

NAME: WENDY MOEKETSE

STUDENT NUMBER: 9924281

RESEARCH TOPIC: VIRGINITY  
TESTING AND MALE CIRCUMCISION:  
HARMFUL PRACTICES OF  
CUSTOMARY LAW?

SUPERVISOR: PROF FA DE VILLIERS

UNIVERSITY *of the*  
WESTERN CAPE

DEGREE: LLM (CONSTITUTIONAL  
LITIGATION)

**Keywords**

Bill of Rights

Child

Customary Law

Discrimination against Women

Harmful Practice

Hymen

Ingcibi

Male Circumcision

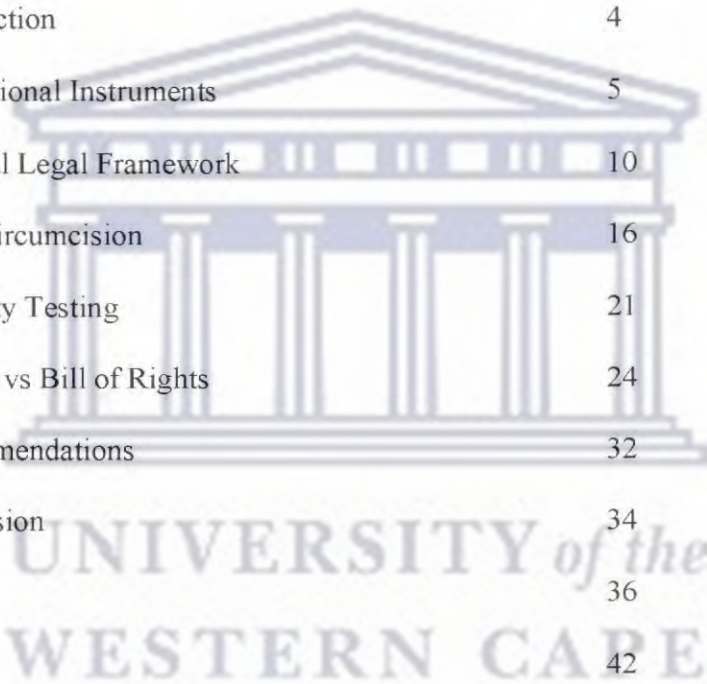
Virginity Testing



UNIVERSITY *of the*  
WESTERN CAPE

## Table of Contents

<u>TITLE</u>	<u>PAGE NO</u>
Chapter 1: Introduction	4
Chapter 2: International Instruments	5
Chapter 3: National Legal Framework	10
Chapter 4: Male Circumcision	16
Chapter 5: Virginity Testing	21
Chapter 6: Culture vs Bill of Rights	24
Chapter 7: Recommendations	32
Chapter 8: Conclusion	34
Bibliography	36
Appendix	42



## **Chapter 1** **Introduction**

When dealing with an issue of customary law, one has to begin by giving a definition of customary law for the purposes of understanding. Customary law is defined in the Recognition of Customary Marriages Act<sup>1</sup> as being customs and usages traditionally observed among the indigenous African peoples of South Africa and which forms part of the culture of those peoples.

South Africa has many different customs that are practised but mainly two are to be dealt with in this paper, and they are male circumcision and virginity testing. These practices have raised some tension between traditionalists and the legislatures (which are backed by NGO's who stand for human rights) on the constitutionality of the provisions of the Draft Children's Bill, which seeks to outlaw the harmful practises of customary law.<sup>2</sup> This research paper aims to illustrate how harmful these practises are in society and even though the Constitution does not deny anyone the right to practise his or her culture, as long as it is consistent with the Bill of Rights, also taking into consideration international law. In doing this, the research paper goes on to look at both international instruments and domestic legislation, and in the process also looks at the right to culture that is protected by the Constitution, and the limitation of that right by outlawing or banning certain practices by applying the limitation clause.

---

<sup>1</sup> Act 120 of 1998.

<sup>2</sup> <http://www.cge.org.za>.(Commission on Gender Equality: Consultative Conference on Virginity Testing June 2000).



## Chapter 2 International Instruments

### 2.1 African Charter on the Rights and Welfare of the Child, 1999

South Africa ratified this Charter on 7 January 2000. The Convention on the Rights of the Child is an international instrument dealing specifically with the rights of the child but does not cover certain aspects regarding to the African cultural concerns.<sup>3</sup>

The Charter is not opposed to the Convention on the Rights of the Child; rather the two pieces of legislation both provide the framework through which children and their welfare are increasingly discussed in Africa, and the Charter stresses the need to include African cultural values and experience in considering issues pertaining to the rights of the child in Africa.<sup>4</sup>

The motivation towards the adoption of the Charter was the fact that the Convention on the Rights of the Child had omitted some of the issues that focused on the African child and the issue that is dealt with in this research paper is one of these practices that are prevalent in the African Society, such as male circumcision and virginity testing.<sup>5</sup> The preamble to the African Charter<sup>6</sup> states that the African Member states of the Organization of the African Unity note with concern that the situation of most African children remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances. The State Parties to this African Charter

---

<sup>3</sup> Lloyd A 'Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts' *International Journal on Children's Rights* Volume 10 2002 p175.

<sup>4</sup> Olowu D, 'Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child' *International Journal of Children's Rights* Volume 10 2002 p128.

<sup>5</sup> Viljoen F 'The African Charter on the Rights and Welfare of the Child' in Davel CJ (ed) *Introduction to Child Law in South Africa* 2000 Juta p218.

<sup>6</sup> OAU Doc CAB/LEG/24.98/49(1990).

also recognize that a child needs legal protection in conditions of freedom, dignity and security.

Article 1(3) of the Charter states that any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present charter shall, to the extent of such inconsistency, be discouraged. Article 21 protects the child against harmful social and cultural practices in that it states that “the State Parties to the Charter shall take all appropriate measures to eliminate harmful practices affecting the welfare, dignity, normal growth and development of the child and in particular:

- (a) those customs and practices prejudicial to the health or life of the child; and
- (b) those customs and practices discriminatory to the child on the grounds of sex or other status.”

There are numerous instances where customary practices have a harmful impact on people that practise it in the traditional African society but since I am dealing with only a few, which are male circumcision and virginity testing, I shall then focus on them. Article 21 seeks to protect the child against such practices that are prejudicial to the health of the child.

