

Under the Convention on the Rights of the Child

M.H.

v

Finland

Communication 23/2017

**Third Party Intervention Submitted to the United Nations
Committee on the Rights of the Child (CRC)**

**Submitted By
The International NGO Council on Genital Autonomy (INGOCGA)**

I INTEREST OF THE INTERVENER

The International NGO Council on Genital Autonomy (INGOCGA) was established in 2016 to promote the consistent application of existing principles that every child is an independent holder of rights and that all children everywhere should be protected from genital cutting that is not medically necessary.

Pursuant to leave granted by the Working Group on Communications of the Committee on the Rights of the Child (Committee), by an electronic mail message dated 29 September 2018, in accordance with Rule 23, “Examination of communications on their merits,” of “Committee Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure,” document number CRC/C/62/3, dated 16 April 2013, and in accordance with Section G, Rules 17-19 of the “Working methods to deal with individual communications received under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure,” adopted by the Committee on 2 October 2015 and revised by the Working Group on communications on 2 June 2017, this third party intervention is submitted by the International NGO Council on Genital Autonomy (INGOCGA).

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 a proper determination of this case.

INGOCGA includes representatives from many nations. INGOCGA works collaboratively with major national and international human rights NGOs. In 2001, an INGOCGA member, J. Steven Svoboda, and Attorneys for the Rights of the Child (ARC) made a presentation to the Sub-Commission for the Promotion and Protection of Human Rights. This was the first and to date is the only known presentation to the UN centrally addressing medically unnecessary genital cutting of male children (MGC) as a human rights violation. More recently, in 2018, INGOCGA prepared and made a general document on MGC as a human rights violation. That same year, INGOCGA also made country-specific submissions on MGC as a human rights violation in Israel and in Canada.

II INTRODUCTION

We write the present third party intervention to address the applicability of human rights documents including the Convention on the Rights of the Child to the current case of *M.H. v Finland*, decided by the Finnish Supreme Court on 31 March 2016 in Judgment Number 768.

For millennia, parents have cut – or engaged others to cut – the genitals of their children, almost always with love, good intentions and the ‘best interests’ of the child in mind. Over the past several decades, however, society has developed an increasing awareness that genital cutting on any child in the absence of a compelling and immediate medical indication (in this paper, “medically unnecessary”) causes harm, is irreversible, and breaches the right of the child to decide for themselves upon reaching an age of consent whether they desire such a procedure.

In 2011 by General Comment 13, the CRC interpreted the words in Article 19(1) “all forms of violence” to permit “no exceptions.”¹ In that same General Comment, the CRC also decided that Article 19 prohibits all forms of harmful practices.² Accordingly, non-consensual, medically unnecessary genital cutting of any child constitutes “a form of violence” and a breach of each child’s rights as a human.

In the 21st Century, it is generally accepted that medically unnecessary cutting of the genitals of a girl, no matter how superficially, and whether in a sterile manner or otherwise, is a grave violation of several of her human rights. This is true regardless of the age of the child, her own personal religious beliefs (if any) or the religious or cultural motivations of her parents and community.

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

¹ General Comment Ibid. para 17.

² Ibid. para 29.

2013: A report by the Special Rapporteur on Torture recognised intersex genital cutting as a potential human rights violation.³

2017: The European Parliament adopted a resolution calling for member States to prevent, ban, and prosecute female genital mutilation/cutting (FGC) and also genital mutilation affecting intersex persons.⁴

Recognition is also growing that male children must also be accorded similar protection to that given to female and intersex children.

In 2012, the 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.⁵

In 2013, the Parliamentary Assembly of the Council of Europe adopted Resolution No. 1952 “Child’s Right to Physical Integrity” and recommended to its own Member States⁶ to research the prevalence and adverse outcomes for all children, not directed to any particular religious or ethnic group or groups.

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.”⁷

The principle of non-discrimination cited in the Universal Declaration on Human Rights (UDHR) has been replicated in other human rights instruments since 1948,⁸ for example, Article 2 of the United Nations Convention on the Rights of the Child (UNCRC).

Human rights principles do not accord different levels of protection to male children than are accorded to female and intersex children. 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 vulnerable male children matter just as much.

