NGO REPORT TO THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD
FROM THE INTERNATIONAL NGO COUNCIL ON GENITAL AUTONOMY

PROTECTING ALL CHILDREN

AFFIRMING THE RIGHT TO GENITAL AUTONOMY OF EVERY CHILD

THE INTERNATIONAL NGO COUNCIL ON GENITAL AUTONOMY

The International NGO Council on Genital Autonomy (INGOCGA) was established in 2016 to promote the consistent application of existing human rights principles that every child is an independent holder of rights, and that all children everywhere should be equally protected from medically unnecessary genital cutting to which they are incapable of consenting.

INGOCGA has extensive experience in issues relating to genital cutting, including asserted benefits, harms, human rights issues, legal issues, issues of medical ethics, gender issues, and other pertinent topics, and is able to offer international and comparative perspectives to support the Committee in its work scrutinising the practice of genital cutting of children worldwide as a children's human rights issue.

INGOCGA includes representatives from four nations and works collaboratively with major national and international human rights NGOs. In 2001, Attorneys for the Rights of the Child (ARC), an INGOCGA member organisation, made a presentation to the Sub-Commission for the Promotion and Protection of Human Rights. In 2018, INGOCGA submitted by invitation a general document on male genital cutting (MGC) as a human rights violation. In 2020, INGOCGA member organisation, The National Secular Society (NSS), an NGO with special consultative status, submitted a written statement to the 43rd Session of the UN Human Rights Council[1] calling on the HRC and on the Office of the High Commissioner for Human Rights (OHCHR) to protect all children equally from non-therapeutic genital cutting. INGOCGA continues to work with many colleagues around the world to prepare country-specific submissions on medically unnecessary, non-consensual genital cutting of children as a human rights violation.

[1] Written statement submitted by National Secular Society, a non-governmental organization in special consultative status, https://ap.ohchr.org/Documents/sdpage_e.aspx?b=10&se=209&t=7 [accessed 25.8.2021]

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Table of Contents

I INTRODUCTION AND EXECUTIVE SUMMARY

The practice of non-therapeutic genital cutting has a long history in numerous cultures world-wide[2]. Although genital cutting can occur at any age, most genital cutting has traditionally been, and continues to be, imposed involuntarily upon infants and children. Whereas prior to the twentieth century, the practice was largely unquestioned, global developments in medical ethics, human rights jurisprudence, and child safeguarding standards have increasingly called the practice into question. Such cutting violates the child's right to bodily autonomy, causing pain and permanent loss by cutting and in some cases excising erogenous bodily tissue. Genital cutting often causes scarring of the genitals, violates the child's own exercise of its right to freedom of religion and belief, and fails to extend to the child the minimum personal rights afforded to adults. As such, it constitutes a harm that is neither justifiable within a modern human rights framework, nor authorised by any qualified rights of the parents.

As a result, in the last 50 years, legal measures restraining the imposition of genital cutting upon children have begun to be introduced. This has not, however, happened uniformly, and contemporary legislative measures tend to offer partial protection at best, while leaving large populations of children wholly unprotected, usually on a gender discriminatory distinction. Whereas it is generally accepted in contemporary legislation that the genital cutting of girls ('FGM') is unacceptable irrespective of the reason for such cutting or the level of cutting involved, the position as to intersex children is mixed, and the imposition of genital cutting on male infants is almost wholly unrestrained. This is, from a rights and ethical perspective, an unsatisfactory situation, resulting in unequal treatment of vulnerable citizens, discriminatory legislation offering unequal gender protection, and serious breaches of the rights of millions of children annually.

This International NGO Council on Genital Autonomy (INGOCGA) now calls on the CRC to formulate a General Comment calling for full, equal protection of all minors from non-therapeutic genital cutting, at least until the age of majority when they are, as adults, able to make their own decisions about their bodies. Gender-based disparities in the legal protection of children are unacceptable violations of the prohibition on discrimination in

[2] The World Health Organization and UNICEF have adopted the term 'female genital cutting' (FGC) to describe all forms of medically unnecessary genital cutting of females. In this report, FGC, MGC, IGC and CGC respectively refer to medically unnecessary genital cutting of females, males, intersex and all children. By reason of its frequent use in scholarship, the term 'circumcision' is also used at times in this paper.

the UNCRC and equivalent human rights treaties, and undermine the UNCRC's child-protective aims.

INGOCGA notes that previous General Comments issued by the Committee on the Rights of the Child (CRC) assist with an interpretation of the Convention on this basis:

In 2011 by General Comment 13, the CRC interpreted the words in Article 19(1) "all forms of violence" to permit "no exceptions."[3] In that same General Comment, the CRC also decided that Article 19 prohibits all forms of harmful practices.[4] Accordingly, non-consensual, medically unnecessary genital cutting of any child constitutes "a form of violence" and a breach of the child's human rights.

In recent years, non-medical and premature genital cutting of intersex minors has been increasingly recognised as a human rights violation:

2013: A report by the Special Rapporteur on Torture recognised intersex genital cutting as a potential human rights violation.[5]

2017: The European Parliament adopted a resolution calling for member States to prevent, ban, and prosecute female genital cutting (FGC) and also genital cutting affecting intersex persons.[6]

Recognition is also growing that male children must be accorded similar protection to that given to female and intersex children. There is no ethical, medical or legal consistency in affording rights on a discriminatory basis according to gender.

In 2012, the International NGO Council on Violence Against Children report on "Harmful practices based on tradition, culture, religion or superstition" said of MGC:

...a children's rights analysis suggests that non-consensual, medically unnecessary circumcision of boys, whatever the circumstances, constitutes a gross violation of their rights, including the right to physical integrity, to freedom of thought and religion and to protection from physical and mental violence.[7]

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[3] CRC General Comment on Violence Against Children 18.4.11, Document CRC/C/GC8, para. 17. https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement [accessed 2.2.2020]

[4] Ibid. para 29.

[5] Mendez, JE. Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment. United Nations Document No. A/HRC/22/53, paragraphs 76 and 88 (1 February 2013)

[6] European Parliament. Resolution 2016/2096(INI) (14 February 2017) http://bit.ly/2nXWR8d [accessed 1.2.2020]

[7] International NGO Council on Violence Against Children, "Violating Children's rights: Harmful practices based on tradition, culture, religion or superstition" 2015, found at https://resourcecentre.savethechildren.net/library/violating-childrens-rights-harmful-practices-based-tradition-culture-religion-or [accessed 28.1.2020]

In 2013, the Parliamentary Assembly of the Council of Europe adopted Resolution No. 1952 "Children's Right to Physical Integrity," which included "the circumcision of young boys for religious reasons" in the "category of violation of the physical integrity of children, which supporters of the procedures tend to present as beneficial to the children themselves despite clear evidence to the contrary." The Assembly recommended that Member States[8] research the prevalence of different categories of non-medically justified operations and interventions and raise awareness of these categories of violation for all children. The Assembly's recommendations were not directed to any particular religious group, ethnic group, or gender.

It is notable that this Committee itself, in Concluding Observations to the 2nd-4th Periodic Reviews of Israel, "expresses concern about reported short and long-term complications arising from some traditional male circumcision practices," and recommends that Israel "undertake a study on short and long-term complications of male circumcision."[9]

The principle of non-discrimination cited in the Universal Declaration of Human Rights (UDHR) has been replicated in other human rights instruments since 1948,[10] for example, Article 2 of the United Nations Convention on the Rights of the Child (UNCRC).

Human rights principles do not allocate differing levels of protection to children based on sex or gender, indeed discrimination on such grounds is impermissible. A unifying principle of bodily integrity and genital autonomy requires that every person, including every child, be protected from non-medical, medically unnecessary genital cutting undertaken without their fully informed consent. The rights of female children and children with intersex characteristics are undisputable; the rights of male children matter just as much.

Freedom of Thought, Conscience and Religion

INGOCGA notes and celebrates Article 14 UNCRC, which explicitly enshrines the child's right to freedom of thought, conscience and religion. Such a right is grounded also in Article 18 ICCPR for all persons. As recalled by the UNCRC Preamble, such rights, when held by children, are entitled to "special care and assistance," given the vulnerability of the child as rights-holder.

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[8] Council of Europe. Resolution 1952 (2013) http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20174&lang=en [accessed 28.1.2020]

[9] CRC Concluding Observations on 2nd – 4th periodic reports of Israel, 14 June 2013, UN Doc CRC/C/ISR/CO/2-4.

[10] For example, ICCPR Art 2.1; ICESCR Art 2.1.

