

Chapter 8

EDUCATING THE UNITED NATIONS ABOUT CIRCUMCISION

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Abstract: In August 2001, NOCIRC submitted an oral address and a written “intervention” to the United Nations’ Sub-Commission for the Promotion and Protection of Human Rights, which became part of the official UN record. We provide the text of our written intervention. At this point in time, the Sub-Commission is the most favorable forum in which to seek UN recognition of male genital cutting (MGC) as a human rights violation. The UN and the Sub-Commission are to be congratulated for their progress in acknowledging the importance of MGC. Further work remains to expand on the UN’s and the Sub-Commission’s statements that (1) at least, under certain circumstances, MGC can constitute a human rights violation; and (2) anti-male sex discrimination violates human rights. Analysis of reports regarding MGC is provided by the Sub-Commission’s Special Rapporteur on Traditional Practices Affecting the Health of Women and the Girl Child. We review the Sub-Commission’s 1998 excision of male children from the Special Rapporteur’s mandate, in apparent violation of both its own procedures and leading human rights documents.

Key words: Circumcision, United Nations, medical ethics

1. INTRODUCTION

In July and August 2001, the political movement to secure the right to bodily integrity was officially represented for the first time at the 52nd annual meeting of the United Nations’ (UN) Sub-Commission for the Promotion and Protection of Human Rights (“Sub-Commission”). Pursuant to the UN Roster Status of the National Organization of Circumcision

Information Resource Centers (NOCIRC) and also unofficially representing Attorneys for the Rights of the Child (ARC), I participated in the three-week session held in Geneva, Switzerland. Tina Kimmel and Kenneth Drabik worked with me for a few days of the session. Our work included presenting an oral address and a written “intervention,” which became part of the official UN record and, at least in theory, will be reviewed and considered by each Sub-Commissioner.¹ Already, the UN has recognized that circumcision, under certain circumstances, can constitute a human rights violation, and we were, among other things, seeking to obtain a general statement to that effect. The UN has also acknowledged that anti-male sex discrimination violates human rights.

2. THE SUB-COMMISSION IS CURRENTLY THE BEST FORUM BEFORE WHICH TO SEEK UN ACKNOWLEDGEMENT OF MGC

The Sub-Commission was selected as the appropriate United Nations agency to approach regarding male genital cutting (MGC), based in part on its unequalled openness to input from non-governmental organizations (NGO’s) regarding proposed newly recognized human rights.

2.1 Overview of United Nations’ Structure

Within the UN, human rights activities are pursued either by bodies created under the authority of the UN Charter (“Charter-based” bodies) or by bodies established under various human rights treaties (“treaty-based bodies”). The 1994 establishment of a High Commissioner on Human Rights emphasizes the increasing role human rights considerations are playing in the organization’s functioning. The General Assembly, composed of all member nations of the UN, constitutes the highest UN body and its most representative decision-making organ. The Economic and Social Council (ECOSOC), the parent institution of the UN’s various human rights bodies, is a subsidiary of the General Assembly. The Commission on Human Rights (“the Commission”) and treaty-monitoring bodies like the Committee on the Rights of the Child are subsidiaries of ECOSOC. ECOSOC must approve all measures recommended by the Commission that involve an expenditure of funds or that need the General Assembly’s attention. As a rule, ECOSOC approves the Commission’s recommendations. At the final level of nesting, which is pertinent to our purposes, the Sub-Commission for the Promotion and Protection of Human Rights (whose original name was “Sub-Commission for the Prevention of Discrimination and the Protection of

Minorities”) is the Commission’s only sub-commission, created through a resolution passed by ECOSOC.² The Sub-Commission is comprised of twenty-six experts, elected by the Commission “with due regard to equitable geographic distribution,” from a list of nominees submitted by UN member states.³ Unlike the Commission, which is technically composed of member states, the Sub-Commission consists of individual “experts” who are not officially representing their country of origin. The Sub-Commission carries out studies and issues reports to the Commission regarding specific human rights conditions relating to its anti-discrimination and minority protection mandate. The Sub-Commission meets for three weeks in August every year.