## **2.2 Convention on the Elimination of All Forms of Discrimination against Women**

South Africa ratified this Convention<sup>7</sup> on 15 December 1995.<sup>8</sup> The Convention (which will hereafter be referred to as “CEDAW” or “the Convention”) contains provisions that

---

<sup>7</sup> Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) GA Res 34/180, 34 UN GAOR Supp (No 46) 193.



guarantee equality and freedom from discrimination by the state and by private actors in all areas of private and public life.<sup>9</sup> It guarantees freedom from discrimination and requires State Parties to ensure that women enjoy equality in the fields of civil, political, rights as well as in the enjoyment of economic, social and cultural rights.<sup>10</sup>

Article 2(f) of CEDAW obliges State Parties to take all appropriate measures, including legislation to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.<sup>11</sup> Article 5(a) then states that State Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices in customary law and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

### **2.3 Convention on the Rights of the Child**

South Africa ratified this Convention<sup>12</sup> on 16 June 1995.<sup>13</sup> This Convention has been seen as significant because it highlights a new philosophy of children's rights contained in the Convention and one of the first announcements made by the former President of South Africa on his accession to power in April 1994 was related to the domestic application of

---

<sup>8</sup> <http://www.un.org/womenwatch/daw/cedaw/index.html> 28/11/2005.

<sup>9</sup> <http://www.un.org/womenwatch/daw/cedaw/index.html> 28/11/2005.

<sup>10</sup> Byrnes A 'The Convention on the Elimination of all Forms of Violence Against Women' in Benek W et al (eds) *Human Rights of Women* 2001 p124.

<sup>11</sup> Byrnes A and Connors J 'Advancing the Human Rights of Women: Using International Human Rights Standards' in *Domestic Legislation for Commonwealth Secretariat* October 1997 p68.

<sup>12</sup> Resolution 44/25 1989, UN doc A/44/736 adopted by the General Assembly of the United Nations on 20 November 1989 and entered into force on 2 September 1990.

<sup>13</sup> Detrick S *The United Nations Convention on the Rights of the Child: A guide to the 'Travaux Preparatoires'* Nijhoff 2000 p132.

principles enshrined in this Convention.<sup>14</sup> The Convention in many cases imposes obligations on State Parties; it also grants a number of general human rights to children.<sup>15</sup> This Convention constitutes the most authoritative statement of the fundamental rights of children covering civil and political, social, economic, cultural rights (in a broad sense, as it does not cover specifically cultural rights with regard to the African child), recreational and humanitarian rights.<sup>16</sup>

Article 19(1) of the Convention requires State Parties to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person(s) who have the care of the child. Article 37 also states that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment and, on this point, Article 16 stipulates that no child shall be subjected to unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour.<sup>17</sup> The most important provision of the Convention that deals with the issue of harmful practices is Article 24(3), which obliges State Parties to take all appropriate measures with a view to abolishing traditional practices detrimental to the health of children.

---

<sup>14</sup> Sloth-Nielsen J 'Ratification of the Convention on the Rights of the Child: Some implications for South Africa' 1995 *South African Journal on Human Rights* p337.

<sup>15</sup> Verhellen E *The Convention on the Rights of the Child: background, motivation, strategies and main themes* 1994 Verhellen and Garant p96.

<sup>16</sup> Bainham A *Children: The modern law* 3<sup>rd</sup> edition Jordan 2005 p66.

<sup>17</sup> Mower Jr AG *The Convention on the Rights of the Child: International Support for Children* Greenwood 1997 p41.



The provisions of the Convention are of value to South Africa as they serve as an invaluable tool in policy formulation and in holding governments accountable for their policies with regard to many issues, especially the rights of the child to be protected from harmful practices of customary law as Article 24(3) stipulates.<sup>18</sup>

#### **2.4 Universal Declaration of Human Rights**

On 10 December 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights<sup>19</sup>.

The relevant provisions to the issue of male circumcision and virginity testing are Article 1 and 2. Article 1 states that all human beings are born free and equal and Article 2 stipulates that everyone, without distinction, is entitled to all rights and freedoms set forth in this declaration, irrespective of gender.



UNIVERSITY of the  
WESTERN CAPE

---

<sup>18</sup> Pollecutt L, Motshekga M and Gardner A, *The Legal Rights of Children in South Africa* The National Institute for Public Interest Law and Research Community Law Centre 1995 p 33.

<sup>19</sup> GA Res 217A(III), UN Doc A810 (1948).

### Chapter 3 National Legal Framework

#### 3.1 Constitution of the Republic of South Africa Act, 1996

At present, South Africa does not have a legal framework that covers the aspects of virginity testing and male circumcision. Although this is indeed the fact our Constitution does provide for the protection of everyone in all aspects, whether it is social, economical or cultural. The Constitution guarantees rights that are directly opposed to the principles of virginity testing and male circumcision. These include the right to privacy,<sup>20</sup> the right to be protected from maltreatment, neglect, abuse or degradation,<sup>21</sup> the right to have their dignity respected and protected,<sup>22</sup> and the right to freedom and security of the person, which includes the right not to be treated or punished in a cruel, inhuman and degrading way.<sup>23</sup>

Although the Constitution guarantees the right of everyone to the enjoyment of his or her culture,<sup>24</sup> the Constitution states further in the same provision that, this right may not be exercised in a manner that is inconsistent with the provisions of the Bill of Rights. This was confirmed in *Christian Education SA v Minister of Education*,<sup>25</sup> where the applicant challenged the constitutionality of the section 10 of the South African Schools Act,<sup>26</sup> which had prohibited the administration of corporal punishment in schools. The prohibition of corporal punishment, it was argued, was a violation of religious and

---

<sup>20</sup> Section 14.

<sup>21</sup> Section 28(1)(d).

<sup>22</sup> Section 10.

<sup>23</sup> Section 12.

<sup>24</sup> Section 31.

<sup>25</sup> 1999 (9) BCLR 951 (SE).

<sup>26</sup> Act 84 of 1996.

cultural freedom, since corporal correction of children was, according to the applicant, a vital element of the Christian religion. The High Court held that to allow corporal punishment to be administered at the applicant's schools, even if done in the exercise of the religious beliefs or culture of those involved, would be to allow the applicant's members to practise their culture or religion in a manner that is inconsistent with the Bill of Rights, in contravention of section 31(2) of the Constitution. The Constitutional Court held that the prohibition was an infringement of section 31; the infringement was held to be a reasonable and justifiable limitation of the right.<sup>27</sup>

When interpreting any legislation or developing customary law, the Constitution requires an interpretation, in terms of section 39, that promotes the values which underlie an open and democratic society based on human dignity, equality and freedom, meaning that the spirit of the Bill of Rights should be promoted. Therefore, when looking at the issue of virginity testing and male circumcision, I shall have to look at both national and international legislation as section 39 also provides that international legislation will have to be taken into consideration.

### **3.2 Children's Act, 2005**

The Act<sup>28</sup> was passed in 2005 but was only assented to by the president on 8 June 2006.

This was as a result of a review of the Child Care Act<sup>29</sup> by the South African Law

---

<sup>27</sup> Currie I and De Waal J *The Bill of Rights Handbook* 5<sup>th</sup> edition Juta 2005 p635.

<sup>28</sup> Act 38 of 2005.

<sup>29</sup> Act 74 of 1983.



