

UNAIDS Legal and Regulatory Self-Assessment Tool for Male Circumcision in Sub-Saharan Africa



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1. Introduction

Purpose of the self-assessment tool

This self-assessment tool provides practical guidance on legal, regulatory, and policy considerations associated with implementation and scale-up of male circumcision services for HIV transmission prevention in sub-Saharan Africa. The results of the assessment process will be useful for health programme planners and others who are considering the introduction or expansion of male circumcision services in the context of comprehensive HIV prevention programmes. The tool should be read together with the UNAIDS guidance document *Safe, Voluntary, Informed Male Circumcision and Comprehensive HIV Prevention Programming: Guidance for decision-makers on human rights, ethical and legal considerations*.

Countries that have already begun implementing services will nonetheless benefit from use of the self-assessment tool. It is intended to be used periodically in all countries, regardless of implementation stage, to gauge how well the existing legal and regulatory framework is supporting male circumcision service scale-up for HIV prevention and indicate what changes may be required. The self-assessment tool is most useful to a country when used by a team with wide ranging expertise which engages a broad base of stakeholders (please see the section below on instructions for use of the tool). The tool has the potential to serve as an accountability framework for government, the private sector, and civil society.

Background and context

There is compelling evidence that male circumcision reduces sexual HIV transmission from women to men by 60%,¹ and

¹ UNAIDS, *Safe, Voluntary, Informed Male Circumcision and Comprehensive HIV prevention Programming: Guidance for Decision-makers on Human Rights, Ethical and Legal Considerations* (2007) (hereinafter *Guidance*).

WHO/UNAIDS recommend that male circumcision should be recognized as an additional, important strategy for the prevention of heterosexually acquired HIV infection in men.² The full set of recommendations covers key topics including sociocultural contexts, communications, health system strengthening, gender implications, ethical/legal/human rights principles to guide service delivery, maximizing public health, safety, HIV testing, the need for additional resources, and unmet and future research needs.

WHO/UNAIDS have developed tools and guidelines intended to provide operational and programmatic guidance to the concerned decision-makers and programme managers. An overview of the tools and guidelines can be found in *Operational Guidance for Scaling Up of Male Circumcision for HIV Prevention*. In addition to this legal and regulatory self-assessment tool and the *Guidance*¹ there are the following tools: an information package, a situation-analysis toolkit, a surgical manual and training modules for performing male circumcision under local anaesthesia, a decision-makers' programme-planning tool, country case studies, a communications framework, and a monitoring and evaluation tool. These tools, which are intended to be complementary and to provide programmatic support, should be consulted in reference to relevant sections of this self-assessment tool.

Legal basis and background material

This self-assessment tool is informed by health and human rights standards in international and domestic law, as well as general UNAIDS policy and the specific recommendations in the UNAIDS guidance document: *Safe, Voluntary, Informed Male Circumcision and Comprehensive HIV Prevention Programming: Guidance for Decision-makers on Human Rights, Ethical and Legal Considerations* (2007).

² WHO/UNAIDS New Data on Male Circumcision and HIV Prevention: Policy and Programme Implications, March 2007

Several international human rights instruments—including The Universal Declaration on Human Rights; Convention on the Elimination of all Discrimination Against Women; Convention on the Rights of the Child—contain basic principles relevant to any public health programme, including male circumcision. For example, the Universal Declaration on Human Rights proclaims that ‘All human beings are born free and equal in dignity and rights (Article 1) e.g. life, liberty and security of the person (Article 3) and also equal access to public service (Article 21). The Convention on Elimination of All Forms of Discrimination embodies the principle of non-discrimination and equality between men and women (Preamble). The guiding principle in the Convention on the Rights of the Child states that ‘in all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.’ (Article 3). There are additional provisions of relevance in these and other international human rights instruments.

Furthermore, various policy documents published by the World Health Organization and other international organizations offer helpful guidance on the specifics of implementation of health services.³ Regional treaties and legal documents,⁴ national laws,⁵ and customary laws,⁶ often have specific provisions that will assist (or hinder) implementation of safe and ethical male circumcision services. It is important to note that customary laws are part of the legal systems in many sub-Saharan nations, and are generally applicable unless they violate principles of natural justice and morality.⁷

³ See, e.g., U.N Econ. & Soc. Council [ECOSOC], Comm. On the right to the highest attainable standard of health, General Comment 14, UN Doc E/C. 12/2000/4, CESCR(11/08/2000)

⁴ See, e.g., African Charter on Human and peoples rights, adopted June 27, 1981 OAU Doc. CAB/LEG/67/3 rev5, 21 I.L.M. 58(1982), entered into force Oct 21, 1986; African Charter on the rights and welfare of the child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov.29,1999; Protocol to the African Charter on Human and People’s rights on the rights of women

⁵ See, e.g., Swaziland constitution.