Prof. Sara Johnsdotter in a December 2017 talk sums up the need for gender equality as follows:

- Why should girls not enjoy the same opportunities as boys to be incorporated into cultural and religious communities through a ritual involving minor cutting of their genitals?
- Why should boys not have the same legal protection as girls against non-medically motivated alterations of their genitals?⁹

A Word about Religion

The Convention on the Rights of the Child (“the Convention”) safeguards the rights of children, because of their special need for protection from everything else they will experience in life and at their families. The parent is however only authorised by Article 14.2 “to provide direction,” not to impose permanent physical markings on children. In the German context, the Cologne District Court held on 7 May 2012 that the best interests test did not justify the consent of parents to the (Muslim) religious circumcision of a four-year-old boy.¹⁰ There was no consent by the child and, since the child was not old enough to understand the consequences, there was no question of such consent being given. “Consent” by the parents was not capable of justifying the commission of the elements of bodily harm.

³ 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)

⁴ European Parliament. **Resolution 2016/2096(INI)** (14 February 2017) <http://bit.ly/2nXWR8d>.

⁵ NGO Council on Violence Against Children. **Violating Children’s Rights: Harmful traditional practices based on tradition, culture, religion or superstition.** 2012, p.22.

http://srsq.violenceagainstchildren.org/sites/default/files/documents/docs/InCo_Report_15Oct.pdf [accessed: 27.2.2017]

⁶ Council of Europe. **Resolution 1952** (2013) <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20174&lang=en>

⁷ CRC Concluding Observations on 2nd – 4th periodic reports of Israel, 14 June 2013, UN Doc CRC/C/ISR/CO/2-4.

⁸ For example, ICCPR Art 2.1; ICESCR Art 2.1.

⁹ Johnsdotter, S. **International Seminar on FGC: Medicine to Critical Anthropology.** Rome, (24-25 November 2017).

https://www.academia.edu/35343412/Girls_and_Boys_as_Victims_Asymmetries_and_dynamics_in_European_public_discourses_on_genital_modifications_in_children

¹⁰ Landgericht Köln. **Strafsache gegen Dr. K. Wa.** 151 Ns 169/11 [7 May 2012]. <https://adam1cor.files.wordpress.com/2012/06/151-ns-169-11-beschneidung.pdf>.

Although some may believe that religion does arguably justify the procedure, identical language in Article 14.3 of the Convention on the Rights of the Child and Article 18.3 of the ICCPR is clear that one party's rights stop at the boundaries of another person's body. Convention Article 14.3 and ICCPR Article 18.3 provide that a limitation to the parent's freedom of conscience and religion arises where such freedom, if exercised, would result in violating the public safety, order, health, or morals, or the fundamental rights and freedoms of another human being. The unnecessary and irreversible alteration of a non-consenting baby's genitals qualifies as just such a violation. The right of a parent to hold religious beliefs is protected absolutely, but their right to act on those beliefs may conflict with rights of other persons, including their children.

II SCOPE OF THE PROBLEM

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.¹¹ 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. We shall address the most common forms of MGC entailing partial or total removal of the foreskin, commonly referred to in English as circumcision. Appendix 2 is a WHO world map of the incidence of MGC.

Complication rates from medicalised MGC are estimated at about 5%.¹² A new 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.¹³ Applying this estimated death rate to conservative estimates of the global incidence of MGC translates to about 13,000 boys who die each year from 'best case scenario' (i.e., medicalised genital cutting customs).

III MALE FORESKIN ANATOMY AND COMPLICATIONS FROM CIRCUMCISION

Introduction – Children's Genital Development and Anatomy

Male and female genitalia have evolved to work together, optimizing sexual function during sexual activity.¹⁴ 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.

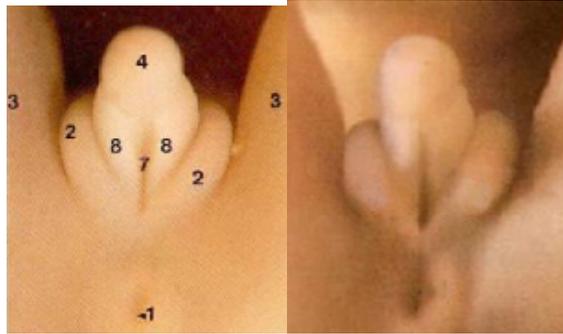
The following diagrams and photographs show the early foetal development of male and female genitalia, and indicate numerous similarities between features in male and female genitalia eight weeks after conception. The below photograph shows that at nine weeks gestation, there are not yet any notable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

¹¹ Hammond, T. **A preliminary poll of men circumcised in infancy or childhood.** *Brit J Urol Intl.* 1999 83(S1):85-92.