Reform Commission (SALRC).<sup>30</sup> Its aims are to give effect to certain children's rights contained in the Constitution. Chapter 2 of the Act aims to protect the child against harmful social and cultural practices that affect the well-being, health or dignity of the child. This provision focuses on female genital mutilation, male circumcision and virginity testing of a child.

Section 12(4) states that virginity testing of a child under the age of 16 is prohibited whilst Section 12(5) states that in children older than 16, virginity testing may only be performed in following circumstances:

- (a) if the child has given consent to the testing in the prescribed manner;
- (b) after proper counseling of the child; and
- (c) in the manner prescribed.

Section 12 further states that the results of virginity tests may not be disclosed without the consent of the child,<sup>31</sup> and the body of the child who has undergone virginity testing may not be marked.<sup>32</sup>

Section 12 also deals with circumcision of male children and states that circumcision of male children under the age of 16 is prohibited except when the following occurs:

- (a) circumcision is performed for religious purposes in accordance with the practices of the religion concerned and in the manner prescribed; or

---

<sup>30</sup> SALRC Project 110: Review of the Child Care Act, 1983.

<sup>31</sup> Section 12(6).

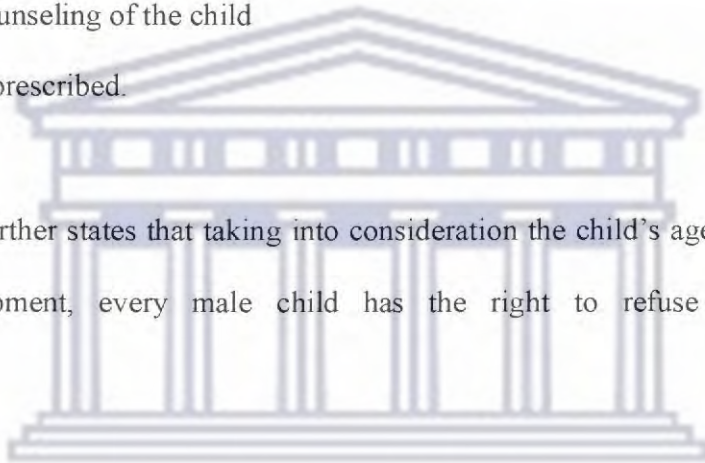
<sup>32</sup> Section 12(7).

(b) circumcision is performed for medical reasons on the recommendation of a medical practitioner<sup>33</sup>.

Section 12(9) states that circumcision of male children older than 16 years may only be performed in the following circumstances:

- (a) if the child has given consent to the circumcision in the prescribed manner;
- (b) after proper counseling of the child
- (c) in the manner prescribed.

Section 12 also further states that taking into consideration the child's age, maturity and stage of development, every male child has the right to refuse circumcision.



### **3.3 Promotion of Equality and Prevention of Unfair Discrimination Act, 2000**

South Africa has international obligations in the field of human rights that promote equality and prohibit unfair discrimination. Amongst a lot of the international instruments that deal with this issue is the CEDAW.

The Constitution provides for the enactment of national legislation to prevent or prohibit unfair discrimination and to promote the achievement of equality. Therefore, this Act was enacted with the purpose of giving effect to the spirit of the Constitution.<sup>34</sup> The most important provision with regard to the issue at hand is the one that deals with unfair

---

<sup>33</sup> Section 12(8).

<sup>34</sup> Section 2 of the Constitution Act of 1996.

discrimination on the grounds of gender. It clearly states that no person may be unfairly discriminated against on the ground of gender, including any practice that includes a traditional, customary or religious practice, which impairs on the dignity of women and undermines equality between men and women (including the undermining of the dignity and the well-being of a girl-child).

### **3.4 Application of Health Standards in Traditional Circumcision Act, 2001 (Eastern Cape)**

The Eastern Cape Department of Health took the initiative and made a call to all role players and stakeholders, to come together and get involved in an effort to curb the mortality rate and the number of botched circumcisions.<sup>35</sup> This initiative set in motion a process that culminated in the promulgation of the said Traditional Circumcision Act of 2001.<sup>36</sup>

Thus far, some of the provinces have approved legislation dealing with male circumcision. In Limpopo and Eastern Cape there are provincial laws in place that deal with the observation of health standards in traditional initiation schools, the granting of permission for the operation of circumcision schools and generally with the granting of permission to conduct circumcisions.<sup>37</sup> The Eastern Cape Act provides for the observation of health standards in traditional circumcision with penalties of up to R10 000 and 10 years imprisonment. It also provides for the regulation of people qualified to

<sup>35</sup> <http://www.africanvoices.co.za/culture?circumcision.htm-16k->.

<sup>36</sup> Act 6 of 2001.

<sup>37</sup> [www.info.gov.za/index.html](http://www.info.gov.za/index.html). (Dr. Goqwana, Provincial Conference on Circumcision, East London)



perform the ritual and regulates the circumcision “schools”.<sup>38</sup> Only recognised traditional practitioners may perform the operation, and they must have the permission of a medical officer designated in the area (whilst the medical officer has to give permission too for each circumcision school).<sup>39</sup>

The Act makes it compulsory for parents or guardians to give their permission or consent and requires that in all but exceptional circumstances the young men cannot be younger than twenty one years and, if the initiate is younger than twenty one, a consent form will have to be signed by the parent or the guardian.<sup>40</sup> The consent form is in Annexure C of the Act<sup>41</sup>. Therefore in view of the above it is clear that even though South Africa does not have a legal framework that covers the aspect of virginity testing and male circumcision, there are some laws that protect people from such harmful practices.



UNIVERSITY *of the*  
WESTERN CAPE

---

<sup>38</sup> Section 9.

<sup>39</sup> Section 5.

<sup>40</sup> Section 7.

<sup>41</sup> See Appendix.

## Chapter 4 Male Circumcision

Male circumcision has become an issue of concern in African society over the past few years because of the deaths and serious injuries inflicted on young boys (initiates).<sup>42</sup> This is a tradition that is practised by the Xhosa tribe, among others. This tribe does not recognize an uncircumcised male as a man, as he is considered to be a boy. For the Xhosa people circumcision represents the formal incorporation of males into society; therefore it is not just a surgical procedure, but is a lengthy and elaborate ritual in preparation for manhood.<sup>43</sup>

In his autobiography, referred to in the previous paragraph, Mandela states that the process is one that requires the *ingcibi* to use his assegai by pulling the foreskin forward and cutting the foreskin off, moving forward to another initiate and using the same assegai, and then proceeding in doing the same thing to another initiate, followed by his assistant, so that the latter may dress the wound with a healing plant which absorb the blood, and upon tying part of the foreskin to the corner of their blanket and the other part of the skin, the initiate was expected to swallow it.

Recently there has been an outcry from some Xhosa people and other concerned people that circumcision should be banned as it has resulted in many injuries and deaths, as there

---

<sup>42</sup> <http://www.cirp.org/news/sapa07-08-04> 'Circumcision school initiates dies' 26/11/2005.

