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MALE CIRCUMCISION: SEXUAL AND REPRODUCTIVE HEALTH PERSPECTIVES

1.0. Abstract

Various studies¹ have considered male circumcision from the health perspective. Unfortunately there is no consensus or certainty regarding the health benefit or otherwise of the practice. While many researchers have condemned the practice as unnecessary infliction of pain on defenceless non consenting children and also as unfortunate mutilation of the male genital; other medical and scientific studies have endorsed the practice as not only normal but desirable due to its health benefits. The concern of the human rights activists and legal commentators however is that, unless the medical benefits outweigh any other arguments to the contrary, male circumcision would amount to a violation of the male children's right to sexual and reproductive health in particular and various other rights in general as guaranteed in various international and regional human rights instruments. We argue in this paper that since male circumcision involves a surgical procedure on male genital organs which is irreversible and permanent, there is need to reach a consensus on the medical necessity of the procedure. This would be necessary in order to either sustain or discourage its practice.

1.1. Introduction

Male circumcision is clearly sexual and reproductive rights issue. Most often, the two categories of sexual and reproductive rights conflate even though each of them represents an independent category of human rights. According to Sen and Baltiwala, sexual rights include:

- Full respect for the physical integrity of a human being's body including freedom from violence, mutilation, or sexual assault;

1. The various researches cited in this article are carefully selected from reliable and renowned medical journals and laboratory studies mostly from the western countries. Particularly, United Kingdom and U.S.A. The two countries are in the fore front of supporting male circumcision based on the outcome of many medical researches. This article touches more than a score of those medical researches and scientific analysis undertaken by many experts in various related fields of health. It is unfortunate though that there are studies pointing to the medically undesirability of male circumcision (as indicated in the body of this work) thereby leading to apparent confusion as to whether the practice of male circumcision should be sustained or jettisoned.

- The right to the highest standard of sexual well-being;
- The right to the necessary information and services to attain sexual well-being.
- The right to make choices and decisions concerning sexuality free of discrimination, coercion, or violence².

Ana Obando³, also gave a definition of reproductive rights to include, apart from the right to health and family planning; the right to life, freedom, integrity, and security; the right not to be assaulted or exploited sexually; the right not to be tortured or to be the object of cruel, inhuman, degrading punishment or treatment; the right not to be subject to sex-based discrimination; the right to privacy; the right to intimacy; the right to enjoy scientific progress and the right to consent to be an object of experimentation⁴.

The definitions above clearly encompass the act of circumcising either male or female children. It therefore follows that the practice of circumcision must not be in conflict with the enumerated rights under sexual and reproductive rights. In other words, the practice must be done in accordance with sexual and reproductive health needs of the children. This paper will therefore consider the issue of male circumcision against the following rights:

- a. Right of the child to enjoy scientific progress and to attain the highest standard of reproductive health.
- b. Right of the child to consent to the procedure without coercion or violence.
- c. The right of the child not to be subjected to torture.

1.2. Anthropological overview of Male Circumcision.

Male circumcision has been an age long practice known to many cultures of the world. It was said to have started in the pre-historic era. Reports indicate that the Egyptians practiced male circumcision as early as 4000 years before the birth of Christ⁵. It has been perpetuated throughout the ages for various reasons, ranging from a Victorian notion that it would prevent masturbation, to the modern idea that the procedure improves hygiene and

2. See G. Sen and S. Baltiwala, "Empowering Women for Reproductive Rights" in H. Presser and G. Zen (eds) *Women Empowerment And Demographic Process: Moving Beyond Cairo*, Oxford University Press, USA (2000) 22-23.

3. A. E. Obando, "Sexual and Reproductive Rights" *Women Human Rights Network (WHRnet)* publication, USA (2003) 1.

4. Reference to some of these rights in relevant human rights instruments will be made in the course of this discussion.

5. E. Wallerstein, "Circumcision: Ritual surgery or surgical ritual"? (1983) 2(2): *Med Law* 85-97.

prevents diseases in both the male and his sexual partners⁶. Hodges gave an account that male circumcision started in America during the masturbation hysteria of the Victorian Era, when a few American doctors circumcised boys to punish them for masturbating. This was predicated on the knowledge that circumcision denudes, desensitizes, and disables the penis. It was also claimed that circumcision could cure serious illnesses and diseases like epilepsy, convulsions, paralysis, elephantiasis, tuberculosis, eczema, bed-wetting, and hernia⁷.