It will be apparent that each child's right to freedom of thought, conscience and religion includes (as it does also for adults) the right to make decisions about their own body where those decisions concern their own religious or philosophical beliefs. At a minimum, therefore, States are bound by the UNCRC to preserve the children's rights to make such free choices about their bodies in accordance with their own conscience, whether exercised in childhood or preserved for exercise in adulthood. INGOCGA highlights the importance of such rights for each child, and calls upon these freedoms to be preserved.

INGOCGA notes that forcible non-therapeutic genital cutting of a child inevitably violates children's rights. First, it imposes permanent alteration to the child's body that may conflict with the child's own present or future beliefs – particularly given that in a number of contemporary philosophies, ethical systems[11] and world religions,[12] the retention of a natural body is a substantive good that is harmed or destroyed by genital cutting. Even if a child is raised within a religious worldview or metaphysical system that does not favour unmodified genitalia, the child may, as is increasingly common in modern societies, eventually leave or dissociate from that particular worldview, yet still retain a permanent scar on their sexual anatomy reflecting their parents' – not their own – mature beliefs. The state cannot evaluate the metaphysical truth of religious perspectives on bodily integrity; rather, the right to bodily integrity must be defensible in terms of principles that are accessible to public reason. Cutting a person's body without their consent and with no relevant medical emergency is a straightforward violation of this state-sanctioned right.

Secondly, any imposition of genital cutting to conform the child's body to the ritual requirements of a specific religion (ordinarily, that of the parents) breaches Article 14 by permanently imposing the marks of that religion on the child and potentially denominating him/her as a practitioner of that religion, thus impinging upon the child's current and future free choice whether or not to be associated with that religion. Although a child can, as many children do, grow up to change their minds about their parents' religion—despite heavy socialisation—they cannot similarly change their bodies, once a permanent mark has been inscribed.

Thirdly, the imposition of cutting required by one religion/philosophy permanently impairs the child's right to fully and unambiguously identify with non-cutting religions/

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[11] For example, humanism: https://humanism.org.uk/campaigns/public-ethical-issues/genital-mutilation-of-children/ [accessed 27.2.2021]

[12] See, for example, Hindu Jainism, in which circumcision is strictly forbidden: *Re S* (*Specific Issue Order: Religion: Circumcision*) [2005] 1 FLR 236, para [18].

philosophies insofar as the possession of an intact body is optimal in non-cutting belief systems.

In this context, INGOCGA identifies a misconception, namely the view that the genital cutting of a child is a legitimate exercise of the religious freedoms of the parents *that overrides the child's rights*.[13] No article of the UNCRC or any international convention permits such an interpretation.

Article 14.2 UNCRC authorises parents and/or legal guardians to "provide direction to the child" in the exercise of the *child's* right to freedom of religion. First, this article is directed to the child, not to third parties such as parents. Secondly, such direction must always conform to the best interests of the child (Article 3), including the child's full right to freedom of religion and conscience, as well as other rights including the preservation of the child's health and bodily autonomy. Such 'direction' manifestly does not extend to unilateral imposition of cutting and permanent bodily scarring to the child, whatever the third party's motivation or claimed justification.

Parental freedom of religion is governed by Article 18 ICCPR. It is critical to note the difference between the right to *hold* particular beliefs, a right which is *absolute* – and the right to manifest (including acting upon) those beliefs, which is *qualified*. Article 18.3 ICCPR provides that freedom to *manifest* religion or belief may be restricted where, if exercised, it would violate public safety, order, health, or morals, or the fundamental rights and freedoms of another human being. The non-consensual imposition of genital cutting on a third party, the child, inevitably violates the fundamental freedoms of the child and its health viewed as the protection of its natural body from harm. Thus, while it is accepted that a parent's right to believe in the significance of genital cutting practices is absolute, and their right to opt for such practices as *concerns their own bodies* is in principle protected by Article 18, the right to impose such practices on the bodies of others (including children) is properly limited by Article 18(3).

Further, were it true that the religious freedom of parents were sufficient to legitimate the genital cutting of children, such freedom would extend to all children, not just males or intersex children but also to girls and female neonates. That such assertions have been manifestly and definitively rejected in the case of female children, whose cutting has been widely prohibited by criminal sanctions notwithstanding the sincere religious beliefs of many devout practicing parents (e.g., the Dawoodi Bohra sect of Islam), indicates that

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[13] *See.,e.,g.,* Jacobs, A. J., and K. S. Arora. 2015. Ritual male infant circumcision and human rights. American Journal of Bioethics 15(2): 30–39; see also *Re J* [1999] 2 FLR 678 at 695 (point 6 in submissions for the father); rejected by Wall J. at 701. While Wall J. identified an initial *prima facie* entitlement by the father to exercise his own religion as per Art 9(1) ECHR, this was rightly limited by consideration of the rights and freedoms of the child under Art 9(2) ECHR.

such argumentation lacks any cogency. As a matter of principle, therefore, it cannot apply to any child of any gender.

INGOCGA notes that the above entirely accords with the CRC's past and current approach to the limits of parental action in areas where these impinge upon a child's bodily integrity. For example, the CRC rightly rejected, and continues to reject, asserted justifications for corporal punishment of children based solely on parental religious beliefs.[14] The Committee noted:

> Freedom of religious belief is upheld for everyone in the International Covenant on Civil and Political Rights (art. 18), but practice of a religion or belief must be consistent with respect for others' human dignity and physical integrity. Freedom to practice one's religion or belief may be legitimately limited in order to protect the fundamental rights and freedoms of others.

INGOCGA invites the CRC to adopt the same consistent approach to Article 18 as concerns genital cutting as it has to certain invasive forms of corporal punishment, and to formulate a General Comment calling for the protection of all children from genital cutting, without distinctions based upon gender.

II EXTENT OF CHILD GENITAL CUTTING WORLDWIDE

It is conservatively estimated that 650 million males and 100 million females living today were subjected as children to some form of genital cutting custom - comprising at least 25% of the world's males and 5% of the world's females. Annually 13 million boys and 2 million girls in developing and developed nations undergo genital cutting customs; about 7 boys for each girl.[15] There is no reliable data about worldwide intersex genital cutting statistics, a problem in itself. Every culture or group on record that practices FGC for ritualistic, religious, or traditional reasons *also* practices MGC, usually in parallel ceremonies with similar justifications given. Depending on the group in question, either the female or the male version of the ritual can be more physically invasive or risky. For example, in much of South and Southeast Asia, the girls receive a ritual 'nick' that does not remove tissue, while the boys undergo a full circumcision. We shall address the most common forms of MGC entailing partial or total removal of the foreskin, commonly referred to in English as 'circumcision'.

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[14] CRC Article 19; General Comment on Violence Against Children 18.4.11, Document CRC/C/GC8, para 29.

[15] Hammond, T. A preliminary poll of men circumcised in infancy or childhood. *Brit J Urol Intl*. 1999 83(S1):85-92.

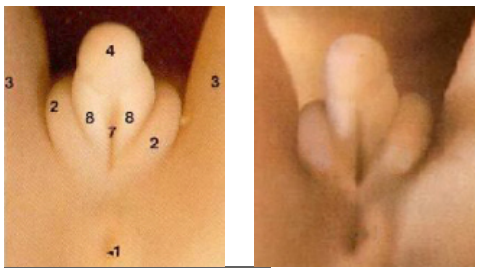
Complication rates from medicalised MGC are estimated at about 5%.[16] A 2018 study tracking more than 9 million circumcisions in U.S. hospitals recorded one death that was unlikely to have occurred without the genital surgery for every 50,000 circumcisions.[17] Applying this estimated death rate to conservative estimates of the global incidence of MGC translates to about 260 boys who die each year from 'best case scenario' (i.e., medicalised genital cutting customs). A larger number of male children suffer serious harm. And in medically suboptimal environments, such as tribal circumcisions performed in Kenya, South Africa, and elsewhere, the rate of death and penile amputations is alarmingly high, as acknowledged by the World Health Organisation.[18]

III MALE FORESKIN ANATOMY AND COMPLICATIONS FROM MGC

Introduction – Children's Genital Development and Anatomy

Male and female genitalia have evolved to optimize sexual function.[19] We discuss normal male genital anatomy briefly here to explain why the harm rises to a level that merits the CRC's attention within its human rights framework for protecting children.

The following diagrams and photographs show the early foetal development of male and female genitalia, demonstrating the numerous similarities between features in male and female genitalia eight weeks after conception. The below photograph shows that at nine weeks gestation, there are not yet any notable visible differences between male and female genitalia.



