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# INTERROGATING THE ACT OF MALE CIRCUMCISION AS AN INFRINGEMENT OF HUMAN RIGHTS

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***ABSTRACT***

*Circumcision of the male genital organ has for centuries been a cultural, religious, and medical practice. It is a procedure that cuts off part of the foreskin from the penis, and when carried out on minors, without an individual's informed consent and absent urgent medical necessity, has raised concerns as constituting a violation of fundamental human rights. This paper interrogates male circumcision infringement on human rights, focusing on the right to bodily integrity, autonomy and freedom from inhuman treatment, the best interest of the child, and the role of parental consent. It seeks a legal analysis of international human rights and local frameworks while addressing cultural and religious considerations. Using the Doctrinal research methodology, this paper found that there is more outcry against female circumcision than male circumcision. The paper argues that non-consensual male circumcision violates key human rights principles and calls for a balanced approach that respects cultural practices while safeguarding individual rights. The paper concludes that though religious and cultural freedoms are guaranteed under domestic and international laws, they do not justify the irreversible alterations on individuals that are non-consenting and recommends reformed legislative and ethical policies aimed at harmonising legal frameworks and promoting rights within the standard of universal human rights.*

***KEYWORDS:*** *Circumcision, Male Circumcision, Human Rights, Child Rights, Parental Consent, Bodily Integrity*

## 1.0 INTRODUCTION

The act of circumcision dates back centuries and is well-entrenched in cultural practices, religious rites and duties. Circumcision can be carried out on both male and female genital organs. In the modern era, the act has become a contested cultural, medical and human rights phenomenon, though there is more outcry against female circumcision than male circumcision. This paper opines that whichever gender undergoes the procedure of circumcision, it remains an infringement of human rights and should come under thorough human rights scrutiny.

Circumcision is derived from the Latin word *circumcidere,* which means to cut around,[1] a procedure that cuts off part of the foreskin from the penis of a male or in the female, to cut off part of the sex organs. Male circumcision, as a globally widespread cultural, religious, and medical practice, is a process that involves the surgical removal of the foreskin from the penis. The practice is observed without informed consent or as a result of immediate medical necessity. In Nigeria, the act is carried out during infancy or childhood. It is an irreversible procedure that is so openly

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[1] A E Abuza, "The Imperative of Banning Male Genital Mutilation or Cutting in Nigeria: What Lessons from Other Countries?", *Commonwealth Law Bulletin, 45:3, 526-555, DOI: 10.1080/03050718.2020.1724811.*

practised in many jurisdictions without any fear of being in contravention of any law, local or international, that protects infringement on bodily integrity.

Non-therapeutic male infant circumcision performed on infants unable to consent or without the individual's informed consent raises serious legal and ethical issues, primarily concerning the inviolability of bodily integrity and individual autonomy, which violate internationally recognised human rights. Accordingly, legal systems should evolve to prohibit or strictly regulate infant circumcision, requiring deferral until the individual can permit or consent.

Most often, save for the hospitals and other health facilities and personnel, the environment where the act is carried out is non-hygienic, no anaesthetic medication to reduce pain, the instruments used in performing the mutilation or the procedure are not sterilized which can cause necrosis and gangrene, lead to transmission of several diseases such as Sexually Transmitted Disease (STD), Human Immuno-deficiency Virus (HIV), Acquired Immuno-Deficiency Syndrome (AIDS), haemorrhage and many other deleterious effect on the health of the male circumcised. The harmful effects of male circumcision include severe pain, a lack of adequate sensation on the male organ and loss of tissue from the external genitals of the male.

Circumcision has religious roots in Judaism and Islam, symbolising covenant and purification, and holds cultural significance in many African and indigenous rites of passage. Medical narratives claim certain health benefits; however, these are often attainable through voluntary adult circumcision. The cultural religiosity and claimed health benefits complicate legal interventions but cannot eclipse the primacy of human rights protecting bodily autonomy, especially for minors.

While often justified on religious, cultural, and medical grounds, circumcision of males raises serious questions about human rights, particularly when performed on minors without their informed consent. The debate and discussion centre on whether such practices violate fundamental human rights, which are protected rights like the right to bodily integrity, privacy, health, freedom from torture or degrading treatment, and the child's right to protection from harm.

The United Nations Convention on the Rights of the Child (UNCRC), the Universal Declaration of Human Rights (UDHR) and other international human rights instruments emphasise the protection of individuals from non-consensual bodily harm or integrity. The UDHR in Article 3 provides everyone with the right to the security of the person. Applying this to circumcision, the inference to be drawn is that all individuals should be free from non-consented physical interference, especially when such acts have permanent effects and are irreversible. In the case of children, all actions must be in their best interests; this must be the primary consideration as provided under Article 3 of the UNCRC. The practice of male circumcision on minors without a clear medical necessity has led to growing scrutiny and arguments, whether parents and guardians possess the right to consent to such an irreversible procedure that may not be necessary medically and may constitute an infringement on human rights.

