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Convention on the Rights of the Child

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Committee on the Rights of the Child

Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 23/2017*, **, ***

Communication submitted by:	M.H. (represented by counsel, Marjo Rantala)
Alleged victim:	The author
State party:	Finland
Date of communication:	29 March 2017 (initial submission)
Date of adoption of decision:	3 February 2020
Subject matter:	Subjection of baby boy to circumcision for non-medical reasons
Procedural issues:	Same matter; incompatibility *ratione temporis* and *ratione materiae*; exhaustion of domestic remedies; substantiation of the complaint
Substantive issues:	Best interests of the child; discrimination based on gender, race and ethnicity; freedom of opinion; interference with privacy; protection of the child from all forms of violence or ill-treatment; right to health
Articles of the Convention:	2, 3, 16, 19 and 24 (3)
Article of the Optional Protocol:	7 (c)–(g)

* Adopted by the Committee at its eighty-third session (20 January–7 February 2020).

** The following members of the Committee participated in the examination of the communication: Suzanne Aho Assouma, Amal Salman Aldoseri, Hynd Ayoubi Idrissi, Bragi Gudbrandsson, Philip Jaffe, Olga A. Khazova, Cephas Lumina, Gehad Madi, Faith Marshall-Harris, Benyam Dawit Mezmur, Clarence Nelson, Mikiko Otani, Luis Ernesto Pedernera Reyna, José Ángel Rodríguez Reyes, Aissatou Alassane Sidikou, Ann Marie Skelton, Velina Todorova and Renate Winter.

*** A joint opinion by Committee members Ann Marie Skelton and Luis Ernesto Pedernera Reyna (dissenting) is annexed to the present decision.

1. The author of the communication is M.H., a Finnish-Nigerian national born on 16 June 2009. He claims that the State party has violated his rights under articles 2, 3, 16, 19 and 24 (3) of the Convention. He is represented by counsel. The Optional Protocol entered into force for the State party on 12 February 2016.

Facts as submitted by the author

2.1 The author was born in Finland to a Finnish mother and a Catholic Nigerian father. He is being raised in Finland. His parents were married from 2005 to 2011. During that time, they shared custody of the author.

2.2 The author's father wanted to circumcise him because of his cultural background whereas his mother was firmly opposed to such a ritual. On 7 November 2009, when the author was four months old and while the mother was away, the father invited a doctor, Dr. A., to the family home in order to perform genital cutting on the author. Allegedly, Dr. A. did not request written confirmation of the mother's consent, was unaware of the author's health situation, did not explain the risks or consequences of the genital cutting to the father and did not issue a medical document after the operation. Moreover, no means for resuscitation had been prepared should the operation have gone wrong. The genital cutting was performed on the living room table. During the procedure, the father held the author down by his legs while Dr. A. applied a local anaesthetic and proceeded with the genital cutting. When the mother arrived home that evening and learned about the operation, she left the apartment with the author. She called an emergency number and the author was taken to hospital. The doctor that examined him noted that the bandage around the author's penis was too tight and that the wound was ragged and had a few stiches. The author was given pain medication and was monitored in the hospital until 9 November 2009.

2.3 The mother and the author filed a claim against the father and Dr. A. The prosecutor charged both defendants with aggravated assault,[1] as the genital cutting was performed with a sharp knife and the cutting was considered irrevocable, causing permanent bodily injury to a defenceless child. Moreover, it was done without the consent of the author's other guardian.

2.4 The prosecutor referred the case to the District Court of Helsinki, demanding a compensation of 8,200 euros. On 2 March 2012, the District Court convicted the father of assault[2] through an agent and sentenced him to payment of a fine of 168 euros plus 200 euros in damages to the author. The District Court noted the absence of national legislation regulating circumcision. It considered that, although there was no medical reason for the circumcision, it was part of the father's culture and religion, which were acceptable reasons, according to the jurisprudence of the Supreme Court of Finland.[3] The District Court heard Dr. A. and two medical experts. It noted that the circumcision had been performed on the table and that a local anaesthetic and ibuprofen had been administered. It also noted that Dr. A. had performed similar operations for over 30 years, as these could not be obtained in public or private health centres. The medical experts testified that the operation had been performed adequately but that the environment in which it had been performed (at home) was not adequate for such medical procedures. The anaesthetist stated that it was unknown whether the circumcision would cause any disability or lack of sensation. A representative of the National Supervisory Authority for Welfare and Health also testified that, although there were "minor defects in the aftercare and pain management, the result of the operation was not inadequate". The District Court concluded that the operation had been performed

[1] In respect of aggravated assault, the Criminal Code of Finland (chap. 21, sect. 6) reads: "(1) grievous bodily injury or serious illness is caused to another or another is placed in mortal danger; (2) the offence is committed in a particularly brutal or cruel manner; (3) a firearm, edged weapon or other comparable lethal instrument is used ... the offender shall be sentenced for aggravated assault to imprisonment for at least one year and at most ten years."