2.2 Sub-Commission for the Promotion and Protection of Human Rights

The Sub-Commission appears to be the best entity to which to address a claim that MGC constitutes a human rights violation. As human rights expert Thomas Buergenthal has observed, the Sub-Commission “has traditionally been the UN institution most sympathetic to the cause of human rights.”⁴ Kathryn English and Adam Stapleton have written that the Sub-Commission is “notable for its independence and openness to NGOs.”⁵ Finally, David Weissbrodt (who happened to be a Sub-Commissioner as well as the Chairman of the Sub-Commission in 2001) and Penny Parker write that, “for NGOs the Sub-Commission has often been a more accessible forum for new ideas than other U.N. bodies.”⁶ The Sub-Commission’s accessibility and relative willingness to entertain novel thinking is no doubt partly attributable to the aforementioned freedom of action enjoyed by its component experts.

The Sub-Commission has regularly entertained non-governmental organization’s submissions of interventions regarding FGC.⁷ Since genital cutting of females has been repeatedly recognized as a human rights violation by the UN’s General Assembly,⁸ and, not incidentally, by the Sub-Commission,⁹ the expansion of this human rights category to encompass male as well as female genital mutilation fits squarely within the Sub-Commission’s mandates to work towards the elimination of sex discrimination and toward the eradication of harmful traditional practices. The Sub-Commission is the best place to work to expand the contours of accepted human rights law in order to include MGC.

The threshold procedural prerequisite to any direct work with the Sub-Commission is locating an issue on which the presenting organization can hang its hat at the annual Sub-Commission meeting in Geneva. The 2001 provisional agenda of the Sub-Commission presented one agenda item that was clearly more promising than any other: Item 6(a) was dedicated to

women and human rights, including “traditional practices affecting the health of women and the girl child.”¹⁰

2.3 Sub-Commission has Power to Issue Resolutions and Undertake Studies

In 1999, the Sub-Commission underwent a reorganization and name change;¹¹ since then, it has been officially barred from adopting resolutions condemning particular countries. It should be noted, however, that this rule does not necessarily bar ingenious and determined Sub-Commission members from passing resolutions that formally do not name a specific country, yet, for all practical purposes focus exclusively on one or several specific nation state(s). Typically, in response to input from Sub-Commission members, UN member states and/or NGO’s, the Sub-Commission can adopt resolutions condemning particular human rights violations. Criticisms of violations tend to be highly diplomatic.¹² Most frequent are expressions of “concern,” such as the Sub-Commission expressed in requesting Mrs. Halima Embarek Warzazi of Morocco to study traditional practices harmful to the health of women and children.¹³ Where deemed appropriate, however, the Sub-Commission on occasion will adopt harsher language that may use such terms as “deploring” and “especially disturbed.”¹⁴

The Sub-Commission also possesses the authority to undertake studies of specific human rights conditions, which may include on-site investigations. Weissbrodt and Parker underscore the importance of this field of Sub-Commission endeavor, noting, “The Sub-Commission’s principal work is the preparation of studies on new human rights issues and the drafting of new human rights standards.”¹⁵ In 1992, the Sub-Commission elected to limit the total number of studies undertaken annually to thirteen, also capping the total time period for studies at three years under normal circumstances.¹⁶ One of the two requested actions in our written and oral interventions asked the Sub-Commission to conduct a study of MGC as a human rights violation. Such a development may serve as a precursor to the development of human rights standards to cover the subject of the report, in this case MGC.

2.4 Sub-Commission has Power to Create a Special Rapporteur or a Working Group or to Expand the Mandate of an Existing Special Rapporteur

The Sub-Commission is empowered to establish a working group to more fully explore issues of possible concern to it, to appoint a Special

Rapporteur to conduct investigations on specific issues, and to expand the mandate of an existing Special Rapporteur to encompass additional human rights issues. Requests in our written and oral interventions that a study of MGC be undertaken are necessary first steps.

One of our two requests for action in our written and oral interventions was that the Sub-Commission restore The Special Rapporteur's mandate to cover traditional practices affecting the health of women and children, as originally formulated, not merely women and the girl child, under the reduction of Mrs. Warzazi's mandate that was effected in 1997. This topic is discussed more fully *infra*, in Section 5.