This paper critically delves into an interrogation of the legal and human rights implications of male circumcision, whether it is inherently unlawful, how, when and upon whom it can be performed legally through a comparative analysis of the practice of circumcision in Nigeria and South Africa. It examines the legal insufficiency of parental proxy consent and clarifies how existing international human rights frameworks and jurisprudence relate to this practice, and suggests measures to address the issue of male infant circumcision as a human rights infringement.

## 2. INTERNATIONAL HUMAN RIGHTS FRAMEWORKS ON MALE CIRCUMCISION

There are extant international human rights regimes that prohibit harmful practices. These instruments protect bodily integrity, freedom from torture or cruelty, inhuman or degrading treatment and the right to health. These frameworks clearly prioritise the bodily integrity of children and set a human rights benchmark applicable to practices such as male infant circumcision, guiding national legal reforms and protections.

### 2.1 European Convention on Human Rights (ECHR)

Article 3 of the ECHR provides that no one shall be subjected to torture or inhuman punishment or degrading treatment. The ECHR also provided in Article 8

(1) That everyone has the right to respect for his private and family life, his home and his correspondence.
(2) There shall be no interference by a public authority with the exercise of this right except such as is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the preservation of health or morals, or for the protection of the rights and freedom of others.

This paper submits that the concept of private life includes a person's physical and moral integrity. There is enshrined in Article 9 of the ECHR, the right to freedom of thought, conscience and religion, and this includes the right to freedom to change religion or belief. Giving a look at these Articles in the ECHR, the loss of bodily integrity,[2] and the pain from circumcision (inhuman treatment),[3] It is difficult to continue the justification of the practice.

### 2.2 United Nations Convention on the Rights of the Child (CRC) 1989

The foundational treaty for child rights protection globally, the CRC, explicitly mandates states to protect children from all forms of physical or mental violence, injury, abuse, or maltreatment in Article 19. By Articles 19 and 24(3) of the CRC, States are to take all effective and appropriate measures to abolish traditional practices that are prejudicial to children's health. This has been repeatedly interpreted by the Committee on the Rights of the Child to include non-consensual genital cutting, irrespective of which gender, when it poses a health risk or violates autonomy.[4] It obligates States to take legislative, administrative, social, and educational measures to safeguard a child's dignity and physical integrity. Article 37 prohibits torture or cruel, inhuman, or degrading

[2] ECHR, art 8.
[3] Ibid, art 3.
[4] Committee on the Rights of the Child, General Comment No. 13 (2011) 29.

treatment or punishment of children. General Comments by the CRC Committee emphasise the prohibition of corporal punishment and all harmful practices affecting bodily integrity.[5] Moreso, the best interest of the child should be the focus in all actions concerning children.

**2.3 Universal Declaration of Human Rights (UDHR) 1948**

Article 3 of the UDHR guarantees every person's right to life, liberty, and security, establishing the basis for bodily integrity rights applicable to children alongside adults.[6] Article 5, it prohibits torture and cruel, inhuman or degrading treatment. Article 29 of the UDHR, along with these stated provisions, can be interpreted as prohibiting interference with bodily integrity, thereby protecting bodily integrity against non-consensual medical or cultural practices.

**2.4 International Covenant on Civil and Political Rights (ICCPR) 1966**

Articles 7 and 17 explicitly protect individuals from torture or cruel, inhuman, or degrading treatment and respect rights to privacy and bodily integrity. Although not child-specific, these provisions undergird protections extended to minors.[7] Article 7 explicitly forbids medical or scientific experiments without free consent. These provisions establish a baseline safeguarding individuals against non-consensual bodily interferences.

**2.5 African Charter on the Rights and Welfare of the Child (AFCRWC) 1990**

Ratified by numerous African states, including Nigeria, this regional treaty obligates protection against and elimination of harmful social and cultural practices affecting children's physical integrity, dignity, health and wellbeing as articulated in Article 21.[8] This provision is often invoked in the context of female genital mutilation,[9] But since the language of this provision is gender-neutral, it is submitted to be broad enough and can apply to male circumcision when carried out without consent or medical necessity.

**2.6 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984**

This convention prohibits acts that inflict severe physical or mental pain or suffering intentionally, which informs standards against non-consensual invasive procedures on children.

**2.7 African Charter on the Human and Peoples' Rights (AFCHPR) 1981**

This instrument has been signed and ratified in Nigeria; it is a part of the national laws. Under Article 4 of the AFCHPR, the right to the integrity of a person is protected, and there is a prohibition of torture, cruelty, inhuman or degrading punishment in Article 5.

[5] CRC, art 19, 37; General Comment No. 8 (2006) on corporal punishment.
[6] UDHR, art 3.
[7] ICCPR, art 7 and 17.
[8] AFCRWC, art 21.
[9] A A Oba, 'Cultural Practices, Human Rights and the Law in Nigeria' [2015] (9) *Nigerian Law Journal,* 52.

These conventions collectively establish the international legal framework urging states to enact and enforce laws protecting children's bodily integrity, including from culturally or traditionally sanctioned practices lacking informed consent or medical necessity.