Genital tubercles at 9 weeks gestation; not yet any notable differences
(left: Male, right: Female).[20]
1. Anus; 2. Labioscrotal folds; 3. Legs; 4. Genital tuber; 7. Urethral groove; 8. Urogenital folds

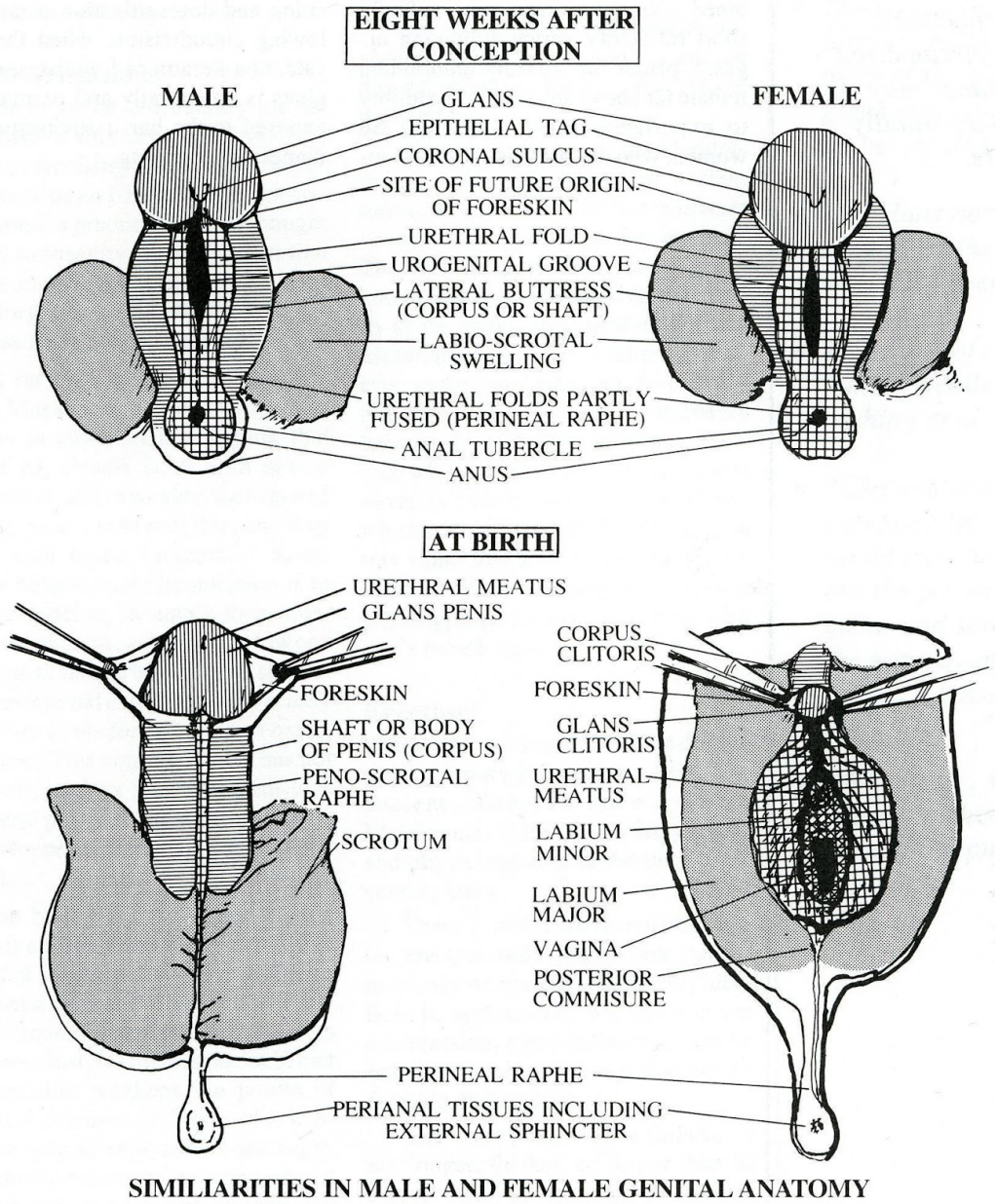
[16] Thorup J, Thorup SC, Ifaoui IBR. Complication rate after circumcision in a paediatric surgical setting should not be neglected. *Dan Med J* 2013; 60(8): A4681.

[17] Earp, B. D., Allareddy, V., Allareddy, V., & Rotta, A. Factors Associated with Early Deaths Following Neonatal Male Circumcision in the United States, 2001-2010. *Clin Pediatr (Phila)* 2018 57(13):1532-1540.

[18] World Health Organisation. Traditional Male Circumcision Among Young People: A Public Health Perspective in the Context of HIV Prevention. November 2009. https://apps.who.int/iris/bitstream/handle/10665/44247/9789241598910_eng.pdf;sequence=1. [accessed 3.3.2022]

[19] Landers MM. The human prepuce. In Denniston GC, Milos MF, eds. Sexual Mutilations: a Human Tragedy. New York, NY: Plenum Press. 1997, 77-84.

[20] External Genital Changes in Fetus Development. http://www.baby2see.com/gender/external_genitals.html. [accessed 28.1.2020]



SIMILIARITIES IN MALE AND FEMALE GENITAL ANATOMY

Source: Doctors Re-examine Circumcision. Thomas J. Ritter, M.D.and George C. Denniston, M.D. Third Millennium Publishing, Seattle, WA, USA. (2002) p.11-3.

MGC removes the foreskin. The foreskin has physiological functions. The foreskin is a complex structure covering the penile head (glans) and performing a variety of sexual, immunological, and protective functions. With a total adult surface area of 30-50 cm^2 [21] [22]

[21] Kigozi G, Wawer M, Ssettuba A, et al. Foreskin surface area and HIV acquisition in Rakai, Uganda (size matters). AIDS. 2009 23(16):2209-2213.

[22] Werker PM, Terng AS, Kon M. The prepuce free flap: dissection of feasibility study and clinical application of a super-thin new flap. Plast Reconstr Surg. 1998 102(4):1075-1082.

and dense innervation,[23] the foreskin is highly touch-sensitive tissue, shown in independent studies to be the most sensitive tissue to light touch on the penis.[24] Its contractible dartos muscle fibres exclude contaminants,[25] while its mucous surface provides a second, immunological layer of protection.[26] [27] The foreskin keeps the glans moist and facilitates a gliding action promoting pleasurable sexual sensations.[28] [29] [30] [31]

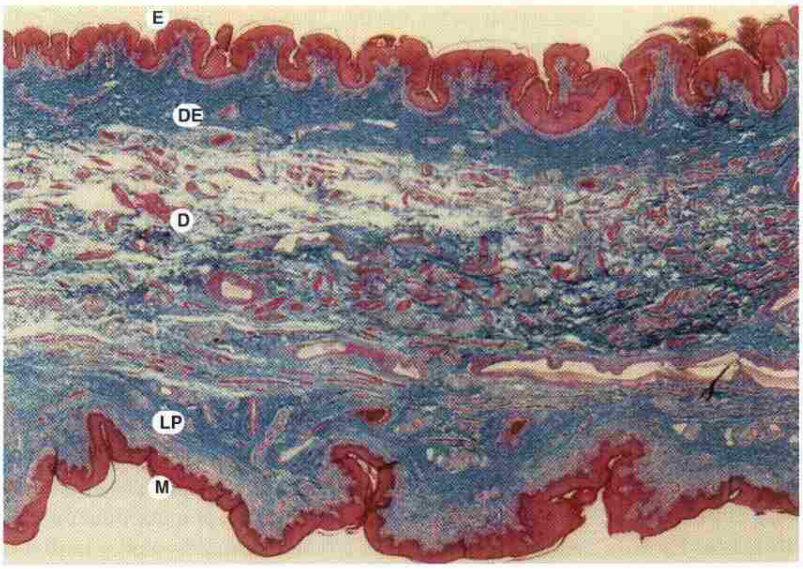


Fig. 8. Male prepuce with five layers. Mucosa (M), lamina propria (LP), dartos muscle (D), dermis (DE) and glabrous outer epithelium (E). Note there are more black elastic fibres in the dermis than in the mucosal lamina propria. Elastin trichrome ×25.

The prepuce *in a cross-sectional slide. The foreskin is a unique, densely nerve-laden genital structure with sexual, immunological and protective functions constituting up to one-half of the penile skin system.*[32]

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[23] McGrath K. Anatomy of the Penis: Penile and Foreskin Neurology. Senior Lecturer in Pathology, Faculty of Health, Auckland University of Technology. 2011. https://www.youtube.com/watch?v=DD2yW7AaZFw&t=7s . [accessed 28.1.2020]

[24] For a review and discussion of the primary studies, see Earp BD. Infant circumcision and adult penile sensitivity: implications for sexual experience.Trends in Urology & Men's Health. 2016 7(4):17-21.