In Africa, several reasons have been advanced for the practice of the male circumcision. These include the maintenance of tradition, the promotion of social and political cohesion, the fulfillment of religious requirements, the prevention of promiscuity, the maintenance of penile hygiene⁸, malformations of the genital fore-skin, and to enhance sexual pleasure. The practice has also been linked to individual identity with a group and a rite of passage to adulthood⁹. From the religious point of view, Jewish and Christianity have endorsed male circumcision¹⁰. Similarly, the Islamic religion prescribes male circumcision as a religious rite to be observed by all Muslims¹¹. Due to socio-cultural, religious and medical acknowledgement of the

6. M. J. Legato. "Rethinking Circumcision: Medical Intervention, Religious Ceremony, or Genital Mutilation?" (2002) 5(4) *J Gend Specif Med* 8.

7. F. A. Hodges, "Short History of the Institutionalization of Involuntary Sexual Mutilation in the United States" in G. C. Denniston and M. F. Milos, (eds) *Sexual Mutilations: A Human Tragedy* Plenum Press, New York (1997) 35.

8. See R. A. Myers *et al*, "Circumcision: Its Nature and Practice among Some Ethnic Groups in Southern Nigeria" (1985) 21 *Soc. Sci. & Med.* 581.

9. T. Hull *et al*, "Male Circumcision and Penis Enhancement in Asia: Matters of Pain and Pleasure" (2001) 9 (18) *Reproductive Health Matters*, 122.

10. Male circumcision is ordained in the Bible when God commanded Abraham thus "...Every man child among you shall be circumcised. And ye shall circumcise the flesh of your foreskin; and it shall be a token of the covenant between me and you... and my covenant shall be in your flesh for an everlasting covenant. And the uncircumcised man child whose flesh of his foreskin is not circumcised, that soul shall be cut off from his people; he hath broken my covenant" (See generally, Genesis 17:10-14)

11. Male circumcision is also compulsory in Islam because it is the practice of Ibrahim (Abraham) and God commanded Muhammad the Prophet of Islam thus: "Then We inspired you: 'Follow the religion of Ibrahim, the upright in Faith.'" (Qur'an 16:123) Muhammad also reported that the Prophet Ibrahim circumcised himself when he was eighty years old. Additionally, in support of the practice of male circumcision, Muslims often quote the sayings of their Prophet, Muhammad thus:

"There are five things that are of the natural hygiene: removing the pubic hair, circumcision, trimming the mustache, removing the underarm hair, and cutting of the nails". This is found in all the books of Hadiths (sayings and deeds of Holy Prophet Muhammad).

practice, male circumcision is undoubtedly the most commonly performed surgical procedure in the world¹². The discussions below attempt to consider its desirability in the modern world *vis a vis* the sexual and reproductive rights of a male child.

Male circumcision may be undertaken for therapeutic or non-therapeutic reasons and in either case; it must be performed in line with the requirements of the right of the child to scientific progress and reproductive health. The Supreme Court of Canada defined a therapeutic treatment in *Marion's* case thus:

"A treatment is therapeutic when it is administered for the chief purpose of preventing, removing or ameliorating, a cosmetic deformity, a pathological condition or a psychological disorder provided the treatment is appropriate for and proportionate to the purpose for which it is administered."¹³

It follows that when a circumcision is performed therapeutically or as a medically corrective measure on male genitalia, there is no controversy about its desirability or justification. However, male circumcision that is performed for any reason other than physical clinical need is termed non-therapeutic. Such may be undertaken or requested for religious reasons, cultural preservation or for any other reason.

1.3. Arguments on Non-Desirability of Male Circumcision and Benefits of Preserving the Male's Foreskin.

Non therapeutic male circumcision has invited a lot of controversies and criticisms from many commentators, social critics, human rights activists, jurists and people in medical field. Its practice has been condemned as unnecessary cutting of male genitalia or infliction of pain on the neonate or male children for no just cause. Critics have proffered arguments to debunk many justifications given by the traditionalists, sociologists, and medical practitioners regarding the benefits of male circumcision.

One of such critics is Paul Pleiss who has been vociferous in the condemnation of male circumcision. He forcefully argued that, millions of years of evolution have fashioned the human body into a model of refinement, elegance, and efficiency, with every part having a function and purpose. And that evolution has determined that mammals' genitals should be sheathed in a protective, responsive, multipurpose foreskin. Therefore every normal hu-

12. C. Perera and F. Bridgewater, "Safety and Efficacy of Non-therapeutic Male Circumcision: A Systematic Review, (2010) 8 *Annals of Family Medicine* 64.