[2] In respect of assault, the Criminal Code of Finland (chap. 21, sect. 5) reads: "A person who employs physical violence on another or, without such violence, injures the health of another, causes pain to another or renders another unconscious or into a comparable condition, shall be sentenced for assault to a fine or to imprisonment for at most two years."

[3] See https://korkeinoikeus.fi/fi/index/ennakkopaatokset/eu-jaihmisoikeusliitynnaisetratkaisut/2008/kko200893inenglish.html.

adequately but that the father had acted without the mother's consent and had violated the child's physical integrity. As to Dr. A., the District Court concluded that there was a lack of criminal intention and dropped the charges against him. The District Court noted that an act could only be punished as assault if it was intentional. The Court noted that Dr. A. had been informed that the other parent had consented. Since the circumcision was performed adequately from a medical standpoint, the act was illegal only because the other parent had not consented.

2.5 All parties, including the father, appealed the decision of the District Court. The prosecutor claimed that the father's Catholic religion did not require circumcision and that his cultural background could not justify the child's circumcision as the author was born and raised in Finland and had no ties to his father's culture. To the contrary, circumcision would cause him harm later in life as it would make him different from the majority of Finnish men. The prosecutor also claimed that Dr. A.'s actions were intentional and that he should be punished as a perpetrator. By a decision of 10 January 2014, the Court of Appeals of Helsinki acquitted both the father and Dr. A. The Court of Appeals noted that the author had been baptised as a Catholic and that tradition neither required nor supported circumcision. However, circumcision had remained a common tradition in sub-Saharan Africa, including in Nigeria, where 90 per cent of males continued to be circumcised. The Court of Appeals also noted that the child belonged to two cultures, in other words those of both parents. The reason for the circumcision had been the father's culture (which, according to the Supreme Court, was acceptable) and the father had not meant to cause any pain, harm or injury to the child. The operation had not been against the best interests of the child as it had in fact strengthened his belonging to his father's culture and community. The Court of Appeals further noted that, although it was undisputed that the mother had not consented to the operation as required by the Act on Child Custody and Right of Access (No. 361/1983), the act was not punishable as an assault as it constituted only a minor interference in the child's physical integrity, had been performed adequately from a medical standpoint and had been executed for acceptable reasons.

2.6 The prosecutor, the author and his mother appealed the decision. The Supreme Court granted them leave to appeal. By a decision of 31 March 2016, the Supreme Court noted that male circumcision for non-medical purposes was an issue that required a legislative process and could not be comprehensively addressed on a case-by-case basis. The Supreme Court also noted that non-medical circumcision was something that both guardians must decide upon jointly and that it could not, in any case, be against the child's best interests. Citing its own jurisprudence, the Supreme Court considered that, when performed adequately from a medical standpoint, a non-medical circumcision of a male child should be considered a relatively minor interference in the physical integrity of the child. Even though it has permanent effects, the operation is not visible or stigmatizing in Finnish society. On the other hand, the operation is directed at a person's most intimate body part and is irreversible. This kind of interference in a child's physical integrity for non-medically grounded reasons is justifiable only if it is in the best interests of the child. Since this kind of non-medical operation can also be performed later, the child's own will and possibility to make his own decisions has to be given extra emphasis. Before the child is old enough to express his own will on circumcision and hence his will to strengthen his bond with only one parent's religious and cultural community, circumcision cannot clearly be justified as in the best interests of the child if the parents disagree on the operation. The Supreme Court concluded that the author's circumcision was not in the best interests of the child as it was only performed because of one parent's cultural reasons and against the other parent's express wishes. The Supreme Court convicted the father of assault. It considered that the assault could not be considered aggravated as it had been performed by a competent doctor, the operation was medically adequate and was motivated by understandable reasons based on the father's and therefore the child's cultural background. The Supreme Court sentenced the father to the payment of a 40-day fine, namely to a fine in the amount set by the District Court of Helsinki. The Supreme Court also confirmed the District Court's acquittal of Dr. A. for the same reasons put forward by that Court.