<sup>43</sup> Mandela NR *A long walk to freedom* MacDonald Purnell 1994 p4.

is also a concern that the surgeries are performed under non-hygienic conditions. There have also been reports of penile amputation, other complications due to infections that are caused by the procedure, and the transmission of HIV in boys who have undergone the traditional ceremony as a result of the use of the same assegai and failure to sterilize and disinfect the assegai.<sup>44</sup>

The following is a list of some of physical damage that may result from male circumcision.<sup>45</sup>

- *Hemorrhage* due to the many veins crossing the penis. If undetected, this can be fatal. Some children are affected by hereditary hemophilia, making it difficult to stop hemorrhaging. In fact, it has been said that 90% of youths who die after undergoing circumcision, suffer from this undetected bleeding disorder.
- *Infections of the injury*. The injury caused by circumcision may be exposed to urine and faeces, provoking infection, thereby damaging the urethra and its structure. An operation may be necessary to widen the opening. In the absence of antibiotics, the infection can lead to diseases such as tetanus, gangrene, meningitis and diphtheria.
- *Urinary infection*. This can be caused by the trauma of the operation, from the surgical dressings and from the pain associated with attempts to urinate. A urinary retention, which if not cured, can lead to a renal disease.

---

<sup>44</sup> <http://washingtontimes.com/upi-breaking/20040409-111443-9055r.htm> 26/11/2005 (Mitchell S 'South Africa: Circumcision worries').

<sup>45</sup> Nyaundi PM 'Circumcision and the Rights of the Kenyan Boy-Child' *African Human Rights Law Journal* 2005 p171.



- *Necrosis of the glans.* This is death of a body tissue. This may happen to the glans following circumcision due to an overly tight bandage.
- *Injury and loss of glans.* Occasionally, the glans is injured or cut off during circumcision.
- *Excessive penile skin loss.* Any loss of skin on the penis is an irretrievable loss. The damage will vary according to the quantity of amputated skin. Some circumcisers pull the skin and cut off as much as they can. This may result in penile bowing and pain at the time of erection.
- *Penis concealed.* The penile shaft following circumcision may retreat into the surrounding skin and fatty area and cannot be seen. This problem must be corrected by surgery, and often skin grafting, to produce a normal looking penis.
- *External deformity of the penis.* The healing of the circumcision wound is not always pretty. It may result in an unpleasant external aspect, or even a cyst or keloid.
- *Loss of penis.* This may be as a result of mishandling the circumcision or as a result of an infection.
- *Death:* Depending on the severity of some of the injuries above, the operation may lead to death.

Medically it has been found that the foreskin's<sup>46</sup> removal is unnecessary as it is an important part of the skin system of the penis. The foreskin is like an eyelid, as it covers, cleans and protects the glans and keeps it in excellent condition just like an eyelid

---

<sup>46</sup> Also known as the prepuce.

protects the eye. Just like the eyelid can close and open to uncover the eyes, so the foreskin can open to reveal the delicate glans.<sup>47</sup> Due to a high number of incidents that had occurred as a result of such “botched” circumcisions, the government of South Africa, together with other countries supported by the World Health Organization, has launched a campaign to outlaw this practice in South Africa and to educate people about the dangers of the practice.<sup>48</sup> As this has been an issue of concern to some people, the media have also reported some incidents of death as a result of this practice. One article in a newspaper<sup>49</sup> stated that two organizations (The National Organization of Circumcision Resources Centre and the National Organization of Restoring Men) have set out to create public awareness, looking at the routine of circumcision and informing parents of the dangers of this practice. The article further stated that a call for the banning of circumcision came after reports of some deaths of young men, more especially in the Eastern Cape.

In some instances, this practice is imposed upon any man by virtue of him being an African, and it seems as if it tends to override some of the Constitutional provisions that guarantee freedom of religion. The Sunday Argus carried a report about one Litha Nthsoza (from the area of Gugulethu in the Western Cape), a Rastafarian of the age of 22, who was forcibly circumcised without his consent, even though he objected to this tradition being practised on him, saying that it goes against his way of life, which is his religion, as a Rastafarian.

---

<sup>47</sup> Fleiss MP and Hodges MF *What your doctor may not tell you about circumcision* Warner 2002 p3.

<sup>48</sup> <http://www.courtchallenge.com/international/WHO1.html> (Association for Genital Integrity 28/04/2004).

<sup>49</sup> Peters M ‘Call for SA men to keep their foreskins’ *Cape Argus* 17/ 07/2004.



It therefore seems that, although people are aware of the constitutional provisions, when these clash with their cultural practice, they believe that such cultural practice should override constitutional provisions<sup>50</sup>. It is not so that people had not realized the danger of this practice before the incident of this Rastafarian; a number of newspaper reports concerning the issue of this practice being harmful to young boys practising it, had been published. In 1996 an article was published that raised concerns about the issue of circumcision being harmful and that it therefore should be banned, after seven youths had died whilst 16 others had been seriously injured in the Eastern Cape, as a result of such traditional operations<sup>51</sup>. Following this article, another one was published which clearly stated that the deaths that were the result of the circumcision operation were blamed on amateur *ingcibis*, as they did not have the proper expertise.<sup>52</sup> It was then that the public decided to voice their opinion with regard to the deaths that had occurred as a result of this practice, in an article in 2001, stating that circumcision is a “cut that kills”.<sup>53</sup>

All of these articles that are mentioned clearly show that the process of circumcision could be harmful and also violates the rights of the people that are practising it, who are to be protected by the Bill of Rights.

---

<sup>50</sup> Ibid.

<sup>51</sup> Bhengu T and Buthelezi S ‘Time to ban traditional circumcision’ *Pace Magazine* 19/10/1996 p19.

<sup>52</sup> Burnett P ‘Circumcision death blamed on amateurs’ *Cape Argus* 3/07/1998 p7.

<sup>53</sup> Kamnqa S ‘The cut that kills’ *Sunday Times* 25/09/2005 p16.



## Chapter 5 Virginity Testing

Virginity testing is seen as a way of women (including young girls) keeping themselves pure, meaning not sexually active, until they get married. There is tension and debate as to whether or not the practice infringes upon women's human rights, even if they are willing participants.<sup>54</sup>

The purpose of this practice is to examine the vagina to see whether the girls' hymen is intact. It is meant to ascertain the girl's purity at marriage, meaning that it discourages the girls from engaging in sexual activities such as pre-marital sex and some consider it as a way to combat the spread of HIV/AIDS.<sup>55</sup>

Most girls are born with a hymen and some without a hymen, and this causes many doctors to believe that the hymen is not a good indicator of sexual virginity for several reasons, some of which being the following:<sup>56</sup>

- (a) a girl may have been born without a hymen;
- (b) the hymen can easily be ruptured during normal physical activities and sports; and
- (c) the hymen can easily be stretched open by the use of tampons.