13. Brennan J, in the case of *Secretary, Department of Health and Community Service v JWB and FMB (Marion's case)* (1992) 175 CLR. 218 at 269.

man being is born with a foreskin¹⁴. He argued that the foreskin serves natural useful purposes. While it protects the glans of the clitoris in females; it similarly protects the glans of the penis of the male. Thus, the foreskin is an essential part of human sexual anatomy¹⁵. He said: "The natural penis requires no special care. A child's foreskin, like his eyelids, is self-cleansing. Forcibly retracting a baby's foreskin can lead to irritation and infection. The best way to care for a child's intact penis is to leave it alone."¹⁶ From the medical or scientific point of view, the following have been suggested as parts of the numerous protective, sensory, and sexual functions of the foreskin¹⁷.

(i) Protection: the foreskin protects the glans and keeps its surface soft, moist, and sensitive. It also maintains optimal warmth, pH balance, and cleanliness. The glans itself contains no sebaceous glands that produce the sebum, or oil, that moisturizes our skin¹⁸. It is the foreskin that produces the sebum that maintains proper health of the surface of the glans.

(ii) Immunological Defenses: it has been scientifically proven that the mucous membranes that line all body orifices are the body's first line of immunological defense. It follows therefore that glands in the foreskin produce antibacterial and antiviral proteins such as lysozyme¹⁹. In addition, specialized epithelial langerhans cells, an immune system component, is said to be

14. Paul Pleiss described the foreskin as follows: "... a uniquely specialized, sensitive, functional organ of touch. The foreskin contains a rich concentration of blood vessels and nerve endings. It is lined with the peripenic muscle sheet, a smooth muscle layer with longitudinal fibers. These muscle fibers are whirled, forming a kind of sphincter that ensures optimum protection of the urinary tract from contaminants of all kinds. Like the undersurface of the eyelids or the inside of the cheek, the undersurface of the foreskin consists of mucous membrane. It is divided into two distinct zones: the soft mucosa and the ridged mucosa. The soft mucosa lies against the glans penis and contains ectopic sebaceous glands that secrete emollients, lubricants, and protective antibodies. See generally, P. Fleiss, "The Case Against Circumcision" *Mothering: The Magazine of Natural Family Living*, (1997).

15. P. Fleiss, "The Case Against Circumcision" *Mothering: The Magazine of Natural Family Living*, (1997) 36.

16. *Ibid*, 40.

17. Paul Pleiss reviewed and gave comprehensive account of scientific benefits and functions of the foreskin which is usually cut off during the male circumcision. See further details in note 15 above.

18. A. B. Hyman and M. H. Brownstein, "Tyson's 'Glands': Ectopic Sebaceous Glands and Papillomatosis Penis" (1969) 99 *Archives of Dermatology* 31-37.

19. A. Ahmed and A. W. Jones, "Apocrine Cystadenoma: A Report of Two Cases Occurring on the Prepuce" (1969) 81 *British Journal of Dermatology*, 899-901.

present in the foreskin's outer surface²⁰. It is also said that plasma cells in the foreskin's mucosal lining secrete immunoglobulins, antibodies that defend against infection²¹.

(iii) Erogenous Sensitivity: The foreskin is said to be very sensitive as it contains a richer variety and greater concentration of specialized nerve receptors than any other part of the penis²².

(iv) Self-Stimulating Sexual Functions: The foreskin's double-layered sheath enables the penile shaft skin to glide back and forth over the penile shaft. This motion is the mechanism by which the penis and the orgasmic triggers in the foreskin, frenulum, and glans are stimulated²³.

(v) Sexual Functions in Intercourse: The foreskin's functions to facilitate smooth, gentle movement between the mucosal surfaces of the two partners during intercourse. It enables the penis to slip in and out of the vagina non-abrasively inside its own slick sheath of self-lubricating, movable skin. The female is thus stimulated by moving pressure rather than by friction only, as is the case when the male's foreskin is missing²⁴.

(vi) Circumcision desensitizes the penis radically by severing the rich nerve network and all the nerve receptors in the foreskin. It is also suggested that circumcision disfigures and alters the appearance of the penis drastically because it permanently externalizes the glans which normally supposed to be an internal organ.

1.4. Male Circumcision, as a Painful Medical Procedure.

It is equally contended that circumcision generally causes lasting and severe harm to the male children and that it is a mere myth to assume that a newborn baby cannot suffer pain²⁵. As reliable medical evidence demonstrates that relative to an adult, the circumcision experience is significantly more traumatizing to an infant, who has not yet developed methods to cope with pain and whose neurological pathways are not yet fully developed²⁶. And that such pain may likely cause permanent and irreversible changes in

20. G. N. Weiss *et al*, "The Distribution and Density of Langerhans Cells in the Human Prepuce: Site of a Diminished Immune Response?" (1993) 29 *Israel Journal of Medical Sciences* 42-43.