2.7 The author and his mother filed an application with the European Court of Human Rights. By a decision of 28 September 2016, the European Court, sitting in a single-judge formation, declared their application inadmissible.

Complaint

3.1 The author claims that the State party has violated his rights under articles 2, 3, 12, 16, 19 and 24 (3) of the Convention.

3.2 The author contends that the State party failed to take appropriate legislative measures to protect him from physical or mental violence and injury or to protect him from interference in his privacy, in violation of articles 16 and 19 of the Convention. Male circumcision – the surgical removal of the foreskin or tissue covering the head of the penis – requires the use of a sharp blade and affects the most intimate part of a male body, causing irreversible and permanent physical and mental effects, and inflicts considerable and unnecessary pain, especially during the healing period after the operation. The pain is inevitable regardless of the use of painkillers.[4] The author claims that the ritual of genital cutting of boys is comparable to the involuntary "normalizing" genital surgery performed on children born with atypical sex characteristics. The Parliamentary Assembly of the Council of Europe has specifically referred to the circumcision of young boys for religious reasons as a violation of the physical integrity of children.[5] The Ombudsmen for children in the Nordic countries have also opposed non-medical genital cutting and called for respecting boys' right to decide themselves, when they reach the age of maturity, whether to consent to ritual circumcision.[6]

3.3 The author also contends that the State party failed to provide him with sufficient remedy given that Dr. A. was acquitted and the father was convicted with a minimal fine of 168 euros plus 200 euros in damages. He alleges that the assault should have been considered as aggravated given the circumstances under which it was performed.

3.4 The author claims a violation of article 2, read in conjunction with articles 16 and 19, of the Convention. He notes that there are no specific laws that regulate the non-medical genital cutting of boys. In Finland, male circumcision is not considered beneficial to health and cannot be performed in the public health-care system. Private clinics do not perform it either as its legal status is unclear. The Finnish Medical Association has stated that performing ritual circumcision on young boys contradicts medical ethics.[7] The author also notes that, in practice, circumcisions are carried out outside medical facilities and quietly permitted despite the absence of specific legislation or authoritative supervision. Therefore, the legal status of the non-medical genital cutting of boys is unclear as it is not always considered a crime. This differs from the regulation of female genital mutilation, which is punishable as an aggravated assault. The author notes that both practices (in particular, the type that involves cutting without removing the foreskin) are comparable to some extent, as both consist in removing healthy tissue from an intimate and extremely sensitive part of the body. Yet, the Supreme Court of Finland considers that female genital mutilation always fulfils the essential elements of aggravated assault and can never be justified, under any circumstances.

3.5 The author notes that ritual male circumcision is not practised among the majority of the Finnish population, although it is estimated that 200 boys are subjected to it every year.[8] His father is a Christian Nigerian for whom male circumcision is an important part of cultural identity. On that basis, the Finnish courts concluded that the author's circumcision would have been justifiable had his mother also consented. Consequently, boys like him, who belong to cultural communities practising ritual circumcision, are not afforded the same protection to personal integrity as other Finnish boys or as Nigerian girls.

3.6 The author claims to be victim of a violation of his rights under article 24 (3), read in conjunction with articles 3 and 12, of the Convention. The State party has failed to take any effective measures to abolish the ritual of male circumcision among infants. Although some specific legislation has been under preparation by the Ministry of Social Affairs and

[4] The author cites the Supreme Court's ruling in KKO 2016:25.

[5] Parliamentary Assembly resolution 1952 (2013) on children's right to physical integrity, para. 2.

[6] See http://lapsiasia.fi/en/tata-mielta/aloitteet/aloitteet-2013/joint-statement-from-the-nordic-ombudsmen-for-children-and-pediatric-experts/.

[7] The author submits an extract of a 2013 publication on medical ethics by the Finnish Medical Association.

[8] The author cites a 2014 report by the Family Federation of Finland.