---

<sup>54</sup> <http://www.webster.edu/~woolfm/wandghrwebpage.html> (Women and Global Human Rights, Virginity testing).

<sup>55</sup> <http://www.thezimbabwean.co.uk/9-september-2005/virginity-testing.html> (Human Rights Watch- Virginity testing in Zimbabwe).

<sup>56</sup> Ibid.

In Africa often the bed sheets of the newlyweds on their wedding night are examined to see if any blood is present on them, as a virgin is supposed to bleed during her first sexual encounter. This then means that the practice is not proper or accurate as a woman may be a virgin and still not bleed during her first intercourse.<sup>57</sup>

The Ministry of Health has many concerns about the testing, however, due to the high rate at which HIV/AIDS is spreading; the Ministry itself is hand tied to such an extent that it is waiting for any solution that might be suggested.<sup>58</sup> In South Africa, particularly with the Zulu, infants as young as four months are being tested and the reason as stated is because they want to protect them against child abuse, which amounts to the practice being inconsistent with the Constitution in that it violates the rights of the child. Many women are raped after undergoing the examination that show that they are virgins, as a result of the existing myth that having sexual intercourse with a virgin will cure a person from AIDS.<sup>59</sup> South Africa's Commission on Gender Equality held a special meeting on virginity testing and determined that it is a bad thing, but recognizes that individuals have the right to practise their cultural traditions. Many of the Zulu believe that they rather not introduce sex education because this would then be promoting sexual intercourse to unmarried children.<sup>60</sup> However, there are many concerns raised about the inspection, such as the following:

(a) How much anatomical knowledge do those doing the tests have?

---

<sup>57</sup> <http://www.saartjie.co.za/feb2000/hymen23.html> (McIntosh).

<sup>58</sup> <http://www.esmonitor.com/durable/2000/06/02/pls4.html> (Singer).

<sup>59</sup> <http://www.aegis.com/news/It/1999/LT990702.html> (Murphy).

<sup>60</sup> <http://www.mg.co.za/mg/news/99/sep2/29sepsep-aidsvirgin.html> (McGreal).



- (b) How do they know that a broken hymen is not the result of sports and other activities related to sport?
- (c) How hygienic are the inspections because if the first girl inspected has HIV and the same pair of gloves are used on the rest of the girls in the row, they could all become infected with the virus.<sup>61</sup>

Virginity testing is a tool men in male-dominated societies used to put pressure on and control the lives and bodies of girls and young women, but the results of such an inspection may not give correct and reliable evidence of prior sexual relations.<sup>62</sup> Not all participants in this practice willingly participate; instead there are cultural dynamics involved that compel them to partake in the procedure. This therefore means that this practice violates their rights to human dignity, bodily integrity and the right to privacy. As a result of this, many reports have been published by newspapers with regard to the issue of virginity testing. The former Deputy President Zuma stated in one of these reports that he encourages young women to take part in the virginity testing programme.<sup>63</sup>

In my opinion, the lack of medical expertise in the process of performing virginity testing, can in itself contribute to a high rate of sexually transmitted diseases and therefore become harmful, which is what the Children's Act aims to prevent.

---

<sup>61</sup> <http://www.hst.org/za/update/44/policy4.html> (Strachan).

<sup>62</sup> <http://www.writ.corporate.findlaw.com/colb/20060111.html> (Colb Sherry F, Virginity tests in South Africa and Judicial Bypass in the U.S.: Ritually Scrutinizing the Virtue of Girls 14/01/2006).

<sup>63</sup> Tyali L 'Zuma takes a stand on virginity testing' *Mail and Guardian* 23/09/2005 p5.



## Chapter 6 Culture vs Bill of Rights

As mentioned in the previous chapters, the Constitution guarantees everyone the right to practise the cultural life of his or her choice, but no one exercising these rights may do so in a manner that is inconsistent with the provisions of the Bill of Rights. The question that arises is whether banning or outlawing the practice of male circumcision together with that of virginity testing would constitute a justifiable infringement on the rights of people to practise their culture. This chapter will then focus on the application of the limitation clause on the right to practise culture. The fact that a fundamental right has been infringed by a certain provision in this instance, meaning that outlawing or banning these practices, does not automatically make that provision invalid; instead it will have to be determined whether such infringement is justifiable in an open and democratic society.

Section 36 sets out specific criteria for the justification of restrictions of the rights in the Bill of Rights.<sup>64</sup> The Constitution permits the limitation of rights by law but requires the limitation to be justifiable. This therefore means that the limitation must serve a purpose that most people would regard as important; however, the important purpose of the limitation on the right will not be justifiable unless there is a good reason for thinking what the restriction would achieve, and that there is no other realistically available way in which the purpose can be achieved without restricting the right.<sup>65</sup> A law may legitimately limit a right in the Bill of Rights if it is:

(a) a law of general application, and

---

<sup>64</sup> Venter F 'The protection of cultural, linguistic and religious rights: the framework provided by the Constitution of the Republic of South Africa, 1996' Volume 13 no. 2 1998 *SAPR/PL* p446.

<sup>65</sup> *S v Manamela and Another* 2002 (3) SA 1 (CC) para 32.

(b) that is reasonable and justifiable in a open and democratic society based on human dignity, equality and freedom.<sup>66</sup>

These criteria will then have to be applied to the outlawing or banning of the right to practise one's culture.

### **6.1 Law of general application**

This requirement has two components and they are the following:

#### **6.1.1 *Authorized by law***

This means the power that the government derives from the law, meaning that the government must have authority for its actions. The effect of this component is shown in *August v Electoral Commission*<sup>67</sup> where the Constitutional Court considered the validity of the Independent Electoral Commission's failure to take steps to allow prisoners to vote in the 1999 elections. The Commission's inactions had the effect of denying prisoners their right to vote and, because it was not authorized by any law, as the Electoral Act<sup>68</sup> did not deny prisoners the right to vote, therefore there was no possibility of justifying the infringement of rights in terms of section 36. A mere policy or practice, even of an organ of state, cannot qualify as law, and the relevant case to this is *Hoffman v South African Airways*,<sup>69</sup> where a policy of an organ of state, that HIV positive persons did not qualify for employment as airliner attendants, was not a law of general application.

---

<sup>66</sup> Currie I and De Waal J, *The Bill of Rights Handbook* 5<sup>th</sup> edition Juta 2005 p168.

<sup>67</sup> *August v Electoral Commission* 1999 (3) SA 1 (CC).

<sup>68</sup> Electoral Act 73 of 1998.

<sup>69</sup> *Hoffman v South African Airways* 2001 (1) SA 1 (CC).