21. P. J. Flower *et al*, "An Immunopathologic Study of the Bovine Prepuce" (1983) 20 *Veterinary Pathology* 189-202.

22. Z. Halata and B. L. Munger, "The Neuroanatomical Basis for the Protopathic Sensibility of the Human Glans Penis" (1986) 371 *Brain Research* 205-230.

23. Pleiss, note 15 above.

24. *Ibid*.

25. K. J. S. Anand and P. R. Hickey, "Pain and its Effects in the Human Neonate and Fetus" (1987) 317 *New England Journal of Medicine*, 1321-1329.

26. *Ibid*.

the developing brain, altering portions of the brain responsible for perceiving pain²⁷. According to a neuro-psychologist, James Prescott,

"It is not without psychobiological consequences that the brain system which is designed for the experience of pleasure and the expression of sexual love is first encoded with extraordinary and excruciating pain. In such individuals, all subsequent acts or experiences of genital pleasure are experienced upon a background of genital pain that is now deeply buried in the subconscious/unconscious brain . . ."²⁸

The above and many other reasons have been given to discourage the continuous practice of male circumcision²⁹. As convincing as the above scientific analysis and arguments appear, it must be pointed out that various scientific, medical and laboratory studies have also supported the need for genital male cutting as having medical benefits, the practice of which must therefore be encouraged particularly in communities where males are not ordinarily circumcised.

1.5. Medical Benefit of Male Circumcision.

As far back as a century ago, the health benefits of male circumcision had been recognized. For instance in the May 28 1910 issue of the *Journal of the American Medical Association*, the reasons for circumcisions were listed as follows:

- Reduced tendency to convulsions in infancy arising from irritable nervous system.
- Habit of masturbation not so likely to be formed and amorosity is reduced.

27. S. Dixon *et al*, "Behavioral Effects of Circumcision with and without Anesthesia" (1984) 5 *Journal of Developmental and Behavioral Pediatrics* 246-250.

28. J. W. Prescott, "Genital Pain vs. Genital Pleasure: Why the one and not the other?" (1989) 1 *Truth Seeker* 14-21.

29. Studies have also suggested that circumcision may rob a male of as much as 80 percent or more of his penile skin. Depending on the foreskin's length, cutting it off makes the penis as much as 25 percent shorter. Also anatomical investigations have shown that circumcision cuts off more than 3 feet of veins, arteries, and capillaries, 240 feet of nerves, and more than 20,000 nerve endings. See H. C. Bazett *et al*, "Depth, Distribution and Probable Identification in the Prepuce of Sensory End-Organs Concerned in Sensations of Temperature and Touch; Thermometric Conductivity" (1932) 27 *Archives of Neurology and Psychiatry* 489-517. Depending on the amount of skin cut off and how the scar forms, the circumcised penis may be permanently twisted, or curve or bow during erection. See also J. P. Gearhart, "Complications of Pediatric Circumcision" in *Urologic Complications, Medical and Surgical, Adult and Pediatric*, F. F. Marshall (ed) Chicago Year Book Medical Publishers, Chicago (1986) 387-396.

- Lessened irritability of child or adult and promotes a hygienic condition.
- Venereal diseases not so readily contacted
- Assists against the impotency in old men³⁰.

In recent years, a lot of researches and studies have also suggested the following as medical or health benefits in relation to male circumcision.

(i) Protection against the transmission of HIV: Generally, substantial evidence has suggested that circumcision protects males from STI infections, penile carcinoma, urinary tract infections, and ulcerative sexually transmitted diseases. Various studies have also shown the relationship between circumcision status and the risk of acquiring or transmitting HIV³¹. Of particular significance is an article which was published in the *British Medical Journal* in 2000 establishing that male circumcision protects against HIV infection³². It was reported that there is a significant relationship between lack of male circumcision and risk of sexually transmitted HIV infection among men³³. Studies in Africa showed an adjusted reduction in HIV risk of about 45% in the general population and 70% in high-risk groups³⁴. Uncircumcised men may also be at increased risk of certain sexually transmitted infections, particularly ulcerative infections, which may increase susceptibility to HIV infection³⁵. These data led to calls for male circumcision to be

30. See, L.S. Dritsas, "Below the Belt: Doctors, Debate, and the Ongoing American Discussion of Routine Neonatal Male Circumcision" (2001) 21 *Bulletin of Science Technology Society*, 300.