3. WRITTEN AND ORAL INTERVENTIONS

On 9 August 2001, I presented a written "intervention" or petition to the Sub-Commission.¹⁷ Written statements are accepted by the Sub-Commission, as a subsidiary of ECOSOC, pursuant to ECOSOC Resolution 1296.¹⁸ On 14 August 2001, I gave an oral address to a session of the Sub-Commission.¹⁹

In the interventions, we asked for two actions from the Sub-Commission: (1) the restoration of the Special Rapporteur's pre-1997 mandate, which — as discussed in more detail *infra* in Section 5 — covered traditional practices harmful to male children as well as female children (and women but not men); and (2) the undertaking by the Sub-Commission of a study of the issue of MGC as a human rights violation. These two requested actions were specifically designed to be relatively achievable goals.

Following is the text of the written intervention:

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Geneva: 30 July–17 August 2001; J. Steven Svoboda

COMMISSION ON HUMAN RIGHTS

Sub-Commission on the Promotion and Protection of Human Rights

Fifty-third session

Agenda Item 6

TRADITIONAL PRACTICES AFFECTING THE HEALTH OF WOMEN
AND THE GIRL CHILD

Written statement submitted by the National Organization of Circumcision Information Resource Centers (NOCIRC), a non-governmental organization on the Roster

Male Circumcision

1. The National Organization of Circumcision Information Resource Centers (NOCIRC) congratulates the Sub-Commission on its excellent work relating to traditional practices affecting the health of women and the girl child. NOCIRC notes with satisfaction the excellent reports prepared by Special Rapporteur Mrs. Halima Embarek Warzazi regarding traditional practices affecting the health of women and the girl child. NOCIRC commends in particular the excellent work done by Mrs. Warzazi on the issue of female genital mutilation.

2. NOCIRC notes that Mrs. Warzazi's mandate originally encompassed traditional practices affecting the health of women and children but that more recently her mandate has apparently been redefined to focus exclusively on traditional practices affecting the health of women and the girl child, thus excluding traditional practices that may affect the health of the boy child. Male circumcision apparently never has been studied as a human rights issue by the Sub-Commission. In all places where female genital mutilation occurs, male circumcision also occurs. Thus, elimination of one practice may go hand-in-hand with elimination of the other.

3. Article 13 of the United Nations Charter, as well as Article 2 of the International Covenant on Civil and Political Rights and Article 2 of the Convention on the Rights of the Child bar discrimination on the basis of sex. Article 7 of the Universal Declaration of Human Rights provides, "All are equal before the law and are entitled without any discrimination to equal protection of the law." Ms. Gay J. McDougall, as the Sub-Commission's Special Rapporteur on Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict, stated:

That international humanitarian law, insofar as it provides protection against rape and other sexual assaults, is applicable to men as well as women is beyond any doubt as the international human right not to be discriminated against (in this case on the basis of sex) does not allow derogation.¹

Males may not be discriminated against in the application of human rights principles. United Nations experts have acknowledged that at least under certain circumstances male circumcision constitutes a human rights violation.²

4. The Parliament of Sweden recently voted decisively, 249 to 10, in favor of Law 2001:499, new legislation that regulates male circumcision and, in the preliminaries, also ordered a study to determine what effect the new law will have and whether male circumcision should be considered a human rights violation. Many Swedish Members of Parliament stated that male circumcision violates children's rights. The ten dissenters in the Swedish vote objected only because they supported total criminalization, rather than mere regulation, of non-therapeutic circumcision of male children.

5. Male circumcision has been stated to be a human rights violation by legislators, non-governmental organizations, and scholars. Germany awarded political asylum to a Turkish man based on his fear of enforced circumcision: "There may be...no doubt that a circumcision which has taken place against the will of the person affected shows...a violation of his physical and psychological integrity, which is of significance to asylum."

6. Numerous researchers have comprehensively documented the broad range of physical and psychological harm caused by male circumcision, including infant pain response, serious harm to infant neurological development and memory capability, the damage caused by memories of the procedure, the damage caused to self-esteem and body image, post-traumatic stress disorder, permanent impacts on sexuality, and death. Reports of death during initiations in the developing world have been appearing frequently in major press outlets. On August 6, for example, the *New York Times* ran a story mentioning that at least 35 boys have died already this year in South Africa, and ten percent or more of initiates are left with no penis or just disfigured stumps.

