Age of Consent for Voluntary Medical Male Circumcision in Tanzania

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I. Introduction

This AIDS Law Brief Background Paper examines the state of the law in Tanzania regarding the age of consent for voluntary medical male circumcision (VMMC). This Paper identifies ambiguities in relevant Tanzanian laws and policies, compares those laws and policies with laws in other African countries and recommendations from international organizations, and suggests legal reforms for Tanzanian stakeholders to consider.

This paper was prepared by the University of Washington and provides support for an AIDS Law Brief on Age of Consent for VMMC in Tanzania. This Background Paper does not constitute legal advice and should not be relied on for purposes of complying with Tanzanian law.

II. Summary

- Tanzanian law does not specify the age of consent for medical or surgical procedures, including VMMC
- A 2009 Ministry of Health and Social Welfare situational analysis for VMMC stated that minors cannot independently consent to VMMC
- Tanzanian law does not state whether a non-legal guardian can consent to VMMC on behalf of a child

III. Background

Tanzania has one of the highest rates of HIV prevalence in the world.[1] In 2014, UNAIDS estimated that 1.5 million Tanzanians—around 3% of the population—live with HIV.[2] Other sources estimate that Tanzania has an even greater HIV prevalence rate. For example, UNICEF has estimated that 5.7% of Tanzanians were living with HIV/AIDS in 2012.[3] In particular, over 5% of adults aged 15–49 are infected[4], as well as around 3.6% of young people aged 15−24 and approximately 160,000 children aged 0−14.[5]

The World Health Organization (WHO) and Joint United Nations Program on HIV/AIDS (UNAIDS) recommend that VMMC be part of comprehensive HIV programming "in settings with high HIV prevalence and low levels of male circumcision, where the public health benefits will be maximized."[6] VMMC is usually performed as a surgical procedure[7] where a scalpel is used to excise the foreskin, an area highly susceptible to HIV infections.[8] VMMC has proven successful in preventing female-to-male transmission of HIV. Three trials, sponsored by the U.S. National Institutes of Health (NIH) and the French National Agency for Research on AIDS, demonstrated that VMMC reduces the risk of female-to-male transmission by approximately 60%.[9]

Agencies within the Tanzanian government have expressed support for increasing the number of VMMC procedures performed each year. The Prime Minster's Office discussed VMMC in its 2013 "Tanzania Third National Multi-Sectoral Strategic Framework for HIV and AIDS." The Framework suggests the increased use of VMMC among several methods to decrease HIV-transmission and AIDS-related deaths.[10] Moreover, the Framework indicates that the national strategy on VMMC should target "younger males for long term impact."[11] The National Institute for Medical Research (part of the Ministry of Health and Social Welfare) has made recommendations relating to the "effective roll-out of male circumcision services in the

country."[12] In particular, the institute has indicated that "Considering the risk/benefit ratio, we recommend infant and child circumcision to parents who assent to the procedure."[13]

Tanzania launched its VMMC strategy in 2009, targeting males aged 10–34 living in regions with high rates of HIV prevalence and low rates of male circumcision prevalence.[14,15] This program aimed to reach 2.8 million boys and men by 2013 through several delivery methods (e.g., fixed, outreach, and mobile) and thereby increase VMMC rates to at least 80% in the priority regions.[16] By December 2012, however, the program had managed to circumcise only 415,398 men.[17] Moreover, as of 2012, VMMC rates remained below 80% in several regions.[18]

One recent study assessed popular attitudes in a Tanzanian community about VMMC, to determine why more Tanzanians do not take advantage of the surgery.[19] The study revealed that many adult men may be ashamed to seek out VMMC, based on a "perceived inappropriateness of [obtaining the procedure] after puberty."[20]

IV. Key Findings

1. Tanzanian law does not specifically identify the age of consent for VMMC or state who may consent to medical treatment or surgery on behalf of a child

Tanzanian law does not explicitly state how old a person must be to consent to VMMC.[21] The age of majority in Tanzania is 18. Tanzania's Law of the Child Act states that "a person below the age of eighteen years shall be known as a child."[22] Thus, anyone who is 18 or older can independently consent to medical procedures. It is likely that the age of consent for VMMC is the age of majority–18 years old.