[25] Jefferson G.The peripenic muscle; some observations on anatomy of phimosis. Surg Gynecol Obstet. 1916 23(2):177-181.

[26] Fleiss PM, Hodges FM, Van Howe RS. Immunological functions of the human prepuce. Sex Transm Infect. 1998 74(5):364-367.

[27] Simpson ET, Barraclough P. The management of the paediatric foreskin. Aust Fam Physician. 1998 27(5):381-383.

[28] Landers MM. The human prepuce. In Denniston GC, Milos MF, eds. Sexual Mutilations a Human Tragedy. New York, NY: Plenum Press. 1997, 77-84.

[29] Cold CJ and Taylor JR. The prepuce. Brit J Urol Intl. 1999 83(S1):34-44.

[30] Taves D. The intromission function of the foreskin. Med Hypotheses. 2002 59(2):180-182.

[31] Earp BD and Darby R. Circumcision, sexual experience, and harm. Univ of Penn J Intl Law, 2017 37(2). http://pennjil.com/2017-penn-jil-online-symposium-circumcision-in-germany/ [accessed 28.1.2020]

[32] Cold CJ and Taylor JR. The prepuce. Brit J Urol Intl. 1999 83(S1):34-44.

MGC upon children — the removal of a boy's foreskin in the absence of a valid medical indication — is an unnecessary surgery that causes pain, permanently alters the penis, typically leaving a visible scar around its circumference, and needlessly exposes a healthy child to iatrogenic (physician-caused) injury and risk of additional short- and long-term side effects.[33] Historical notions of prophylactic childhood circumcision for alleged medical benefits have become obsolete in view of modern advances in conservative (non-invasive) prevention and treatment of (rare) foreskin pathology.[34] Although statistical health benefits continue to be asserted for male circumcision, the main data cited in support of these benefits (such as a reduced risk of female-to-male transmission of HIV in areas with a low prevalence of male circumcision and a high rate of such heterosexual transmission) are from studies of adult, voluntary circumcision, which raises fewer ethical issues. If a similar risk reduction were demonstrated for adult, voluntary labiaplasty of women, it is inconceivable that these data would be cited as a justification for the non-consensual labiaplasty of minor girls. This shows that the "health benefits" argument, even if the claims of proponents of circumcision are accepted, cannot be a valid basis for cutting the genitals of a non-consenting child.[35] Growing numbers of adult males—as well as transgender women— express distress and experience emotional/psychological harm from being subjected irreversibly to a procedure before they could decline.[36] [37]

The permanent loss of a body part violates the physical integrity of a non-consenting person. Importantly, therefore, MGC is in and of itself the principal harm, regardless of whether there are additional surgical complications.[38] [39] Insofar as the tissue removed by circumcision has any nonzero value to the individual, its removal in itself is a harm.

Medical and Paediatric Associations Oppose MGC

Of the numerous medical associations worldwide with current formal positions on non-voluntary childhood MGC, none identified a substantive therapeutic benefit from the operation that could be said to outweigh the risks. The exceptional policy by the

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[33] Hutson JM. Circumcision: a surgeon's perspective. J Med Ethics. 2004 30(3):238-240.

[34] Frisch M, Aigrain Y, Barauskas Y, et al. Cultural bias in the AAP's technical report and policy statement on male circumcision. Pediatrics. 2013 131(4):796-800.

[35] Earp, BD. Male or female genital cutting: why 'health benefits' are morally irrelevant. Journal of Medical Ethics. 2021 47(12): e92-e92.

[36] Hammond T and Carmack A. Long-term adverse outcomes from neonatal circumcision reported in a survey of 1,008 men: an overview of health and human rights implications. Int J Hum Rights. 2017 21(2):189-218.

[37] Watson LR. Unspeakable Mutilations: Circumcised Men Speak Out. 2014 Ashburton, New Zealand.

[38] Earp BD and Darby R. Circumcision, sexual experience, and harm. Univ of Penn J Intl Law, 2017 37(2). http://pennjil.com/2017-penn-jil-online-symposium-circumcision-in-germany/ [accessed 28.1.2020]

[39] Darby R. Risks, benefits, complications and harms: neglected factors in the current debate on non-therapeutic circumcision. Kennedy Inst of Ethics J. 2015 25(1):1-34.

American Academy of Pediatrics from 2012, claiming the contrary, has since expired following international criticism.[40] All other international medical societies of comparable standing have identified significant risks involved in cutting procedures. Many have expressly opposed MGC on the basis that it represents a violation of the rights of the patient and medical ethics in any event. The Appendix provides a précis of the positions of Australian, British, Canadian, Danish, Dutch, Finnish, German and United States medical associations as to MGC.

Intrinsic Harms of Genital Cutting

The genital cutting of boys and intersex minors involves both intrinsic harms and attendant harms. The intrinsic harms – central to any cutting event – are the permanent deprivation of, or damage to, a functional body part, and permanent scarring of the genitals. This, INGOCGA notes, is the primary human rights violation, and occurs in every case of non-therapeutic genital cutting, whether its mode of execution was surgically professional or not, and whether or not other attendant harms of cutting (whether long-term or transient) eventuate.

Attendant Harms of Genital Cutting

Attendant harms of child genital cutting, of general application to all children yet here particularly referring to boys, include trauma, pain, and complications as set out below.

Trauma and Pain: It is indisputable that older children experience pain and trauma with genital cutting, as most survivors of FGC and childhood/adolescent IGC attest. There can equally no longer be any dispute that babies and young children experience pain and trauma, including the pain of genital cutting and medical surgery.[41] [42] Topical anaesthesia cannot adequately protect an infant from pain when being genitally cut,[43] [44] and general anaesthetics are to be avoided due to high risks.[45] Many practitioners still do not use any form of pain control, and yet Lander et al. showed that "every newborn in the [non-

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[40] The American Academy of Pediatrics male circumcision policy statement expired in 2017.

[41] Anand, KJS and Hickey PR. Pain and its Effects on the Human Neonate and Fetus. New Engl J Med 1987; 317:1321-1329.

[42] Taddio A, Koren G, et al. Effect of neonatal circumcision on pain response during subsequent routine vaccination. Lancet, 1997 Mar;349: 599-603.

[43] Van Howe RS. Anaesthesia for circumcision: a review of the literature. In Denniston GC, Hodges FM, Milos MF, eds. Male and Female Circumcision: Medical, Legal, and Ethical Considerations in Pediatric Practice. New York, NY: Kluwer Academic/Plenum Publishers, 1999, pp.67-98.

[44] Rappaport B, Mellon RD, Simone A, et al. Defining safe use of anesthesia in children. N Engl J Med. 2011 364(15):1387-1390.

[45] Lander J, Brady-Fryer B, Metcalfe JB, et al. Comparison of ring block, dorsal penile nerve block, and topical anesthesia for neonatal circumcision: a randomized controlled trial. JAMA. 1997 278(24):2161.

anesthetised] placebo group exhibited extreme distress during and following circumcision."[46]

Complications: Complications of MGC occur even when performed in a sterile clinical setting:

> Post-circumcision bleeding in patients with coagulation disorders can be significant and sometimes even fatal. Other serious early complications include chordee, iatrogenic hypospadias, glanular necrosis, and glanular amputation. Late complications include epidermal inclusion cysts, pain neuromas, suture sinus tracts, chordee, inadequate skin removal resulting in redundant foreskin, penile adhesions, phimosis, buried penis, urethrocutaneous fistulae, meatitis, and meatal stenosis.[47]

As noted earlier, even in the USA where the prevalence of routine MGC has been over 80% until recent years, and where it is usually performed in a clinical setting, the AAP Task Force on Circumcision has consistently acknowledged that the true incidence of complications after newborn circumcision is unknown.[48] [49] [50]

Even precise prevalence of MGC is unknown largely due to the fact that there is no pro-active, systematic collection of prevalence, mortality or short or long-term morbidity data by any nation in the world.

Sexual harms: Since MGC removes from one-third to one-half of the highly innervated penile skin-system, as well as the majority of the penis's specialised erotogenic nerve endings,[51] [52] [53] [54] it inevitably affects male sexual response: at minimum, all sexual activities and sensations involving manipulation of the foreskin are precluded by MGC, and the glans penis may become tougher, with less or changed sensitivity, due to chronic

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[46] Ibid.