7. NOCIRC notes that male circumcision is a very pervasive practice throughout both the developed and developing worlds. An estimated 13.3 million male children and babies are forced to undergo male circumcision without medical indication each year. As a numerical frame of reference, 2 million females undergo some form of female genital mutilation annually. In the developed world, the procedure is typically carried out at infancy, while in the developing world it occurs any time between infancy and early adulthood depending on various factors.

8. The fact that a newborn baby can suffer pain has been conclusively proven. The harm that male circumcision causes to babies by the severe levels of pain has been repeatedly documented. The level of response to the pain and stress of

the procedure exceeds the response to blood sampling or injections and is not significantly reduced even by application of an anesthetic. Male circumcision harms women by impairing infant-mother bonding and breastfeeding.

9. Non-therapeutic male circumcision does not have any significant medical benefits justifying its routine performance upon a child. Every national medical association in the world that has considered the issue has refused to endorse routine male circumcision. Respected opponents of female genital mutilation have also questioned male circumcision and have pointed out analogies between the two practices and between false beliefs surrounding and justifying the perpetuation of the two practices. Recent research demonstrates that the average male circumcision in the developed world removes over 50% of all surface genital tissue and also a highly significant number of specialized neural end organs, including extremely specialized tissue, unique to that part of the body and fundamental to human sexual response. Research documents the long-term harm which many men experience as a result of male circumcision.

10. Research suggests that male circumcision causes behavioral changes and that some reported gender differences may actually be a result of male circumcision.

11. Complications in the developed world occur with a frequency of between 2-5% or more depending on the definition applied. A significant number of deaths occur each year. One study of male circumcision in the developing world found that 9% of the boys died, 52% lost all or most of their penile shaft skin, 14% developed severe infectious lesions, 10% lost their glans penis, and 5% lost their entire penis. This represents only those boys who completed travel to the hospital. The true complication rate is likely to be higher.

12. While supporting Mrs. Warzazi's admirable work on traditional practices specifically affecting women and the girl-child, NOCIRC respectfully requests that the Sub-Commission also focus attention on traditional practices that specifically affect the male child, such as male circumcision. NOCIRC notes that the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and other relevant treaties are applicable both to males and females, and that discrimination against either gender in their application is forbidden.

13. Legislation or human rights provisions that protect against female genital mutilation and not male circumcision violate the human rights of the boy child. Ample evidence proves the serious harm caused by male circumcision. Logically, any difference in severity between female genital mutilation and male circumcision, even if proven, does not justify the neglect of the latter practice.

14. Any alteration of children's genitals performed without absolute medical indication violates human rights. Male circumcision violates the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and other documents. Relevant rights include the rights to security of the person, to the highest attainable standard of health, and to protection from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse." Article 24.3 of the Convention on the Rights of the Child calls on states to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children," terminology that — as human rights scholars such as Jacqueline Smith have commented — is fully applicable to male circumcision.

Conclusions

15. Male circumcision causes permanent and severe harm and violates human rights.

16. NOCIRC asks that the mandate of the Special Rapporteur on Traditional Practices Affecting the Health of Women and the Girl Child be revised to again encompass traditional practices affecting the health of women and children.

17. NOCIRC asks that the Sub-Commission undertake a study of male circumcision as a human rights violation.

Notes

1. Contemporary forms of slavery: systematic rape, sexual slavery and slavery-like practices during armed conflict: final report submitted by Ms. Gay J. McDougall, Special Rapporteur (E/CN.4/Sub.2/1998/13, para. 24).

2. United Nations Security Council. Commission of Experts' Final Report [on the Former Yugoslavia] (S/1994/674, part IV, section F).

4. RECOGNITION OF MGC

Numerous eminent scholars such as Jacqueline Smith²⁰ and Margaret Somerville²¹ have noted the legal and human rights problems implicated by MGC. Moreover, the Sub-Commission and other UN bodies have already repeatedly acknowledged MGC's status as a potential human rights violation as well as males' human right to equal protection against sex discrimination.