Health for years, there has been no concrete outcome, presumably due to lack of political will. On 20 January 2015, the Ministry published policy guidelines on the non-medical circumcision of boys,[9] in which it stated, among other things, that the procedure should be performed only by licensed physicians, with the consent of both guardians and ensuring that the boy's opinion be heard. However, the guidelines are not legally binding and have not been respected in practice. The author adds that, although his mother had sought assistance at a health-care centre, fearing a risk that the author would be circumcised, and although she was reassured that such a procedure could not be carried out without her consent, she had no official recourse for ensuring that the author's circumcision would not be performed against her will. The Supreme Court too noted that the lack of legislation was unsatisfactory. The author argues, however, that the Supreme Court has created further confusion by stating that the guidelines were "unenforceable soft law", by implying that the consent of both parents was not strictly necessary, by acquitting Dr. A. and by stating that male circumcisions could be performed by persons who were not doctors and without hearing children's opinions. The author concludes that, according to the Supreme Court, primary consideration is given to adults' rights to perform religious or cultural practices without any separate assessment of children's right to physical integrity.

3.7 The author finally claims that the State party has failed to take the best interests of the child as a primary consideration when failing to legally regulate the practice of ritual male circumcision, in violation of article 3 of the Convention. It has failed to take effective legislative and administrative measures to afford children like him the protection and care necessary for their well-being. Instead, the author has been left vulnerable to physical and mental injury caused by traditional practices, without being afforded the possibility to form his own views and express them freely on a matter affecting him in such a drastic way. Even though there is no reason why male circumcisions could not wait until children have become old enough to form an opinion on the matter, the operations are allowed to be carried out on children as young as 4 months old, as in the case of the author.

State party's observations on admissibility

4.1 In its observations of 26 September 2017, the State party argues that the communication is inadmissible under article 7 (d) of the Optional Protocol because the same matter has already been examined by another procedure of international investigation or settlement, namely the European Court of Human Rights, which declared the author's complaint inadmissible.

4.2 The State party also argues that the communication is inadmissible *ratione temporis* pursuant to article 7 (g) of the Optional Protocol because the facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State party, in other words before 12 February 2016. The circumcision was performed on 7 November 2009 and the subsequent judicial decisions to remedy the violation were handed down on 2 March 2012 (District Court), 10 January 2014 (Court of Appeals) and 31 March 2016 (Supreme Court). There is no reason to consider that the alleged violations continued beyond the entry into force of the Optional Protocol. The State party notes that, as established by the European Court of Human Rights, instantaneous acts like the deprivation of an individual's home or property do not in principle produce a continuing situation. Similarly, neither should the instantaneous act of a circumcision. Nor can the subsequent failure of remedies aimed at redressing the alleged violation fall within the Committee's competence.

4.3 The State party contends that domestic remedies have not been exhausted, as required by article 7 (e) of the Optional Protocol, as it is unclear from the author's appeals to the Helsinki Court of Appeals and the Supreme Court that he invoked all the articles of the Convention that are being invoked before the Committee. In particular, the discrimination claims could have been raised in the context of the criminal proceedings.

[9] See https://stm.fi/documents/1271139/1367411/MSAH-Guidelines-on-non-medical-circumcision.pdf/31861c45-2602-4a4f-9651-aa1211e0b0c6/MSAH-Guidelines-on-non-medical-circumcision.pdf.

4.4 Finally, the State party contends that the communication in incompatible with the provisions of the Convention and that it is manifestly ill-founded or insufficiently substantiated.

Author's comments on the State party's observations on admissibility

5.1 In his comments dated 17 November 2017, the author notes that the European Court of Human Rights and the Committee are two substantially different bodies bound by their own independent rules of procedure and admissibility criteria. The fact that the European Court found a complaint inadmissible should not prevent the assessment of the alleged violations of the Convention by the Committee. Additionally, the European Court did not assess the merits of the case, so the same matter was not duly examined.

5.2 With regard to the State party's argument that the facts occurred prior to the entry into force of the Optional Protocol for the State party, the author notes that the Supreme Court delivered its judgment on 31 March 2016, that is, after the entry into force of the Optional Protocol. He clarifies that he does not claim that his circumcision constitutes in itself a human rights violation by the State party but, rather, that the national authorities have failed to protect him and punish the perpetrators appropriately. The facts of the case refer in particular to the domestic legal proceedings. Also, the situation of lack of any relevant legislation on ritual genital male cutting persists. All the above justifies the continuous nature of the State party's violation.

5.3 Finally, the author claims that, despite the appeals filed by the prosecutor, by the author and by his mother alleging discrimination based on gender and racial or ethnic origin, neither the Court of Appeals nor the Supreme Court assessed the case in light of constitutional provisions prohibiting discrimination.