[47] Krill AJ, Palmer LS, Palmer JS. Complications of circumcision. Sci World J. 2011 (11):2462.

[48] American Academy of Pediatrics Task Force on Circumcision. Report of the AAP Task Force on Circumcision. Pediatrics. 1989 84(4):388-391.

[49] American Academy of Pediatrics Task Force on Circumcision. Circumcision Policy Statement. Pediatrics. 1999 103(3):686-693.

[50] American Academy of Pediatrics Task Force on Circumcision. Technical Report: Male Circumcision. Pediatrics. 2012 130(3):e756-785.

[51] Taylor JR, Lockwood AP, Taylor AJ. The prepuce: Specialized mucosa of the penis and its loss to circumcision. Brit J Urol .1996 77(2):291-295.

[52] Cold CJ and Taylor JR. The prepuce. Brit J Urol Intl. 1999 83(S1):34-44.

[53] Sorrels ML, Snyder JL, Reiss MD, et al. Fine touch pressure thresholds in the adult penis. Brit J Urol Intl. 2007 (99):864-869.

[54] Scott S. Anatomy and Physiology of the Human Prepuce. In Denniston GC, Hodges FM, Milos MF, eds. Male and Female Circumcision: Medical, Legal and Ethical Considerations in Pediatric Practice. Kluwer Academic/Plenum Publishers, New York, 1999, 9-18.

exposure to dryness and fabric.[55] A 2011 study of heterosexual men and women reported that "Circumcision was associated with frequent orgasm difficulties in Danish men and with a range of frequent sexual difficulties in women, notably orgasm difficulties, dyspareunia and a sense of incomplete sexual needs fulfilment."[56] Another found that erectile dysfunction and difficulty in reaching orgasm increased in circumcised men. [57] While a 2013 narrative review by Morris and Krieger purported to show that circumcision does not negatively affect sexual function, substantial methodological flaws render its conclusions unreliable.[58]

Psychological/emotional harms: For some men, MGC has adverse emotional consequences and damages their sense of body image and self-esteem, and hence their sexual functioning. Recent research confirms the existence of a sub-population of men who are distressed by their neonatal circumcisions, due in part to their own lack of consent to the genital modification. This distress and subsequent lower satisfaction with one's circumcision status was found to be associated with worse body image and poor sexual functioning.[59]

Respondents in a survey of over 1,000 men "revealed wide-ranging unhealthy outcomes attributed to newborn circumcision." The poll showed that a substantial subset of circumcised men are adversely impacted by the circumcision. These adverse impacts include a dry or keratinized glans requiring lubricants among 75% of respondents, an insensitive glans among 67% of respondents, and dissatisfaction with one's condition among 77% of respondents.[60] Objective scientific models alone, however, may be insufficient to document the nuances of harm caused by genital cutting. The physical, sexual and emotional consequences of most genital cutting can be subjective, can vary greatly based on each individual's understanding and/or perception of harm[61] with a lack of opportunity for boys and men to recognise or to document adverse consequences.

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[55] Cold CJ and Taylor JR. The prepuce. Brit J Urol Intl. 1999 83(S1):34-44.

[56] Frisch M, Lindholm M, Grønbæk M. Male circumcision and sexual function in men and women: a survey-based, cross-sectional study in Denmark. Int J Epidemiol. 2011 40(5):1367.

[57] Dias J, Freitas R, Amorim R, et al. Adult circumcision and male sexual health: a retrospective analysis. Andrologia. 2014 46(5):459-464.

[58] Morris and Krieger, Does Male Circumcision Affect Sexual Function, Sensitivity, or Satisfaction? - A Systematic Review" Journal of Sexual Medicine 2013 vol 10, 2644-2657. The Morris and Krieger paper does not satisfy the criteria for a valid review as, among other failings, 1) it primarily relies on findings regarding adult circumcision that, moreover, did not use validated survey instruments and 2) the quality ratings of individual studies were assigned by the authors themselves, instead of a non-biased panel of evaluators as required by the quality assessment measure they employed.

[59] Bossio JA and Pukall CF. Attitudes about one's circumcision status is more important than actual circumcision status for men's body image and sexual functioning. Arch Sex Behav. 2018 47(3):771-781.

[60] Hammond T and Carmack A, op cit., at 189, 200.

[61] Earp BD. Gender, Genital Alteration, and Beliefs About Bodily Harm. Lecture delivered at the 23rd Congress of the World Association for Sexual Health, Prague, 29.05.2017. https://www.youtube.com/watch?v=SB-2aQoTQeA [accessed 28.1.2020]

IV ETHICS OF MEDICALLY UNNECESSARY GENITAL SURGERY ON CHILDREN AND ISSUES OF CONSENT

Contemporary principles of medical ethics do not support consent by proxy to medically unnecessary surgeries, particularly if the intervention is on a healthy child and would irreversibly change normal anatomy or would adversely affect functions of a non-diseased organ.[62] As one of us (Svoboda) has argued, ethical justification for the procedure is difficult to demonstrate unless a clear therapeutic basis exists to outweigh the permanent loss of a body part, as well as the pain, risk of complications, and sexual harm that may ensue.[63]

MGC itself conflicts with each of the four principal rules of medical ethics.

Patient Autonomy

Autonomy is widely regarded as the most fundamental principle of medical ethics.[64] MGC irretrievably removes from a child's body a body part of special significance,[65] violating his future autonomy. By contrast, as the Center for Disease Control and Prevention (CDC) observes, patient autonomy is respected by deferring cutting to adulthood: "delaying male circumcision until adolescence or adulthood obviates concerns about violation of autonomy."[66]

Non-Maleficence ("Do No Harm")

The principle of non-maleficence bars subjecting a patient to any surgical harm that is not medically necessary. Since, as discussed above, MGC causes harm to a healthy child without medical justification, it fails the non-maleficence requirement.

Two further ethical principles reinforce this conclusion. First, physicians are not permitted to carry out surgeries on children that lack sound medical basis, and this

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[62] Gillon R. Ethics needs principles—four can encompass the rest—and respect for autonomy should be "first among equals." J Med Ethics. 2003 29(5):307-312.

[63] See generally Svoboda JS. Nontherapeutic Circumcision of Minors as an Ethically Problematic Form of Iatrogenic Injury. AMA Journal of Ethics. 2017 19(8):815-824.

[64] Tasmania Law Reform Institute. Non-Therapeutic Male Circumcision. August 2012. Hobart, Tasmania, Australia.

[65] Earp BD and Darby R. Circumcision, autonomy and public health. Pub Health Ethics. 2018 12(1): 64-81 https://doi.org/10.1093/phe/phx024 [accessed 2.1.2020]

[66] U.S. Centers for Disease Control and Prevention Division of HIV/AIDS Prevention. Recommendations for providers of counseling to male patients and parents regarding male circumcision and the prevention of HIV infection, STIs, and other health outcomes. 2014, 39-40.

injunction is all the more relevant if the proposed procedure would remove healthy tissue from the patient. In itself, as domestic courts regularly state, unnecessary surgery that is carried out without lawful consent, no matter how well it may be performed, "in and of itself constitutes harm."[67] Second, demands from parents or guardians are not determinative of whether a physician may lawfully carry out any surgical procedure: the physician must exercise their own independent professional judgment. A physician owes a duty of care to the patient alone.[68]

Beneficence ("Do Good")

In determining whether medically unnecessary circumcision of boys constitutes "doing good," ethicist Akim McMath writes, "the child will have an interest in living according to his own values, which may not reflect those of his parents... Only the child himself, when he is older, can be certain of his values."[69]

Prevailing opinion among world medical authorities (see Appendix) is that the risks and harms of MGC, FGC, and intersex genital cutting (IGC) are not outweighed by tangible benefits. There are no valid medical indications for prophylactic circumcision.[70] Accordingly, infant circumcision fails to meet the ethical requirement of beneficence.

Justice

Physicians have an ethical duty to treat patients justly and fairly. It is unjust that boys, unlike girls, have no effective protection from unnecessary genital cutting. Justice requires preserving all children's right to an open future[71] and to normal, unaltered genitals. Danish research[72] published in 2016 shows that the overwhelming majority (more than 99.5 per cent) of genitally intact (not circumcised) boys will not require a circumcision for medical reasons before age 18. From an ethical perspective, CGC cannot be differentiated by gender. As Kristen Bell comments, "Each operation involves

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[67] California Court of Appeal, Second District, Division 3. Tortorella v. Castro. No. B184043. 2006; and High Court of Australia. Department of Health and Community Services v JWB and SMB (Marion's Case). 1992 HCA 15, 175 CLR 218 (6 May 1992).

