

# Sexual Mutilations

## A Human Tragedy

Edited by

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## ROUTINE INFANT MALE CIRCUMCISION

### Examining the Human Rights and Constitutional Issues

J. Steven Svoboda

#### 1. INTRODUCTION

Human rights agreements—applicable either through ratification or through customary law—prohibit circumcision based on such important principles as the rights of the child, the right to freedom of religion, the right to the highest attainable standard of health, and the right to protection against torture. Cultural blindness facilitates the perpetuation of many barbaric and/or egregiously discriminatory practices and conditions. The many laws against female sexual mutilation, and the discriminatory failure to outlaw and vilify male sexual mutilation, violate equal protection under both international human rights law and American legal doctrines.

##### 1.1. Customary Law and Human Rights Agreements

Although the recent ratification of certain human rights documents has ameliorated its position somewhat, the United States has long been regarded as an outlaw by the human rights community. Among other considerations, this reputation may be attributed to tardiness and/or failure to sign and/or ratify a number of documents which have been widely accepted around the world, including the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Rights of the Child* and until relatively recently, the *International Covenant on Civil and Political Rights*. The constitutional requirement that any ratification must be approved by the Senate has facilitated the United States' frequent failure to endorse widely-accepted human rights treaties.

Nevertheless, under well-recognized principles of international law, human rights agreements and other international laws may be widely enough observed by the community of nations to acquire the status of customary law. Customary law is applicable to all states regardless of whether they have themselves actually ratified the document in question. Therefore, the United States' failure to ratify certain human rights agreements does

not necessarily insulate us from liability for violations of internationally recognized human rights as set forth in those documents.

## 2. HUMAN RIGHTS PRINCIPLES FORBID INFANT CIRCUMCISION

Well recognized human rights principles forbid circumcision, and all other forms of male sexual mutilation, as a human rights violation.

### 2.1. Reasons for Concern with Infant Male Circumcision

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

### 2.2. Circumcision Prohibited by Several Human Rights Documents

Several United Nations resolutions, conventions and declarations appear to forbid routine infant male circumcision. These prohibitions are based on such critical rights as the rights of the child, the right to freedom of religion, the right to the highest attainable standard of health, and the right to protection against torture.

*2.2.1. Rights of the Child.* The *Convention on the Rights of the Child* imposes various obligations which are violated by male sexual mutilation, including sexual abuse, torture, interference with privacy, the right to safety while under the care of a parent or guardian, and the right to health.

*2.2.2. Male Sexual Mutilation Prohibited under Provisions Regarding Sexual Abuse, Torture, and Interference with Privacy.* Article 34 of the *Convention on the Rights of the Child* requires states parties to protect the child from all forms of sexual exploitation and sexual abuse, and Article 36 further obliges states parties to protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.<sup>1</sup> Article 37(a) of the *Convention on the Rights of the Child* forbids subjecting any child to torture or other cruel, inhuman or degrading treatment or punishment. Article 16 bars arbitrary or unlawful interference with a child's privacy, and gives children the right to the law's protection against such interference. The *Declaration of the Rights of the Child* also stipulates that children must be protected against all forms of cruelty, neglect, and exploitation.<sup>2</sup> Current practice of governments, such as the United States, which permit, encourage, and even arrange for circumcision are clearly and grossly in violation of all of these provisions.

*2.2.3. Child's Right to Safety While under Care of Parent or Guardian Is Violated by Circumcision.* Article 19.1 of the *Convention on the Rights of the Child* provides that states parties must take all measures to insure that no violence, injury, or abuse occurs while the child is under the care of a parent or legal guardian. A parent's or guardian's

consent cannot justify a non-medically necessary procedure such as circumcision. Only the consent of the individual himself can permit such an operation, and no infant is capable of providing such a consent.<sup>3</sup>

**2.2.4. Child's Right to Health Is Violated by Procedure.** Article 24 of the *Convention on the Rights of the Child* addresses health issues. Section 1 obliges states parties to recognize the child's right to enjoy the highest attainable standard of health. Similarly, Section 2 of Article 24 requires states parties to pursue full implementation of the child's right to enjoy the highest attainable health standard and to take appropriate measures, *inter alia*, to diminish infant and child mortality. These guarantees are violated where a medically unnecessary and extremely painful alteration of an infant male's sexual organs is performed, subjecting the child to the risk of complications and possible death. Section 3 requires states parties to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. Article 24.1 of the *International Covenant on Civil and Political Rights* provides that every child shall have, without any discrimination as to, *inter alia*, sex, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the state.<sup>4</sup>

### 2.3. Freedom of Religion Does Not Justify Procedure

The right of freedom of religion does not justify circumcision.