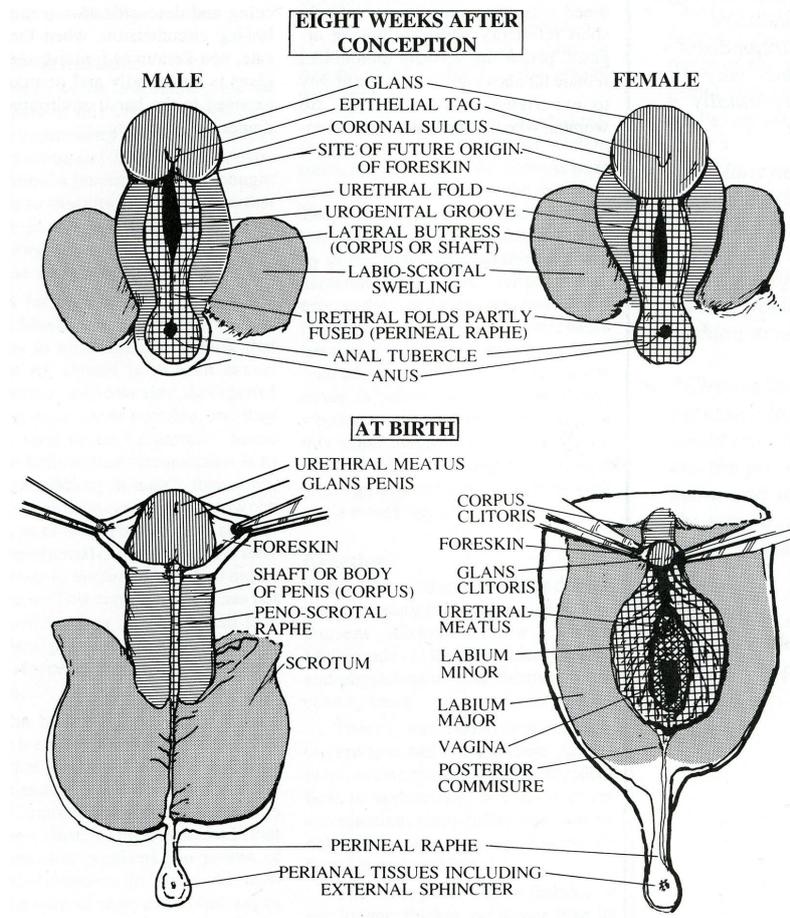
¹² Thorup J, Thorup SC, Ifaoui IBR. Complication rate after circumcision in a paediatric surgical setting should not be neglected. *Dan Med J* 2013; 60(8): A4681.

¹³ Earp, B. D., Allareddy, V., Allareddy, V., & Rotta, A. T. (in press). (2018). Factors associated with early deaths following neonatal male circumcision in the United States, 2001-2010. *Clinical Pediatrics*. In press.

¹⁴ Landers MM. **The human prepuce.** In Denniston GC, Milos MF, eds. *Sexual Mutilations a Human Tragedy*. New York, NY: Plenum Press. 1997, 77-84.



Genital tubercles at 9 weeks gestation; not yet any notable differences (left: Male, right: Female).¹⁵
 1. Anus; 2. Labioscrotal folds; 3. Legs; 4. Genital tuber; 7. Urethral groove; 8. Urogenital folds



SIMILARITIES 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 cm²^{16,17} and dense

¹⁵ External genital changes in Fetus development. http://www.baby2see.com/gender/external_genitals.html. [accessed 03.03.2018]

¹⁶ 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.

¹⁷ 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.

innervation,¹⁸ the foreskin is highly touch-sensitive tissue, shown in independent studies to be the most sensitive tissue to light touch on the penis.¹⁹ Its contractible dartos muscle fibres exclude contaminants,²⁰ while its mucous surface provides a second, immunological layer of protection.^{21,22} The foreskin keeps the glans moist and facilitates a gliding action promoting pleasurable sexual sensations.^{23,24,25,26}