[68] American Academy of Pediatrics Committee on Bioethics. Informed Consent, Parental Permission, and Assent in Pediatric Practice. Pediatrics. 1995 959(2):314-317.

[69] McMath A. Infant Male Circumcision and the Autonomy of the Child: Two Ethical Questions. J Med Ethics. 2015 41(8):687-690, 689.

[70] British Medical Association. The law & ethics of male circumcision: guidance for doctors. J Med Ethics. 2004 30(3):259-263.

[71] Darby RJ. The child's right to an open future: is the principle applicable to non-therapeutic circumcision? J Med Ethics. 2013 39(7):463-468.

[72] Sneppen I and Thorup J. Foreskin morbidity in uncircumcised males. Pediatrics. 2016 137(5):e20154340.

an unnecessary bodily violation that entails the removal of healthy tissue without the informed consent of the person involved."[73]

Accordingly, physicians cannot perform cutting procedures on healthy boys while satisfying the ethical requirement of justice.[74]

We support growing international consensus opinion that laws to protect children from genital cutting should be gender-blind. Since this is not currently the case in most jurisdictions, then only some children are protected from significant harm. That the protections afforded to children rest entirely on the child's biological sex represents overt sex discrimination of a kind that would be difficult to imagine being tolerated in any other context. Selective protections based on biological sex also fail to account for transgender people.

Whereas it is recognised that females have suffered the large majority of historical sex discrimination, in the context of CGC, millions of biologically male children in the world are selectively subject to gross violations of their physical integrity whilst strenuous attempts are made to protect biologically female children from even less severe forms of cutting. A recent case in the USA illustrated the problem. The 2018 case involved the prosecution of a doctor alleged to have perpetrated the crime of 'FGM' on several children. The doctor was prosecuted under federal law for performing a 'ritual nick' of the clitoral prepuce for explicitly religious reasons. A federal judge, noting that a sex-specific law was not logically supportable on grounds of gender non-discrimination against children, struck down the FGM law as unconstitutional on federal grounds. Some authors argue that anti-FGM laws in other countries risk being struck down as similar inconsistencies are noted elsewhere.[75] [76] Universal laws to protect all children from all forms of medically unnecessary genital cutting would help to prevent such perverse consequences and to protect all children from violations of their genital autonomy.

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[73] Bell K. Genital Cutting and Western Discourses on Sexuality. Med Anthrop Qtrly. 2005 19(2):125–148.

[74] In the matter of B and G (Children) (No 2), [2015] EWFC 3 Per Munby J, President Family Division, High Court, UK at ¶¶59-61 . https://www.judiciary.gov.uk/wp-content/uploads/2015/01/BandG_2_.pdf [accessed 2.1.2020].

[75] Earp, BD. Why was the US ban on 'female genital mutilation ruled unconstitutional, and what does this have to do with male circumcision?. Ethics, medicine and public health, 2020 15, 100533.

[76] Svoboda JS. Gender-Equal Protection of Genital Autonomy: Recent Legal Developments. Int'l J Children's Rights (forthcoming).

V HUMAN RIGHTS LAW: MEDICALLY UNNECESSARY GENITAL SURGERY

Summary of International Human Rights instruments

All medically unnecessary CGC violates several provisions of the CRC and of the International Covenant on Civil and Political Rights (ICCPR). As one of us has shown, medically unnecessary MGC also qualifies as a breach of international law.[77]

Official acknowledgement of MGC as a human rights violation is growing.

1991: Germany awarded political asylum to a Turkish man based on his fear of enforced circumcision:

> There may be... no doubt that a circumcision which has taken place against the will of the person affected shows...a violation of his physical and psychological integrity which is of significance to asylum.[78]

1994: United Nations reports recognised sexual assault on males, including circumcision, as torture and a human rights violation.[79] [80]

2001: the CRC expressed its concerns with health risks linked to MGC in Lesotho.[81] The U.N. Security Council, in the context of the war in the former Yugoslavia, condemned the forced circumcision of males as a human rights abuse.[82] The abuse in this case concerned adults, but there is no reason why such circumcisions would not be abuses when performed on children – indeed, given the helplessness of each child, the abuse could be considered greater.

2002: Attorneys for the Rights of the Child and the National Organization of Circumcision Information Resource Centers (NOCIRC, now Genital Autonomy - America) presented to the Sub-Commission on the Promotion and Protection of Human Rights a document

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[77] Svoboda JS. Educating the United Nations about Male Circumcision. In Denniston GC, Milos MF, and Hodges FM, eds. Flesh and Blood: Perspectives on the Problem of Circumcision in Contemporary Society. New York: Kluwer Academic/Plenum Publishers, 2004:89-108.

[78] Federal Administrative Court Judgment. BVerwG, Bundesverwaltungsgericht 107 DVBI 828-830, (5 Nov 1991).

[79] United Nations Commission of Experts' Final Report; 1996-2001. UN Doc. No. S/1994/674 (1994), Section IV.F.

[80] United Nations. Fourth Report on War Crimes in the Former Yugoslavia (Part II): Torture of Prisoners 3.

[81] United Nations Committee on the Rights of the Child, twenty-sixth session. Concluding observations of the Committee on the Rights of the Child: Lesotho; 1996-2001. [cited 27 February 2002]. UN Doc No. CRC/C/15/Add. 147 (February 2001) para. 43.

[82] U.N. Security Council. Commission of Experts' Final Report on the former Yugoslavia (27 May 1994) doc.S/1994/674/part IV, sect. F.

incorporated into official UN records affirming male circumcision as a human rights violation.[83]

2002: the CRC in its Consideration of the Initial Report submitted by Guinea-Bissau under Article 44, reported that "the circumcision of boys aged between 9 and 13 years and female genital mutilation in girls aged between 7 and 12 years ...are the most cruel and harmful practices"[84] of the traditional practices to be eliminated in that region.

Further, in consequence of their elaboration of the right to bodily integrity, the right to freedom of religion, the right to the highest attainable standard of health, the right to protection against torture, the right to non-discrimination on the grounds of sex, and specific rights pertinent to children, numerous international human rights treaties implicitly, and sometimes explicitly, prohibit MGC.

Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights (UDHR) safeguards privacy rights (Article 12), guarantees that "everyone has the right to life, liberty and security of the person" (Article 3), and is widely, though not universally, interpreted to prohibit interference with physical integrity. Moreover, Article 2 declares the universal principle of non-discrimination. These articles are all applicable to MGC.

International Covenant on Civil and Political Rights (ICCPR)

Similar language to UDHR Article 2 requiring non-discrimination appears in Article 24.1 of the International Covenant on Civil and Political Rights (ICCPR). The ICCPR also prohibits discrimination on the basis of age and applies with equal force to children and adults, to boys as well as girls and children with intersex characteristics. Article 24.1 thus provides that every child shall have, without any discrimination as to, among other things, sex, the right to such measures of protection as are required by his status as a minor, on the part of his family, society, and the state.

Convention on the Rights of the Child ("Convention")

The case against unnecessary MGC of children is reinforced by the Convention. The Convention expressly safeguards the child's right to autonomy and bodily integrity.

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[83] Human Rights Documents. First item listed at https://ap.ohchr.org/documents/alldocs.aspx?doc_id=7400 [accessed 28.1.2020]

[84] CRC "Consideration of Initial Report - Guinea-Bissau" [26 July 2001] document CRC/C/3/Add.63, para 52.

Several Articles of the Convention support the proposition that MGC breaches fundamental human rights.

Article 2 provides that the rights of girls, boys and children with intersex characteristics are equal without discrimination irrespective of their sex.

Article 6(2) safeguards the survival and development of the child.

Article 12 assures to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 14 gives each child the right to freedom of conscience, religion and belief, and notes the rights of parents to "provide direction." [See below for more detail on this article].

Article 16 bars arbitrary or unlawful interference with a child's privacy.

Article 19.1 provides that states shall take all appropriate measures "to protect the child from all forms of physical or mental 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 who has the care of the child."

Article 24.1 protects the child's right to enjoy the highest attainable standard of health. This right must include the right not to be exposed to medically unnecessary risks.

Article 24.2 requires member states to pursue full implementation of the child's right to enjoy the highest attainable health standard and to take appropriate measures to, among other things, diminish infant and child mortality.

Article 24.3 requires states to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

Article 34 of the Convention on the Rights of the Child requires states to undertake to protect the child from all forms of sexual exploitation and sexual abuse.

