Chief Justice, Arthur Chaskalson, in his Third Bram Fischer Lecture, said:

“Freedom does not mean total freedom. In a democratic society freedom can never be absolute. It must be exercised with due regard to the legitimate interests of other members of the society, and the countervailing claims of other constitutional values.”<sup>22</sup>

Section 36 of our Constitution sets out the manner in which rights contained in the Constitution may be limited. It states:

“36 (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and the extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.”

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<sup>21</sup> Human Rights Watch, *Honoring the Killers: Justice Denied For “Honor” Crimes in Jordan*, April 2004 Vol 16, No 1. (E) at p 21.

<sup>22</sup> Arthur Chaskalson ‘The Third Bram Fischer Lecture: Human Dignity As A Foundational Value Of Our Constitutional Order,’ (2000) 16 *South African Journal On Human Rights*, pp 195-205, at p 202.

Furthermore, as has already been pointed out above, both sections 30 and 31 of the Constitution have built in internal limitations on the exercise of cultural, religious and linguistic rights. Both clauses state that the exercise of the right to culture must not be in a manner “inconsistent with any provision of the Bill of Rights.”

### **Limiting cultural rights**

Our constitutional court has already been called upon to make the difficult determination of balancing cultural and religious rights against other rights that are enshrined in our Bill of Rights.

In *Christian Education South Africa v Minister of Education*, the court stated:

“The underlying problem in any open and democratic society based on human dignity, equality and freedom in which conscientious and religious freedom has to be regarded with appropriate seriousness, is how far such democracy can and must go in allowing members of religious [and other cultural and linguistic] communities to define for themselves which laws they will obey and which not. Such a society can cohere only if all its participants accept that certain norms and standards are binding. Accordingly, believers cannot claim an automatic right to be exempted by their beliefs from the laws of the land. At the same time, the state should, whenever possible, seek to avoid putting believers to extremely painful and intensely burdensome choices of either being true to their faith or else respectful of the law.”<sup>23</sup>

The balancing of cultural rights with other human rights will, for a long time to come, be an on-going challenge and debate in the post-apartheid era.

With regards to the prohibition of virginity testing in the Children’s Bill it must be noted that the rights to equality and dignity that are limited by the practice constitute both constitutional rights and values. We should thus be exceptionally circumspect of any practice that seeks to limit these rights. The rights to privacy and freedom and security of the person are also important rights that cannot easily be limited. The right to culture on the other hand has a built in limitation in addition to the limitations clause.

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<sup>23</sup> 2000 (4) SA 757(CC); 2000 (10) BCLR 1051(CC), para 35.

The importance and the purpose behind the practice of virginity testing is not always expressly stated. This makes it further problematic to argue that the Children's Bill cannot limit the right to culture. If the underlying purpose of the practise is to combat HIV/AIDS, promote good sexual morals and prevent teenage pregnancy it is questionable whether the practice achieves its purpose. Given the important nature of the rights involved, it is justifiable that the Bill limits the right to virginity testing in the manner in which it is currently conducted. There is therefore no less restrictive means of achieving this.

### **The role of parliament**

In the *Prince Case*, the Constitutional Court said with regards to religious practices ( the comments are equally apt with regards to cultural practices):

“In a constitutional democracy like ours that recognizes and tolerates diverse religious faiths, tolerance of diversity must be demonstrated by accommodating the practices of all faiths, if this can be done without undermining the legitimate government interest. Thus when Parliament is faced with a religious practice that involves some conduct that runs counter to its objectives, the proper approach under our Constitution is not to proscribe the entire practice but to target only that conduct that runs counter to its objectives, if this can be done without undermining its objectives. This approach is consistent with the constitutional commitment to tolerance and accommodation of different religious faiths implicit in our Constitution. The requirement that less restrictive means must be used in the limitation of constitutional rights is indeed a manifestation of this commitment.”<sup>24</sup>

### **Conclusion**

Virginity testing compromises and potentially violates the girl-child's right to equality, dignity, privacy and freedom and security. The Commission is of the view that the prohibition of virginity testing in the Children's Bill constitutes a justifiable limitation of the

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<sup>24</sup> Prince v President of the Law Society of the Cape of Good Hope & Others 2002 (3) BCLR 231(CC), para 79.

cultural rights of the adherents of this practice. Such limitation is, according to the Commission, reasonable and justifiable in the context of our Constitutional values and provisions and South Africa's international human rights law obligations. The physical examination of girl-children that constitutes virginity testing can not hold up to constitutional scrutiny.

