



# General Assembly

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## Human Rights Council

Twenty-first session

Agenda item 4

Human rights situations that require the Council's attention

### **Written statement\* submitted by the International Humanist and Ethical Union, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 August 2012]

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\* This written statement is issued, unedited, in the language received from the submitting non-governmental organizations.

## Circumcision of male children\*\*

### Introduction

Following a hearing on 7 May 2012, the regional appellate court of the Landgericht in Cologne,<sup>1</sup> Germany ruled that non-therapeutic circumcision of male children amounts to bodily injury, and is a criminal offence in the area under its jurisdiction. This ruling and the reactions to it have reopened the debate on the legitimacy of the circumcision of male children.

### Conclusion

The International Humanist and Ethical Union (IHEU), having taken specialist legal advice, submits that the practice of forcible, non-therapeutic genital cutting of male and female infants is opposed to the best interests of the child and a violation of international human rights norms:

- Article 24(3) of the UN Convention on the Rights of the Child (UNCRC) commits states **parties** to “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children”. The Article was understood by those voting on the Convention as referring, inter alia, to the genital cutting of children,<sup>2</sup> and has been invoked by most legislatures to eradicate the phenomenon of FGM. The Article applies to children of both sexes and thus protects boys as well as girls from genital cutting. Prominent activists in the campaign against FGM have expressed their horror that the Article has not yet been applied in favour of all children, boys and girls<sup>3</sup>. This constitutes a failure by states to guarantee Convention rights to all children without discrimination on grounds of sex (UNCRC Article 1).
- The forced circumcision of a male child, which involves amputation by cutting, nerve loss, pain, bleeding, scarring and risk of serious physical and psychological complications, amounts to cruel, inhuman or degrading treatment prohibited by ICCPR Article 7. Significantly, Article 7 refers, in the context of medical experimentation, to lack of consent as relevant to breach of the Article. Other international human rights courts have found the forcible removal of any part of the body (even if painless) to amount to cruel and inhuman treatment (see *Tarhan v Turkey* [2012] ECHR – forced shaving of hair), and such rulings would apply with even greater force to genital cutting.
- International Articles which do not override the above in respect of infant circumcision include the freedom of religion guaranteed by ICCPR Article 18. This freedom is not absolute but is subject to limitations of protecting (a) health and (b) the fundamental rights and freedoms of others. The right to bodily autonomy is a fundamental right to be protected, especially in the case of a child who is more vulnerable to unwanted physical intrusion upon his/her person. The genital cutting of male infants unacceptably violates both the child’s health and its bodily integrity,

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\*\* The National Secular Society (UK), an NGO without consultative status, also shares the views expressed in this statement.

<sup>1</sup> Ref 151 Ns 169/11.

<sup>2</sup> Van Bueren, G, *The International Law on the Rights of the Child*, (1998) at 307.

<sup>3</sup> Soraya Mire, the Somali filmmaker and global leader per Reuters Article of 25 June 2009: <http://www.reuters.com/article/pressRelease/idUS153241+25-Jun-2009+PRN20090625>).

and thus is not the subject of protection of Article 18 but rather is legitimately to be restricted by the limitations of 18(3).

The rights and duties of parents to provide “direction” as to their child’s exercise of freedom of religion and belief (UNCRC Art 14(2)) is in protection of the child’s beliefs, not the religion of the parents, which are subject to the same restrictions (health and fundamental freedoms of others) as the right to religious expression generally. There is no right to parental “direction” exceeding those restrictions and states may legitimately ban such excesses, and indeed have done so.<sup>4</sup>

### **Concerns regarding the lawfulness and human rights implications of non-consensual circumcision carried out solely on religious grounds**