### 6.1.2 *General application*

This is the second component, that the law should be of general application, which means that the law must be sufficiently clear, accessible and precise to those that are affected by it and that the law must apply impersonally, equally to all, and that it must not be arbitrary in its application. This limitation of the cultural right is applicable to people (meaning both males and females) that are by tradition required to practise the particular ritual.

The second requirement deals with the limitation of the right to being reasonable and justifiable in an open and democratic society.

## **6.2 Reasonable and justifiable in an open and democratic society**

In respect of this provision, section 36 requires that there should be proportionality, meaning weighing up the harm done by a law, which is an infringement of a fundamental right, against the benefits that the law seeks to achieve, which is the reason for the law, or the purpose of the law.<sup>70</sup> In doing so the factors that have to be taken into consideration are the following:

### *6.2.1 The nature of the right*

The nature of the right refers mainly to the importance of the right,<sup>71</sup> which in this instance is the right for one to practise his or her own culture freely, that must be considered so as to determine which kind of purpose would justify the limitation of the right. It has been claimed that the focus of those practising virginity testing is to combat

<sup>70</sup> *S v Makwanyane* 1995 (3) SA 391 (CC).

<sup>71</sup> Malherbe R 'The Constitutionality of government policy relating to the conduct of religious observances in public schools', *Journal of South African Law* 2000 p391.



teenage pregnancies, prevent the spread of sexually transmitted diseases such as HIV/AIDS and detecting cases of child abuse, but there is no documented evidence to substantiate this. In *Prince v President of the Law Society of Cape of Good Hope*,<sup>72</sup> where the court was faced with the provisions of the Drugs and Drug Trafficking Act,<sup>73</sup> specifically section 4(b), which, read with section 22A of the Medicines and Related Substances Control Act, prohibited the use of cannabis. The applicant raised a concern of constitutionality of these provisions in that they constitute an infringement, as they infringed upon the right to practise culture and religion as a Rastafarian. The court held that it was a justifiable limitation under section 36 of the Constitution, Ngcobo J highlighting in his decision that a constitutional right cannot be denied on the basis of mere speculation, unsupported by conclusive and convincing evidence.

Those who are practising male circumcision are of the view that one can never be regarded as a “man” without having been circumcised (as Mandela has pointed out in his abovementioned autobiography). The value of both these practices in modern society is therefore limited in the sense that they infringe upon the rights of the right to privacy, the right to be protected from maltreatment, neglect, abuse or degradation, the right to have their dignity respected and protected, and the right to freedom and security of the person, which includes the right not to be treated or punished in a cruel, inhuman and degrading way.<sup>74</sup> Especially when it comes to virginity testing, one would state that the practice discriminates against women on the basis of gender as males are not subjected to

---

<sup>72</sup> *Prince v President of the Law Society of the Cape of Good Hope* 2002 (2) SA 794 (CC) at para 74 E.

<sup>73</sup> Drugs and Drug Trafficking Act 140 of 1992.

<sup>74</sup> <http://www.rhoespanol.org/html/hthps-keyissues.htm> (Reproductive Health Outlook, Aspectos Clave 22/01/2006).

virginity testing it is applicable to women only. The move to prohibit the practice of inspection has exposed the ideological clash between culture and human rights, according to Dr. Singh, head of the Bioethics and Health Law Programme at the Centre of the AIDS Programme of Research in South Africa (CAPRISA) at the University of KwaZulu-Natal.<sup>75</sup>

### 6.2.2 *The importance of the purpose of the limitation*

This aspect assists in deciding whether the limitation is justified in view of the importance of the right that is limited. Since section 28 stipulates that a child's best interests are of paramount importance in every matter concerning a child. It is therefore important to scrutinise the provision in the Constitution, the relevant case being that of *Christian Education South Africa v Minister of Education*,<sup>76</sup> where the court held that the state is under a constitutional duty to protect a child from maltreatment, abuse and degradation. The court took into consideration the fact that section 39 stipulates that when interpreting the bill of rights, a court, tribunal or forum must promote the values that underlie an open, democratic society based on human dignity, equality and freedom, and must also consider international law. Therefore this means that the provisions of the Convention on the Elimination of all Forms of Discrimination Against Women together with the Convention on the Rights of the Child have to be taken into consideration, in that they also seek to protect the child against maltreatment, abuse and degradation more especially since the Convention on the Rights of the Child also states that the rights of the child are of paramount importance.

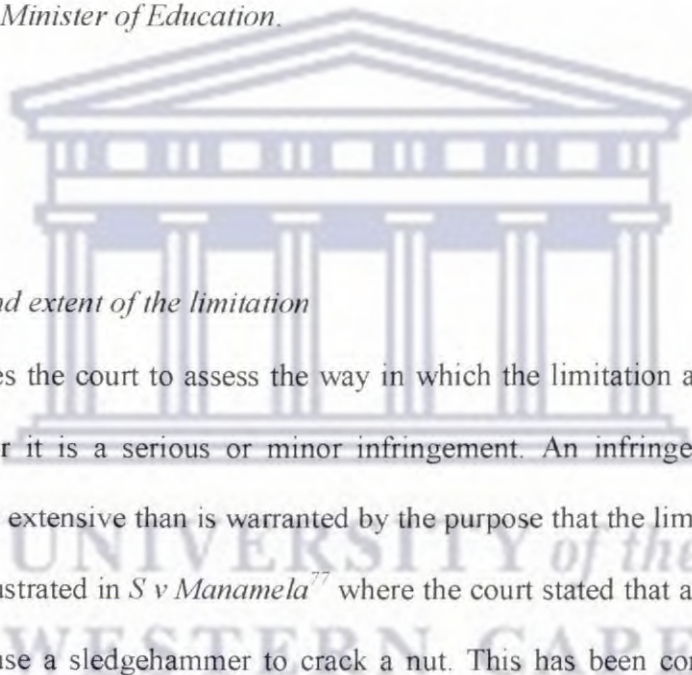
---

<sup>75</sup><http://www.irinnews.org/report.asp?ReportID=48969> South Africa: Virginity testing - absence of a tissue becomes a big issue 14/01/2006.

<sup>76</sup> 1999 (9) BCLR 951 (SE).



When applying both international instruments together with the national legislation, I submit, although the right to practice one's culture is a right which is protected by the Constitution, it is clear that both international instruments and national legislation suggest that the rights of a child are of paramount importance and, therefore, means that these weigh more than that of culture or religious group beliefs, as seen in *Christian Education South Africa v The Minister of Education*.



### 6.2.3 *The nature and extent of the limitation*

This factor requires the court to assess the way in which the limitation affects the right concerned, whether it is a serious or minor infringement. An infringement of rights should not be more extensive than is warranted by the purpose that the limitation seeks to achieve. This is illustrated in *S v Manamela*<sup>77</sup> where the court stated that a law that limits rights should not use a sledgehammer to crack a nut. This has been confirmed by the courts' decision in *S v Lawrence; S v Negal; S v Solberg*,<sup>78</sup> where the court was faced with an issue of constitutionality of section 159(a) of the Liquor Act<sup>79</sup> prohibiting the sale of liquor on a "closed day", which is a Sunday; the court highlighted that the severity of the of the breach must be a highly relevant factor in any proportionality exercise.