Official publications from the Tanzanian government support this inference. The National Institute for Medical Research and Ministry of Health published a 2009 report referencing VMMC, which states that "minors cannot consent to the procedure."[23] The Tanzanian Ministry of Health and Social Welfare "Standard Operating Procedures for HIV Testing and Counseling (HTC)" state that certain "mature minors" can independently consent to HTC if the child: (1) is married; (2) has children; or (3) is sexually active.[24]

Tanzanian statutory law does not state whether a non-legal guardian can consent to VMMC on behalf of a child.

2. Laws in South Africa, Kenya, and Lesotho permit minors to consent to certain medical interventions, including VMMC

South Africa expressly established 16 as the age of consent for VMMC. South Africa's Children's Act of 2005 provides that "circumcision of male children older than 16 may only be performed – if the child has given consent to the circumcision."[25] Moreover, a child in South Africa may consent to a surgical procedure if he or she is a) 12 or older, b) demonstrates "sufficient maturity and has the mental capacity to understand the benefits, risks, social, and other implications of the treatment," and c) is assisted by a parent or guardian.[26]

A number of other African countries also permit minors to consent to certain medical interventions. In Kenya, a minor may independently consent to HIV testing if he or she is "symptomatic, pregnant, married, a parent, or engaged in behaviour that puts them at high risk of contracting HIV."[27] Regarding VMMC in particular, the Kenyan Ministry of Public Health and Sanitation is currently working to "[e]nsure that appropriate laws, regulations and supervisory mechanisms are developed so that male circumcision services are accessible and provided safely without discrimination."[28] In Lesotho, children 12 or older may independently consent to medical treatment if they are "of sufficient maturity" and have "the mental capacity to understand the benefits, risks, social and other implications of the treatment or operation."[29]

3. The WHO, UNAIDS, UNICEF, Global Commission on HIV and the Law, U.S. Agency for International Development, and Southern African Development Community recommend that countries examine their consent laws to address age-related barriers to HIV services

The WHO, UNAIDS, United Nations Children's Fund (UNICEF), Global Commission on HIV and the Law, United States Agency for International Development (USAID), and Southern African Development Community (SADC)[30] advise that countries with high HIV prevalence assess and possibly amend their consent laws to facilitate access to HIV services, including VMMC.[31] Recommendations regarding changes to age of consent laws for VMMC include: (1) ensuring that laws and regulations require that providers obtain informed consent before performing VMMC;[32] (2) ensuring that laws and regulations clearly establish the age of consent for HIV services;[33] (3) considering lowering the age at which boys may independently consent to VMMC;[34] and (4) enacting laws and regulations protecting minors who do not wish to be circumcised.[35]

a. Laws and regulations should require that providers obtain informed consent before performing VMMC

International guidelines stress that health care providers should always obtain informed consent before performing VMMC. For example, the WHO and UNAIDS indicate that, "Countries should ensure that male circumcision is provided with full adherence to medical ethics and human rights principles. Informed consent, confidentiality, and absence of coercion should be assured."[36] Likewise, in its Model Law on Southern Africa, the SADC recommends that male circumcision only be performed with informed consent.[37]

b. Laws and regulations should clearly establish the age of consent for VMMC

The Global Commission on HIV and the Law has stated that it is "good practice" for countries to have age of consent set in law, because this "enables eligible children to consent independently to various forms of medical treatment."[38] Likewise, USAID has noted that where countries fail to define the age of consent for HIV treatment, including VMMC, providers are inhibited from offering services and adolescents are prevented from accessing treatment.[39] USAID has further stated that "Defining and clarifying the age of consent for…access to care and treatment services is critical to improve services for adolescents."[40]

c. Countries could consider lowering the age of consent for VMMC below 18

The WHO and UNAIDS have indicated that countries may need to "review, revise, or develop an appropriate policy or guidance with respect to informed consent for minors."[41] Specifically, the WHO and UNAIDS have recommended that, "[g]iven the importance of male circumcision in terms of HIV risk reduction, consideration will be given to allowing adolescents who have the capacity to appreciate risks and benefits access to male circumcision independent of parental consent."[42] The SADC has also promulgated guidelines indicating that countries should permit minors to independently consent to VMMC.[43] In its Model Law on HIV in Southern Africa, the SADC recommends that countries should ensure that "male circumcision is only performed…with prior voluntary and informed consent" from patients 16 or older.[44]

d. Laws and regulations should permit minors to object to circumcision

The WHO and UNAIDS recommend "involvement of the child in the decision-making" regarding VMMC.[45] Specifically, "the child should be given the opportunity to provide assent or consent, according to his evolving capacity."[46] Moreover, these organizations stress that VMMC should always be carried out "without coercion."[47]

V. Considerations

In light of the above recommendations, Tanzania could consider amending its laws and policies to reduce ambiguities regarding age of consent for VMMC, facilitate access to VMMC for adolescents, and provide safeguards for adolescents who do not wish to undergo the procedure.