Article 36 obliges states to protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37(a) forbids subjecting any child to torture or other cruel, inhuman or degrading treatment or punishment.

Article 37(b) of the Convention on the Rights of the Child provides, "No child shall be deprived of his or her liberty unlawfully or arbitrarily."

A Closer Look At Convention Article 24 Including Article 24.3 – "Traditional Practices Prejudicial to the Health of Children"

Article 24 of the Convention specifically addresses the interaction of health and cultural practice. Article 24.1 obliges state parties to recognise the child's right to enjoy the highest attainable standard of health. This must include the right not to be exposed to medically unnecessary risks. **Article 24.2** requires member states to pursue full implementation of the child's right to enjoy the highest attainable health standard and to take appropriate measures to, among other things, diminish infant and child mortality. Article 24.3 requires states to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."
There is nothing in the text of the Convention, nor in the Preparatory Works, that limits Convention Article 24.3 to female children, or that excludes males or children with intersex characteristics. The express text of 24(3) includes all children. That FGC is one practice clearly within the scope of this Article makes the case for the Article's application to other traditional forms of genital cutting of children stronger still.[85]

UNESCO Universal Declaration on Bioethics

The United Nations Educational, Cultural, and Scientific Organization (UNESCO) Declaration is significant as a statement of minimal acceptable ethical principles in contemporary medicine world-wide. It illustrates how far the practice of MGC stands in discord with minimal ethical standards in any other context.

Article 3 of the Declaration affirms that human rights are at the heart of medical treatment – that *"human dignity, human rights and fundamental freedoms … be fully respected"*.

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[85] Andree Feillard, Lies Marcoes 1998 "Female Circumcision in Indonesia: To "Islamize" in Ceremony or Secrecy" Archipel, volume 56, 1998. L'horizon nousantarien. Mélanges en hommage à Denys Lombard (Volume I) pp. 337-367, https://doi.org/10.3406/arch.1998.3495; Darwin, Muhadjir, Faturochman, Ptranti, Dyah, Basilica, Purwatiningsih, Sri, & Isaac Tri, Octaviatie (2002). "Male and female genital cutting among Yogyakartans and Madurans". Center for Population and Policy Studies (CPPS), Gadjah Mada University; Meiwita Budiharsana, Lila Amaliah, Budi Utomo and Erwinia, 2003 "Female Circumcision in Indonesia – Extent, Implications and Possible Interventions to Uphold Women's Health Rights" Population Council Research Report, Jakarta, September 2003; Mary Ainslie 2015 "The 2009 Malaysian Female Circumcision Fatwa: State ownership of Islam and the current impasse",," Women's Studies International Forum 52 (2015) 1–9; Octaiv L, "Circumcision and Women's Idntity in Indonesia" Studia Islamika – Indonesian Journal for Islamic Studies – Vol 21, no 3, 2014 pp.419-455.

The Declaration is clear that individual rights to bodily integrity are unambiguously superior to any scientific or social interest: *"the interests and welfare of the individual should have **priority** over the sole interest of science or society"* (Art 3(2)).

Article 6(1) requires meaningful consent as a minimal pre-condition for any therapeutic procedure. Further, Article 7 requires that *"special protection is to be given to persons who do not have the capacity to consent"*. Article 8 amplifies this by insisting that *"in … medical practice and associated technologies, human vulnerability should be taken into account. **Individuals and groups of special vulnerability should be protected and the personal integrity of such individuals respected**"*.[86]

The disparity between these principles, which represent international consensus, and the practice of MGC is major. Not only are male infants, who cannot consent and are exceptionally vulnerable, not being offered any additional protection as to their autonomy rights as required (Arts 7 and 8); they are being denied even the basic minimum that a non-vulnerable adult would receive – namely of protection from interventions without free, informed, and prior consent, withdrawable at will (Art 6).

VI CONCLUSION AND SUMMARY

A growing movement of scholars, human rights campaigners, and individuals affected by childhood genital cutting asserts that all children, regardless of sex or gender, should be protected from such intimate violations of their bodies and rights.[87] [88]

As detailed above, all medically unnecessary genital cutting of children is a breach of the child's right under the Convention to protection from all forms of violence (Article 19), the elimination of traditional practices harmful to children (Article 24.3) and the child's own right to freedom of conscience, belief and religion (Article 11).

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[86] UNESCO Universal Declaration on Bioethics and Human Rights. https://en.unesco.org/themes/ethics-science-and-technology/bioethics-and-human-rights [accessed 1.9.2021].

[87] Brussels Collaboration on Bodily Integrity. Medically unnecessary genital cutting and the rights of the child: moving toward consensus. American J of Bioeth, 2019 19: 17–28.

[88] Townsend KG. Defending an inclusive right to genital and bodily integrity for children. IJIR: Your Sexual Medicine Journal 2021, in press, at <https://www.nature.com/articles/s41443-021-00503-x> (last visited January 21, 2022).

The International NGO Council on Genital Autonomy notes that the Committee has previously in the Concluding Observations to the 2nd-4th Periodic Reviews of Israel expressed concerns about male circumcision.[89]

We now know that MGC provides no benefits sufficient to justify it under normal circumstances. Removing healthy tissue from non-consenting minors in the absence of a relevant medical emergency conflicts with widely accepted ethical norms as well as with several Convention and ICCPR articles.

VII RECOMMENDATIONS

WHEREAS the Committee has previously with the Elimination of All Forms of Discrimination Against Women (EDAW) Committee in Joint General Recommendation/General Comment No.18 recognised that FGC of all types is a breach of the child's rights to bodily integrity, to protection from violence, and other rights, and has identified the criteria that constitute "harmful traditional practices" for the purposes of Article 24.3,

AND WHEREAS the Committee has previously in the Concluding Observations to the 2nd-4th Periodic Reviews of Israel recognised that medically unnecessary genital cutting of male children is a "harmful traditional practice,"[90]

AND WHEREAS the Committee has in Concluding Observations to Switzerland, Spain and others identified medically unnecessary genital cutting of intersex boys and girls as violence against children,

AND WHEREAS the principle of anti-discrimination on the grounds of the sex, gender, culture, ethnicity and religious belief of children is an infringement of Article 2 of the Convention and of similar prohibitions in major human rights instruments including the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights, the Convention on the Elimination of Discrimination Against Women and the Yogyakarta Principles,

[89] CRC Concluding Observations on 2nd – 4th periodic reports of Israel, 14 June 2013, UN Doc CRC/C/ISR/CO/2-4.

[90] CRC Concluding Observations on 2nd – 4th periodic reports of Israel, 14 June 2013, UN Doc CRC/C/ISR/CO/2-4.

AND WHEREAS the International NGO Council on Violence against Children has identified FGC, IGC and MGC as harmful traditional practices based on tradition, culture, religion or superstition,[91]

THEREFORE, the International NGO Council on Genital Autonomy respectfully calls on the CRC to adopt the following recommendations:

CRC GENERAL COMMENT ON CHILD GENITAL CUTTING (CGC)

1. That in consultation with the SRSG on Violence Against Children, with the SRSG on Torture, with the Committee for EDAW and with NGOs concerned with medically unnecessary genital cutting of children, the Committee develop a "General Comment on Child Genital Cutting" for interpretation of the Convention for the information and guidance of Member States when submitting Periodic Reviews.

2. That the Committee request the SRSG on Violence Against Children to assist with the formulation of a General Comment on CGC by conducting an inquiry and subsequently by reporting to the Secretary-General on all forms of medically unnecessary genital cutting of children and means to eradicate these practices.

CRC COMMITTEE RESOLUTIONS ON CGC

3. That the Committee resolve as follows:

3.1 That medically unnecessary FGC and MGC and IGC all meet the criteria for harmful practices contained in Heading V Paragraph 16 of the "Joint General Recommendation/General Comment No.18 of the Committee on the Elimination of Discrimination against Women/Committee on the Rights of Children on harmful practices," 14 Nov 2014.[92]

3.2 That all medically unnecessary genital cutting of children is a breach of the child's right to protection from all forms of violence (Article 19), the elimination of traditional practices harmful to children (Article 24.3) and the child's own right to freedom of conscience, belief and religion (Article 11).

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[91] International NGO Council on Violence Against Children. Op cit.

[92] United Nations Document Number CEDAW/C/GC/31-CRC/C/GC/18.

3.3 That Member States who permit MGC whilst taking steps to eliminate FGC and IGC breach the male child's right to freedom from discrimination on the grounds of sex, gender, religious opinion, social origin, parentage or other status (Article 2).