## 3.0 LEGAL PERSPECTIVES OF MALE CIRCUMCISION: EUROPE AND AFRICA (NIGERIA AND SOUTH AFRICA)

A comparative analysis of male circumcision across jurisdictions reveals divergent approaches shaped by cultural traditions, religious freedoms, and human rights commitments**.** While Western and European systems have increasingly scrutinised the practice through the lens of bodily integrity and consent, African nations, including Nigeria, often maintain a tolerant stance rooted in tradition and religion. However, the tension between cultural relativism and universal human rights continues to provoke debate on whether male circumcision constitutes a permissible cultural act or an infringement of human dignity.[10]

### 3.1 Europe: The Shift towards Bodily Integrity

European jurisprudence has been at the forefront of challenging non-therapeutic male circumcision. In 2012, a landmark ruling by the *Cologne District Court (Landgericht Köln)* held that circumcision of a minor for non-medical reasons constituted bodily harm under the German Criminal Code and violated the child's right to self-determination.[11] The Court reasoned that the child's right to bodily integrity outweighed parental rights to religious freedom, emphasising that circumcision caused "permanent and irreversible changes" without medical necessity.[12] Though the decision provoked backlash from Jewish and Muslim groups, in response, the German Bundestag, that is the German Parliament, amended the German Criminal Code and passed a law that would allow parents to legally circumcise their children under specific medical and parental consent conditions.[13] Nonetheless, the case underscored that the State's interest in protecting children's bodily integrity must take precedence over collective religious claims. Similarly, the Council of Europe Parliamentary Assembly Resolution 1952 (2013) declared non-medical circumcision a violation of children's rights, urging Member States to ensure that such procedures respect the child's consent and autonomy.[14]

The Nordic countries have also taken strong stances. The Swedish Ombudsman for Children**,** alongside paediatric associations from Finland, Norway, and Denmark, jointly called for a ban on non-therapeutic circumcision of boys, emphasising the inconsistency of the practice with the **UN** Convention on the Rights of the Child (CRC)**.**[15] The Scandinavian position reflects a broader

[10] R Darby and B D Earp, 'Circumcision, Bodily Integrity and the Rights of the Child' [2016] 22 *Journal of Medical Ethics* 10.
[11] *Landgericht Köln*, Judgment of 7 May 2012, Case No. 151 Ns 169/11.
[12] Ibid.
[13] German Bundestag, Law on the Religious Circumcision of Male Children (BGBI 2012 I, 2749).
[14] Council of Europe, Parliamentary Assembly Resolution 1952 (2013), 7.3.
[15] Nordic Ombudsmen for Children, Joint Statement on the Rights of the Child and Circumcision (2013).

European trend towards recognising circumcision as a form of cultural and bodily violence inconsistent with evolving child protection standards.[16]

### 3.2 Africa: Cultural Endurance and Human Rights Challenges

In Africa, male circumcision retains deep cultural and religious significance. It is often associated with initiation rites, maturity, and identity among ethnic groups such as the Xhosa (South Africa), Kikuyu (Kenya), and Yoruba and Igbo (Nigeria).[17] However, these traditional practices have led to numerous fatalities, infections, and human rights abuses due to unsterile conditions and coercive participation.[18] It is worthy of mention that the Nigerian legal framework is more explicit with respect to female circumcision, as by section 6 of the Violence Against Persons (Prohibition) Act (VAPPA), female circumcision and genital mutilation are criminalised. This exposes the significant fact that the Nigerian legislature already recognises that non-therapeutic mutilation of the genital tissues is an infringement of rights.

#### 3.2.1 Nigerian Legal Frameworks

In Nigeria, circumcision is almost universal among males and forms part of both cultural rites and medical routines**.**[19] The reality on the ground reveals an enduring acceptance of male circumcision across the line of ethnicity and religion.[20] Circumcision in Nigeria is nearly universally practised for cultural, religious and perceived hygienic reasons, and this procedure is usually performed within the first eight days after birth.[21]

Nigeria is one of the signatory states to the UDHR, AFCHPR, ICCPR, UNCRC and AFCRWC and therefore has the corresponding international duties to safeguard bodily integrity and children's welfare. The Child Rights Act 2003 (CRA)**,** which domesticates the United Nations Convention on the Rights of the Child (CRC)**,** guarantees every child the right to dignity, survival, and development, and protection from torture or inhuman treatment.[22] However, the CRA and other Nigerian statutes are silent on male circumcision, neither prohibiting nor regulating the practice, as will be revealed below in this paper.[23] However, the explicit prohibition of female circumcision under section 6 of the Violence Against Persons Prohibition Act (VAPPA) illustrates that the Nigerian legal system recognises that the cutting of genital tissues constitutes a rights violation and questions the justification of a different treatment for boys. The lack of explicit prohibition stems from socio-religious acceptance**.** Circumcision is perceived as a harmless norm, and its legality is