**2.3.1. Children Bear Independent Right to Freedom of Religion.** Children bear their own right to freedom of religion, independent of the wishes of their parents or guardians. Under Article 14.1 of the *Convention on the Rights of the Child*, children have the right to demand that states parties respect their right to freedom of thought, conscience, and religion. No infant is capable of consenting to a surgical procedure based on his own religion. Where the procedure is one based on religion, it is the parent's religion which motivates the procedure and not the religion of the person whose sexual organs are being surgically altered. Children subjected to sexual mutilation have neither asked for nor consented to the procedure. A parent's consent is therefore, again, clearly insufficient.<sup>5</sup>

**2.3.2. Exception to Freedom of Religion Applies Here.** Moreover, even if religion did somehow justify the procedure, which it clearly does not, identical language in Article 14.3 of the *Convention on the Rights of the Child*, Article 18.3 of the *International Covenant on Civil and Political Rights* and Article 12.3 of the *American Convention on Human Rights* very clearly provides that an exception to the requirement to permit freedom of conscience and religion arises where such freedom, if exercised, would result in violating the public safety, order, health, or morals, or the fundamental rights and freedoms of another human being. A traumatic disfigurement of a nonconsenting baby's sexual organs should qualify as such a violation under this exception. Therefore, human rights principles forbid the mutilation.

### 2.4. Treaties Prohibiting Torture Apply to Circumcision

Treaties prohibiting torture, including the *Convention Against Torture* and the *Declaration Against Torture*, also prohibit routine infant male circumcision.

*2.4.1. Definition of Torture.* The *Convention Against Torture* — ratified by the United States — defines torture as, *inter alia*, 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 official.<sup>6</sup> The *Declaration Against Torture* 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*.<sup>7</sup>

*2.4.2. Circumcision Constitutes Torture.* Ecumenics International, which, as discussed below, is currently working closely with the United Nations to combat sexual mutilation, notes that, whether performed on male or female persons:

Genital mutilation is a traditional practice of physiological torture and psychological trauma destroying reproductive integrity and sexual health with significant risks of death.<sup>8</sup>

No objective observer who has witnessed a circumcision can seriously dispute that the procedure inflicts severe pain or suffering on the child. Circumcision does constitute torture.

*2.4.3. United States Routinely Violates Torture Treaties.* The United States routinely violates the *Convention Against Torture* and the *Declaration Against Torture*. Article 2.1 of the *Convention Against Torture* obliges a state party to take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction, and Article 2.2 adds that no exceptional circumstances whatsoever may justify the torture. Articles 4.1 and 4.2 of the *Convention Against Torture* state that any act of torture is a criminal offense which states parties must punish. Obviously the United States is not in compliance with these provisions: Its laws permit the procedure, and many circumcisions are initiated, promoted, allowed, and/or paid for by public health officials and/or performed in public hospitals. Furthermore, state obligations regarding circumcision extend to *all* procedures, whether or not performed with direct government participation. Article 3 of the *Declaration Against Torture* prohibits any state from permitting or tolerating torture or other cruel, inhuman and degrading treatment or punishment. The United States, by failing to take action against circumcision, as well as by subsidizing and performing the procedure, is also violating this article.

Without being explicitly defined, torture is also forbidden under Article 5 of the *Universal Declaration of Human Rights*, which we have ratified, Article 7 of the *International Covenant on Civil and Political Rights*, which the United States recently ratified, and under Article 37(a) of the *Convention on the Rights of the Child*, which we have signed but not ratified.

### 3. CULTURAL BLINDNESS AND CIRCUMCISION

Lawsuits and political activism play different, yet equally invaluable, roles in effecting social change. Law generally follows the current of society and does not commonly serve as the leader of dramatic social transformation. Judges rarely use their bench as a platform from which to hurl themselves into the vanguard, preferring to respond to well-established social trends. This was true, for example, with the civil rights and women's rights movements, in which activists worked for many years to lay the political ground-

work, which later supported legal strategies that ultimately led to judicial acknowledgment of previously unimaginable rights.