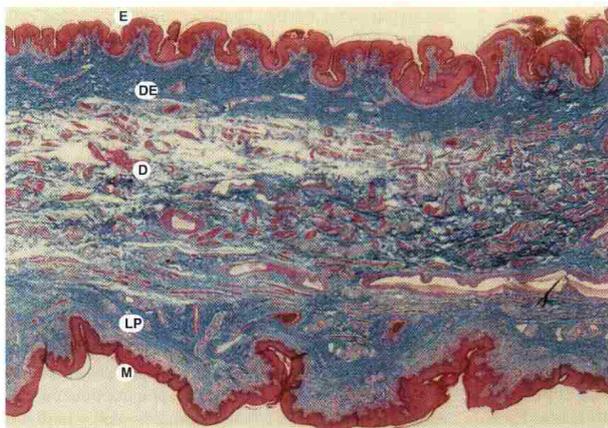


Fig. 8. Male prepuce with five layers. Mucosa (M), lamina propria (LP), dartos muscle (D), dermis (DE) and glabrous outer epithelium (E). Note there are more black elastic fibres in the dermis than in the mucosal lamina propria. Elastin trichrome × 25.

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.²⁷

Medically unnecessary infant/child MGC — the removal of a child'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 risk of iatrogenic (physician-caused) injury.²⁸ Historical notions of prophylactic circumcision for alleged medical "benefits" have become obsolete in view of modern advances in conservative (non-invasive) prevention and treatment of (rare) foreskin pathology.²⁹ Growing numbers of adult males are angry that the procedure was forced on them before they could decline.^{30,31}

Children are by definition our most vulnerable population and deserve to be protected under the CRC's human rights framework from the harms outlined here. If a man assigns value to the foreskin itself — as most non-circumcised men do — the loss of this tissue is in and of itself a harm, regardless of whether there are also additional surgical complications.^{32,33} The 2012 position statement's suggestion that the benefits outweigh the risks is contradicted by the same statement's suggestion that the rate of complications is unknown,³⁴ and additionally has been rejected by the consensus of other medical authorities.³⁵ Many

¹⁸ 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>

¹⁹ 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.

²⁰ Jefferson G. **The peripenic muscle; some observations on anatomy of phimosis.** *Surg Gynecol Obstet.* 1916 23(2):177-181.

²¹ Fleiss PM, Hodges FM, Van Howe RS. **Immunological functions of the human prepuce.** *Sex Transm Infect.* 1998 74(5):364-367.

²² Simpson ET, Barraclough P. **The management of the paediatric foreskin.** *Aust Fam Physician.* 1998 27(5):381-383.

²³ Landers MM. **The human prepuce.** In Denniston GC, Milos MF, eds. *Sexual Mutilations a Human Tragedy.* New York, NY: Plenum Press. 1997, 77-84.

²⁴ Cold CJ and Taylor JR. **The prepuce.** *Brit J Urol Intl.* 1999 83(S1):34-44.

²⁵ Taves D. **The intromission function of the foreskin.** *Med Hypotheses.* 2002 59(2):180-182.

²⁶ 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/>

²⁷ Cold CJ and Taylor JR. **The prepuce.** *Brit J Urol Intl.* 1999 83(S1):34-44.

²⁸ Hutson JM. **Circumcision: a surgeon's perspective.** *J Med Ethics.* 2004 30(3):238-240.

²⁹ 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.

³⁰ 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.

³¹ Watson LR. **Unspeakable Mutilations: Circumcised Men Speak Out.** 2014 Ashburton, New Zealand.

³² 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/>

³³ 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.

³⁴ American Academy of Pediatrics Task Force on Circumcision. **Technical Report: Male Circumcision.** *Pediatrics.* 2012 130(3):e756-785.

paediatric associations around the world have stated that medically unnecessary MGC breaches rights of the child patient (Appendix 1).

Harms of Medically Unnecessary MGC

Other attendant harms of medically unnecessary child genital cutting of general application to all children but with particular reference to boys include:

Trauma and Pain

There can no longer be any dispute that babies and children experience pain and trauma, including the pain of genital mutilation, cutting and medical surgery.³⁶³⁷ It is indisputable that older children also experience pain and trauma with genital cutting, as most survivors of FGC and childhood/adolescent IGC attest. Topical anaesthesia cannot adequately protect an infant from pain when being genitally cut,³⁸³⁹ and general anaesthetics are to be avoided due to high risks.⁴⁰ Many practitioners still do not use any form of pain control, and yet Lander et al. showed that “every newborn in the [non-anesthetised] placebo group exhibited extreme distress during and following circumcision.”⁴¹

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. The latter, of course, requires prompt surgical intervention. 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.⁴²

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 from 1989 to 2012, the AAP Task Force on Circumcision has consistently acknowledged:

The true incidence of complications after newborn circumcision is unknown.⁴³⁴⁴⁴⁵

Precise rates are unknown and, as with complications, this is largely due to the fact that no nation systematically tracks prevalence, morbidity, or mortality.