31. R.C. Bailey *et al*, "Male Circumcision and HIV Prevention: Current Knowledge and Future Research directions" (2001) 1 *Lancet Infect Dis* 223-231, B.K. Patterson *et al*, "Susceptibility to HIV virus-1 Infection of Human Foreskin and Cervical Tissue grown in Explants Culture" (2002) 161 *Am J Pathol* 867-873, S.J. Reynolds, *et al*, "Male Circumcision and Risk of HIV-1 and Other Sexually Transmitted Infections in India" (2004) 363 *Lancet* 1039-1040, N. Siegfried, *et al*, "Male Circumcision for Prevention of Heterosexual Acquisition of HIV in Men" (2003) (3) *Cochrane Database Syst Rev*. CD003362, H.A. Weiss *et al*, "Male circumcision and Risk of HIV Infection in sub-Saharan Africa: A Systematic Review and Meta-analysis" (2000) 14 *AIDS* 2361-2370.

32. R. Szabo and R.V. Short, "How does Male Circumcision Protect Against HIV Infection?" (2000) 320 *BMJ* 1592-1594.

33. S. Moses S, *et al*, "Male Circumcision: Assessment of Health Risks and Benefits" (1998) 74 *Sex Transm Inf* 368-373.

34. H.A. Weiss, *et al*, "Male circumcision and Risk of HIV Infection in sub-Saharan Africa: A Systematic Review and Meta-analysis" (2000) 14 *AIDS* 2361-2370.

35. H.A. Weiss *et al*, "Male Circumcision and Risk of Syphilis, Chancroid, and Genital herpes: A Systematic Review and Meta-analysis" (2006) 82 *Sex Transm Infect* 101-109.

accepted as an important strategy for HIV prevention, especially in areas of high prevalence of HIV infection³⁶.

As a result of many convincing scientific reports on the significance of male circumcision in relation to HIV epidemics many countries in eastern and southern Africa, have now developed plans to expand services for male circumcision. For instance, the Government of Kenya³⁷ has established a National Task Force on Male Circumcision within the Ministry of Public Health and Sanitation and has adopted national policy guidelines for voluntary male circumcision. The United States also recently established President's Emergency Plan for AIDS Relief (PEPFAR) whose function among others is to assist in expanding services for male circumcision. PEPFAR has also provided \$26 million for this project in eastern and southern African countries³⁸.

It is pertinent to point out however, that the suggestion that male circumcision protects against HIV transmission has been attracting a storm of protests and comments from many researchers. Van Howe *et al* in their article quoted an American physicians commenting thus:

"HIV transmission is heavily dependent on certain sexual behaviours, not anatomy. The authors have not provided any new information to alter this fact but have taken the discussion off on a needless tangent. Indiscriminate mass circumcision, which is currently popularized by some Western researchers... does not address the core behavioural issues that have fueled this pandemic. Therefore, it will not alter the course of AIDS in Africa."³⁹

It is also argued that such a claim that being circumcised helps to prevent HIV/ AIDS may eventually lead to triple jeopardy in the fight against AIDS. Firstly, where there is a lack of medical facilities for the operation, the knives and other utensils used for the procedure might actually fuel the spread of AIDS. Secondly, the fact that people believe they are somehow

36. See the publication, *Canada Medical Association Journal* (CMAJ) 2009. DOI:10.1503/cmaj.090809.

37. Recent clinical trials conducted in Kenya, South Africa, and Uganda have demonstrated considerable benefit of male circumcision in reducing HIV sero-incidence in males 51% to 60% reduction in the relative risk. See B. Auvert, *et al*, (2005) "Randomized, Controlled Intervention trial of Male Circumcision for reduction of HIV Infection Risk: The ANRS 1265 Trial" (2005) 2 *PLoS Medicine* 298. R. Gray, *et al*, "Male Circumcision for HIV Prevention in Men in Rakai, Uganda: A Randomised Trial" (2009) 3 (1) *American Journal of Men's Health*

38. Quoted in *Canada Medical Association Journal* (CMAJ) note 37 above.

39. R.S. Van Howe *et al*, "Male Circumcision and HIV Protection: Some science would not have gone amiss" (2000) 321 *British Medical Journal* (BMJ) 1467-1468.

protected against HIV by being circumcised may cause them to be somewhat careless or dismissive about the need for other protection, to have promiscuous sex, and in general to feel they are now immune to the virus. Thirdly, the fact that male circumcision is seen to be medically related to the prevention of HIV/AIDS may lead onto a slippery slope that ultimately leads to it being culturally required that FGM is practiced for the same purpose⁴⁰.

(ii) Male Circumcision and Cancer prevention.

