

Letter sent from IHEU and NSS to Secretary of the UN Committee on the Rights of the Child on 10 September 2012 (Extract):

Circumcision of infant boys

In the wake of the ruling by the Cologne regional court over male infant circumcision in May 2012, we have sought to establish the extent of legal and medical opinion supporting this ruling. We found it to be both large and compelling, with some lawyers convinced that the practice breaches UNCRC. We therefore feel compelled to bring our research to your attention, and it forms the Appendix to this letter. We would like you to treat this letter as a formal request to investigate the children's rights implications of non-consensual, non-therapeutic infant circumcision of boys. We would very much value an opportunity to meet with you and perhaps some of your colleagues in Geneva about this issue and its children's rights implications and ways forward. We would very much like this letter and Appendix to be circulated to all Committee members at its forthcoming session and will be happy to deliver the appropriate hardcopies.

**APPENDIX
CIRCUMCISION OF MALE CHILDREN**

1. Introduction

Following a hearing on 7 May 2012, the regional appellate court of the Landgericht in Cologne¹, Germany ruled that non-therapeutic, non-consensual 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 enlarged the debate on the legitimacy of the circumcision of male children without their informed consent.

Our legal advice is that this court decision, and other similar legal opinions, are based on sound analysis and suggest that non-consensual, non-therapeutic circumcision of male children breaches the UNCRC. We therefore offer the Committee, as the UN body most directly concerned, this summary of the growing body of legal (and also medical) opinion that supports this view.

We are also tabling similar information at the Human Rights Council in September, but given its wide ranging mandate, do not expect it to receive the detailed attention which we hope the CRC will accord it.

2. 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 infants is opposed to the best interests of the child and a violation of international human rights norms:

2.1 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 forced circumcision of a male child, which involves amputation of the foreskin 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 and Article 37 of

¹ Ref 151 Ns 169/11

the CRC. 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.

2.2 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 his bodily integrity, 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 Sweden has done so².]

3. Concerns regarding the lawfulness and Human Rights implications of non-consensual circumcision carried out solely on religious grounds

3.1 2012 Germany - Köln District Court – found³ inter alia:

- a) 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;
 - b) that the parents' fundamental rights ... are limited by the fundamental right of the child to physical integrity and self-determination; and
 - c) 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 injury⁴)

3.2 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 there⁵

3.3 1993 Australia: a research paper of Queensland Law Reform Commission concludes that “routine circumcision of a male infant could be regarded as a criminal act”⁶

² 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).

³ http://www.justiz.nrw.de/nrwe/lgs/koeln/lg_koeln/j2012/151_Ns_169_11_Urteil_20120507.html Section III

⁴ http://www.lareda.hessenrecht.hessen.de/jportal/portal/t/dz2/page/bslaredaprod.psm1?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdocdoc=yes&doc_id=KORE244012007%3Ajuris-r01&doc.part=L&doc.price=0.0&doc.hl=1

⁵ UN Security Council, Commission of Experts' Final Report on the former Yugoslavia, 27 May 1994, doc. S/1994/674/part IV, section F.

3.4 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 there⁷.

3.5 2002 – USA: the National Organization of Circumcision Information Resource Centers (NOCIRC) expresses the conclusion to the Economic and Social Council that “Male circumcision causes permanent and severe harm and violates human rights.”⁸

3.6 2004 – Canada: The College of Physicians and Surgeons of British Columbia raise emerging widespread concerns about the legality of proxy consent by parents to non-therapeutic circumcision⁹

3.7 2004 – United Kingdom: Law professors Fox and Thomson challenge British Medical Association (BMA) guidance to doctors arguing that consent cannot be given for non-therapeutic circumcision. They say there is “no compelling legal authority for the common view that male circumcision is lawful.”¹⁰ This appears to have influenced the BMA’s viewpoint, as shown below in II e.