Harm to Sexuality

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,⁴⁶⁴⁷⁴⁸⁴⁹ it inevitably compromises 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

³⁵ 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.. See also Earp, B. D. & Shaw, D. M. (2017). Cultural bias in American medicine: the case of infant male circumcision. *Journal of Pediatric Ethics*, Vol. 1, No. 1, 8-26.

³⁶ Anand, KJS & Hickey PR. **Pain and its Effects on the Human Neonate and Fetus.** *New Engl J Med* 1987;317:1321-1329.

³⁷ Taddio A, Koren G, et al. **Effect of neonatal circumcision on pain response during subsequent routine vaccination.** *Lancet*, 1997 Mar;349: 599-603.

³⁸ 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.

³⁹ Rappaport B, Mellon RD, Simone A, et al. **Defining safe use of anesthesia in children.** *N Engl J Med*. 2011 364(15):1387-1390.

⁴⁰ 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.

⁴¹ *Ibid.*

⁴² Krill AJ, Palmer LS, Palmer JS. **Complications of circumcision.** *Sci World J*. 2011 (11):2462.

⁴³ American Academy of Pediatrics Task Force on Circumcision. **Report of the AAP Task Force on Circumcision.** *Pediatrics*. 1989 84(4):388-391.

⁴⁴ American Academy of Pediatrics Task Force on Circumcision. **Circumcision Policy Statement.** *Pediatrics*. 1999 103(3):686-693.

⁴⁵ American Academy of Pediatrics Task Force on Circumcision. **Technical Report: Male Circumcision.** *Pediatrics*. 2012 130(3):e756-785.

⁴⁶ 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.

⁴⁷ Cold CJ and Taylor JR. **The prepuce.** *Brit J Urol Intl*. 1999 83(S1):34-44.

⁴⁸ Sorrels ML, Snyder JL, Reiss MD, et al. **Fine touch pressure thresholds in the adult penis.** *Brit J Urol Intl*. 2007 (99):864-869.

⁴⁹ 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.⁵⁰ One recent study of heterosexual men and women reported: “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.”⁵¹ Another found that erectile dysfunction and difficulty in reaching orgasm increased in circumcised men.⁵² Morris and Krieger wrote a highly cited “review study” that purports to show that circumcision does not negatively affect sexuality. 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 Morris and Krieger themselves, instead of a non-biased panel of evaluators as is required by the quality assessment measure they employed.

Emotional/Self-Esteem Harm

MGC has adverse emotional consequences and causes damage to some men's sense of body image and self-esteem, and hence to 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.⁵³

Objective scientific models alone, however, may be insufficient to adequately document the nuances of harm caused by genital cutting, since the physical, sexual and emotional consequences of most genital cutting can be subjective and can vary greatly based on each individual's understanding and/or perception of harm.⁵⁴

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

Medical ethics generally forbids 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.⁵⁵ As one of us (Svoboda) has argued, ethical justification for the procedure is difficult to demonstrate unless a clear medical basis exists to outweigh the pain, risk of complications, and sexual harm that may ensue.⁵⁶

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.⁵⁷ MGC irretrievably removes from a child's body a body part of special significance,⁵⁸ violating his autonomy. On the other hand, the Centers for Disease Control and Prevention (CDC) observes, “Delaying male circumcision until adolescence or adulthood obviates concerns about violation of autonomy.”⁵⁹

Ethicist Brian Earp notes that Jewish filmmaker Francelle Wax, who opposes both FGC and MGC, has argued:

⁵⁰ Cold CJ and Taylor JR. **The prepuce.** *Brit J Urol Intl.* 1999 83(S1):34-44.

⁵¹ Frisch M, Lindholm M, Grønnebæk 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.

⁵² Dias J, Freitas R, Amorim R, et al. **Adult circumcision and male sexual health: a retrospective analysis.** *Andrologia.* 2014 46(5):459-464.

⁵³ 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.

⁵⁴ 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>

⁵⁵ 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.

⁵⁶ 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.

⁵⁷ Tasmania Law Reform Institute. **Non-Therapeutic Male Circumcision.** August 2012. Hobart, Tasmania, Australia.