⁶ See, e.g., Country specific customary laws.

⁷ See, e.g., Swaziland Law of evidence amendment Act 45 of 1988; Nigeria’s Evidence Act §14(1) (3); Kenya’s judicature Act Chapter 8 of the Laws of Kenya §3(2)

Duties of governments

The primary duty of formulating and implementing laws and regulations governing the provision of male circumcision services is vested in national governments. Governments and communities seeking to implement or scale up male circumcision services should strive to meet all legal and regulatory standards in this self-assessment tool; however, provision of these services should not be held back because the complete legal framework does not exist. At a minimum, there must be in place procedures to ensure informed consent following counselling, quality assurance of service provision to ensure safety, carefully designed and well evaluated communications strategies, and monitoring for unintended consequences as well as individual and community satisfaction. Thus, use of the self-assessment tool serves as a starting point for strengthening existing legal and regulatory frameworks to ensure that they are appropriate for the provision of safe, voluntary male circumcision services for HIV prevention. Governments should then ensure, through legal requirements; adequate resource allocation; training, supervision, and quality assurance; and monitoring and evaluation, that health care providers appropriately implement such services.

Governments should ensure that safe male circumcision for HIV prevention is available, accessible, and culturally acceptable—in law and in fact—to all individuals who seek the service, without discrimination based on such factors as income, race, age, or health status, unless it is medically contraindicated. In addition, governments and health care providers should seek to include women, both as parents and sexual partners, in the counselling and decision-making concerning circumcision of their male infants, children, and sexual partners. Governments and health care providers should engage community leaders in the process of designing, scaling up, and evaluating male circumcision services for HIV prevention, including traditional practitioners in areas where male circumcision currently is a traditional

practice. Finally, governments should ensure that male circumcision service provision reinforces other aspects of combination prevention, including the correct and consistent use of male and female condoms, and that it complements and does not weaken other sexual and reproductive health programmes.

2. INSTRUCTIONS

The assessment team using the tool should have a broad range of expertise, including: medicine, law and human rights, health policy, gender equality, programme evaluation, and comprise both programme staff and community members. The assessment process should engage a broader group of stakeholders, including other technical experts from the national AIDS programme, traditional providers of male circumcision (where male circumcision is an existing practice), and representatives of the national human rights institution, groups representing people living with HIV, women's groups, human rights and legal groups, groups of men working towards gender equality, youth groups, and other civil society groups. It should undertake site visits, interviews, and focus group discussions, as appropriate, and also a review of the existing legal and regulatory framework, including relevant customary law. Participants in the assessment process should receive a copy of the assessment tool before an interview, or focus group discussion, happens, as well as other relevant information on HIV and male circumcision, including current national provisions. The process should be seen as an opportunity to generate community dialogue on comprehensive HIV prevention, to raise awareness about the *partial* protective effect of male circumcision, and to clarify any misperceptions that people may have.

Findings and recommendations derived from the assessment process should inform the development or revision of specific policies and laws relating to male circumcision. A process should be put in place to monitor follow up to the recommendations, and civil society should be fully engaged in such efforts. Recognizing that each country will develop its own mechanisms for the initial application of the tool and its subsequent use, UNAIDS encourages countries to document experiences and share progress with other countries that are introducing or expanding male circumcision services for HIV prevention.

Availability—governments should ensure that safe, voluntary, informed, affordable male circumcision is available to all who seek it, without discrimination on the basis of race, age, HIV status, income, or other status.

- How are decisions being taken about the anticipated scope, speed, and focus of male circumcision service scale-up (including priority age groups and populations, facilities, and providers) and the resultant implications for human resources, such as task shifting and training needs; infrastructure and logistics; cost and funding; quality assurance; and monitoring and evaluation?
- What are the plans to make male circumcision services for HIV prevention available to the entire male population (including in rural areas) starting in areas with high HIV prevalence and in accordance with agreements on priority populations and age groups?
- What laws, regulations, policies, and customary practices may pose barriers to access to male circumcision services for any individuals (e.g. HIV-positive individuals, ethnic minorities, migrants and refugees, male sex workers, children, prisoners, or drug users) and how are such barriers being confirmed and addressed?
- How are all sectors of the population to be made aware of the existence of the facilities that offer safe male circumcision services?
- What measures are in place to ensure that resources for the provision of safe, male circumcision for HIV prevention are truly *additional* and that the scale-up of male circumcision services serves to strengthen the health system, particularly surgical services, sexual and reproductive health care, and other HIV prevention measures, rather than weaken them?