Each court will naturally — almost necessarily — view all issues it addresses through a set of filters derived from that society's particular social and cultural prejudices. American judges, for instance, will base their decisions, in part, on society's almost unconscious biases, of which ample historical and current evidence exists. Throughout the history of the United States, various horrors have been enshrined and endorsed by the laws of the United States, including slavery, "separate but equal" facilities for whites and blacks, and the disenfranchisement of all women and all non-property-owning men. Today in America, women's and men's differing socializations are reinforced by discriminatory child custody and divorce decisions.<sup>9</sup> This anti-male gender discrimination harms both men and women by reinforcing the presumption and perception that men's proper role is as a non-child-rearing wage-earner and women's proper role is in the home taking care of children. Such stereotypes limit the opportunities for each one of us to aspire to our full human potential.

Cultural blindness around the world has played a strong role in a broad range of body mutilations and, more specifically, sexual mutilation practices. In the United States, differing socialization and perceptions of men and women have enabled the passage of laws addressing female sexual mutilation but not male sexual mutilation. Cultural blindness frequently colors perceptions of human rights issues. The United States has come to tolerate altering baby boys' sexual organs in this manner. Throughout history, a broad range of body mutilation practices have been accepted, including footbinding, placing growing children in vases so that their bones would be bent to the shape of the vase, and many other forms of sexual mutilation of both sexes. As with infant male circumcision, all these practices have been carried out without the victim's consent.

#### **4. LAWS AGAINST FEMALE SEXUAL MUTILATION, WHICH FAIL TO OUTLAW MALE SEXUAL MUTILATION, VIOLATE EQUAL PROTECTION UNDER BOTH HUMAN RIGHTS LAW AND THE UNITED STATES CONSTITUTION**

Laws against female sexual mutilation that do not simultaneously prohibit male sexual mutilation contravene principles of equal protection enshrined in human rights law. Statutes passed by the federal government of the United States or by individual American states also violate the requirement of equal protection under the United States Constitution.

##### **4.1. Numerous Laws Forbid Only Female Sexual Mutilation**

Various countries, states, and provinces have passed statutes which prohibit only female sexual mutilation and do not address male sexual mutilation.

*4.1.1. Federal Law in the United States.* In the United States, as public and legislative awareness regarding the horrors of female sexual mutilation has grown, a number of provisions regarding female sexual mutilation became law in 1995 and 1996. At the federal level, a law was passed in 1996 providing that female sexual mutilation of a minor is a felony punishable by a fine of up to \$250,000 and/or imprisonment for not more than



five years.<sup>10</sup> Another new federal statute requires the Immigration and Naturalization Service to make available to all aliens who are issued immigrant or non-immigrant visas from countries where female sexual mutilation is commonly practiced information on harm caused by female sexual mutilation and information concerning potential legal consequences in the United States of performing or allowing female sexual mutilation.<sup>11</sup> A third federal law, passed in 1996, requires the Secretary of Health and Human Services to compile data on the number of victims of female sexual mutilation residing in the United States, including the number of minors, in order to identify communities practicing female sexual mutilation and then to carry out an outreach and education program regarding the health effects of female sexual mutilation, and to develop recommendations for education of medical students regarding female sexual mutilation.<sup>12</sup>

*4.1.2. State Laws in the United States.* This same year, California passed a law providing that female sexual mutilation of a minor is punishable by imprisonment in state prison for up to two, four, or eight years.<sup>13</sup> Delaware has declared female sexual mutilation of a minor a Class C felony punishable by imprisonment for up to ten years.<sup>14</sup> Minnesota passed a statute classifying sexual mutilation of *any* female as a felony punishable by imprisonment for more than one year.<sup>15</sup> California and Minnesota both enacted second laws directing their respective state departments of health services to establish and implement education, prevention, and outreach activities in communities that traditionally practice female sexual mutilation, to inform community members about the health risks and emotional trauma inflicted by this practice and informing them and the medical community of the criminal penalties.<sup>16</sup> North Dakota's law defines female sexual mutilation of a minor as a Class C felony punishable by up to five years imprisonment and/or a fine of up to \$5,000.<sup>17</sup> Rhode Island passed a statute defining sexual mutilation of *any* female as felony assault, punishable by imprisonment for not more than *twenty* years, the stiffest maximum penalty in any jurisdiction.<sup>18</sup> Tennessee outlawed sexual mutilation of *any* female as a Class D felony punishable by not less than two nor not more than twelve years imprisonment and in addition a discretionary fine not to exceed \$5,000.<sup>19</sup> Wisconsin created a criminal law that holds female sexual mutilation of a minor punishable by a fine of not more than \$10,000 or imprisonment for not more than five years or both.<sup>20</sup>