Researches have also shown that there are various possible health benefits of circumcision in relation to cancer prevention. Studies from five countries exploring the impact of circumcision on the incidence of human papillomavirus (HPV) infections in the male or cervical cancer in the female revealed that not only were circumcised men less likely to have HPV infection than their uncircumcised counterparts but women who had intercourse with men with a history of six or more sexual partners were less likely to have cervical cancer if their partners were circumcised⁴¹. Similarly, it has been suggested that circumcision not only protects against penile cancer, but that newborn circumcision virtually eliminates the threat⁴².

Hodges *et al* debated this point and recommended that if circumcision is being used to prevent future cancer, then the risks of surgery and complications that could arise from the circumcision procedure have to be balanced⁴³. The research showing that male circumcision protects women against cervical cancer was similarly contested as being inconclusive⁴⁴. In addition, it is equally submitted that male circumcision should not be encouraged as it is unethical in medical practice to modify a person surgically in order to protect the health of another person⁴⁵.

40. S. K. Hellsten *et al*, "Rationalising Circumcision: from Tradition to Fashion, from Public health to Individual Freedom? Critical notes on Cultural Persistence of the Practice of Genital Mutilation" (2004) 30 *Journal of Medical Ethics* 251.

41. X. Castellsague, *et al*, "Male Circumcision, Penile Human Papillomavirus Infection, and Cervical Cancer in Female Partners" (2002) 346 *N Engl J Med* 1105-1112.

42. E. Schoen, "The Relationship Between Circumcision and Cancer of the Penis" 41 (5) *Cancer Journal* 306-309, E. Schoen, "Benefits of Newborn Circumcision is Europe Ignoring Medical Evidence?" *Archives of Disease in Childhood* (1997) 77(3) 258-260. C. Colby and G. Ray, "Newborn Circumcision Decreases Incidence and Costs of Urinary Tract Infections During the First Year of Life" (1997) 105 (4) *Pediatrics* 789-793.

43. F., Hodges *et al*, "Prophylactic Interventions on Children, Balancing Human Rights with Public Health" (2002) 28 (1) *Journal of Medical Ethics* 10-16.

44. L. Brinton, *et al*, "The Male Factor in the Aetiology of Cervical Cancer Among Sexually Monogamous Women" (1989) 44 (4) *International Journal of Cancer* 199-203.

45. S. K. Kjaer *et al*, "Role of the Male Factor in Women with One Lifetime Sexual Partner" (1991) 48 *International Journal of Cancer* 39-44.

1.6. Need for Medical or Scientific Consensus

There is need to reach a consensus on the medical necessity of the male circumcision in order to have a categorical standpoint on the issue. This is more imperative in view of the reproductive health concern of the practice. Male circumcision involves the various categories of rights which are internationally recognized and which must be protected at all cost. These include the following:

a. Right to enjoy scientific progress and to attain the highest standard of reproductive health.

Every child is entitled to the right to good health and to enjoy the scientific progress including the attainment of the highest standard of reproductive health. As a result, circumcision of male children must be in conformity with these important rights already guaranteed in various human rights instruments⁴⁶.

Article 24 of the Convention on the Rights of the Child specifically addresses health issues of the children. Paragraph 1 obliges states parties to recognize the child's right to enjoy the highest attainable standard of health. Paragraph 2 further requires states parties to pursue full implementation of this right for the benefit of the child and to take appropriate measures, *inter alia*, to diminish infant and child mortality.

It is our submission that these rights would be breached if there is no justification for the continuous practice of male circumcision. This is because where a medically unnecessary and extremely painful alteration of an infant male's genitals is performed, the child is subjected to the risk of complications and possible death may be imminent. Paragraph 3 of the article 24 of Child's Rights Convention is most relevant in this argument because it requires states parties to take all effective and appropriate measures to abolish traditional practices that are prejudicial to the health of children. On the other hand, if the practice is medically necessary and of health benefit to the children, its sustenance would be inevitable and would be in consonant with the right of the child to attain the highest standard of reproductive health.

1.7. Right to Consent to the Procedure which must be done without Coercion Or Violence.

46. These human rights instruments include Universal Declaration of Human Rights, (UDHR) GA/Res/217A (111) of 10 December 1948, Convention on the Right of the Child, G.A. res. 44 U.N. GAOR Supp. (No.49) at 167, U.N. Doc. A/44/49 (1989) entered into force on September 2 1990, African Charter on Human and People's Rights (ACHPR) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) etc.