[16] B D Earp, 'Does Male Circumcision Violate the Rights of the Child?' [2016] 18, AMA *Journal of Ethics* 437.
[17] R Cook, B M Dickens and M Fathalla, *Reproductive Health and Human Rights* (Oxford University Press, 2003) 219.
[18] Ibid, 220.
[19] National Population Commission (Nigeria), *Demographic and Health Survey* (2018) 42.
[20] NPC and ICF, *Nigeria Demographic and Health Survey* (Abuja: NPC, 2019),122.
[21] Ibid.
[22] CRA, s 11–32.
[23] Ibid.

rarely questioned.[24] Nonetheless, from a human rights perspective, it is submitted that the omission constitutes a legislative gap**,** exposing children to potential harm.[25]

### 3.2.2 Constitution of the Federal Republic of Nigeria 1999 (CFRN) (as amended)

The dignity of a person is protected under the Constitution of Nigeria. The Nigerian constitution in section 33 guarantees the right to life, and the protection against torture, inhuman or degrading treatment is provided therein in section 34(1)(a). Though these provisions do not expressly mention circumcision of the male, these provisions are wide enough to guard against non-consensual circumcision and deem the practice of male circumcision for minors in particular as an affront to bodily integrity and human dignity. The provisions of these sections of the CFRN have not been a subject of any judicial interpretation in Nigeria.[26] The reasons are not far-fetched, as there is socio-religious acceptance and endorsement of the procedure.

### 3.2.3 Child's Rights Act (CRA) 2003

The CRA is a domestication of the CRC, which strengthens and recognises the child's right to dignity and protection from abuse and neglect. It provides in section 11(b) that every child has the right to dignity and freedom from inhuman or degrading treatment. Section 11(b) expressly prohibits subjecting a child to physical or mental torture or to any inhuman or degrading treatment. Section 11(c) prohibits any form of torture or maltreatment of every child. A child is prohibited from being subjected to any form of physical pain and emotional abuse under section 32. It can be drawn that the CRA is in line with international norms that prioritise the safety and welfare of the child, as well as preservation of bodily integrity of the child, which even parental consent cannot override. The CRA, like other statutes in Nigeria, does not expressly prohibit or regulate the practice of male circumcision. Unfortunately, this Act is unevenly domesticated in the States in Nigeria, hence a limitation in its nationwide applicability.

### 3.2.4 The National Health Act 2014 and Medical Practitioners Code of Ethics 2004

These also emphasise the necessity of informed consent as a prerequisite for medical procedures.[27] The 2014 Act regulates the health system, standard of care and patients' protection, while the 2004 Act deals with professional conduct, ethical obligations and competence in treatment as seen in part 111. The Medical Practitioners Code of Ethics governs the conduct of the doctor by requiring ethical treatment, respect for patients, professional competence, confidentiality and observance of accepted standards. In the context of circumcision, a doctor should not perform the procedure unless clinically justified or consented to, and it must be safely and competently performed.

[24] A Sani, 'Religion and Cultural Practices in Nigeria' [2015] 4 *Journal of African Studies* 18.
[25] Oba (n 9) 60.
[26] A O Ewere, 'Male Circumcision and Bodily Integrity: The Nigerian Legal Paradox' [2020] *Nigerian Law Journal* 15.
[27] NHA, s 23(1); Medical and Dental Practitioners Code of Ethics, rule 25.

### 3.3 South Africa Legal Frameworks

#### 3.3.1 South African Children's Act 2005 (SACRA)

This is the most direct legal framework on circumcision. In South Africa, circumcision is regulated by the South African Children's Act. Boys aged sixteen to eighteen years may be circumcised only with proper consent, counselling, and compliance with some requirements. The Act restricts the procedure to boys over sixteen years who consent, except for religious or medical purposes, which must be in accordance with prescribed rules or be medically necessary.[28] This is submitted to be a pragmatic but inconsistent approach as it acknowledges bodily integrity in one breath and, on the other, privileges religion over a child's rights.[29]

#### 3.3.2 South African Customary Initiator Act, 2021

This Act reinforces the oversight of initiation practices, registration, parental consent and health standards by the State in sections 26 to 30 and 35(1). It regulates customary initiation by requiring safety, consent and lawful procedure to promote initiation while setting State norms and standards.

#### 3.3.3 South African Constitution, 1996

Section 12(2) of the South African Constitution gives everyone the right to bodily and psychological integrity, which includes control over their body and freedom from scientific or medical experiments without the requisite consents. Chapter 2 and section 28(2) of the South African Constitution establishes human dignity, equality and bodily integrity and the best interests of the child, respectively. There is a statutory restriction guided by the constitution's commitment to dignity, bodily integrity, equality and the best interests of the child. Even though culturally accepted, where circumcision becomes dangerous, coercive or non-consensual, it may be a constitutional infringement.

#### 3.3.4 Comparative Analysis on Nigerian and South African Perspectives on Male Circumcision

An evaluation of the positions of these two countries is that they converge on the position that children require protection from harmful bodily practices, though they differ in legislative precision. Specific regulatory measures on male circumcision can be found in South Africa; there will be more reliance on general constitutional rights in Nigeria. The model in South Africa is more administratively enforceable, whereas that of Nigeria is open-textured and dependent on litigation.