*4.1.3. Statutes in Other Countries.* Other countries have crafted legislation to prohibit female sexual mutilation. In Egypt, the practice was banned by President Nasser in 1958.<sup>21</sup> Kenya banned female sexual mutilation under legislation passed in 1990.<sup>22</sup> New Zealand has passed a law barring and punishing by imprisonment for up to seven years the sexual mutilation of *any* female or the arranging for a child to be removed from New Zealand for the purposes of performing female sexual mutilation.<sup>23</sup> In the Sudan, legislation dating from 1946 bans infibulation but permits *sunna*.<sup>24</sup> Sweden banned health professionals from performing female sexual mutilation in 1982.<sup>25</sup> The United Kingdom outlawed sexual mutilation of *any* female in 1985,<sup>26</sup> subsequently providing for the investigation of suspected violations and enabling the removal of a child from her home where this is the only way that her protection can be guaranteed.<sup>27</sup>

*4.1.4. Statutes in Other Provinces.* New South Wales in Australia has outlawed the sexual mutilation of *any* female and declared it punishable by imprisonment for up to seven years.<sup>28</sup> Although the Civil Code of Quebec does not explicitly criminalize either female sexual mutilation or male sexual mutilation, both practices should be illegal under provisions outlawing the removal of tissue from an unconsenting individual.<sup>29</sup> Moreover, a



and Naturalization Service non-immigrant visas from concealed information on harming potential legal consequences of sexual mutilation.<sup>11</sup> A third Human Services to community residing in the United States practicing female genital mutilation on program regarding the recommendations for education

California passed a law prohibiting imprisonment in state for female sexual mutilation to ten years.<sup>14</sup> Minnesota made a felony punishable by imprisonment for both enacted second laws to establish and implement at traditionally practice female genital health risks and emotional medical community of sexual mutilation of a minor child and/or a fine of up to \$10,000 on of any female as felony. In 1990, the stiffest maximum punishment of any female as a felony was twelve years imprisonment.<sup>19</sup> Wisconsin created a law punishable by a fine of not less than \$10,000 or both.<sup>20</sup>

drafted legislation to prohibit by President Nasser in 1990.<sup>22</sup> New Zealand for up to seven years the law was removed from New Zealand. In the Sudan, legislation was passed to ban health professionals. The United Kingdom outlawed genital mutilation, providing for the removal of a child from her home.

Australia has outlawed the practice of imprisonment for up to ten years for genital mutilation, explicitly criminalize either female genital mutilation or female genital mutilation should be illegal under the law of individual.<sup>29</sup> Moreover, a

person who gives consent to care for another person must act in that person's sole interest, ensuring that any care for which consent is given is beneficial, advisable in the circumstances and that the risks incurred are not disproportionate to the anticipated benefit.<sup>30</sup> Finally, Article 19 provides that a minor incapable of giving consent may have a part of his body alienated only if that part is capable of regeneration and provided that no serious risk to his health results, both requirements which are violated by infant circumcision.<sup>31</sup>

## 4.2. Proposed Legislation Also Forbids Only Female Sexual Mutilation

A number of other countries and states have proposed legislation outlawing female sexual mutilation while not addressing male sexual mutilation. Canada's Criminal Code currently prohibits the removal of children normally resident in Canada from Canada with the intention of committing assault causing bodily harm, aggravated assault or any sexual offense.<sup>32</sup> While this law has a more general scope, it was passed in response to a concern that Canadian law did not contain sufficient protections against female sexual mutilation. Pending legislation would outlaw sexual mutilation of any female.<sup>33</sup> A pending bill in Illinois would classify sexual mutilation of any female as a Class X felony,<sup>34</sup> punishable by imprisonment for not less than six and not more than thirty years,<sup>35</sup> and by a fine of up to \$10,000.<sup>36</sup> Legislation against female sexual mutilation has been defeated in Colorado,<sup>37</sup> New York,<sup>38</sup> South Carolina,<sup>39</sup> and Texas.<sup>40</sup>

## 4.3. State Laws Grant Circumcisers Special Exceptions

Other statutes actually accord circumcisers special exceptions and protections.