First, Tanzania could consider clarifying that providers must obtain informed consent prior to performing VMMC, including the assent of adolescent boys. In addition, Tanzania could consider clarifying the age of consent for VMMC in the law. This could be accomplished in several ways. Tanzania could consider adopting legislation that defines the age of consent for VMMC specifically, or Tanzania could consider defining the age of consent for surgical procedures generally. Moreover, in the event non-surgical VMMC becomes available among adolescent men, Tanzania could consider defining ages of consent for both surgical and non-surgical VMMC.

Tanzania could consider defining in law that minors can independently consent to VMMC at some age younger than 18. Tanzania could consider adopting legislation establishing a lower age of consent for VMMC than the age of majority (for example, that the age of consent for VMMC is 16). Tanzania could also consider adopting legislation providing that a minor may independently consent where he shows sufficient maturity, similar to that noted above in South Africa.

Finally, Tanzania could consider defining who may consent to VMMC on behalf of a boy who is not able to independently consent to VMMC. Tanzania could consider allowing certain non-legal caregivers to consent on behalf of boys in certain circumstances.

V. Research Methods

Researchers used a wide range of online legal and non-legal resources in the preparation of this brief. LexisNexis and Westlaw were searched for relevant primary and secondary legal sources. Legislative acts were accessed primarily through either the legislature's website or that of the Law Reform Commission of Tanzania. WHO, UNICEF, UNAIDS, Global Commission on HIV and the Law, USAIDS, and SADC resources were consulted for guidelines and best practices, as well as HIV/AIDS data for Tanzania. Non-legal databases included PubMed, PLoS One, EBSCO, and the University of Washington WorldCat service.

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References

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[2] *United Republic of Tanzania: HIV and AIDS estimates (2014)*, UNAIDS.ORG, http://www.unaids.org/en/regionscountries/countries/unitedrepublicoftanzania/ (last accessed September 13, 2015).

[3] *Tanzania: Children and AIDS*, UNICEF.ORG, http://www.unicef.org/tanzania/children_aids.html (last accessed September 13, 2015).

[4] *HIV and AIDS Estimates*, *supra* note 2.

[5] *Tanzania: Children and* AIDS, *supra* note 3.

[6] *Voluntary medical male circumcision for HIV prevention*, WHO.INT, http://www.who.int/hiv/topics/malecircumcision/fact_sheet/en/ (last accessed September 13, 2015). The WHO estimates that achieving and maintaining 80% coverage among men aged 15–49, through 2025, could avert 3.4 million new HIV infections in Eastern and Southern Africa.

[7] In 2013, the WHO announced prequalification of PrePex, the first non-surgical device for adult male circumcision, after the device was tested among men aged 18 and older and proved effective. *See Information update on the PrePex device for adult male circumcision for HIV prevention* (May 31, 2013), WHO.INT., http://www.who.int/hiv/topics/malecircumcision/prepex_device_update/en/ (last accessed August 9, 2015).

[8] *Voluntary medical male circumcision for HIV prevention*, *supra* note 6.