Sub-Commissioner Ms. Gay J. McDougall, the Sub-Commission's expert on systematic rape and sexual slavery, advised the Sub-Commission that sex discrimination against males violates international law.²² Ms. McDougall stressed that human rights must protect both males and females from all forms of sexual assault. Several documents released by the United Nations recognize various forms of sexual assault on males, including circumcision, as torture and as a human rights violation.²³ Since 1999, the Committee on the Rights of the Child has placed its concerns about male circumcision on record no fewer than three separate times. In 1999, the Committee called on South Africa to "please provide additional information on the traditional practice of male circumcision and outline the programs undertaken and/or envisaged to eliminate this practice and promote awareness of its harmful effects on boys."²⁴ In 2000, the Committee expressed its concern that, in South Africa, male circumcision is in some instances carried out in unsafe medical conditions. The Committee also recommended that South Africa "take effective measures, including training for practitioners and awareness-raising, to ensure the health of boys and protect against unsafe medical conditions during the practice of male circumcision."²⁵ Finally, in 2001, the Committee expressed its concerns with health risks linked to male circumcision in Lesotho.²⁶

Male circumcision is specifically cited as a sexual assault to which men have been subjected in the final report of the UN commission of experts assembled to report on humanitarian law violations in the former Yugoslavia.²⁷ The Fourth Report on War Crimes in the Former Yugoslavia (Part II) reports as "torture of prisoners" circumcisions performed on Bosnian Serb soldiers by Muslim and Mujahedin troops.²⁸ The Final Report notes that, where such acts of mutilation constitute "serious international violations directed against the protected persons, in contradistinction to a fate befalling them merely as a side-effect," they are prohibited by common article 3 of the four Geneva Conventions of 1949 and by Protocol II to the Geneva Conventions. Clearly, recognition of the human rights problems posed by male circumcision is developing in the United Nations.

5. THE SUB-COMMISSION'S APPARENTLY IMPROPER REDEFINITION OF THE SPECIAL RAPPORTEUR'S MANDATE

The Sub-Commission is due sincere congratulations for its hard work to date, acknowledging the importance of MGC as a human rights violation. At the same time, the Sub-Commission appears to have violated its own procedures as well as some central UN documents through its 1997 redefinition of the mandate of the Special Rapporteur on Traditional

Practices, which excluded male children (along with the previously excluded male adults). Such unequal treatment based on sex clearly and gravely violates core human rights principles, including Article 7 of the Universal Declaration of Human Rights, which states: “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of the Declaration and against any incitement to such discrimination.” Article 2 of the Universal Declaration, which provides, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as... sex...” The Sub-Commission’s action also directly contravenes Article 2 of the Convention on the Rights of the Child, which demands that the rights of each child be ensured without discrimination based on sex or other listed factors. Such policies also violate Article 1, paragraph 3 of the Charter of the United Nations, which includes among the purposes of the United Nations promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion, as well as Charter Article 55(c), which states that the UN “shall promote... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”²⁹ All members and all subdivisions of the United Nations are bound by all Charter provisions. Therefore, a human rights violation occurs where males are discriminated against by not enjoying the UN’s enforcement of their right to protection from genital mutilation. Moreover, the Sub-Commission’s actions violate its own findings, which, as discussed in Section 4, *infra*, affirm that MGC is a human rights violation and that discrimination against males violates human rights.³⁰

5.1 Historical Development of the Special Rapporteur

The Special Rapporteur’s position was first created at a 1985 meeting of the Sub-Commission’s Working Group on Slavery. For the following twelve years, the Special Rapporteur’s efforts on traditional practices principally addressed issues directly relevant only to girls (FGC, honor killings, early marriage, son preference, infanticide and neglect of girls, “crimes of honor,” etc.) while secondarily working on some issues affecting both male and female children (harmful traditional healing practices, harmful childbirth practices, etc.). In 1997, in an apparent violation of the Sub-Commission’s normal procedure as well as the requirements of core UN documents, the Special Rapporteur’s mandate was silently reduced during the Sub-Commission’s 49th session in July-August 1997. As late as 25 June 1997, one Sub-Commission document still refers to the “Special Rapporteur on traditional practices affecting the health of women and children.”³¹ But by

the time the Sub-Commission meeting was nearing its conclusion and it issued its report on the session, Mrs. Warzazi's mandate had been changed to cover "traditional practices affecting the health of women and the girl child."³² Evidently no substantive discussion of this seemingly highly significant change ever occurred, nor was the change of title ever alluded to in any Sub-Commission document. Seven years ago, the Commission may have signaled the Sub-Commission regarding its greater interest in FGC relative to MGC. The Commission directed two paragraphs in its 1996 resolution on the rights of the child to the alleged need for "paying particular attention to the obstacles faced by the girl child" and encouraging states "to enact and enforce legislation" addressing, *inter alia*, FGC.³³ It said nothing regarding MGC.