**4.3.1. Ritual Abuse Laws Exempt Male Circumcision.** Ritual abuse laws in California,<sup>41</sup> Idaho,<sup>42</sup> and Illinois<sup>43</sup> specifically exempt male circumcision. The need to mention circumcision and circumcisers in such statutes is certainly intriguing, to say the least. If there were no potential for male circumcision to be considered ritual abuse, then these laws would be utterly superfluous. They suggest that the legislators tacitly recognized the reasonableness — in the absence of the statutory loophole — of classifying circumcision as abusive, unethical, and/or inhuman.

**4.3.2. Medical Licensing Laws Exempt Mohels Performing Male Circumcision.** Medical licensing laws specifically exempt mohels for the purposes of performing male circumcision in Delaware,<sup>44</sup> Minnesota,<sup>45</sup> Montana,<sup>46</sup> and Wisconsin.<sup>47</sup> Of course, regulations and/or official tolerance permits mohels to perform the procedure in all fifty of the states, despite arguably being no more defensible under human rights or constitutional principles than are the statutory exemptions. The reprehensible double standard implicit in legislation addressing only the mutilation of one gender strikes a particular noxious note here. All three states which see fit to enshrine at the statutory level the mohels' special authorization to mutilate males have simultaneously passed laws barring female sexual mutilation.

## 4.4. Laws against Female Sexual Mutilation Violate Equal Protection under International Human Rights Law

No law anywhere in the world currently outlaws male sexual mutilation, either alone or in combination with a prohibition of female sexual mutilation. On the other hand, as we

have seen, many statutes and proposed laws prohibit only female sexual mutilation, and others grant special protections and exceptions regarding male circumcision.

By only safeguarding females against involuntary alteration of their sexual organs, while doing nothing to protect males, laws against female sexual mutilation by definition discriminate against males. Arguably, such laws are worse than no laws at all in suggesting, through their exclusive attention to female sexual mutilation, that male sexual mutilation is a permissible and unobjectionable practice. Statutes granting special exceptions only to circumcisers of males but not to those who sexually mutilate females also clearly discriminate against males. Such laws highlight the artificiality of the culturally-based special treatment of male circumcision in the United States.

Both laws against female sexual mutilation and special statutory exceptions for male circumcision directly conflict with 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.

Therefore, a human rights violation occurs where males are discriminated against by not enjoying legal protection from sexual mutilation which is enjoyed by females. Countries, states and provinces must amend these laws, regulations, and practices to protect males as well as females from sexual mutilation.

Under Article 7 of the *Universal Declaration of Human Rights*, states cannot rest in confidence that they are violating no laws once they have amended discriminatory anti-female sexual mutilation laws to include men within their scope. Even where the state is not the mutilator, a human rights violation also occurs where males do not receive equal protection from sexual mutilation applied in a discriminatory manner, e.g., through predominant or exclusive mutilation of their gender. Worldwide, five out of six victims of sexual mutilation are male.<sup>48</sup> Males are entitled to equal protection against such discrimination wherever it occurs and against any incitement to such discrimination. States are thus obligated to do more than merely eliminate all their gender-specific laws against sexual mutilation. States also carry a positive obligation to apply their resources to protect males as well as females against sexual mutilation practices that are discriminatorily applied to males (or to females) and to stop anyone attempting to bring about such discriminatory sexual mutilation.