⁵⁸ Earp BD and Darby R (in press). **Circumcision, autonomy and public health.** *Pub Health Ethics.* 2018 (in press). Available online ahead of print at: https://www.researchgate.net/publication/320853591_Circumcision_autonomy_and_public_health

⁵⁹ 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.

As most people are not [inclined to be] norm-questioning...and be hard-wired to rationalize irreparable harm done to them, or harm they caused to another, it is both unsurprising and un-compelling to note that the majority of people from cutting cultures do not object to having been cut [or see the practice as being unproblematic]. People should be encouraged to look to dissenting minorities, not to the masses, to take their cues about what is ethically problematic.⁶⁰

Non-Maleficence (“Do No Harm”).

The principle of non-maleficence bars subjecting a patient to any harm that is not medically necessary. Since, as discussed above, MGC causes harm to a healthy child and fails to offer equivalent benefits, it fails the non-maleficence requirement.

Two further ethical principles reinforce this conclusion. First, physicians are not permitted to carry out surgery on children that lacks sound medical basis, and this is all the more true if the proposed procedure would remove healthy tissue from the patient. In itself, courts agree, surgery that is not medically required, no matter how well it may be performed, “in and of itself constitutes harm.”⁶¹ Second, physicians cannot ethically practice medicine following orders from parents or guardians but must exercise their own professional judgment. A physician owes a duty to the patient alone.⁶²

Beneficence (“Do Good”).

In determining if 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.”⁶³

Prevailing opinion among world medical authorities is that the risks and harms of MGC, FGC and IGC are not outweighed by tangible benefits (Appendix 1). There are no valid medical indications for prophylactic circumcision.⁶⁴ 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 legal protection from unnecessary genital cutting. Justice requires preserving males’ right to an open future⁶⁵ and to a normal, unaltered penis. Recent Danish research⁶⁶ 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, MGC and FGC look very similar. As Kristen Bell comments, “Each operation involves an unnecessary bodily violation that entails the removal of healthy tissue without the informed consent of the person involved.”⁶⁷

Accordingly, physicians cannot operate on healthy children while satisfying the ethical requirement of justice.⁶⁸

V INTERNATIONAL AND HUMAN RIGHTS LAW: MEDICALLY UNNECESSARY GENITAL SURGERY

Summary of International Human Rights instruments

All medically unnecessary childhood genital cutting (CGC) of male, female, and intersex children violates several provisions of the CRC and of the International Covenant on Civil and Political Rights (ICCPR). Medical knowledge, human rights principles, cultural awareness, and legal standards all evolve. As

⁶⁰ Earp BD. **Female genital mutilation and male circumcision: toward an autonomy-based ethical framework.** *Medicolegal and Bioethics.* 2015 (5):89-104.

⁶¹ 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).

⁶² American Academy of Pediatrics Committee on Bioethics. **Informed Consent, Parental Permission, and Assent in Pediatric Practice.** *Pediatrics.* 1995 959(2):314-317.

⁶³ McMath A. **Infant Male Circumcision and the Autonomy of the Child: Two Ethical Questions.** *J Med Ethics.* 2015 41(8):687-690, 689.

⁶⁴ British Medical Association. **The law & ethics of male circumcision: guidance for doctors.** *J Med Ethics.* 2004 30(3):259-263.

⁶⁵ 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.

⁶⁶ Sneppen I and Thorup J. **Foreskin morbidity in uncircumcised males.** *Pediatrics.* 2016 137(5):e20154340.

⁶⁷ Bell K. **Genital Cutting and Western Discourses on Sexuality.** *Med Anthropol Qtrly.* 2005 19(2):125-148.

⁶⁸ **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

numerous commentators have observed, human rights provisions are “elastic clauses” which expand as standards of international legality and decency evolve and advance.⁶⁹

Basic human rights principles mandate that one violation cannot be ignored or minimised regardless of other violations that may also be occurring. As one of us has shown, medically unnecessary MGC qualifies as a breach of international law.⁷⁰

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.⁷¹

1994: United Nations reports have recognised sexual assault on males, including circumcision, as torture and a human rights violation.⁷²⁷³

2001: the CRC expressed its concerns with health risks linked to MGC in Lesotho.⁷⁴ 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.⁷⁵ 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 incorporated into official UN records affirming male circumcision as a human rights violation.⁷⁶

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”⁷⁷ of the traditional practices to be eliminated in that region.

Several leading human rights treaties prohibit MGC based on such critical rights as the rights of the child, 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, and the right to non-discrimination on the grounds of sex.