State party's observations on admissibility and the merits

6.1 In its observations dated 4 January 2018, the State party argues that the communication should be considered inadmissible *ratione personae* as it is unclear whether the author has locus standi. The State party cites the case law of the European Court of Human Rights' establishing that a person lacking legal capacity should be represented by his or her legal guardian. The State party contends that it should be carefully examined whether the author, who was 7 years old at the time of submitting his communication, could give his consent or whether it should be for his legally designated representatives or guardians, namely his parents, to do so. The State party adds that the author has lost his status as victim regarding his allegations based on articles 16 and 19 of the Convention, given that these have been appropriately remedied at the domestic level. Also, his allegations based on article 24 (3), read in conjunction with articles 3 and 12, of the Convention constitute an *actio popularis* and the author therefore lacks victim status. Finally, the State party argues that the author's communication is based on the fact that Dr. A. was not sentenced by the domestic courts. Given that the communication is brought against an individual, it should also be considered inadmissible *ratione personae*.

6.2 The State party reiterates its previous observations on the admissibility of the communication. With regard to the competence *ratione temporis*, the State party refers to the Human Rights Committee's jurisprudence expressing the view that a continuing violation is to be interpreted as an affirmation, after the entry into force of the Optional Protocol, by act or by clear implication, of the previous violations of the State party.[10] With regard to the positive obligation to carry out an effective investigation, the State party notes that only procedural acts and/or omissions occurring after the critical date can fall within the temporal jurisdiction. It adds that the proceedings before the Supreme Court commenced two years before the entry into force of the Optional Protocol. Thus, it is a matter of coincidence that the final decision was rendered only one month after such entry into force. Should the Committee consider the communication admissible *ratione temporis*, only those elements of the case that are procedural and only in so far as they relate to the time period after the entry into force of the Optional Protocol should be considered.

[10] Human Rights Committee, *Könye v. Hungary*, communication No. 520/1992, para. 6.4.

6.3 On the merits, the State party notes that, as a rule, genital mutilation fulfils the essential elements of an assault. Depending on the seriousness of the offence, it may qualify as an aggravated assault or a petty assault.[11] The Supreme Court of Finland has held, in a case concerning a mother who was the sole custodian of a circumcised son for religious reasons (KKO 2008:93), that the mother's conduct was not punishable because the circumcision had been performed for acceptable reasons and in a medically appropriate manner without causing unnecessary pain. It must be presumed that the persons who have custody of a child have the right to decide on such a procedure on behalf of their child, provided that the purpose of the operation is to promote the child's welfare and development. The Supreme Court considers male circumcision a relatively harmless procedure that, when performed appropriately, does not cause any health hazard or other permanent harm, nor is it associated with any stigmatization in childhood or adulthood. A circumcision performed for religious reasons may have a positive significance, especially for the circumcised boy, including for the development of his identity and integration into his community. Although a circumcision is always a violation of the child's physical integrity, it can be justified in the child's best interests, including his attachment to his family and ethnic group.

6.4 The State party argues that the author has not presented any claims concerning the investigation of the alleged violations or the procedural elements of the domestic proceedings. The legality of the physician's and the father's actions has been tried in a criminal case, and the father has been sentenced for assault. Both the Court of Appeals and the Supreme Court considered that the circumcision had been performed in a medically appropriate manner and that the physician had made entries in the child's patient document, although those entries were insufficient. The case was investigated appropriately within the criminal justice system, and the author obtained effective protection against the alleged violations of his physical integrity. The author notes that the father should have been sentenced for aggravated assault and that the physician was not sentenced. However, there is no absolute right to obtain a prosecution or a conviction. The Committee cannot substitute national courts in evaluating the evidence in the matter and cannot serve as a fourth instance. The State party concludes that the obligations under article 19 of the Convention have been met by taking appropriate legislative measures under which assault is punishable and ensuring criminal responsibility in the present case. The author had access to efficient legal remedies, including the Supreme Court. Therefore, this claim is ill-founded or, alternatively, without merit.

6.5 Regarding the author's claims under article 16 of the Convention, the State party argues that this article is irrelevant in the present case where the circumcision was arranged by the person who held custody of the child. The State party adds that the author's allegations based on article 16 concern the same facts evoked under article 19 and do not give rise to any separate issues to those addressed under article 19.