[9] WHO, UNAIDS, NEW DATA ON MALE CIRCUMCISION AND HIV PREVENTION: POLICY AND PROGRAMME IMPLICATIONS, 3 (2007), *available at* http://www.unaids.org/sites/default/files/media_asset/mc_recommendations_en_0.pdf.
[10] THE UNITED REPUBLIC OF TANZANIA, PRIME MINISTER'S OFFICE, TANZANIA THIRD NATIONAL MULTI-SECTORAL STRATEGIC FRAMEWORK FOR HIV AND AIDS (2013/14 – 2017/18), 1, 2, 24, 38, 48 (2013).
[11] *Id.* at 27.
[12] NATIONAL INSTITUTE FOR MEDICAL RESEARCH AND MINISTRY OF HEALTH AND SOCIAL WELFARE, SITUATION ANALYSIS FOR MALE CIRCUMCISION IN TANZANIA: FINAL REPORT, x (2009).
[13] *Id.* at 97.
[14] Rates of male circumcision in Tanzania vary by region, ranging from around 25% in some regions to almost 90% in others. *See* Veena Menon et al., *Costs and Impacts of Scaling up Voluntary Medical Male Circumcision in Tanzania*, 9:5 PLOS ONE (e83925) 1, 2 (2014), *available at* http://www.ploscollections.org/article/fetchObject.action?uri=info:doi/10.1371/journal.pone.0083925&representation=PDF.
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[16] Marya Plotkin et al., *Man, what took you so long? Social and individual factors affecting adult attendance at voluntary medical male circumcision services in Tanzania*, 1:1 GLOB HEALTH SCI. PRACT. 108, 108 (2013), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4168557/; *see also VMMC in Tanzania and Zimbabwe*, *supra* note 15, at 1; *Costs and Impacts of Scaling up Voluntary Medical Male Circumcision*, *supra* note 14, at 1.
[17] STRATEGIC FRAMEWORK FOR HIV AND AIDS, *supra* note 10, at 27.
[18] *Costs and Impacts of Scaling up Voluntary Medical Male Circumcision*, *supra* note 14, at 2.
[19] *Man, what took you so long?*, *supra* note 16.
[20] *Id.* at 108.
[21] *See, e.g.*, GLOBAL COMMISSION ON HIV AND THE LAW, REGIONAL ISSUES BRIEF: CHILDREN, HIV, AND THE LAW, 9 (2011), *available at* http://www.hivlawcommission.org/index.php/regional-dialogues-main/africa/regional-issues-brief-children-hiv-and-the-law/download (recognizing there is "no age set in law" for "various health interventions" in Tanzania).
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[23] SITUATION ANALYSIS FOR MALE CIRCUMCISION IN TANZANIA, *supra* note 12, at 97.
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[29] Children's Protection and Welfare Act 7 of 2011 § 232(2) (Lesotho), *available at* http://www.aclr.info/images/stories/uploader/Publication_files/Acts/children_protection_and_welfare_act.pdf.

[30] The Southern African Development Community comprises representatives from 15 member states, including Tanzania. The Model Law on HIV in Southern Africa was developed by SADC's Parliamentary Forum. *About SADC*, SADC.INT, http://www.sadc.int/about-sadc/ (last accessed August 9, 2015).

[31] *See, e.g.*, USAID, MAPPING HIV SERVICES AND POLICIES FOR ADOLESCENTS: A SURVEY OF 10 COUNTRIES IN SUB-SAHARAN AFRICA, xi (2013); SADC PARLIAMENTARY FORUM, MODEL LAW ON HIV IN SOUTHERN AFRICA, 13 (2008) *available at* http://www.justice.gov.za/vg/hiv/docs/2008_Model-Law-on-HIV-in-Southern-Africa.pdf; NEW DATA ON MALE CIRCUMCISION AND HIV PREVENTION, *supra* note 9, at 6; REGIONAL ISSUES BRIEF: CHILDREN, HIV, AND THE LAW, *supra* note 21, at 9; WHO, UNAIDS, JOINT STRATEGIC ACTION FRAMEWORK TO ACCELERATE THE SCALE-UP OF VOLUNTARY MEDICAL MALE CIRCUMCISION FOR HIV PREVENTION IN EASTERN AND SOUTHERN AFRICA, 16 (2011), *available at* http://www.pepfar.gov/documents/organization/178294.pdf.

[32] *See, e.g.*, NEW DATA ON MALE CIRCUMCISION AND HIV PREVENTION, *supra* note 9, at 6.

[33] *See, e.g.* REGIONAL ISSUES BRIEF: CHILDREN, HIV, AND THE LAW, *supra* note 21, at 9.

[34] JOINT STRATEGIC ACTION FRAMEWORK, *supra* note 31, at 11.

[35] *See, e.g.*, NEW DATA ON MALE CIRCUMCISION AND HIV PREVENTION, *supra* note 9, at 6.

[36] *Id.*

[37] MODEL LAW ON HIV IN SOUTHERN AFRICA, *supra* note 31, at 13.

[38] REGIONAL ISSUES BRIEF: CHILDREN, HIV, AND THE LAW, *supra* note 21, at 9.

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[40] *Id.*

[41] JOINT STRATEGIC ACTION FRAMEWORK, *supra* note 31, at 16.

[42] *Id.* at 11.

[43] MODEL LAW ON HIV IN SOUTHERN AFRICA, *supra* note 31, at 13.

[44] *Id.*

[45] NEW DATA ON MALE CIRCUMCISION AND HIV PREVENTION, *supra* note 9, at 6.

[46] *Id.* at 6.

[47] *Id.* at 5.