Although the Sub-Commission evidently does not have a rule speaking directly to this issue, the UN as a whole as well as its constituent parts, including the Sub-Commission, are institutions that above all value protocol and established procedure. It is highly irregular for the mandate and title of any officer of the Sub-Commission to be altered without discussion or even official notice, particularly a position as influential as the Special Rapporteur on Traditional Practices. I scanned numerous documents from Sub-Commission history and reviewed all relevant procedures³⁴⁻³⁵ without being able to locate any viable procedure on which the Sub-Commission could claim to rely in taking this evidently unprecedented step.

5.2 Analysis of the Special Rapporteur's Work Regarding MGC

The Special Rapporteur deserves praise for her sustained commitment to publicizing and rooting out FGC. However, her actions unfortunately demonstrate differential treatment of MGC and FGC despite her acknowledged receipt of numerous communications regarding MGC. For example, in January of 1997, the Special Rapporteur received a questionnaire about male and female circumcision, to which she replied by inaccurately suggesting that "the circumcision of male children did not concern the United Nations as only female circumcision was deemed a harmful practice to be eradicated. Consequently, it would seem inappropriate to consider under one head both female circumcision which is harmful to health and male circumcision which has no undesirable effect and it [sic] even considered to be beneficial."³⁶ The Special Rapporteur provides no support for her assertions.

In a report issued in 2000, the Special Rapporteur mentions in one paragraph receiving mail concerning male circumcision³⁷ and later writes:

For the sake of transparency, the Special Rapporteur would like to mention the fact that she has received a few letters condemning male circumcision. In order to close once and for all an acrimonious debate, which has led to personal attacks against herself, she would like to recall that her mandate by the Sub-Commission on the Promotion and Protection of Human Rights concerns traditional practices affecting the health of women and the girl child. The same mandate applies with regard to the General Assembly or other United Nations bodies. By restricting herself to female circumcision, the Special Rapporteur is therefore only keeping to her terms of reference. Furthermore, she considers that the harmful effects of male circumcision cannot in any way be compared or equated with the violence, danger and risk faced by girl children and women.³⁸ [emphasis in original]

A number of distortions of the truth are evident here. The Special Rapporteur's references to the coverage of her mandate and her suggestion that she is "only keeping to her terms of reference" are literally correct but highly misleading. It is true that, *since August 1997*, her mandate covered only women and the girl child. At the time the Special Rapporteur made this comment, her time with a mandate covering only girls represented less than three years of a total of 15 years working on the topic. She fails to allude to the preceding 12 years, during which her mandate also covered male children. Similarly, her suggestion that "the same mandate" applies to the General Assembly or other UN bodies, while technically correct, is again highly misleading. The Special Rapporteur implies that other UN bodies have also elected to concentrate on traditional practices affecting women and the girl child, whereas the truth is other UN bodies' actions on the topic occur as reactions to the reports and actions of the Sub-Commission and its Special Rapporteur. A comprehensive search of UN documents issued since the mid-1990s by both charter-based and treaty-based entities on the topic of traditional practices harmful to women and the girl child disclosed only Sub-Commission documents and documents issued by the General Assembly,³⁹⁻⁴⁰ ECOSOC,⁴¹ the Commission,⁴² and the Committee on the Rights of the Child,⁴³⁻⁴⁴ all in response to actions or reports instigated by the Special Rapporteur. Next, the Special Rapporteur makes a statement regarding the alleged non-comparability of the harmful effects of male and female circumcision that can only be considered a *non sequitur*. No citation is provided and of course this begs the question: Even if it is true that the harm of MGC, which even the Special Rapporteur concedes does exist, is greatly exceeded in magnitude by the harm caused by FGC, this does not justify the UN and the Special Rapporteur failing to act to correct human rights violated by MGC. Human rights protections are not subject to being competitively balanced against each other in the scales of international justice to determine which should be enforced.⁴⁵