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.

⁶⁹ T. Buergenthal. **International Human Rights in a Nutshell**. 1995 West Publishing Co, St. Paul, MN USA:p.99.

⁷⁰ 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.

⁷¹ Federal Administrative Court Judgment. BVerwG, Bundesverwaltungsgericht 107 DVBI 828-830, (5 Nov 1991).

⁷² United Nations Commission of Experts' Final Report; 1996-2001. UN Doc. No. S/1994/674 (1994), Section IV.F.

⁷³ United Nations. **Fourth Report on War Crimes in the Former Yugoslavia (Part II): Torture of Prisoners 3**.

⁷⁴ 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.

⁷⁵ U.N. Security Council. Commission of Experts' Final Report on the former Yugoslavia (27 May 1994) doc.S/1994/674/part IV, sect. F.

⁷⁶ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/140/10/PDF/G0214010.pdf?OpenElement>

⁷⁷ CRC “Consideration of Initial Report - Guinea-Bissau” [26 July 2001] document CRC/C/3/Add.63, para 52.

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

Article 5(a) of the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW)⁷⁸ addresses the adverse impact of the maltreatment of girls and women, namely that practices designed to promote gender stereotypes are thought to promote the superior social position of boys and men. All CGC is one such practice. For the women and men who perform it and the children who undergo it, particularly as a “rite of passage” whether religious or cultural, it reinforces binary and masculinist stereotypes of toughness, ruthlessness, power, and cruelty that negatively impact both women and girls in society.

Convention on the Rights of the Child (the 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. 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.” We look at this article in more detail below.
- **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** There is nothing in the text of the Convention, nor in the Preparatory Works, that limits Convention Article 24.3 to female children or excludes males and children with intersex characteristics. The fact that some, but not all, the drafters of the Convention on the Rights of the Child may have had in mind FGC and not MGC as one practice to be addressed by this Article is not determinative of its interpretation so as to exclude children other than girls.⁷⁹
- **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.”

⁷⁸ CEDAW, Article 5(a). To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary 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.

⁷⁹ Commission on Human Rights. **Report of the Working Group on a Draft Convention on the Rights of the Child**. U.N. Doc. No. E/CN.4/1987/25: 8-10.

VI CONCLUSION AND SUMMARY

A growing movement of scholars, human rights campaigners, and individuals affected by childhood genital cutting assert that all children, regardless of sex or gender, should be protected from such intimate violations of their bodies and rights.⁸⁰

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).

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.⁸¹

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

VII RECOMMENDATION

That the Committee find that the Convention and other applicable human rights documents support guilty findings in the case of *M.H. v Finland* due to the human rights violations committed by the defendants.

⁸⁰ Earp BD and Steinfeld R. **Gender and Genital Cutting**. In Teresa Giménez Barbat (ed.), *Gifted Women, Fragile Men*. 2017 Euromind Monographs-2, Brussels: ALDE Group-EU Parliament.

⁸¹ CRC Concluding Observations on 2nd – 4th periodic reports of Israel, 14 June 2013, UN Doc CRC/C/ISR/CO/2-4.

APPENDIX 1: STATEMENTS ON MGC FROM WORLD MEDICAL ASSOCIATIONS, CHILDREN'S OMBUDSMEN AND HUMAN RIGHTS OMBUDSMEN

British Medical Association (2006)

The BMA considers that the evidence concerning health benefits from medically unnecessary circumcision is insufficient as a justification for doing it. It suggests that it is “unethical and inappropriate” to circumcise for therapeutic reasons when effective and less invasive alternatives exist.⁸²

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.⁸³

Royal Australasian College of Physicians (2010)

The RACP states that routine infant circumcision is not warranted in Australia and New Zealand. It argues that, since cutting children involves physical risks that are undertaken for the sake of merely psychosocial benefits or debatable medical benefits.⁸⁴

American Academy of Pediatrics (AAP) and U.S. Centers for Disease Control and Prevention (CDC) (2012)

AAP Policy Statement: “The benefits of newborn male circumcision outweigh the risks.” “...health benefits are not great enough to recommend routine circumcision for all newborns...”⁸⁵

AAP Technical Report: “The true incidence of complications after newborn circumcision is unknown.” (p. e772).

