

INTERNATIONAL LEGAL NOTE

Virginity testing

International law and social work perspectives

● Daniel Pollack

Virginity testing is an old custom designed to check if a young girl's hymen is intact. Turkey, Zimbabwe, Malawi, South Africa, Swaziland, Togo and other African countries have been embroiled in controversial discussions regarding virginity testing for the past couple of years. Every day we struggle to be respectful and open to the traditions and ideas of different cultures. Certainly, at least theoretically, there is a point beyond which each of us feels unable to tolerate the practices of another culture if they are too dissonant. Quite simply, we feel that cross-cultural acceptance has a limit. Does virginity testing cross that threshold?

Social work has a proud history of respect and tolerance towards people of different backgrounds and faiths. Providers of social work services are challenged every day with ethical decisions that can have far-reaching consequences for the well-being of their clients. Should there be a unified international social work voice in this discussion? If so, what should it be? Weighing in too firmly on either side of this controversy is sure to ignite polarization among our colleagues. Therefore, before attempting to answer these questions let us try to frame the pros and cons of the issue.

Virginity testing: pro

Those in favor of virginity testing raise some of the following arguments.

- The rights and customs of indigenous populations deserve the respect of the world community.
- Cultural diversity means accepting practices that may not necessarily be agreeable to our own individual or professional values.
- Maintaining high moral standards is a reasonable goal. Testing acts as a reasonable deterrent against adolescent girls having pre-marital sex.
- We should not interfere with the preservation of another culture's customs. The incorporation of this screening is a vital component of continuing a rich cultural heritage.
- Testing and the disapprobation that may accompany it are valid cultural norms.
- Failure to test could lead teenage girls towards a more promiscuous lifestyle. Indeed, testing may help to slow the spread of AIDS and identify victims of sexual abuse and incest. Therefore, given the high incidence of HIV/AIDS infection in some countries, testing is a valuable public health intervention.

Virginity testing: con

Those opposed to virginity endorse some of these points.

- Virginity testing is just a modern, invasive, morality test.
- Virginity testing is an old-fashioned idea whose principal purpose is to improperly and aggressively control a vulnerable population.
- Sexual activity is a personal moral choice best left to the individual.
- There is no opportunity for girls to opt out if they object to being tested.
- The testing is often not done in a satisfactorily sanitary way.
- Even if it was done in a hygienically satisfactory way, testing is simply legitimizing a destructive practice.
- It is unnecessary to meddle in the lives of girls who are presumed to be responsible.

- Virginity testing focuses attention only on girls, not their partners or perpetrators. Such overt discrimination is improper and unacceptable.

Does virginity testing violate international law?

Does virginity testing, even when carried out by female elders, violate various internationally recognized documents? Among these documents are: the Universal Declaration of Human Rights (UDHR),¹ the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),² the International Covenant on Civil and Political Rights (ICCPR)³ and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Universal Declaration of Human Rights (UDHR)

Article 1 of the UDHR states that 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.' Does virginity testing of adolescent girls deny them equality of 'dignity and rights'? Article 2 states that 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.' Does Article 2 invoke an impermissible distinction between males and females? Article 12 states that 'No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.' Is the spirit of this article being contravened by virginity testing?

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Article 16 states that 'Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.' Does virginity testing constitute torture or cruel and degrading treatment?

International Covenant on Civil and Political Rights (ICCPR)

Article 1 states that 'All peoples have the right of self-determination'. Article 7 states that 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.' Does virginity testing compromise a girl's self-determination or unreasonably endanger her?

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination Against Women, Article 2(d) states that signors shall undertake 'to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation'. The phrase 'discrimination against women' is defined as 'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'. Does testing constitute 'discrimination against women' as used in this convention?

Humiliation or pride?

When discussing child welfare issues, we often ask ourselves what is the role of the state as compared with the role of parents. In this case the question is posed differently: What is the role of a mainstream culture vis-a-vis a child? These adolescents are at very high risk of rejection and stigma from their peer group and family if they disclose their non-virgin status. Simultaneously, they are dependent on their family for all life necessities. They certainly would not be prepared for the consequences of being stigmatized in the absence of readily available supports and counseling.

Serving a population which either opposes or supports virginity testing is an ethical issue that social workers in Africa routinely face. There is no one approach that fits every case. At the very least, social workers should take into account the repercussions of their interventions based upon three well-established foundation stones of social work ethics: self-determination, respect and social

justice. In any event, we should keep in mind that we do not make the final decisions about the services our clients receive.

Primary prevention which minimizes exposure or susceptibility to health risks is a core function of social work. Virginity testing may be heralded as a particularly effective or destructive achievement. In our role as guardians of the public's trust and health, social workers play a significant role in shaping such policies. For some girls this custom may work well. The risk of disease infection may be low and the pride in publicly communicating their virgin status is important. For others, it may be a deeply degrading, humiliating and dangerous procedure.

Accountability: speaking out or being silent?

As social workers concerned about social justice we revere the idea of accountability, but often we mean holding someone else accountable. We must think carefully about how we define this concept. The term usually refers to the extent to which one must answer for one's conduct and obligations, especially to a recognized higher enterprise. Accountability has become a generic term referring to everything from financial responsibility to the idea of meeting expectations of a rainbow of constituents to whom one feels responsible. So, how do social workers face these complex decisions? We are being asked to balance intricate notions of the need to protect a minor's health, reputation and civil rights. Depending upon one's point of view, this may mean protecting the adolescent girl against or in keeping with this time-honored custom.

There is a natural tension between universal rights and cultural relativism. At the same time that we are trying to be tolerant of a culture different from our own, there may be elements of that culture we feel deserve condemnation. Should we be silent in the name of cultural diversity or speak out in the name of social justice and accountability? In an odd way, this tension demands that we be both tolerant and intolerant simultaneously.

Can the social work community speak with one voice?

There is no one global vision of social work any more than there is a singular vision of international law. Quite the opposite: each country is rooted in its own history, culture and fervently held moral doctrines. There is an infinite number of continental, national, regional and institutional social work perspectives, despite the existence of

transnational organizations such as the International Federation of Social Workers (IFSW), the International Council on Social Welfare (ICSW) and the International Association of Schools of Social Work (IASSW). Each of us is conditioned by our own social work and cultural norms. Indisputably, there exists the beginning of a common social work language, but this too expresses itself through individual voices that are the products of diverse and unique cultures. However tolerant we are, each of us harbors a non-erasable spot of pride that claims that our ethics, values and model of social work is uniquely susceptible to being adopted by the whole world. To acknowledge this is to recognize our own finitude and humanity. Thus, there is a slim possibility of arriving at a true consensus unless we first squarely face the larger contradictions posed by globalized and particularized visions of law and culture.

A clash of cultures does not mean perpetual opposition. Perhaps we could all agree that, at the very least, it is our job as social workers to reinforce the idea that we share as many points of convergence as we share points of difference.

Notes

1. Universal Declaration of Human Rights (10 December 1948). Available online at: <http://www.un.org/Overview/rights.html> (accessed 12 February 2007).
2. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (entry into force 26 June 1987). Available online at: <http://www.ohchr.org/english/law/cat.htm> (accessed 12 February 2007).
3. International Covenant on Civil and Political Rights (entry into force 23 March 1976). Available online at: http://www.unhcr.ch/html/menu3/b/a_ccpr.htm (accessed 12 February 2007).
4. Convention on the Elimination of All Forms of Discrimination Against Women (entry into force 3 September 1981). Available online at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article1> (accessed 26 February 2007).

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