Both systems reveal that the State may recognise culture and religion without sacrificing bodily autonomy. This balance is sacrosanct in Africa as constitutionalism must tag along with personal and customary laws. It is to discipline circumcision if there is a need for it and not abolishment, especially where it ignores consent, safety, dignity or welfare of the child.

[28] SACRA, s 12(8).
[29] Ibid, s 12(9).

The lesson herein for Nigeria is to strengthen its legal response by expressly regulating male circumcision within children's rights and health frameworks.

## 4.0 ANALYSIS OF HUMAN RIGHTS IMPLICATIONS OF MALE CIRCUMCISION

Under the international instruments examined above, the practice of male circumcision can be perceived as an infringement of a child's right to bodily integrity. The once medical and cultural practice of male circumcision has become a subject of scrutiny under human rights in these ways:

### 4.1 The Right to Bodily Integrity and Autonomy

The principle of the right to bodily integrity is central to human rights discourse as it gives credence to the fact that humans have ownership and control of their own bodies, an inherent right to personal protection against non-consensual bodily interference.[30] This right to bodily integrity is an extension of the broader right to life, dignity, as well as personal liberty that ensures that individuals are free from unwarranted physical interference, medical intervention or mutilation.[31] The moral and legal commitment that everyone's body is inviolable is well reflected in this right, and that any infringement must be justified by necessity, consent or a compelling social interest.[32] This right is so deeply rooted in the human rights philosophy that "over his own body and mind, the individual is sovereign",[33] that has formed the moral basis for modern conceptions of personal autonomy, the ability to make voluntary and informed decisions about one's body.[34] The application of this to circumcision is that the right requires that any individual subjected to circumcision should give informed consent based on understanding, voluntariness and maturity.[35]

The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, in its preamble, states that human rights derive from the inherent dignity of the human person.[36] This right to bodily or genital integrity is a derivation of the inherent dignity of the human being. The European Court of Human Rights (ECHR) has upheld that medical interventions without informed consent violate the right to private life as enshrined in Article 8 of the ECHR. This was affirmed in the case of *X and Y v The Netherlands.*[37] by the European Court of Human Rights (ECHR) that bodily integrity forms part of the right to private life under Article 8 ECHR.

Article 3 of the United Nations Convention on the Rights of the Child obliges States to ensure that the best interests of the child are the primary consideration in all actions concerning them.[38] It went

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[30] T L Beauchamp and J F Childress, *Principles of Biomedical Ethic,*( 8th ed. Oxford University Press) 122, 124 .
[31] R Cook, B M Dickens and M Fathalla, 'Human Rights Dynamics of Circumcision'[2018] (41) *Medical Law International Journal,* 1.
[32] G Dworkin, *The Theory and Practice of Autonomy* (Cambridge University Press, 1988) 15.
[33] J S Mill, *On Liberty* (Penguin Classics 1985) 120.
[34] Beauchamp and Childress (n30) 107.
[35] B D Earp, 'The Ethics of Non-Therapeutic Male Circumcision Under International Law' [2016] 35 *Oxford Journal of Legal Studies,*30.
[36] ICESCR, 2.
[37] (1985) 8 EHRR 234, 240.
[38] UNCRC, art 3(1).

further to impose an obligation on States to protect children from all forms of physical or mental violence, injury and abuse.[39] In Article 12, it emphasised that children capable of forming their own views have the right to freely express those views in matters that affect them. The performance of circumcision upon them before they reach this developmental threshold takes away this participatory right and the principles of evolving capacities.

The Universal Declaration of Human Rights (UDHR)[40] provides that everyone has the right to the security of a person.[41] These provisions, when applied to circumcision, infer that individuals should be free from involuntary physical interference, especially when such interferences have irreversible effects.

In some jurisdictions, like Sweden and Germany, courts have debated whether bodily harm is inflicted upon male circumcision.[42] In *Landgericht Köln*, a Cologne Regional Court Judgment, 7 May 2012, it was held that non-therapeutic circumcision infringed on the child's right to bodily integrity and was contrary to the child's best interests. [43] This decision was not devoid of controversy. However, it highlighted a legal redirection towards viewing circumcision as a human rights issue and not merely a deep-rooted cultural or religious practice.

Circumcision, when performed without medical necessity, arguably contravenes these principles by permanently altering the child's body without consent. It has also been argued by Ogu and Okorie that male circumcision without consent constitutes an infringement of the constitutional right to human dignity and could be viewed under Nigerian law as a tortious battery.[44]

By these legal regimes, it is an infringement of a child's right to bodily integrity and autonomy when there is a performance of male circumcision for non-medical reasons, especially as the child gave no consent and is too young to do so. The permanent and irreversible nature of the practice takes away the future choice regarding the integrity of the individual's genital body, thereby causing an infringement on the right to bodily integrity and autonomy and should heighten concerns about this continuous practice.

