

International Human Rights Law and the Circumcision of Children

A report from Doctors Opposing Circumcision

Introduction

The various codes of medical ethics that have been enunciated by the medical societies of western nations require medical doctors to respect the human rights of their patients.¹⁻⁷ It is, therefore, necessary to consider circumcision of children in the light of international human rights law. According to The United Nations Children's Fund (UNICEF):

Human rights are those rights which are essential to live as human beings – basic standards without which people cannot survive and develop in dignity. They are inherent to the human person, inalienable and universal.⁸

This chapter will examine the position of circumcision of children (who are unable to consent to surgery) that was introduced into medical practice in the nineteenth century, under international human rights law, which was adopted by the nations of the world in the twentieth century.

The era of human rights may be considered to have started with the formation of the United Nations at San Francisco in 1945 because the *Charter of the United Nations* requires that body to promote universal respect and observance of human rights for all—without distinction as to race, sex, language, or religion.⁹

Children possess two kinds of human rights:

- General human rights that every human possesses, universally, simply by reason of being a human being.
- Special human rights that every child possesses, universally, simply by reason of minority.

UNICEF explains:

Human rights apply to all age groups; children have the same general human rights as adults. But children are particularly vulnerable and so they also have particular rights that recognize their special need for protection.¹⁰

Doctors who treat child-patients, therefore, have an ethical duty to respect and honour both the general human rights and the special human rights of the child-patient.

General Human Rights

The General Assembly of the United Nations, acting to fulfill its obligations under the Charter, adopted the *Universal Declaration of Human Rights* (UDHR) in 1948.¹¹ The UDHR recognizes the rights of all to security of the person (Article 3), to freedom from inhuman, cruel, or degrading treatment (Article 5), and the rights of

motherhood and childhood to special protection (Article 25.2), all of which are applicable to circumcision.

The General Assembly adopted the *Covenant on Civil and Political Rights* (CCPR) in 1966.¹² That Covenant has several provisions, which are applicable to the circumcision of children. Each nation that is a state-party under the CCPR, which took effect in 1976, pledges to enforce those rights for its citizens. The United States ratified this covenant on 8 September 1992 with various reservations, understandings, and declarations that limit its value. Articles 7 and 24 are applicable to circumcision.

Article 7 provides:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 24:

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, 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.

One must bear in mind that non-therapeutic circumcision is a radical, irreversible operation that excises healthy functional tissue from the body of the child¹³ without medical justification and without the consent of the child, and which permanently destroys various physiological functions. According to Svoboda:

Reasons for concern with the procedure under human rights principles include a profound loss of highly specialized and sensitive sexual tissue, which also serves important protective functions, loss of bodily integrity, traumatic and highly painful disfigurement, complications with a range of severity up to and including death, and the impermissibility of any mutilation of children's sexual organs performed with neither their consent nor medical justification.¹⁴

Applicable general human rights include *security of the person* and *freedom from cruel or degrading treatment*. In addition, the two instruments recognize the right of the child to special protection by reason of his minority.

Additional particular human rights for children

The General Assembly of the United Nations has acted twice to enunciate and protect the rights of the child. First, in 1959, the General Assembly adopted the *Declaration on the Rights of the Child* (DRC),¹⁵ which expanded and further defined the rights of the child to special protection. The DRC enunciated ten general principles for the protection of children, of which Principles 1, 2, 8, 9, and 10 are applicable to child circumcision:

1. The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of

race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

2. The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

8. The child shall in all circumstances be among the first to receive protection and relief.

9. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

10. The child shall be protected from practices which may foster racial, religious and any other form of discrimination.

The DRC, however, was binding on no one, so in 1989, the United Nations General Assembly adopted the *Convention on the Rights of the Child (CRC)*,¹⁶ which enunciated specific rights which the states-party were required to implement in their domestic laws. 191 nations have become states-party to the CRC. Two nations are not states-party to the CRC. They are Somalia, which has no functional government, and the United States,¹⁷ where deep opposition exists. The implementation of the CRC varies from nation to nation. In the United States, even though the CRC has not been ratified by Congress, it still sets a benchmark for the protection of children.

The CRC has a number of articles, which are relevant to child circumcision. They include Articles 2, 3, 4, 6, 19, 24(3), 34, 36, 37, and 39. All nations except Somalia and the United States, therefore, have pledged to implement the provisions of the CRC for the protection of children within their respective borders.

Article 2(1)

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

This article establishes the universality of child rights. As UNICEF says:

All children have the same rights.¹⁸

There are no exceptions.

Article 3

- 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.**
- 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures**

This article establishes “best interests” as the guidance by which decisions concerning the child are made. The second part establishes the obligation of the state to provide protection and care for the well-being of the child.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 4 establishes the obligation of the state-party to take action to implement the provisions of the CRC.

Article 6

- 1. States Parties recognize that every child has the inherent right to life.**
- 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.**

Article 6 acknowledges that children have the same right to life as adults. Article 6 is particularly relevant to such countries as South Africa where children regularly lose their lives in “initiation schools” where they are circumcised. It is also relevant to circumcision in the advanced Western nations, where children sometimes die of bleeding or infection after circumcision.

Article 19

- 1. States Parties shall take all appropriate legislative, administrative, social and educational 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.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 19 recognizes the right of children to special protection from all forms of mental or physical violence or abuse.

Article 24

Article 24 recognizes the right of the child to health. Article 24.3 is relevant to the traditional and injurious practice of male circumcision.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

Article 24.3 makes clear that children have a right to protection from the traditional practice of child circumcision.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.

The penis is a sexual organ, so circumcision is a violation of this article.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Doctors exploit the presence of the foreskin on male children as an excuse to do a circumcision and collect a fee for the surgery. Children have a right under this article to protection from such exploitation.

Article 37(a)

a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

This article provides the child with a right to freedom from cruel, inhuman, and degrading treatment. Circumcision excises functional tissue from the human body and degrades the sexual and protective

functions of the prepuce. This is cruel, inhuman, and degrading treatment.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

By this article, children have a right to whatever treatment will help in the recovery from the effects of circumcision.

Conclusion

Smith, writing for the Netherlands Institute of Human Rights (Studie- en Informatiecentrum Mensenrechten), reported that male circumcision is an obvious violation of the human rights of the child, equivalent to female circumcision.¹⁸ All members of society, including parents and professionals, have a duty to protect the rights of children.²⁰ We shall see in another report how this impacts the medical ethics of the circumcision of male children.

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