6.6 As to the author's claim based on article 2 of the Convention, the State party notes that in order for a treatment to be discriminatory, it must refer to relevantly similar situations, and have no objective and reasonable justification, namely, not pursue a legitimate aim and there must be no proportionality between the means employed and the aim sought.[12] The State party notes that Finnish criminal law establish the same criteria for male and female genital mutilation, which is based on the seriousness of the offence and not on the victim's gender or race. Female genital mutilation may classify as assault or aggravated assault, and given that it is a more serious violation of physical integrity, it can never be justified under any circumstances by religious and social reasons, according to the Supreme Court's interpretation. The author's claims based on article 2, read in conjunction

[11] See footnotes 2 and 3 above. In respect of petty assault, the Criminal Code of Finland (chap. 21, sect. 7) reads: "If the assault, when assessed as a whole and with due consideration to the minor significance of the violence, the violation of physical integrity, the damage to health or other circumstances connected to the offence, is of minor character, the offender shall be sentenced for petty assault to a fine."

[12] The State party cites the European Court of the Human Rights' decision in *Burden v. the United Kingdom* (application No. 13378/05), para. 60.

with articles 16 and 19, should therefore be considered as ill-founded or, alternatively, without merit.

6.7 With regard to the author's claims under article 24 (3) of the Convention, the State party notes that there are no specific regulations on the non-medical circumcision of boys in any international agreements binding on Finland. Non-medical circumcision is a widely approved practice across the world and its health risks are minimal when performed appropriately. The State party refers to the guidelines adopted by the Ministry of Social Affairs and Health (see para. 3.6 above) and notes that supervisory authorities monitor compliance with the guidelines. The State party adds that Parliamentary Assembly resolution 1952 (2013), which was cited by the author, does not contain a call to ban the circumcision of boys for religious reasons. Rather, it calls on States to clearly define the medical, sanitary and other conditions to be ensured for such practices.

Author's comments on the State party's observations on admissibility and the merits

7.1 In his comments of 19 March 2018, the author notes that, since the entry into force of the Convention for the State party, Finnish domestic courts have had the possibility of assessing the ritual circumcision of children in light of the Convention. In his case, the Supreme Court did not refer to the Convention at all. In particular, it failed to consider article 19 in light of the Committee's general comment No. 13 (2011) on the right of the child to freedom from all forms of violence. The author adds that ritual genital cutting is far from being a solved issue in the State party and reports that a 2-month-old baby who had recently been subjected to ritual circumcision in Finland had suffered complications and permanent injuries as a result of the operation.

7.2 The author disputes the State party's position on the seriousness of male genital cutting. He notes that because these operations are not performed at health-care centres but by private persons on private premises and in non-sterile conditions, the genital cutting can pose a real threat to life and well-being. The procedure, the surroundings and the personal capacity of the person performing the cutting vary. Even in a case like his, in which the person performing the cutting was a doctor, health-care legislation did not apply because the doctor was not acting in a professional capacity.

7.3 The author notes that both the State party and the Supreme Court have stated that, as a rule, non-medical circumcision fulfils the essential elements of the offence of assault. However, factors like religion can act as a justification. This leads to a situation whereby an assault can be legally carried out against boys of a certain religion or ethnicity whereas the same act would be considered an aggravated assault, in violation of article 2 of the Convention, when committed against a boy from a white Finnish family.

7.4 The author challenges the State party's argument that his claims based on article 24 (3), read together with articles 3 and 12, of the Convention are an *action popularis*. His claims under these articles are based on an actual and concrete event that led to his illicit genital cutting.

State party's additional observations

8.1 In its additional observations of 31 August 2018, the State party notes that in the case cited by the author of a boy who had complications resulting from his ritual circumcision, the boy in question had access to legal remedies, like the author did.

8.2 The State party reiterates its previous observations on admissibility and the merits of the communication. The State party challenges the author's assertions and notes that the Act on Health-Care Professionals (No. 559/1994) applies irrespective of whether health professionals intervene at a health-care centre or in a private setting. Additionally, according to the guidelines from the Ministry of Social Affairs and Health (see para. 3.6 above), only licensed physicians are authorized to perform circumcisions, the operations must be conducted in sterile conditions and pain relief must be used.

Third-party intervention

9.1 On 31 December 2018, the Council on Genital Autonomy, a non-governmental organization, made a third-party intervention. In its submission, the Council notes the increase in recent decades of awareness that medically unnecessary genital cutting on any child breaches the rights of the child. It added that the District Court of Cologne, in Germany, held on 7 May 2012 that parents' consent did not satisfy the best interests test. In light of article 14 (3) of the Convention and article 18 (3) of the International Covenant on Civil and Political Rights, a limitation to the parents' freedom of conscience and religion arises when the exercise of such freedom results in a violation of the fundamental rights and freedoms of another human being.