Acceptability—governments should ensure that male circumcision services are respectful of medical ethics, and are offered and delivered in a culturally appropriate way.

- How are all sectors of the society (general public, government officials, media, nongovernmental organizations, schools, youth

groups, work places, women's groups, health professionals) being provided with new evidence regarding the connection between male circumcision and reduced risk of acquiring HIV?

- What information are men and women (adults and adolescents) being given to ensure comprehensive and accurate understanding about HIV prevention, particularly the continuing importance of correct and consistent condom use, delayed sexual debut, reduction in the number of sex partners, and abstinence from penetrative sex until certified wound healing?
- How are traditional health providers and community leaders being included in the design, implementation, and monitoring of male circumcision services as part of a comprehensive HIV prevention programming?
- What regulatory framework is being enacted to monitor the implementation of male circumcision services, measure quality of services, and detect and act on adverse events and deviations from appropriate medical and safety standards?
- What measures are in place to ensure that male circumcision services for HIV prevention are offered in a manner that does not discriminate against men of unknown HIV status or against HIV-positive men?

Education and counselling—governments should ensure that all necessary information about the risks and benefits of male circumcision is provided to individuals seeking male circumcision services and their sexual partners (and parents of unemancipated minors).

- How are all sectors of society able to access accurate information about the benefits and risks of male circumcision?
- How are men and women (adults and adolescents) to be counselled not only about the partial protection from HIV but also the benefits of male circumcision with respect to other diseases (e.g. genital ulcer disease, human papillomavirus infection, penile cancer, and cervical cancer)?
- How will men seeking male circumcision services and their sexual partners be informed about the partial protection against

HIV infection afforded by male circumcision and the importance of combining it with other HIV prevention methods?

- How are men and women (adults and adolescents) to be appropriately counselled about the importance of abstaining from sex until certified wound healing and to reinforce the need for circumcised men to use condoms correctly and consistently after healing is complete?
- How are health providers trained to communicate with patients, their families and sexual partners, and communities, in a culturally and linguistically appropriate and effective way?

Children—governments should consider the best interests of children (adolescents, children, and infants) in designing and implementing male circumcision services, and should ensure that the right of children to participate in decision-making is respected.

- What measures, including laws, regulations or policies, are in place to protect boys from discrimination (in schools and other settings) based on their circumcision status?
- What measures are in place to protect boys from peer pressure and stigma based on their circumcision status?
- What laws, regulations or policies permit boys to participate in the decision-making process about male circumcision in an age-appropriate manner, recognising their level of maturity and capacity to understand the consequences of their decision?
- What national and local laws, regulations or policies provide for a lower age of consent for HIV-related prevention and health services to ensure confidential access to services such as HIV testing and male circumcision by adolescents?
- What training exists for health care providers to be able to assess the level of understanding of adolescents who seek male circumcision services without parental or guardian consent, either on their own initiative or because they do not have a legal guardian?
- How are health care providers trained to keep confidential all health services provided to adolescents?

- How are parents and guardians to be provided with adequate and accurate information to determine whether male circumcision is in the best interests of their male children?
- In the case of infants, how are parents, legal guardians, or caregivers to be provided with clear and understandable information on the risks and benefits of male circumcision in infancy versus at older ages, including when the child is mature enough to decide for himself?
- How does the law and its implementation ensure that women and men have equal rights to consent, or refuse to consent, to male circumcision on behalf of their male children subject to their best interest as a primary consideration?

Women—the state should protect the sexual partners of men and adolescent boys seeking circumcision. Sexual partners should be involved as much as possible in the decision-making process, without compromising the men’s right to consent or to privacy.

- How does the law protect women from discrimination, such as discrimination that could result if society views male circumcision as protection against HIV-positive women and what measures are being taken to ensure that women are not stigmatized as a result?
- How do laws, regulations or policies ensure that men and women (adolescents and adults) receive individual and joint counselling emphasising mutual commitment to sexual abstinence during the post-circumcision healing period to protect women and men against potential increased risk of acquiring or transmitting HIV?
- How do laws, regulations or policies protect women against physical, legal, cultural, and other pressures to have nonconsensual and/or unprotected sex?
- What measures are being taken to ensure that male circumcision is not combined with, or used as an excuse to promote, female genital mutilation, which has no health benefits, and is harmful to the health and well-being of women and girls?