<sup>77</sup> *S v Manamela and Another* 2000 (3) SA 1 (CC) at para 34.

<sup>78</sup> 1997 (10) BCLR 1051 (CC) at para 168.

<sup>79</sup> Liquor Act 27 of 1989.

This therefore means that if applied to male circumcision and virginity testing, of outlawing both of these cultural practices will constitute an infringement of the right to practise one's culture. However, this would not mean that every cultural practice is to be outlawed. It does not mean that every cultural practice is harmful, the concern is only in those practices that are harmful to society at large and it is only then that the prohibition should be applicable.

#### *6.2.4 The relation between the limitation and its purpose*

To serve as a legitimate limitation of a right, a law that infringes the right must be reasonable and justifiable. This means that there must be a good reason for the infringement and there must be a causal connection between the law and its purpose in that the law must serve the purpose that it has to serve.<sup>80</sup> This is confirmed by the decision in *S v Steyn*<sup>81</sup> where the court was of the opinion that the question that arises is whether the limitation is at all capable of promoting its purpose and, if so, how, and to what extent. Therefore in applying this to outlawing male circumcision and virginity testing, this would serve the state's purpose to protect the child against harmful practices of customary law, as both international instruments have pointed out, together with national legislation, that they uphold the principles of the Constitution, in that these seek to protect the rights of the child and that of women from discrimination on the grounds of gender, and other rights that are in the best interests of the child and are of paramount importance to the child's well-being and health.

---

<sup>80</sup> Currie I and De Waal CJ *The Bill of Rights Handbook* 5<sup>th</sup> edition p183.

<sup>81</sup> *S v Steyn* 2001 (1) BCLR 52 (CC) at para 31.



### 6.2.5 *Less restrictive means to achieve the purpose*

In my opinion, the only option is to outlaw both practices as they pose a very high risk in our society. With regard to male circumcision, it has been pointed out that there is no need for circumcision as the foreskin that is removed during the circumcision is one part of the skin that protects the glans of the penis just like an eyelid protects the eye.<sup>82</sup>

Therefore circumcision is unnecessary. With regard to virginity testing, since it has been stated that the purpose of the practice is protection against teenage pregnancies and HIV/AIDS, it would be preferable to introduce sex education to children at primary school level. Therefore, the only available option is to outlaw both practices as there is no less restrictive measure that can be taken; even if they can be performed in less dangerous circumstances, in terms of changing blades and gloves, it would still constitute a violation of rights.

It is my submission that it is clear that there is a violation of the right to practise one's culture, as section 31(1) of the Constitution protects a person belonging to a cultural community from being denied the right to enjoy such a culture or to form, join and maintain a cultural association, and the limitation to the right thereof (as evaluated above in terms of section 36) should be a reasonable and justifiable limitation in an open and democratic society based on human dignity, equality and freedom, when taking into account the factors that were discussed above.<sup>83</sup>

---

<sup>82</sup> Fleiss MP and Hodges MF *What your doctor may not tell you about circumcision* Warner 2002 p5.

<sup>83</sup> Venter F 'The protection of cultural, linguistic and religious rights: the framework provided by the Constitution of the Republic of South Africa 1996' Volume 13 No 2 *SAPR/PL* 1998 p446.

## Chapter 7

### Recommendations

When looking at the relevant international instruments we find that the African Charter on the Rights and Welfare of the Child has provisions that state that any custom that is inconsistent with the rights, duties and obligations of the Charter shall be discouraged, as the Charter aims at protecting the child against everything that could be harmful to the well being, dignity, normal growth and development of the child, which would include harmful, social and cultural practices. The Convention on the Rights of the Child also confirms the abovementioned provision as it focuses mainly on the rights of the child. CEDAW obliges State parties to abolish customs that constitute discrimination against women.<sup>84</sup> Seeing that South Africa has ratified the abovementioned international instruments, it means that South Africa is under an obligation to comply with their provisions by virtue of it being a member state of these Conventions. In the light of many countries ratifying these Conventions but not complying with their provisions, it would therefore be of paramount importance for the United Nations to establish Committees to look at implementation strategies, for example, if the UN were to offer incentives to states trying to comply with these provisions.

Therefore, when looking at the Children's Act, it is evident that the concerns raised in terms of the international instruments mentioned above, are covered by the Children's Act, in that the latter's aim is to abolish practices that are harmful to the rights of the child, as it aims to protect the child against harmful social and cultural practices that

---

<sup>84</sup> Pieterse M 'Killing it softly: Customary Law in the new constitutional order' *De Jure* 2000 p38.



affect the well-being, health or dignity of the child, focusing on male circumcision and virginity testing.<sup>85</sup>

It is my submission that relevant governmental departments should avail resources for educating the people or advocating their human rights. This means that programmes should be developed so as to educate people about HIV/AIDS, focusing on sexual abuse of children and sexual intercourse before marriage, instead of advocating the practising of male circumcision and virginity testing for some of the purposes mentioned above, such as the avoidance of HIV/AIDS and teenage pregnancy. Not only should these programmes be developed for combating HIV/AIDS, but also for eliminating stereotyped attitudes in people that are practising this culture in stigmatizing people who choose not to partake in these practices.



UNIVERSITY *of the*  
WESTERN CAPE

## **Chapter 8** **Conclusion**

When interpreting any legislation or developing customary law, the Constitution requires an interpretation in terms of section 39 that promotes the values which underlie an open and democratic society based on human dignity, equality and freedom, meaning promoting the spirit of the Bill of Rights. This section also highlights the fact that the Constitution does not deny the existence of customary law practices, but only to the extent that they are consistent with the Constitution.

Based on what has been illustrated in this research paper, the Constitution, Children's Act and international instruments do not deny the existence of customary law practices, but only to the extent that they are consistent with the Bill of Rights. Traditionalists state that they use virginity testing for purposes of addressing issues such as teenage pregnancy, child abuse and sexually transmitted diseases such as HIV/AIDS, but in reality the practice in itself can contribute to sexually transmitted diseases, as has been shown in the chapter on virginity testing through the use of the very same glove that is used in every child. With male circumcision - the purpose for it, as has been stated, is that of transforming a child from being a boy to manhood - this neglects the fact that the blades that they use are unhygienic and may contribute to HIV/AIDS. These are not the only negatives aspects connected with these rituals, but the protection of the human rights issue is the one of importance.



It is thus clear that these are harmful practices of our customary law and, therefore, the government should be urged to take the necessary steps to uphold the provisions of both international and national legislation by outlawing or banning these practices. It is in the best interests of all to do so.