Arguments have been proffered that circumcision when performed on infants or small children, particularly for non-therapeutic reasons amounts to a violation of children's rights. Since circumcision actually involves intentional infliction of physical violence on another person, so it would automatically amount to an assault in both civil and criminal law unless a valid and informed consent was given prior to the procedure. As rightly pointed out in the case of *R v Brown* when Lord Templeman in his judgment said:

"Even when violence is intentionally inflicted and results in actual bodily harm, wounding or serious bodily harm, the accused is entitled to be acquitted if the injury was a foreseeable incident of a lawful activity in which the person injured was participating. Surgery involves intentional violence resulting in actual or sometimes serious bodily harm but surgery is a lawful activity. Other activities carried on with consent by or on behalf of the injured person have been accepted as lawful notwithstanding that they involve actual bodily harm or may cause serious bodily harm. Ritual circumcision, tattooing, ear-piercing and violent sports including boxing are lawful activities"⁴⁷

The problem with the circumcision of male children however, lies in the impossibility of these children to give consent or to make an informed decision regarding the circumcision due to their immaturity. In most cases therefore, the consent of the parents would be required before the procedure is undertaken especially if the circumcision is on non-therapeutic grounds.

1.7.1. Validity of parental consent on behalf of their children.

Legally speaking, where the child is too young to give personal consent, the law presumes that parents are legally protected and are free to give informed consent for circumcision on behalf of their children/neonates even for religious, traditional or cultural reasons. However, parental consent and subsequent request for circumcision of their infant males is not without criticisms. Helstein had contended that if parents are allowed to decide what is best for their children on the basis of their religious or cultural identity, there would be no justification for stopping them cutting off their children's ears, fingers, or noses if their religious and cultural beliefs demanded so...⁴⁸ In the same vein, while commenting on consent for circumcision, David Richards asserted that all human beings have a right to bodily integrity and that parental permission for medical treatment must be grounded in the assumption that the treatment will result in a benefit that supersedes the negative of in-

47. *R v Brown* [1993] 2 All ER 75, HL, per Lord Templeman.

48. S. K. Helstein *et al*, "Rationalising Circumcision: from Tradition to Fashion, from Public health to Individual Freedom? Critical notes on Cultural Persistence of the Practice of Genital Mutilation" (2004) 30 *Journal of Medical Ethics* 249.

vading a child's personal integrity⁴⁹. In other words, unless and only in circumstances where the surgery is intended for the benefit or in the best interest of the child, parental consent would be insufficient and invalid. In assessing the best interests of the children in relation to non-therapeutic circumcision, the British Medical Association identified the following as relevant consideration⁵⁰:

- a. The patient's own ascertainable wishes, feelings, and values.
- b. The patient's ability to understand what is proposed and weigh up the alternatives.
- c. The patient's potential to participate in the decision, if provided with additional support or explanations the patient's physical and emotional needs.
- d. The risk of harm or suffering for the patient
- e. The implications for the family of performing, and not performing the procedure.
- f. Relevant information about the patient's religious or cultural background
- g. The priority of options which maximize the patient's future opportunities and choices.

1.7.1. Circumstances Warranting Personal and Individual Consent.

In situations where the person to be circumcised is an adult or a matured minor, he is expected to give informed consent personally to the procedure. It follows therefore that in jurisdictions where male circumcisions are undertaken at an adulthood age (for instance in the case of Xhosa tradition in South Africa where the ritualistic circumcision is observed as a rite of passage and initiation into adulthood at the age of 16 or 18 years) it is our submission that the entire initiation exercise must therefore be performed in accordance with the fundamental requirement of the law regarding consent. This is evident in the recent case of *Justice Alliance South Africa and Others v Yama and Others*⁵¹.

49. D. Richards, "Male circumcision: Medical or Ritual?" (1996) 3(4) *J Law Med* 371-376.

50. Based on checklist in British Medical Association Consent, Rights and Choices in Health Care for Children and Young People. BMJ Books, London (2001) Chapter 1.

51. Reported in *Daily Dispatch* of 15th October 2009. See also www.sowetan.co.za, 10-16-09.

Bonani Yamani had taken his father to court on the ground that he was forcefully circumcised in a traditional way. He was a second year microbiology student at the University of the Free State. The Applicant was abducted by his father Lindile Yamani and 10 other men at his KwaMasele village near King William's Town on March 3, 2007. Meanwhile, Young Yamani had earlier been surgically circumcised at the East London's Frere Hospital in November 2006. Yamani refused to go with the men, telling them that he had already been circumcised, but the men mocked the circumcision and took him to the bush where they circumcised him again.

Yamani claimed in the court to have been forced to undergo traditional circumcision against his religious beliefs. He also contended that as a result of the forced circumcision, his right to dignity had been undermined. The presiding judge of the Bisho High Court, Yusuf Ebrahim said that forced circumcision was against the South African Constitution and it is unfair for anyone to be discriminated against based on his religious beliefs. However, the Eastern Cape Contralese (Congress of Traditional Leaders in South Africa) gave apology to Yamani and a consent judgement was delivered pursuant to the settlement. Yamani therefore withdrew his complaint.