- 2012 Germany - Köln District Court – found<sup>5</sup> inter alia:
  - that the circumcision of a boy who is not capable of giving consent is not in the best interests of the child, even if this is to avoid exclusion within the relevant religious and social environment;
  - that the parents’ fundamental rights are limited by the fundamental right of the child to physical integrity and self-determination; and
  - that in German law a citizen’s [in this case the boy’s] rights cannot be compromised by the exercise by others of their freedom of religion (...); (this followed a Frankfurt am Main appeals court finding in 2007 that the circumcision of an 11 year old boy without his approval was an unlawful personal injury).<sup>6</sup>
- 1994 Former Yugoslavia: UN Security Council reports during hostilities in the Balkans refer explicitly to the forcible circumcision of non-consenting males as a human rights abuse taking place there;<sup>7</sup>
- 2002 – Guinea-Bissau: UN Committees reporting on the implementation of the Convention on the Rights of the Child report that “the circumcision of boys aged between 9 and 13 years and female genital mutilation in girls aged between 7 and 12 years ... are the most cruel and harmful practices” of the traditional practices to be eliminated in that region,<sup>8</sup> and
- 1993-2002 – Serious concerns about legality raised by authoritative bodies in: Australia<sup>9</sup> &,<sup>10</sup> Canada,<sup>11</sup> United Kingdom,<sup>12</sup> and USA.<sup>13</sup>

<sup>4</sup> See *X Y & Z v Sweden* (1982) 5 EHRR 147 (Swedish ban on corporal punishment of children upheld – complaint by parents that they had a religious right to use corporal punishment which was violated by the ban was not accepted).

<sup>5</sup> [http://www.justiz.nrw.de/nrwe/lgs/koeln/lg\\_koeln/j2012/151\\_Ns\\_169\\_11\\_Urteil\\_20120507.html](http://www.justiz.nrw.de/nrwe/lgs/koeln/lg_koeln/j2012/151_Ns_169_11_Urteil_20120507.html) Section III.

<sup>6</sup> [http://www.lareda.hessenrecht.hessen.de/jportal/portal/t/dz2/page/bslaredaprod.psm1?pid=Dokumentanzeige&showdoccase=1&js\\_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=KORE244012007%3Ajuris-r01&doc.part=L&doc.price=0.0&doc.hl=1](http://www.lareda.hessenrecht.hessen.de/jportal/portal/t/dz2/page/bslaredaprod.psm1?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=KORE244012007%3Ajuris-r01&doc.part=L&doc.price=0.0&doc.hl=1).

<sup>7</sup> UN Security Council, Commission of Experts’ Final Report on the former Yugoslavia, 27 May 1994, doc. S/1994/674/part IV, section F.

<sup>8</sup> Committee on the Rights of the Child Considers the Initial Report of Guinea-Bissau, <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/39E976491EF5DD8DC1256BC20029E249?opendocument> UN Press Release, 22 May 2002

<sup>9</sup> [http://www.themercury.com.au/article/2012/05/15/328271\\_tasmania-news.html](http://www.themercury.com.au/article/2012/05/15/328271_tasmania-news.html).

<sup>10</sup> <http://www.cirp.org/library/legal/QLRC/> (in Part 9. Conclusion).

<sup>11</sup> <http://www.cirp.org/library/statements/cpsbc2004/>.

**Concerns expressed by the medical community**

There is growing concern in the medical community that the non-consensual procedure, where not carried out for medical reasons:

- results in frequent complications, some potentially dangerous;
- may have long term adverse effects;
- is unnecessary;
- and is not in the interests of the child.

In May 2010, The Royal Dutch Medical Association and a group of affiliated organisations:<sup>14</sup>

- Noted four serious common complications, alongside reports of “penis amputations” and “psychological problems” as a result of the circumcision.”
- Concluded that “There is no convincing evidence that circumcision is useful or necessary.” and “Non-therapeutic circumcision of male minors conflicts with the child’s right to autonomy and physical integrity.”

Evidence of this is also provided for the following countries: Australia;<sup>15</sup> Sweden;<sup>17</sup> and UK.<sup>18</sup> The CIRP specialist medical website catalogues medically respectable studies indicating the reality of pain and trauma for the circumcised infant, and also studies suggesting long-term harm and sexual problems resulting from infant circumcision.<sup>19</sup>

**The Cologne case**

Chancellor Merkel has reacted to intemperate opposition of the court decision and has “promised a new law to protect the right to circumcise male infants”,<sup>20</sup> but fellow German MP Marlene Rupprecht supported the Court’s ruling on the grounds of non-violence and UNCRC.<sup>21</sup> We note that both before and after the Cologne decision individuals in the Jewish community have spoken publicly against the practice of genital mutilation of infants, including men on whom the procedure was imposed as

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<sup>12</sup> Profs Fox M and Thomson M. A covenant with the status quo? Male circumcision and the new BMA guidance to doctors. *J Med Ethics* 2005;31:463-9 <http://www.cirp.org/library/legal/UKlaw/fox-thomson2005/>.