#### **4.5. Laws against Female Sexual Mutilation Violate Equal Protection under American Law**

A natural question which arises in considering the flurry of legislative activity this year against female sexual mutilation in the United States is whether the criminalization of the alteration of only female sexual organs — while not addressing male sexual mutilation — can survive Constitutional scrutiny. The answer is clearly "No." In addition to the human rights considerations discussed above, in the United States, the dramatically unequal treatment of males and females arising from the statutory prohibitions of only female sexual mutilation also violates equal protection, a basic principle enshrined in the Fifth Amendment of the *Constitution of the United States*. Since 1976, legislative classifications based on gender have been subject to an "intermediate scrutiny," which is less demanding than that accorded to classifications based on race or ethnic origin or sometimes

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alienage, comparable to the level of scrutiny of illegitimacy classifications, and more rigorous than the "rational basis scrutiny" attached to most other classifications. One recent Supreme Court decision suggests that the gap is narrowing between intermediate and strict scrutiny.<sup>49</sup> Justice Ginsburg wrote for the Court, emphasizing repeatedly that, "[P]arties who seek to defend gender-based government action must demonstrate an 'exceedingly persuasive justification' for the action."<sup>50</sup> The state is required to show, not only that the law substantially serves the important governmental objectives, but also that "the discriminatory means employed are substantially related to the achievement of those objectives."<sup>51</sup> On this basis, an equal protection lawsuit against the North Dakota female sexual mutilation law has been initiated.<sup>52</sup>

Unfortunately, due in part to American cultural blindness, male sexual mutilation is not viewed in the same way as female sexual mutilation. North Dakota activists against female sexual mutilation and male sexual mutilation began their attempts to institute legislative change on these issues by lobbying state legislators to pass a law banning sexual mutilation of both males and females. When it became clear that insufficient support existed for this proposed bill, the activists threw their support behind a bill banning female sexual mutilation only, planning on initiating an anti-discrimination lawsuit as soon as the ink had dried on the female-only sexual mutilation legislation.

## 4.6. Female-Only Sexual Mutilation Legislation Is Not Justified

One frequent justification for legislation addressing only female sexual mutilation is the supposedly dramatic contrast in degree between the severity of female sexual mutilation and male sexual mutilation. Since recent research documents that circumcision removes at least half of the skin of the penis,<sup>53</sup> this suggestion is certainly questionable. In a widely noted article, three researchers recently found that an average circumcision removes 51% of a male's penile skin. The long-term physical, sexual and psychological harm caused by the procedure has never been investigated because of the underlying and erroneous assumptions that the procedure is benign. Political history — notably that of women — and human rights principles alike should eloquently remind us to resist any temptation to create hierarchies of rights and then to argue that we need not or cannot now address the abuses we have placed lower in our hierarchy.

## 5. CONCLUSION

Laws against female sexual mutilation and laws granting circumcisers special legal loopholes are clearly vulnerable under constitutional and human rights principles. Only cultural blindness has so far insulated doctors, hospitals, mohels, parents, and other responsible parties from liability under a broad range of legal theories. No basis in international human rights law or domestic law of the United States justifies the discriminatory prohibition of only female sexual mutilation.

A number of human rights documents — whether ratified or applicable under principles of customary international law — forbid routine infant male circumcision. Statutes in a number of states and countries that outlaw female sexual mutilation but not male sexual mutilation or that grant special exceptions and protections to male circumcisers violate equal protection under both international and domestic United States law.