In terms of the settlement, which was made an order of the court, Contralese accepted the right of adult males to choose whether to attend traditional circumcision schools according to their religious beliefs. In delivering the order, Judge Yusuf Ebrahim emphasised that consent was essential if the traditional male circumcision practice was to be both lawful and pass constitutional muster⁵².

1.8. Right not to be an Object of Torture

The procedure for circumcision is painful and may amount to torture unless there is justification for its practice. Male circumcision is medically described as the surgical removal of a healthy male infant's foreskin. This simple definition does not appear to grasp the symbolism of the act nor fully appreciate the procedure involved. For instance, Zoske referred to circumcision as more than a benign medical procedure. He described it as fundamentally an elective amputation of healthy genital tissue driven by the power of tradition and performed without a patient's consent, occurring when he is most vulnerable and completely dependent⁵³.

Gelbun also stated that the procedure requires that a male infant be taken from his parents and placed on a restraint table with his extremities fastened or held down, while a variety of surgical instruments (probes, clamps,

52. See the report, *Ibid.*

53. J. Zoske, "Male Circumcision: A Gender Perspective" (1998) 6 (2) *Journal of Men's Studies* 189.

scalpel) are used to grasp the foreskin, separate it from the glans, slit it, stretch it, crush it, and amputate it⁵⁴. It is also most often performed without anesthesia due to medical contraindications. In few instances, local anesthetic may be used to alleviate the pains. However, in most cases, the practitioners do not employ any anesthesia, due to the continued belief that the pain of neonatal circumcision is insignificant⁵⁵. The description by Gelbum gives the clear picture of the procedure as an extremely painful experience for the neonates or the children:

The Convention Against Torture (CAT) defines torture⁵⁶ *inter alia* as any act by which severe pain or suffering, physical or mental, is intentionally inflicted on a person, with the consent or acquiescence of or at the instigation of a public official⁵⁷. The fact that many circumcisions are initiated, promoted and performed by public health officials and in public hospitals freely compound the culpability of the States in this respect. Article 37(a) of the CAT also forbids subjecting any child to torture or other cruel, inhuman or degrading treatment or punishment. Similarly, in terms of the African Charter on Human and People's Rights⁵⁸, article 4 declares that "every human being shall be entitled to respect for his life and the integrity of his person." article 5 prohibits all forms of exploitation and degradation of man particularly torture, cruel, inhuman or degrading punishment and treatment.

The point being made here is that without convincing and credible arguments to justify the practice of male circumcision as offering medical benefits to the children, its continuous practice may simply amount to torture of innocent young ones.

1.9. Conclusion

54. I. Gelbaum "Circumcision: Refining a Traditional Technique" (1993) 38 *Journal of Mid-Wifery* 188-205, see also M.S. Cohen, "Circumcision" In J. F. Fowler (ed.) (1992) *Urologic Surgery* Boston (1992) 422-428.

55. *Ibid.*

56. G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], entered into force June 26, 1987.

57. The Declaration Against Torture similarly holds torture to be an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment which violates the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights. Also, article 7 of the International Covenant on Civil and Political Rights provides that no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

58. OAU Doc. CA/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

At present, there are conflicting views of the medical researchers on the need for circumcision of male children. This needs to be resolved as soon as possible. The public society must be assured of the benefit of doing and the disadvantages of not doing the circumcision for people to be able to make an informed decision about it. At present, the driving forces sustaining its practice are tradition, customs, religion and ignorance as to whether it serves any medical benefit or not. We should learn from the female circumcision which, though is now condemned internationally, but over the years, millions of women have been subjected to mutilation of their genitals irreversibly for no justified reasons other than in the name of traditions and religion. It is therefore imperative that a consensus be reached medically regarding the necessity of the practice otherwise it would amount to torture, physical assault occasioning permanent harm, and breaches of various basic human rights of the children.

SUMMARY

This article touches more than a score of medical researches and scientific analysis undertaken by experts in various related fields of health pointing to the medical desirability or otherwise of male circumcision. The paper reveals the apparent non-consensus of scientific opinion or certainty regarding the health benefit of the practice. We argue that unless the medical benefits outweigh any other arguments to the contrary, male circumcision would amount to a violation of the male children's right to sexual and reproductive health in particular and various other rights in general as guaranteed in both international and regional human rights instruments. It is submitted that since male circumcision involves a surgical procedure on male genital organs which is irreversible and permanent, therefore, there is need to reach a consensus on the medical necessity of the procedure.