<sup>13</sup> COMMISSION ON HUMAN RIGHTS Sub-Commission on the Promotion and Protection of Human Rights- 54th session Agenda item 6(c) E/CN.4/Sub.2/2002/NGO/1 23 March 2002. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/140/10/PDF/G0214010.pdf?OpenElement>.

<sup>14</sup> The non-therapeutic circumcision of male minors, KNMG, May 2010. <http://knmg.artsennet.nl/Publicaties/KNMGpublicatie/Nontherapeutic-circumcision-of-male-minors-2010.htm>.

<sup>15</sup> <http://news.smh.com.au/national/sa-bans-some-surgery-in-hospitals-20071112-19mc.html>.

<sup>16</sup> <http://www.abc.net.au/news/2007-12-09/doctors-back-call-for-circumcision-ban/981976>.

<sup>17</sup> [www.thelocal.se/20900/20090725/](http://www.thelocal.se/20900/20090725/).

<sup>18</sup> <http://bma.org.uk/-/media/Files/PDFs/Practical%20advice%20at%20work/Ethics/Circumcision.pdf>.

<sup>19</sup> <http://www.cirp.org/library/> referred to in British Medical Journal website

<http://www.bmj.com/rapid-response/2011/10/29/two-wrongs-dont-right-make-so-speak>.

<sup>20</sup> <http://www.jpost.com/JewishWorld/JewishNews/Article.aspx?id=277793>.

<sup>21</sup> Bundestag 19 July 2012 – Circumcision P22834 “In Art. 24 Abs. 3 der UN-Kinderrechtskonvention steht eindeutig, dass die Vertragsstaaten alles versuchen, um Bräuche, die Kinder verletzen, zu beseitigen”.

children and who are aggrieved at the violation of their bodies and the resultant suffering.<sup>22</sup>

#### **Suggested alternatives for the future**

- Postponement: that genital cutting be deferred until the boy reaches an appropriate age of medical competence to give or withhold informed consent.
- Replacement / rethinking: that genital cutting be replaced by a symbolic ritual as suggested by Norway's ombudsman for children's rights.<sup>23</sup>

We note that Dutch medical bodies record great reductions in the incidence of non-therapeutic circumcision in the USA, Canada and UK as a result of "increasing criticism of routine circumcision".<sup>24</sup>

**Note:** We are indebted to our affiliate, the (UK) National Secular Society,<sup>25</sup> and the (UK) Secular Medical Forum<sup>26</sup> for having assisted IHEU in compiling this Statement.

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<sup>22</sup> See the evidence of (a) Jews Against Circumcision (an association); (b) Jenny Goodman in the Dutch Med Assn report; (c) press reports of demonstrations/public statements by Jewish individuals in favour of a ban: Interview with Israeli intactivist Jonathan Enosch: <http://www.taz.de/Israelischer-Beschneidungsgegner/!97492/>; Interview with Ronit Tamir from Kahal in Israel: <http://aktuell.evangelisch.de/artikel/5321/pro-contra-beschneidung-aus-israelischer-sicht?destination=node/5321>; Short report about the demonstration organized by Jonathan Friedman in New York: <http://www.bild.de/politik/ausland/beschneidung/new-york-demo-fuer-koelner-bescheidungs-urteil-25153138.bild.html>; An Austrian Jew who has worked on criminalizing forced child circumcision for many years has been encouraged to submit a new charge: <http://www.tt.com/Tirol/5053157-2/strafanzeige-in-tirol-wegen-beschneidung.csp>.

<sup>23</sup> Reference: <http://www.jpost.com/JewishWorld/JewishNews/Article.aspx?id=280251>.

<sup>24</sup> The non-therapeutic circumcision of male minors, KNMG, May 2010. <http://knmg.artsennet.nl/Publicaties/KNMGpublicatie/Nontherapeutic-circumcision-of-male-minors-2010.htm>.

<sup>25</sup> <http://www.secularism.org.uk>.

<sup>26</sup> <http://www.secularmedicalforum.org.uk>.