3.8 2007 – Germany: A Frankfurt am Main appeals court finds that the circumcision of an 11 year old boy without his approval was an unlawful personal injury¹¹

3.9 2007– Australia: Tasmania’s then Commissioner for Children Paul Mason said that other than for medical reasons, it is a breach of the most basic human right to inflict permanent, painful and disfiguring surgery on a boy's body when he was too small to resist.

4. 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 organisations¹²

i. noted four *serious common complications, alongside reports of “penis amputations” and “psychological problems” as a result of the circumcision.*”

⁶ <http://www.cirp.org/library/legal/QLRC/> (in Part 9. Conclusion)

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

⁸ 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>

⁹ <http://www.cirp.org/library/statements/cpsbc2004/>

¹⁰ 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/>

¹¹

http://www.lareda.hessenrecht.hessen.de/jportal/portal/t/dz2/page/bslaredaprod.psm!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

¹² *The non-therapeutic circumcision of male minors, KNMG, May 2010.*

<http://knmg.artsenet.nl/Publicaties/KNMGpublicatie/Nontherapeutic-circumcision-of-male-minors-2010.htm>

ii. 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^{13 14}; Sweden¹⁵; and UK¹⁶. 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.¹⁷

5. Concerns expressed by other NGOs

We note that the following NGOs are opposed to non-consensual infant circumcision: international child rights charity GENITAL AUTONOMY (GA), US coalition NO-CIRC and Finnish non-profit sexuality foundation SEXPO.

6. The Cologne case

Chancellor Merkel has reacted to intemperate opposition to the court decision and has “promised a new law to protect the right to circumcise male infants”¹⁸, but fellow German MP Marlene Rupprecht supported the Court’s ruling on the grounds of non-violence and compliance with UNCRC¹⁹.

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 children and who are aggrieved at the violation of their bodies and the resultant suffering²⁰.

7. The Future

Suggested Alternatives

a) **Postponement**: that genital cutting be deferred until the boy reaches an appropriate age of medical competence to give or withhold informed consent.

¹³ <http://news.smh.com.au/national/sa-bans-some-surgery-in-hospitals-20071112-19mc.html>

¹⁴ <http://www.abc.net.au/news/2007-12-09/doctors-back-call-for-circumcision-ban/981976>

¹⁵ www.thelocal.se/20900/20090725/

¹⁶ <http://bma.org.uk/-/media/Files/PDFs/Practical%20advice%20at%20work/Ethics/Circumcision.pdf>

¹⁷ <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>

¹⁸ <http://www.jpost.com/JewishWorld/JewishNews/Article.aspx?id=277793>

¹⁹ 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”.

²⁰ See the evidence of (a) Jews Against Circumcision (an association) <http://www.jewsagainstcircumcision.org/>; (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>

b) **Replacement / rethinking:** that genital cutting be replaced by a symbolic ritual as suggested by Norway's former ombudsman for children's rights.²¹

Religious opposition to non-consensual infant circumcision

Although we cannot testify to its size, we note the existence of an association called Jews Against Circumcision²² We do recognise that infant circumcision has a long-standing religio-cultural history about which feelings run high. Nevertheless, harmful religio-cultural practices have been abandoned in recent centuries and we hope that this Statement will start a debate that will raise awareness and pave the way for the replacement of infant circumcision with some symbolic but harmless ritual.

²¹ Reference: <http://www.jpost.com/JewishWorld/JewishNews/Article.aspx?id=280251>

²² <http://www.jewsagainstcircumcision.org/>

Reduction in non-consensual infant circumcision in wider population

We also 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”²³, although we accept these have presumably generally not been carried out with a religious motivation.

Note: We are indebted to our affiliate, the (UK) National Secular Society²⁴, and the (UK) Secular Medical Forum²⁵ for having assisted IHEU in compiling this Appendix.

²³ *The non-therapeutic circumcision of male minors, KNMG, May 2010.*

<http://knmg.artsennet.nl/Publicaties/KNMGpublicatie/Nontherapeutic-circumcision-of-male-minors-2010.htm>

²⁴ <http://www.secularism.org.uk>

²⁵ <http://www.secularmedicalforum.org.uk>