9.2 The Council on Genital Autonomy notes that, according to conservative estimates, 650 million males and 100 million females alive today have been subjected, as children, to some form of genital cutting and that those figures are equivalent to 25 per cent of all men and 5 per cent of all women. Complication rates from medicalized male circumcisions are estimated at about 5 per cent. A 2018 study tracking more than 9 million circumcisions in United States hospitals recorded one death for every 50,000 circumcisions during the period 2001–2010.[13] That translates into 13,000 boys dying each year from medicalized genital cutting, which is considered to be the "best case scenario" for carrying out such procedures.

9.3 The Council on Genital Autonomy notes that the penis' foreskin is a highly sensitive tissue with sexual, immunological and protective functions. It excludes contaminants and provides an immunological layer of protection. An unnecessary surgery permanently alters the penis, typically leaving a visible scar around its circumference, and needlessly exposes a healthy child to risk of injury. Historical notions of prophylactic circumcision for alleged medical benefits have become obsolete in view of modern advances in non-invasive prevention and treatment of foreskin pathologies. Complications from male circumcision occur even when performed in a sterile clinical setting. Post-circumcision bleeding in patients with coagulation disorders can be significant and sometimes even fatal. Other serious early complications include chordee, iatrogenic hypospadias, glanular necrosis and glanular amputation. Late complications include epidermal inclusion cysts, pain neuromas, suture sinus tracts, chordee, inadequate skin removal resulting in redundant foreskin, penile adhesions, phimosis, buried penis, urethrocutaneous fistulae, meatitis and meatal stenosis.[14] Since circumcision removes between one third and one half of the foreskin, the glans penis may become tougher, with reduced or changed sensitivity due to chronic exposure to dryness and fabric, thereby affecting sexual sensations. It also has emotional consequences and causes damage to some men's sense of self-esteem. It violates patient autonomy. Medical ethics generally forbids consent by proxy for medically unnecessary surgeries. It also runs counter to the non-maleficence and the beneficence principles. The child has an interest in living according to his own values, which may not reflect those of his parents. Only the child himself, when he is older, can be certain of his values.[15] Finally, physicians have an ethical duty to treat patients justly and fairly. Physicians cannot operate on a healthy child while satisfying this ethical duty.

9.4 The Council on Genital Autonomy contends that all medically unnecessary childhood cutting of male, female and intersex persons violates several provisions of the Convention (arts. 2, 6 (2), 12, 14, 16, 19 (1), 24 (1) and (3), 34, 36 and 37 (a)–(b)), among other human rights provisions. It notes that the Committee itself has expressed concern at the health risks linked to male circumcision on several occasions.[16]

[13] Brian D. Earp and others, "Factors associated with early deaths following neonatal male circumcision in the United States, 2001–2010" *Clinical Paediatrics*, vol. 57, No. 13(2018).

[14] Aaron J. Krill, Lane S. Palmer and Jeffrey S. Palmer, "Complications of circumcision", *Scientific World Journal*, vol. 11 (2011), p. 2463.

[15] Akim McMath, "Infant male circumcision and the autonomy of the child: two ethical questions", *Journal of Medical Ethics*, vol. 41, No. 8 (2015), p. 689.

[16] The Council cites the Committee's concluding observations on the initial report of Lesotho (CRC/C/15/Add.147), on the initial report of Guinea-Bissau (CRC/C/3/Add.63) and on the combined second to fourth periodic reports of Israel (CRC/C/ISR/CO/2-4).

State party's observations on the third-party intervention

10. In its observations of 11 January 2019, the State party notes that the third-party intervention does not lead to a different assessment of the communication as the one already put forward by the State party. It contends that the Committee is precluded from examining alleged violations of the Convention other than those invoked by the author. The State party adds that the sources used by the third party are selective and were presented for a particular purpose and not necessarily representative. Finally, it reiterates that appropriate legislative measures have been adopted at the national level and that the author has received appropriate remedies.

Issues and proceedings before the Committee

Consideration of admissibility

11.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

11.2 The Committee notes the State party's argument that the communication is inadmissible *ratione temporis* because the facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State party, in other words before 12 February 2016, unless those facts continued after the entry into force of the Optional Protocol. The Committee considers that the alleged acts or omissions by the State party in the present case do not amount to a continuous violation and therefore declares those claims inadmissible *ratione temporis* under article 7 (g) of the Optional Protocol.