UNIVERSITY *of the*  
WESTERN CAPE

## Bibliography

### Articles and Books

Bainham A *Children: The modern law* 3<sup>rd</sup> edition Jordan 2005

Byrnes A 'The Convention on the Elimination of all forms of Violence against Women'  
in Benek W et al (eds) *Human Rights of Women* 2001 p124

Byrnes A and Connors J 'Advancing the Human Rights of Women: Using International  
Human Rights Standards' in *Domestic Legislation for Commonwealth Secretariat*  
October 1997 p68

Currie I and De Waal CJ *The Bill of Rights Handbook* 5<sup>th</sup> edition Juta 2005

Detrick S *The United Nations Convention on the Rights of the Child: A guide to the  
'Travaux Prepataires'* Nijhoff 2000

Fleiss MP and Hodges MF *What your doctor may not tell you about circumcision* Warner  
2002



Lloyd A 'Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts' *International Journal on Children's Rights* Volume 10 2002 p175

Malherbe R 'The Constitutionality of government policy relating to the conduct of religious observances in public schools' *Journal of South African Law* 2000 p391

Mandela NR *A long walk to freedom* MacDonald Purnell 1994

Mower Jr. AG *The Convention on the rights of the Child: International Support for Children* Greenwood 1997

Nyaundi PM 'Circumcision and the rights of the Kenyan Boy-child' *African Human Rights Law Journal* Volume 2 2005 p171

Olowu D 'Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child' *International Journal on Children's Rights* Volume 10 2002 p128

Pieterse M 'Killing it softly: Customary Law in the new constitutional order' *De Jure* 2000 p38

Pollecutt L, Motshekga M and Gardner A *The Legal Rights of Children in South Africa*  
The National Institute for Public Interest Law and Research Community Law Centre  
1995 p33

Sloth-Nielsen J 'Ratification of the Convention on the Rights of the Child: Some  
implications for South Africa' *South African Journal of Human Rights* 1995 p337

Venter F 'The protection of cultural linguistic and religious rights: the framework  
provided by the Constitution of the Republic of South Africa, 1996' Volume 13 No 2  
*SAPR/PL*1998 p446

Verhellen E *The Convention on the Rights of the Child: background, motivation,  
strategies and main themes* Verhellen and Garant 1994

Viljoen F 'The African Charter on the Rights and Welfare of the Child' in Davel CJ (ed)  
*Introduction to Child Law in South Africa* 2000 Juta p218.

### **Case Law**

*August v Electoral Commission* 1999 (3) SA 1 (CC)

*Christian Education SA v Minister of Education* 1999 (9) BCLR 951 (SE)

*Hoffman v South African Airways* 2001 (1) SA 1 (CC)

*Prince v President of the Law of Society of Cape of Good Hope* 2002 (2) SA 794 (CC)



*S v Lawrence; S v Negal; S v Solberg* 1997 (10) BCLR 1051 (CC)

*S v Makwanyane* 1995 (3) SA 391 (CC)

*S v Manamela and Another* 2000 (3) SA 1 (CC)

*S v Steyn* 2001 (1) BCLR 52 (CC)



**Media Articles**

Bhengu T and Buthelezi S 'Time to ban traditional circumcision' *Pace Magazine*  
19/10/1996 p19

Burnett P 'Circumcision death blamed on amateurs' *Cape Argus* 3/07/1998 p7

Peters M 'Call for SA men to keep their foreskins' *Cape Argus* 17/07/2004

Tyali L 'Zuma takes a stand on virginity testing' *Mail and Guardian* 23/09/2005 p5

Kamnqa S 'The cut that kills' *Sunday Times* 25/09/2005 p16

**Domestic Legislation**

Application of Health Standards in Traditional Circumcision Act 6 of 2001 (Eastern  
Cape)

Child Care Act 74 of 1983

Children's Act 38 of 2005

Constitution of the Republic of South Africa Act of 1996

Drugs and Drug Trafficking Act 140 of 1992

Electoral Act 73 of 1998

Promotion of Equality and Prevention on Unfair Discrimination Act 2000

Liquor Act 27 of 1989

South African Schools Act 84 of 1996

### **International Instruments**

African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.98/49  
(1990)

Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)  
GA Res 34/180, 34 UN GAOR Supp (No 46) 193

Convention on the Rights of the Child, Resolution 44/25 1989, UN Doc A 44/736

### **Internet**

<http://www.africanvoices.co.za/culture?circumcision.htm-16k->

<http://www.aegis.com/news/It/1999/LT990702.html> (Murphy)

<http://www.cipr.org/news.sapa> (Circumcision school initiate dies 26/11/2005)

<http://www.cge.org.za> (Commission on Gender Equality: Consultative Conference on  
Virginity Testing June 2000)

<http://www.courtchallenge.com/international/WHO1.html> (Association for Genital  
Integrity 28/04/2004)

<http://www.csmonitor.com/durable/2000/06/02/pls4.html> (Singer)

<http://www.hst.org/za/update/44/policy4.html> (Strachan)



<http://www.info.gov.za.index.html> (Dr. Goqwana, Provincial Conference on Circumcision, East London)

<http://www.irinnews.org/report.asp?ReportID=48969> South Africa: Virginity testing - absence of a tissue becomes a big issue 14/01/2006.

<http://www.mg.co.za/mg/news/99/sep2/29sep-aidsvirgin.html> (McGreal)

<http://www.rhoespanol.org/html/htphps-keyissues.html> (Reproductive Health Outlook, Aspectos Clave)

<http://www.saartjie.co.za/feb2000/hymen23.html> (McIntosh)

<http://www.thezimbabwean.co.uk/9-september-2005/virginity-testing.html>

<http://www.un.org/womenwatch/daw/cedaw/index.html> 28/11/2005

<http://www.webster.edu/woolfilm/wandghrwebpage.html> (Women and Global Human Rights, Virginity testing)

<http://www.writ.corporate.findlaw.com/colb/20060111.html> (Colb Sherry F, Virginity tests in South Africa and Judicial Bypass in the U.S.: Ritually Scrutinising the Virtue of Girls 11/01/2006)

<http://www.washingtontimes.com/upi-breaking/20040409-111443-90055r.html> (Mitchell S 'Circumcision worries')

Appendix

PARENTAL OR GUARDIAN CONSENT

I,  
ID No.  
Residential address

1.  
Confirm that I am the parent/guardian of  
NAME OF PERSON

Who will be undergoing a circumcision on,

DATE OF OPERATION

In

PLACE OF OPERATION

At

TIME OF OPERATION

And

2.  
consent to my child undergoing a circumcision operation and attending initiation school. I acknowledge that I understand the conditions set out in Annexure A and B hereto, which conditions bind the traditional surgeon and the traditional nurse.

SIGNATURE OF THE PARENT

/or

GUARDIAN



UNIVERSITY *of the*  
WESTERN CAPE