- How are social change communication strategies relating to male circumcision designed to ensure strong male involvement in reducing women's vulnerability to HIV with messages that reinforce the importance of reducing concurrency of sexual partners; postponing sexual debut; increasing male and female condom use; raising awareness about the risks of age-disparate, intergenerational sex and transactional sex; rejecting cultural practices that are harmful to women and girls, and advocating zero-tolerance for gender-based violence?

Access to safe procedures—health providers should ensure that good quality male circumcision services are provided under conditions of adequate sanitation.

- What laws, regulations or policies require health facilities to adopt and comply with safety and quality standards, including: availability of trained and skilled personnel, sterile equipment, and universal precautions, in the delivery of safe and voluntary male circumcision services?
- What laws or regulations ensure adequate safety and ethics training of all health practitioners, including traditional healers where appropriate?
- How does the law provide for a grievance redress mechanism to address violations of patients' rights to safe and ethical medical procedures, for example through a Medical and Dental Council, Human Rights Commission, or Public Protector?

Informed consent—health providers must obtain full and free informed consent before performing male circumcision.

- How does the law ensure that health care providers supply all individuals seeking male circumcision services with accurate and adequate information necessary to secure consent (including information about the risks, benefits, and methods of male circumcision; and the right to refuse the procedure without risk of reprisal or other adverse consequence)?
- What laws or regulations ensure that consent is obtained in a culturally appropriate manner, with due consideration for individuals' literacy, linguistic, and educational level?

- How does the law ensure that individuals are able to make free and informed decisions without undue influence from peers, sexual partners, or health providers?
- How does the law ensure that people with mental disability or persons in institutional settings such as prisons and jails or the military who may be unable to provide free and informed consent are not coerced to undergo circumcision?

Privacy and confidentiality—health providers must protect the privacy and confidentiality of individuals seeking male circumcision.

- What laws prohibit disclosure of any health information, including information about the HIV status of individuals seeking male circumcision?
- How are health care providers trained on the importance of protecting the privacy of vulnerable persons from discrimination based on their circumcision status through keeping personal health information confidential, recalling that unauthorized disclosure of medical information is unethical and can cause stigma?
- What privacy safeguards are in place to protect uncircumcised men, who opt not to get circumcised, from stigma based on their circumcision status?

HIV testing and counselling policy—health providers should recommend HIV testing and counselling to all individuals seeking male circumcision services but must not make agreement to be tested a prerequisite for male circumcision.

- How are health care providers trained to recommend HIV testing and counselling on site as part of standard male circumcision services and offer HIV treatment and care, facilitating access to those services not offered on site?
- What law requires that health care providers are trained to maintain the confidentiality and privacy of the recommendation to undergo an HIV test, its acceptance, and the provision of the result?

- How are health care providers trained on how to counsel men regarding disclosure of their HIV status to their sexual partners?
- How are health care providers trained to offer circumcision, unless there are medical contraindications, to HIV-positive men who can benefit from reduced genital ulcer disease and reduced penile cancer?
- How are male circumcision services to be offered in conjunction with other health and social services, as part of a comprehensive HIV prevention and treatment strategy?
- What provisions are being made to offer men who are at a higher risk of HIV exposure, e.g. sexually transmitted disease clinic patients and seronegative men in serodiscordant couples, referral to male circumcision services as part of a comprehensive HIV prevention and treatment strategy?

Monitoring, evaluation, and operational research

- How and with what stakeholders has a monitoring and evaluation framework been designed for the scale-up of male circumcision services for HIV prevention?
- How does the monitoring and evaluation framework address the need to assess evolving knowledge, attitudes, perceptions and sexual behaviour change among circumcised men, their sexual partners, and the community at large?
- What measures have been taken to monitor for potential negative consequences, such as sexual violence, changes in condom use and partner numbers, effects on other health care services, and increased stigma and discrimination against circumcised men, uncircumcised men, or HIV-positive men?
- What operational research is planned or underway to improve the delivery of male circumcision services for HIV prevention?

The Joint United Nations Programme on HIV/AIDS (UNAIDS) brings together ten UN agencies in a common effort to fight the epidemic: the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the World Food Programme (WFP), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the United Nations Office on Drugs and Crime (UNODC), the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), and the World Bank.

UNAIDS, as a cosponsored programme, unites the responses to the epidemic of its ten cosponsoring organizations and supplements these efforts with special initiatives. Its purpose is to lead and assist an expansion of the international response to AIDS on all fronts. UNAIDS works with a broad range of partners – governmental and nongovernmental, business, scientific and lay – to share knowledge, skills and best practices across boundaries.



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