**4.2 Parental Rights and Children's Rights**

Under international and domestic laws, parental authority over children is well taken into cognisance, including the right to make decisions on behalf of the child.[45] *Albeit* this authority is not absolute. Parental proxy consent is generally accepted for medical decisions, but it is not absolute; it cannot be given or extended to irreversible, non-urgent procedures infringing on a

[39] UNCRC, art 19 (1).
[40] (n6) .
[41] Ibid, art 3.
[42] J S Svoboda, Non-Therapeutic Circumcision of Minors as an Ethical and Legal Problem', [2013] 39, *Journal of Medical Ethics*, 434.
[43] Cologne Regional Court Judgment, 7 May 2012, Case No.151 Ns 169/11, 5.
[44] C E Ogu and C Okorie, 'Male Circumcision and Human Dignity: A Nigerian Perspective' (2022) *Journal of Human Rights Law Reform* 38.
[45] S Harris-Short and J Miles, *Family Law: Text, Cases and Materials* (Oxford University Press 2011) 256.

child's fundamental rights. It must be in the best interests of the child. Medical ethics recommend deferring circumcision until the individual can consent, aligning with human rights principles.

It is clearly stipulated under the CRC that parents' rights must be exercised in conformity with the evolving capacities of the child.[46] This brings to bear the perspective that parental consent for irreversible procedures without therapeutic justification is contrary to the best interests of the child.[47]

The European Court of Human Rights (ECHR) has ruled that parental rights must be balanced with the child's right to health and bodily integrity.[48] These must be balanced with the best interests of the child. The case of *Pretty v United Kingdom*[49] confirmed bodily integrity as a protected right under Article 8 ECtHR, allowing limitations only with strict medical justification, which infant circumcision lacks in non-therapeutic cases.

The CRC mandates that in all actions concerning children, the best interests of the child shall be the primary consideration.[50] The Non-therapeutic circumcision of minors raises the question of whether parental rights justify a procedure that may have lifelong physical and psychological consequences, more so, circumcision is an irreversible procedure. Also, the International Covenant on Civil and Political Rights (ICCPR) declares that no one shall be subjected to torture, cruel, inhuman and degrading treatment or punishment and in particular, no one shall be subjected without their true consent to medical or scientific experimentation.[51]

The promoters of circumcision often rely on parental rights and cultural freedom, yet human rights law increasingly views such practices through the eyes of children's autonomy.[52] It is argued that, though parents may guide their children's moral and religious development, parents cannot permit bodily modifications that are permanent in nature and may be rejected later by the child.[53]

### 4.3 Religious and Cultural Considerations

The right to freedom of thought, conscience and religion is guaranteed under Article 18(1) of the International Covenant on Civil and Political Rights (ICCPR). This provision protects religious freedom.[54] Therefore, circumcision that is practised by most religious faithful can be said to be protected under this provision.

[46] UNCRC, art. 5.
[47] J Tobin, *The Right to Health in International Law* (Oxford University Press 2012) 221.
[48] European Court of Human Rights, *Case of Varicka and Others v The Czech Republic,* Application NO..47621/13 (2021), 18.
[49] (2002) ECHR 427.
[50] UNCRC, art 3(1).
[51] ICCPR, art 7.
[52] Earp (n16) 276.
[53] Ibid, 278.
[54] ICCPR, art 18(1).

Under human rights laws, such as freedom of thought, conscience and religion are not absolute. By article 18(3) of the ICCPR, there are permissible restrictions necessary for the protection of public safety, order, health or the fundamental right and freedom of others.

There are justifications and considerations of circumcision as a vital aspect of religious practice in many communities. Courts have generally been reluctant to interfere with religious practices, but have also emphasised the need to protect children from harm. In *Eweida and Others v United Kingdom*,[55] while affirming religious freedom rights, the ECtHR clarified that these religious freedom rights cannot override the fundamental rights of others, including children's bodily integrity.

Under human rights laws, such as freedom of thought, conscience and religion rights laws are not absolute. By article 18(3) of the ICCPR, there are permissible restrictions necessary for the protection of public safety, order, health or the fundamental rights and freedoms of others. This restriction is relevant in circumstances where circumcision is performed on minors who are unable to grant personal consent. The others in Article 18 (3) of the ICCPR are the children or other vulnerable persons whose bodily integrity rights have been infringed upon.[56]

The African Charter on the Rights and Welfare of the Child (ACRWC) and the African Charter on Human and Peoples' Rights (ACHPR) recognise both individual and collective rights but impose obligations to ensure that customs do not undermine the dignity and welfare of individuals. Article 21 of the ACRWC prohibits harmful social and cultural practices that affect the health or dignity of the child. While the provision is often invoked concerning female genital mutilation (FGM), its language is sufficiently broad to cover non-consensual male circumcision, especially when harmful or non-medically justified. It is a complex legal challenge balancing religious freedom with the protection of one's rights, especially when it involves children or other vulnerable persons.[57]

The conclusion of the 2013 report of the German Ethics Council is to the effect that while it is deserving to protect religious freedom, it should not override a child's right to bodily integrity and future autonomy.[58] The Royal Dutch Medical Association has similarly described non-therapeutic circumcision as a violation of children's rights under international laws.[59]