The Commission recognizes that proponents of the practice may be seeking to achieve positive social values through cultural practices. These social values include: responsible approaches to sexuality, combating HIV/AIDS, decreasing teenage pregnancies and educating teenagers about their bodies and their sexuality. These important social values cannot be ignored. The challenge to those who support virginity testing is to develop the cultural practice within the confines of the constitution.

There is much that is common cause between those who support and those who oppose the practice of virginity testing. What is at issue is the methodology that has been adopted to achieve these social ends. If we can agree on what these social values are we can begin to achieve in different ways that which is common. It is of concern to the Commission that the battle lines on this cultural issue have been drawn so starkly between those who favour and those who oppose virginity testing. Yet there is much in common between the opposing sides. The challenge is how do we bridge this divide. This is a far broader challenge. We live in a diverse society. There are many instances in which cultural practices are contested. Virginity testing cannot be dealt with in a vacuum. We need to approach this cultural practice and resolve the issue in a manner that will set precedents for the future as to how we resolve our cultural differences in constructive manners that give regard to our constitutional values.

## **Recommendations**

### **1. Bring virginity testing within constitutional parameters**

Cultural practices and activities intended to foster social behavior that will promote and protect child rights, promote a healthy and responsible approach to sexuality, and contribute positively to the fight against the spread of HIV/AIDS should be supported. Culture is not static. What we need to question is what are we testing? Are we testing for virginity? What are the social values and norms that we wish to promote through virginity

testing? Do we wish to promote virginity or a healthy and open approach to sexuality in which teenagers take responsibility for themselves of their bodies and their sexuality? What is the most supportive manner in which our cultures can support teenagers in this fast changing and challenging world in which we live to give effect to their sexuality in a responsible and safe manner? These objectives appear to be a common thread amongst those who support virginity testing.

Those who support and practice virginity testing are taking proactive steps to address the sexuality of our young people in this country. The challenge is to bring these steps within constitutional parameters.

## **2. Promote the positive underlying reasons for the practice**

The further challenge is for those who condemn the practice to question their own cultural practices and beliefs and to evaluate what it is that we should be doing as a diverse society to promote good morals and a healthy and responsible approach to sexuality.

The efforts and support of virginity testing activities should be channeled into more appropriate cultural activities that could promote awareness on issues such as HIV/AIDS and child abuse and the prevention of teenage pregnancies.

## **3. Government and society must do more to support children developing positive approaches to sexuality**

It should be acknowledged that the failure of government and society (particularly parents and care-givers) to raise adequate awareness on issues such as teenage pregnancy, child abuse and the increasing spread of HIV/AIDS amongst the youth has lead to activities like virginity testing becoming popular in certain communities. Virginity testing is a response to a dire situation which threatens the fabric of our society. The popularity of this activity, if newspaper reports are anything to go by, cannot be ignored. Everyone must commit to engaging more with these issues.



**4. Leadership must spearhead the initiative to bring the practice within constitutional parameters**

There is a need for a concerted effort by all stakeholders, especially the institution of traditional leadership, the National and Provincial Houses of Traditional Leaders and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities to spearhead meaningful studies and discussions that will ensure that indigenous cultural practices occupy a space within our society.

**5. Virginity testing on adults must also be re-evaluated**

The Children's Bill only prohibits virginity testing being conducted on children. The practice can be conducted on persons over the age of 18 years. However, the Commission, even then, has serious concerns about the rights of those who engage voluntarily or involuntarily in the practice. The rights that are involved in determining the constitutionality of the practice are not limited to children only. These rights extend to everyone. It needs to be seriously questioned whether our constitutional values support a practice that on the face of it violates a number of constitutionally entrenched rights.