DATA COLLECTION

4. That the Committee in session with each Member State and in its Concluding Observations to Member States following periodic or other review recommend that each Member State:

4.1 Accord priority to the regular collection, analysis, dissemination and use of quantitative and qualitative data on medically unnecessary genital cutting disaggregated by sex, age, geographical location, socioeconomic status, education level and other key factors and ensure that such activities are adequately resourced. Regular data collection systems should be established and/or maintained in the health-care and social services, education and judicial and law enforcement sectors on protection-related issues.[93] Such data should include details of morbidities and mortalities associated with medically unnecessary genital cutting of children.

4.2 Report to the CRC the prevalence of different categories of all forms of non-medically necessary genital surgeries and interventions impacting on the genital autonomy of children in their respective countries, as well as the specific practices related to them, and – keeping in mind the best interests of the child – formulate specific lines of action for their eradication or replacement by non-invasive alternatives.

LEGISLATIVE REFORM

5. That the Committee recommend that States parties to the Conventions adopt or amend legislation with a view to effectively addressing and eliminating CGC and in doing so, ensure:

5.1 That the process of drafting legislation is fully inclusive and participatory. For that purpose, they should conduct targeted advocacy and awareness raising and use

[93] Adapted from CRC General Comment No.18 op cit, para. 39. https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement [accessed 2.2.2020]

social mobilization measures to generate broad public knowledge of and support for the drafting, adoption, dissemination and implementation of the legislation.[94]

5.2 That the legislation is in full compliance with the relevant obligations outlined in the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child and other international human rights standards that prohibit harmful practices and that the legislation takes precedence over customary, traditional or religious laws that allow, condone or prescribe any harmful practice, especially in countries with plural legal systems.[95]

5.3 That the States parties repeal without further delay all legislation that permits harmful practices, including traditional, customary or religious laws and any legislation that accepts the defence of parental preference, belief, religion or culture as a defence or mitigating factor in the commission of medically unnecessary genital cutting of children.[96]

5.4 That a national system of compulsory, accessible and free birth registration is established in order to effectively prevent harmful practices.[97]

5.5 That national human rights institutions mandated to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by parents and children, in a confidential, gender-sensitive and child-friendly manner.[98]

5.6 That it is made mandatory by law for professionals and institutions working for and with children and families to report actual incidents or the risk of such incidents if they have reasonable grounds to believe that a genital cutting event has occurred or may occur. Mandatory reporting responsibilities should ensure the protection of the privacy and confidentiality of those who report.[99]

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[94] Adapted from CRC General Comment No.18 op cit, para. 55(a). https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement [accessed 2.2.2020]

[95] CRC General Comment No.18 op cit, para. 55(b). https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement [accessed 2.2.2020]

[96] Adapted from CRC General Comment No.18 op cit, para. 55(c). https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement [accessed 2.2.2020]

[97] Adapted from CRC General Comment No.18 op cit, para. 55(h). https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement [accessed 2.2.2020]

[98] Adapted from CRC General Comment No.18 op cit, para. 55(h). https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement [accessed 2.2.2020]

[99] Adapted from CRC General Comment No.18 op cit, para. 55(j). https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement [accessed 2.2.2020]

5.7 That legislation establishes jurisdiction over offences of harmful practices that applies to nationals of the State party and habitual residents even when they are committed in a State in which they are not criminalized.[100]

5.8 That legislation and policies relating to immigration and asylum recognise the risk of being subjected to harmful practices or being persecuted as a result of declining to submit to such practices as a ground for granting asylum. Consideration should also be given, on a case-by-case basis, to providing protection to a relative who may be accompanying the child or adult.[101]

5.9 That adults and children subjected to harmful practices have equal access to justice, including by addressing legal and practical barriers to initiating legal proceedings, such as the limitation period, and that the perpetrators and those who aid or condone such practices are held accountable.[102]

5.10 That legislation is passed or policy formulated to withdraw public funding from hospitals and private clinics that perform medically unnecessary genital cutting of children (other than the treatment of morbidities arising from such).

OTHER MEASURES TO ERADICATE CGC

6. That the Committee in discussion and in Concluding Observations recommend that Member States ensure that any efforts undertaken to address medically unnecessary genital cutting of children and to challenge and change underlying social norms be holistic, community-based and founded on a rights-based approach that includes the active participation of all relevant stakeholders, especially children.[103]

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[100] Adapted from CRC General Comment No.18 op cit, para. 55(l). https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement [accessed 2.2.2020]

[101] Adapted from CRC General Comment No.18 op cit, para. 55(m). https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement [accessed 2.2.2020]

[102] Adapted from CRC General Comment No.18 op cit, para. 55(o). https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement [accessed 2.2.2020]

[103] Adapted from CRC General Comment No.18 op cit, para. 60.. https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement [accessed 2.2.2020]

APPENDIX:
STATEMENTS ON MGC FROM WORLD MEDICAL ASSOCIATIONS, CHILDREN'S OMBUDSMEN AND HUMAN RIGHTS OMBUDSMEN

British Medical Association (BMA) (2019)

The BMA Non-therapeutic Male Circumcision (NTMC) Toolkit states that "the evidence concerning health benefit from NTMC is insufficient for this alone to be a justification for boys undergoing circumcision," that "parental preference alone does not constitute sufficient grounds for performing NTMC," and that, "Where a child (with or without competence) refuses NTMC, the BMA cannot envisage a situation in which it will be in a child's best interests to perform circumcision, irrespective of the parents' wishes".

Danish Medical Association (2016)

"Circumcision of boys without a medical indication is ethically unacceptable when the procedure is carried out without informed consent from the person undergoing the surgery. Therefore, circumcision should not be performed before the boy is 18 years old and able to decide whether this is an operation he wants."[104]

Canadian Paediatric Society (CPS) (2015; reaffirmed 2021)

The CPS does not recommend the routine circumcision of every newborn male. It further states that when "medical necessity is not established, ...interventions should be deferred until the individual concerned is able to make their own choices."[105]

United States Centers for Disease Control and Prevention (CDC) Statement (December 2014: "Delaying circumcision until adolescence or adulthood enables the male to participate in - or make - the decision."[106]

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[104] Lægeforeningens politik vedrørende omskæring af drengebørn uden medicinsk indication (2016). Available at https://www.laeger.dk/laegeforeningens-politik-vedroerende-omskaering-afdrengeboern-uden-medicinsk-indikation [accessed 25.8.2021]

[105] http://www.cps.ca/documents/position/circumcision [accessed 28.1.2020]

[106] http://www.cdc.gov/nchhstp/newsroom/docs/factsheets/mc-factsheet-508.pdf [accessed 28.1.2020]

German Association of Paediatricians (BVKJ) (2012)

Boys have the same right to physical integrity as girls under German law, and, regarding medically unnecessary circumcision, parents' right to freedom of religion ends at the point where the child's right to physical integrity is infringed.[107] [108]

American Academy of Pediatrics (AAP) Policy Statement (2012*;* expired as of 2017): "The benefits of newborn male circumcision outweigh the risks." "...health benefits are not great enough to recommend routine circumcision for all newborns..."[109]

AAP Technical Report (2012): "The true incidence of complications after newborn circumcision is unknown." (p. e772). [110]

Royal Dutch Medical Association (KNMG) (2010)

The KNMG states "there is no convincing evidence that circumcision is useful or necessary in terms of prevention or hygiene." It regards the medically unnecessary circumcision of male minors as a violation of physical integrity, and argues that boys should be able to make their own decisions about circumcision.[111]

Royal Australasian College of Physicians (2010)

The RACP states that routine infant circumcision is not warranted in Australia and New Zealand. It argues that cutting children involves physical risks that are undertaken for the sake of merely psychosocial benefits or debatable medical benefits.[112]

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[107] https://www.arclaw.org/news/german-pediatric-association-cites-arc-in-statement-to-parliament-attacking-circumcision [accessed 2.1.2020]

[108] https://www.dgkch.de/menu-dgkch-home/menu-pressestelle/33-pressemitteilung-2012-10 [accessed 2.1.2020]

[109] http://pediatrics.aappublications.org/content/early/2012/08/22/peds.2012-1989 [accessed 28.1.2020]

[110] http://pediatrics.aappublications.org/content/pediatrics/130/3/e756.full.pdf [accessed 28.1.2020]

[111] https://www.bma.org.uk/media/1847/bma-non-therapeutic-male-circumcision-of-children-guidance-2019.pdf [accessed 28.1.2020]

[112] https://www.racp.edu.au/docs/default-source/advocacy-library/circumcision-of-infant-males.pdf [accessed 28.1.2020]