In practice, male genital circumcision is still regarded as a cultural or religious rite rather than as a harmful practice and a violation of rights. In a society where custom and religion are intertwined, it is perceived as a moral obligation, and the prohibition of male circumcision would likely encounter intense resistance. It is submitted that cultural and religious rites must evolve, especially

[55] (2013) App Nos 48420/10, ECHR.
[56] J. Harris, 'Consent and Cultural Practices' [2014] 45 *Journal of Medical Law,* 114.
[57] Ibid,115.
[58] German Ethics Council Opinion on Circumcision of Male Infants in Germany, 6.
[59] Royal Dutch Medical Association, Non-Therapeutic Circumcision of Male Minors: A Human Rights Perspective, 2010, (Position statement adopted 27th May,2010) 15.

in situations where they contravene individual autonomy and bodily integrity, particularly with reference to children who cannot consent.

**4.4 Medical Justifications and Ethical Considerations**

The prevention of certain infections and diseases is often cited as a defence in the medical justifications for circumcision.[60] Proponents of circumcision frequently cite alleged health benefits**,** including reduced risk of urinary tract infections, HIV transmission, and penile cancer.[61] However, medical organisations are divided on the necessity and benefits of routine infant circumcision.[62] Ethical concerns arise when procedures with questionable medical necessity are performed without the individual's consent. Public health arguments for infant circumcision, such as reduced HIV transmission risk, fail to justify bypassing informed consent. Voluntary adult medical circumcision can achieve these benefits without compromising individual autonomy.

Though the World Health Organisation (WHO) has recognised male circumcision as one of several strategies to reduce HIV transmission in high-prevalence regions, it emphasises that circumcision should be performed only under safe, informed, and voluntary conditions.[63] Non-therapeutic circumcision of minors is explicitly discouraged by WHO, noting that children are incapable of giving informed consent and that any health benefits can be achieved through other preventive measures.[64] The Royal Dutch Medical Association (KNMG)**,** the Swedish Paediatric Society**,** the British Medical Association (BMA) and other numerous medical associations have stated that routine circumcision of healthy boys is medically unnecessary and violates the ethical principle of "first, do no harm."[65] These Associations are emphatic that the prepuce (foreskin) is not a pathological structure but a functional part of the male anatomy, serving protective, sensory, and immunological purposes.[66]

Circumcision can lead to complications, including excessive bleeding, infection, penile damage, and, in extreme cases, death. Even when performed in clinical settings, complications occur and often leave lifelong physical and psychological scars. From a human rights standpoint, the irreversibility of the procedure underscores its incompatibility with medical ethics, particularly when performed without therapeutic necessity or patient consent.

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[60] American Academy of Paediatrics', Policy Statement on Circumcision (2012); R. Darby, 'The Aesthetic Hypothesis: Circumcision, Autonomy and the Ethics of Consent' [2015] 2(3) *Journal of Medical Ethics* 106.
[61] World Health Organisation, *Male Circumcision: Global Trends and Determinants of Prevalence, Safety, and Acceptability* (WHO 2007) 3.
[62] R. Darby, "The Aesthetic Hypothesis: Circumcision, Autonomy and the Ethics of Consent" (2015) 23 *Journal of Medical Ethics* 106.
[63] WHO (n61) 12 .
[64] Ibid, 13.
[65] (n58) 4.
[66] C Cold and J Taylor, 'The Prepuce: Specialised Mucosa of the Penis and its Loss to Circumcision' [1999] 79 *British Journal of Urology International,* 34.

Medical ethics rest on four cardinal principles, namely: autonomy, beneficence, non-maleficence, and justice.[67] Non-therapeutic circumcision of minors fails the test of autonomy because it removes the individual's ability to decide about his own body.[68] This is particularly significant since the operation alters a normal, healthy organ and imposes a permanent physical change based solely on parental, cultural, or religious inclinations.[69]

It is required by the principle of beneficence that any medical intervention must be in the patient's best interest.[70] Suffice to state that circumcision performed for non-medical reasons does not provide immediate or necessary health benefits, thereby failing this ethical criterion.[71] Moreso, the principle of non-maleficence**,** "do no harm," is clearly violated where unnecessary surgery exposes the child to pain, infection, and potential trauma.[72]

Another fundamental ethical consideration is informed consent. Consent must be voluntary, informed and competent under both medical law and human rights principles.[73] Infants and young boys lack the capacity to provide such consent, and thus, the decision is imposed upon them by parents or guardians. Freeman observes that this means the law should not be condoned when the consequences are irreversible.[74] The ethical dilemma intensifies when the surgery is carried out under anaesthesia or restraint, as this may amount to a form of assault or inhuman treatment**,** contrary to Articles 5 of the Universal Declaration of Human Rights (UDHR) and 7 of the ICCPR.[75]

This paper, therefore, argues that having looked at these legal instruments, the justifications for circumcision do not outweigh the permanent loss of bodily tissue and autonomy, especially when it is medically unwarranted**.**