CDC Statement: “Delaying circumcision until adolescence or adulthood enables the male to participate in — or make — the decision.”⁸⁶

The AAP and CDC statements are similar: published technical and human rights challenges have responded to both statements.⁸⁷⁸⁸

German Association of Pediatricians (BVKJ) (2012)

Boys have the same right to physical integrity as girls under German law, and, regarding medically unnecessary circumcision, that parents' right to freedom of religion ends at the point where the child's right to physical integrity is infringed.^{89 90}

Canadian Paediatric Society (CPS) (2015)

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.”⁹¹

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.”⁹²

⁸² <https://www.bma.org.uk/advice/employment/ethics/children-and-young-people/male-circumcision>

⁸³ <https://www.doctorsopposingcircumcision.org/wp-content/uploads/2016/09/knmg-non-therapeutic-circumcision-of-male-minors-27-05-2010.pdf>

⁸⁴ <https://www.racp.edu.au/docs/default-source/advocacy-library/circumcision-of-infant-males.pdf>

⁸⁵ <http://pediatrics.aappublications.org/content/early/2012/08/22/peds.2012-1989>

⁸⁶ <http://www.cdc.gov/nchstp/newsroom/docs/factsheets/mc-factsheet-508.pdf>

⁸⁷ <https://www.doctorsopposingcircumcision.org/for-professionals/medical-organization-statements/#anchor-03>

⁸⁸ <https://www.doctorsopposingcircumcision.org/for-professionals/medical-organization-statements/#anchor-04>

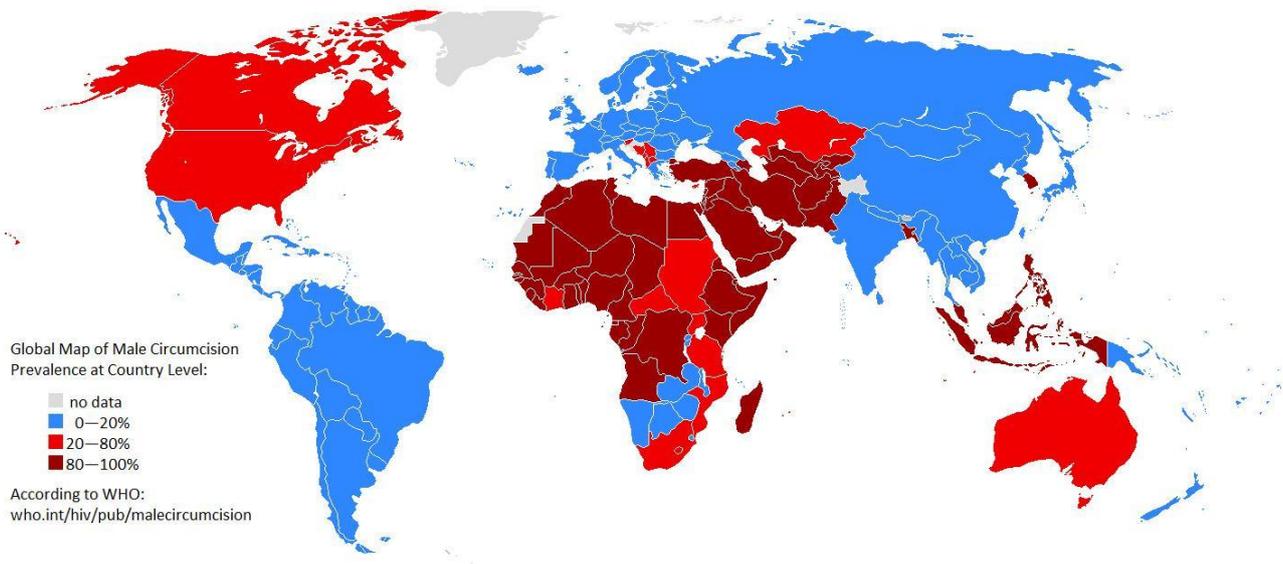
⁸⁹ <https://www.arclaw.org/resources/german-pediatric-association-cites-arc>

⁹⁰ http://www.dgkic.de/index.php/menu_dgkch_home/menu_pressestelle/33-pressemitteilung-2012-10

⁹¹ <http://www.cps.ca/documents/position/circumcision>

⁹² Found at <https://www.bellybelly.com.au/baby/one-countrys-entire-medical-board-finds-circumcision-unethical/>

APPENDIX 2: MGC BY REGION ⁹³



For illustrative purposes only.

⁹³ (Gray, L.H. "Circumcision", comp. by Hastings in *Encyclopedia of Religion and Ethics* New York, International Universities Press, 1958)