## 6. REFERENCES

1. Convention on the Rights of the Child. UN GA resolution 44/25, November 20, 1989.
2. Declaration of the Rights of the Child. UN GA resolution 1386 [XIV], November 20, 1959, Principle 9.
3. Dwyer J. Parent's religion and children's welfare: debunking the doctrine of parent's rights. *California Law Review* 1994;82:1371-227.
4. International Covenant on Civil and Political Rights. UN GA resolution 2200 A [XXI]. December 16, 1966.
5. Dwyer J. Parent's religion and children's welfare: debunking the doctrine of parent's rights. *California Law Review* 1994;82:1371-227.
6. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. UN GA resolution 39/46, December 10, 1984, Article 1.
7. Declaration on the Protection of All Persons from Being Subjected to Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment. UN GA resolution 3452 [XXX], December 9, 1975, Articles 1.2 and 2.
8. Ecumenics International. News Release: Ad Hoc Working Group of International Experts on Violations of Genital Mutilation. Sloatsburg, New York: Ecumenics International July 1, 1995.
9. Kimbrell A. *The Masculine Mystique*. New York: Ballantine Books, 1995:145-7.
10. 18 United States Code §§ 116, 1, 3571 (b) (3)
11. 104th Congress, 1st Session, House of Representatives Bill 2202.
12. 104th Congress, 2nd Session, House of Representatives Bill 3019 (e) (1).
13. California Penal Code § 273.4
14. Delaware Code Title 11, §§ 1113, 4205 (b) (3) (date of enactment July 3, 1996).
15. Minnesota Statutes §§ 609.2245, 609.02.
16. California Health and Safety Code § 124170; Minnesota Criminal Code § 144.3872.
17. North Dakota Criminal Code §§ 12.1-36-01, 12.1-32-01.4.
18. Rhode Island General Laws § 11-5-2 (date of enactment July 3, 1996).
19. Tennessee Code Annotated §§ 39-13-857, 40-35-111 (b) (4).
20. 1995 Wisconsin Act 365 (date of enactment May 28, 1996).
21. Australia Family Law Council. *Female Genital Mutilation: A Report to the Attorney-General Prepared by the Family Law Council*. Canberra, Australia: Commonwealth of Australia, June 1994:70.
22. Australia Family Law Council. *Female Genital Mutilation: A Report to the Attorney-General Prepared by the Family Law Council*. Canberra, Australia: Commonwealth of Australia, June 1994:70.
23. Crimes Act 1961, as amended 1995, 204a and 204b.
24. Australia Family Law Council. *Female Genital Mutilation: A Report to the Attorney-General Prepared by the Family Law Council*. Canberra, Australia: Commonwealth of Australia, June 1994:70.
25. Act 316 of 1982 Prohibiting the Circumcision of Women.
26. Prohibition of Female Circumcision Act 1985
27. The Children Act 1989.
28. Crimes (female Genital Mutilation) Amendment Act 1994 (effective May 1, 1995).
29. 1991, Chapter 64 (Bill 125), Civil Code of Quebec, Article 11.
30. 1991, Chapter 64 (Bill 125), Civil Code of Quebec, Article 12.
31. 1991, Chapter 64 (Bill 125), Civil Code of Quebec, Article 19.
32. Criminal Code Section 273.3.
33. Bill C-235, reintroduced on March 12, 1996, and originally introduced as Bill C-277 on September 29, 1994.
34. Illinois 1995-96 Sessions, House Bill 3572, introduced on February 9, 1996, would create 720 Illinois Compiled Statutes 5/12-34.
35. 730 Illinois Compiled Statutes § 5/5-8-1 (3)
36. 730 Illinois Compiled Statutes § 5/5-9-1 (a) (1)
37. Colorado 1996 Sessions, Senate Bill 96-31.
38. New York 1995-96 Sessions, Senate Bills 510 and 597, and Assembly Bills 690 and 788.
39. 1994 South Carolina Sessions, House Bill 4710.
40. 1995 Texas Sessions, House Bill 2442.
41. California Penal Code § 667.83.
42. Idaho Criminal Code § 18-1506A (b).
43. 720 Illinois Compiled Statutes §§ 5/12-32 and 5/12-33(2).
44. 24 Delaware Code § 1703(e)(4).

45. Minnesota Statute § 147.09(10).
46. Montana Code § 37-3-103(h).
47. Wisconsin Statute § 448.03(g).
48. Ecumenics International. News Release: Ad Hoc Working Group of International Experts on Violations of Genital Mutilation. Sloatsburg, New York: Ecumenics International July 1, 1995.
49. United States v. Virginia, 116 S.Ct. 2264, 2275 (1996).
50. United States v. Virginia, supra, 116 S.Ct. at 2274, 2275, quoting Mississippi University for Women v. Hogan, 458 U.S. 718, 724 (1982) (O'Connor, J.).
51. United States v. Virginia, supra, 116 S.Ct. at 2275, quoting Mississippi University for Women v. Hogan, supra, 458 U.S. at 724.
52. Spring P. Suit claims N.D. genital mutilation law biased. The Forum. June 7, 1996.
53. Taylor JR, Lockwood AP, Taylor AJ. The prepuce: specialised mucosa of the penis and its loss to circumcision. British Journal of Urology 1996;77:291-5.