

Human Rights and the Non-therapeutic Circumcision of Male Children

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In my view, circumcision is a violation of human rights, and society has an obligation to protect children too young to object.

– Martin Scurr, M.D.

Introduction

Most medical procedures do not trigger human rights scrutiny due to the implied assumption that there exists both necessity and immediate benefit to the patient. However, non-therapeutic circumcision of a healthy child cannot claim such legal or ethical protection. While the American Academy of Pediatrics has struggled to promote the notion that the putative benefits outweigh the risks,[1,2] it invariably defers to parental cosmetic preference, putting the lie to any medical necessity. Given this, the excision of healthy functional tissue from a child who cannot consent raises human rights concerns.

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.[3]

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.[4-10] It is, therefore, necessary to consider the practice of genital cutting of children in the light of international human rights doctrine and law.[11]

The modern era of human rights may be considered to have started with the formation of the United Nations in 1945. 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.[12]

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.[13]

According to the United Nations, children possess two kinds of human rights:

- General human rights that every human possesses, universally (meaning, without exception), simply by reason of being 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.[14]

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

General human rights

In 1948, the General Assembly of the United Nations, acting to fulfill its obligations under the Charter, adopted the *Universal Declaration of Human Rights* (UDHR).[15] Articles 3, 5, 25, and 30 are applicable to genital cutting of children.

In 1966, the General Assembly adopted the *Covenant on Civil and Political Rights* (CCPR), which expands upon the UDHR to define the duties of State-parties to enforce this subset of rights for its citizens.[16] The United States ratified the CCPR on 8 September 1992 with various reservations, understandings, and declarations. Articles 7, 9, and 24 of the CCPR are applicable to genital cutting of children, making points similar to the above-listed UDHR Articles.

UDHR Article 3

Everyone has the right to life, liberty and security of person.

CCPR Article 9(1)

Everyone has the right to liberty and security of person.

The United Nations interprets the right to “security of person” listed in these Articles, in part, as a right to bodily integrity.[17]

UDHR Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment...

CCPR Article 7

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.

Non-therapeutic genital cutting of children excises functional tissue from the human body, causes pain and trauma, and degrades the function of the penis, thus violating these Articles. Non-therapeutic genital cutting for the purposes of research without the patient's consent violates CCPR Article 7.

UDHR Article 25(2)

Motherhood and childhood are entitled to special care and assistance.

CCPR 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.

The two above Articles recognize the special needs and rights of children based on their status as minors. CCPR Article 24(1) makes clear that enumerated rights protecting children must be applied equally to all children without any kind of discrimination.

UDHR Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Article 30 “serves a critical function in the UDHR, in that it precludes the possibility of using the provisions of one article to trump the intended function and provisions of another.”[18] In the case of genital cutting, this implies, for example, that a parent's right to freedom of religion (UDHR Article 18) may not override a child's right to security of person (UDHR Article 3).

Additional particular human rights for children

The above two documents recognize the right of children to special protection by reason of their vulnerability as minors. The General Assembly of the United Nations has acted twice to enunciate and protect the particular rights of the child.

First, in 1959, the General Assembly adopted the *Declaration on the Rights of the Child* (DRC),[19] 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 genital cutting of children:

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 CRC, however, was not a binding agreement, so in 1989, the United Nations General Assembly adopted the *Convention on the Rights of the Child* (CRC),[20] to enunciate specific rights which the State-parties were required to implement in their domestic laws. As of 2015, 196 nations have become State-parties to the CRC,[21] meaning they have pledged to implement the provisions of the CRC for the protection of children within their respective borders. The sole remaining member-state of the United Nations which has yet to ratify the CRC is the United States, where it has been opposed out of concerns over national sovereignty.[22] 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, 6, 19, 24, 34, 36, 37, and 39.

CRC Article 2(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." [23] There are no exceptions.

CRC Article 3

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.

This Article establishes “best interests” as the guidance by which decisions concerning the child are made. The British Medical Association, in guidance to physicians based on the Human Rights Act of 2000 (UK), provides a thorough discussion of the elements relevant to determining a child’s best interests with regard to non-therapeutic circumcision.[24]

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.[25] It is also relevant to non-therapeutic circumcision in the advanced Western nations, where children sometimes die of bleeding or infection after circumcision.[26]

CRC 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.

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

CRC Article 24(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 recognizes the right of the child to health. Children have a right under this Article to protection from the practice of child genital cutting based on tradition. Further commentary by the International NGO Council on Violence against Children extrapolates this Article to include protection from “harmful practices based on tradition, culture, religion or superstition.”[27]

CRC Article 34

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

The penis is a sexual organ, thus non-therapeutic genital cutting of children is a form of sexual harm and a violation of Article 34.

CRC 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.[28] To the extent that such tissue has commercial value and may have been harvested to extract that value, the excision of the foreskin for such purposes without the consent of the owner of the foreskin constitutes further exploitation.[29,30] Children have a right under this Article to protection from such exploitation.

CRC Article 37(a)

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

As with the general right to freedom from cruel, inhuman or degrading treatment found in the UDHR and the CCPR (above), children have a special right under this CRC Article to freedom from the cruelty, inhumanity, and degradation of genital cutting.

CRC 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.

Children have a right under this Article to whatever treatment will help in the recovery from the effects of genital cutting.

The UN Study on Violence against Children

In 2002, the United Nations General Assembly asked the Secretary-General to conduct an in-depth study on violence against children and to make recommendations to prevent and respond to it.[31] The resulting *Report of the Independent Expert for the United Nations Study on Violence against Children* (2006), and related comments by the United Nations Committee on the Rights of the Child (2011),[32] enumerate the following human rights principles regarding violence against children:

No violence against children is justifiable. Children should never receive less protection than adults.

A child rights-based approach to child caregiving and protection requires a paradigm shift towards respecting and promoting the human dignity and the physical and psychological integrity of children as rights-bearing individuals...

The concept of dignity requires that every child is recognized, respected and protected as a rights holder and as a unique and valuable human being with an individual personality, distinct needs, interests and privacy.

Children's rights to be heard and have their views given due weight must be respected systematically in all decision-making processes, and their empowerment and participation should be central to child caregiving and protection strategies and programmes.

The International NGO Council on Violence against Children was established in 2006 to ensure that the recommendations from the UN Study on Violence against Children are effectively implemented. A 2012 report from this NGO Council, entitled *Violating Children's Rights: Harmful Practices Based on Tradition, Culture, Religion or Superstition*, lists "male circumcision," "female genital mutilation," and "sex assignment of inter-sex children" as examples of such harmful practices.[27]

With regard to male circumcision the NGO Council's report states:

A child's rights analysis suggests that non-consensual, non-therapeutic 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. When extreme complications arise, it may violate the right to life.

...[P]otential health benefit does not over-ride a child's right to give informed consent to the practice. The decision to undertake circumcision for [risk-reduction] reasons can be deferred to a time where the risk is relevant and the child is old enough to choose and consent for himself.

Conclusion

Non-therapeutic circumcision of male children has been recognized as a human rights violation, ethically equivalent to female genital cutting and intersex sex reassignment surgeries on children.[27,33,34] All members of society, including parents and professionals, have a duty to protect the rights of children.[35]

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