12 The Committee therefore decides:

(a) That the communication is inadmissible under article 7 (g) of the Optional Protocol;

(b) That the present decision shall be transmitted to the State party and to the author.

Annex

Joint opinion of Committee members Ann Marie Skelton and Luis Ernesto Pedernera Reyes (dissenting)

1. We wish to respectfully present our dissenting view on inadmissibility *ratione temporis* pursuant to article 7 (g) of the Optional Protocol because the facts occurred prior to the entry into force of the Optional Protocol for the State party, in other words before 12 February 2016. We are of the view that judicial decisions of the national authorities can be considered as part of the facts of the case when they are the result of procedures directly connected with the initial facts giving rise to the violation, provided such judicial decisions are capable of remedying the alleged violation. Therefore, if such decisions are adopted after the entry into force of the Optional Protocol for the State party, article 7 (g) is not a barrier to the admissibility of the communication, since the national courts had an opportunity to consider the complaints and provide redress for violations.[1]

2. In the present case, we note that, although the decisions issued on first and second instance preceded the entry into force of the Optional Protocol, the decision by the Supreme Court is dated 31 March 2016. It is our considered opinion that a review by the Supreme Court appears to have been an appropriate avenue to remedy the alleged violations raised by the author. Consequently, we would have found that the Committee was not precluded by article 7 (g) of the Optional Protocol from examining the author's claims based on the Supreme Court's assessment of his case.

3. Had we found the case admissible, we would have gone on to consider whether there had been a violation. We would have followed the general rule that it is for national organs to examine the facts and evidence and to interpret domestic law, unless such examination or interpretation is clearly arbitrary or amounts to a denial of justice.[2] In the present case, we would have noted that, in determining the father's criminal responsibility for the author's circumcision, the Supreme Court duly assessed the facts of the case and the evidence presented by the plaintiffs and the prosecutor. In that determination, the Supreme Court expressly considered the best interests of the child and noted that before the child was old enough to express his own will on circumcision and hence his will to strengthen his bond with only one parent's religious and cultural community, circumcision could not clearly be justified as being in the best interests of the child if the parents disagreed on the operation. The Supreme Court concluded that the author's circumcision was not in the best interests of the child as it was only performed because of one parent's cultural reasons and against the other parent's express wishes. The Supreme Court also provided cogent reasons why the assault on the author could not be considered "aggravated" under national law. As to Dr. A., the Supreme Court considered that it was not established that he had acted with the intention of going against the mother's consent. While the author may disagree with the findings of the Supreme Court, it has not been demonstrated that the Supreme Court's examination of the facts and evidence or its interpretation of domestic legislation was clearly arbitrary or amounted to a denial of justice, or that his best interests had not been adequately taken into account as a primary consideration in those deliberations.

4. Therefore, we would have found that the facts of which the Committee had been apprised did not reveal any violations of the Convention.

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[1] In this regard, see *M.L.B. v. Luxembourg* (E/C.12/66/D/20/2017), para. 7.2; S.C. and *G.P. v. Italy* (E/C.12/65/D/22/2017), para. 6.6; *Jaime Efraín Arellano Medina v. Ecuador* (E/C.12/63/D/7/2015), para. 8.3; *Marcia Cecilia Trujillo Calero v. Ecuador* (E/C.12/63/D/10/2015), para. 9.5; *Ana Esther Alarcón Flores et al. v. Ecuador* (E/C.12/62/D/14/2016), para. 9.8; *Joaquim Pinheiro Martins Coelho v. Portugal* (E/C.12/61/D/21/2017), para. 4.2; *A.M.B. v. Ecuador* (E/C.12/58/D/3/2014), para. 7.4; and *I.D.G. v. Spain* (E/C.12/55/D/2/2014), para. 9.3. See also *A.A.A. v. Spain* (CRC/C/73/D/2/2015), para. 4.2; *Fermín Navarro Presentación and Juana Medina Pascual v. Spain* (CRC/C/81/D/19/2017), para. 6.2.

[2] See, among others, the Committee's inadmissibility decisions in *A.A.A. v. Spain*, para. 4.2, and *Fermín Navarro Presentación and Juana Medina Pascual v. Spain*, para. 6.4.