The 2000 document contains further misleading claims in the following paragraph. Mrs. Warzazi writes:

To close this aside, the Special Rapporteur might draw attention to a study published at the beginning of the year by the University of Washington (Seattle) which concludes that the great majority of boys suffer no complications as a result of circumcision. What is more, the *Sunday Times* (United Kingdom) of 26 March 2000 published a scientific study carried out by specialists of Melbourne University in Australia, according to which male circumcision may be related to a lower risk of HIV transmission from women to men.⁴⁶

Setting aside the imprecise suggestion that the *Sunday Times* published a scientific study rather than a news story regarding such a study, it can easily be shown that both articles referenced by Warzazi are flawed and unworthy of UN citation. As Dennis Harrison adroitly noted, the first one, by Christakis, et al.,⁴⁷ “appears to confirm that a medically unnecessary surgical intervention is being undertaken in an ethical vacuum on the basis of limited scientific understanding.”⁴⁸ After reporting that certain complications occur twenty times more frequently in circumcised infants than in intact males, the authors somehow manage to conclude that circumcision remains a “relatively safe procedure.”⁴⁹ They also fail to address the important ethical, legal, and human rights issues raised when a medically unnecessary surgical operation is carried out on a person who cannot speak for himself.

The second article the Special Rapporteur mentions, by Short and Szabo,⁵⁰ is similarly fallacious. This notoriously flawed article provoked a torrent of letters responding to and debunking its claims.⁵¹ As Robert S. Var Howe has pointed out, the authors’ simple-minded tallying of studies without allowing for confounding factors is “both unscientific and misleading.”⁵² The futility of Short and Szabo’s attempt to blame male genital integrity for HIV is clear, since the United States has both the highest circumcision rate in the developed world, estimated at seventy-seven percent,⁵³ and the highest incidence of sexually transmitted disease infection amongst the same nations.⁵⁴ Systematic review, using meta-analysis of studies regarding circumcision status and HIV, has shown a substantial degree of heterogeneity across studies,⁵⁵ naturally casting serious doubt on the validity of superficial summary surveys such as that of Short and Szabo. Because many diverse considerations affect sexual behavior and vulnerability to HIV, blaming it on normal anatomy is bad science and an even worse human rights policy. The numerous distortions and mistakes of fact found in these few sentences were presumably not inadvertent errors since the entire first paragraph appears again almost *verbatim* in another report made in 2001, including a concession — again repeated in two separate paragraphs — that she continues to receive mail relating to male circumcision.⁵⁶ Interestingly, in the more recent document, the Special

Rapporteur backs off from alluding to “personal attacks” and deletes the two medical references on which she relies in the previous report.

In short, the Special Rapporteur’s work on MGC suffers from superficiality regarding even relatively basic medical and human rights aspects of the procedure, flaws not evident in her efforts to halt female genital cutting.

5.3 Bringing the Mandate into Compliance

Thus, the Sub-Commission finds itself violating the UN’s own human rights standards. The requested reinstatement of the Special Rapporteur’s mandate to encompass traditional practices harming male children would promote compliance with equal protection and non-discrimination requirements applicable under both human rights principles and the national laws of numerous countries.⁵⁷ The requested change would be invaluable in promoting universal genital integrity and would remind the Special Rapporteur regarding the need to use her office’s resources to address both FGC and MGC.

6. CONCLUSION

The United Nations and its Sub-Commission for the Promotion and Protection of Human Rights have made an admirable start in recognizing MGC as a human rights violation under certain circumstances and, by accepting into their official records, an intervention documenting that male genital cutting contravenes human rights principles. The UN and the Sub-Commission deserve further praise for acknowledging that sex discrimination against males constitutes a human rights violation. Nevertheless, further work remains to be done. The Sub-Commission’s unacknowledged reduction of the Special Rapporteur’s mandate contravenes UN principles on both substantive and procedural grounds and should be reversed immediately. We are confident that the UN and the Sub-Commission will continually expand upon their already laudable recognition that male circumcision is an issue that must be addressed in the name of humanity.

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