## 5. CONCLUSION

This paper on male circumcision has revealed the intersection between culture, religion, medicine and the law. Traditionally, though perceived as harmless and beneficial, in contemporary times, there are increased questions on the compatibility of the rite of circumcision with the principles of bodily integrity, autonomy and informed consent. Significant human rights concerns arise when male circumcisions are performed without medical necessity or informed consent. While cultural and religious practices deserve respect, they must be balanced against the right to bodily integrity and protection from harm. Human rights must be seen to transcend rhetoric and become operational norms. International human rights laws provide frameworks for addressing this issue: the protection

[67] Beauchamp and Childress (n30) 101.
[68] Ibid 104.
[69] M Freeman, 'The Body, Child and Parents [1998] 6 (1) *Modern Law Review* 465.
[70] Beauchamp and Childress (n30) 106.
[71] B D Earp, 'Does Male Circumcision Violate the Rights of the Child?' [2016] (42) *Journal of Law, Medicine & Ethics,* 433
[72] Beauchamp and Childress (n30) 110.
[73] WHO (n 61) 15.
[74] Freeman (n69) 468.
[75] UDHR (n6), art 5; ICCPR (n7), art 7.

of individuals, especially minors, from non-consensual bodily harm. These international legal regimes firmly enshrine and affirm that everyone has inherent dignity and autonomy over their body, human rights that are non-derogable and applicable universally, but legal systems around the world have been inconsistent in their approach. It is demonstrated in this article that the performance of non-therapeutic male circumcision on infants without informed consent from them is an infringement of their fundamental human rights.

There is in Nigeria, through the 1999 constitution in section 34(1)(a) and section 11 of the CRA, 2003, theoretical protection and guarantee of human dignity and the right to health and safety, respectively. Due to cultural, religious and social norms, these provisions remain unenforceable with respect to male circumcision. It is a global struggle between cultural relativism and universal human rights. Though the practice of male circumcision is near-universal and very embedded as a communal identity, performed on minors who are not capable of consenting, it is an infringement of the right to bodily integrity and freedom from degrading treatment. Male infant circumcision without individual informed consent violates fundamental human rights to bodily integrity and freedom from cruel treatment. International instruments and case law support the deferral of such procedures until consent is possible, emphasising the primacy of child welfare over cultural or religious mandates. Legal reform and policy efforts must ensure the protection of minors' rights in this context. Since the Nigerian society respects cultural and religious relativisms, it must, on the other hand, ensure compliance with international human rights norms and obligations that protect children from harm, even when culturally permissible. It must be recognised in the Nigerian society that standards are dynamic and there are evolving human rights standards to reflect the new understandings of autonomy, consent, as well as medical ethics. It is an ethical and legal paradox to carry out male circumcision for non-therapeutic purposes, particularly on infants. Even though circumcision is framed as an act of religion or culture, it is submitted that it denies an individual the most fundamental of human entitlements, the right to determine and choose what happens to one's body. The trend toward universal protection of bodily integrity should therefore challenge States like Nigeria to harmonise cultural tolerance with global human rights obligations.

## 6. RECOMMENDATIONS

The following recommendations are proffered for Nigeria to honour cultural identity and human rights in a manner that such practices do not compromise the human body and dignity:

### 6.1 Law Reforms

To strengthen legal protections, especially for vulnerable victims like children,

Legislators should consider enacting laws that prohibit non-therapeutic circumcision and all other forms of genital mutilation on minors until they can provide informed consent, and such consent is documented and explicitly prohibit non-consensual and non-therapeutic infant circumcision as a human rights violation. Also, there should be an enactment of a minimum age-of-consent law for circumcision to give room for autonomy and voluntary consent in this respect. These can be

specifically enshrined in the Child's Rights Act or in a statute of its own. They should also criminalise any circumcision carried out without medical justification or consent. These laws should balance cultural and religious practices with a child's fundamental rights.

### 6.2 Promoting Awareness and Dialogue

Governments, traditional rulers, religious bodies and non-governmental organisations should collaborate and promote dialogue between parents, communities, medical professionals, religious leaders, and human rights advocates to find common ground that promotes bodily autonomy and challenges entrenched cultural assumptions on circumcision. Medical information should be made available to parents and communities to dispel myths on circumcision and encourage voluntary informed consent. Educate parents, health professionals, and cultural groups on ethical and legal aspects. The religious and community leaders should be engaged to promote voluntary adult circumcision alternatives.

### 6.3 Providing Medical Guidelines

Medical associations and councils should develop clear guidelines on the ethical and medical aspects of circumcision, ensuring that the procedure is only recommended when medically justified. Hospitals and practitioners should be made to have consent to undergo circumcision documented, as well as ensuring that the procedures are performed in sterile and hygienic conditions.

### 6.4 Monitoring, Reporting and Enforcement

Human rights bodies such as the National Human Rights Commission (NHRC) should devise mechanisms to monitor the implementation of laws and policies related to circumcision to ensure compliance with international human rights standards and facilitate redress where needed. There should be provision for legal recourse and protection for individuals who are coerced or subjected to non-consensual circumcision.

### 6.4 Judicial Responses

Nigerian courts should recognise non-consensual circumcision as a violation of human dignity, interpret it as such and pronounce the appropriate punishment.