

challenging religious privilege

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national  
secular  
society

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Cc Tim Loughton MP  
Parliamentary Under-Secretary of State (Children and Young Families)  
Anne Milton MP  
Parliamentary Under-Secretary of State (Public Health)

Dear Ms Teather

### **Non-therapeutic circumcision on a child**

We are writing to you as the Minister responsible for children and young people's health, for the Children's Commissioner and particularly in respect of your Departmental responsibility for the UN Convention on the Rights of the Child (UNCnRC), which we believe to be being breached in this country.

Following the ruling by the Cologne district court that infant, and therefore non-consensual, circumcision is harmful, we have investigated the matter at some length in conjunction with a human rights barrister and our associated organisation the Secular Medical Forum, whose chair is Dr Antony Lempert.

We found that the lawfulness of such circumcision is being increasingly questioned and that medical opinion in a number of countries is similarly turning against the historic *carte blanche* afforded to infant circumcision on the basis that the parents' freedom of religion is the only consideration. Instead, it is now being recognised more widely that this non-therapeutic procedure for which there are numerous complications, some of which are very serious, is a breach of children's rights. This conclusion was recently echoed in the Bundestag by German MP Marlene Rupprecht who supported the Court's ruling on the grounds of non-violence.<sup>1</sup> She argued against capitulating to those who shouted the loudest.

### **Questions over the lawfulness of non-therapeutic circumcision on a child**

UK Courts have never imposed non-therapeutic circumcision on a child. The legality of the circumcision of a male child without his personal informed consent has never been the subject of formal legal ruling in UK courts. There are cases, however, which involve the possible circumcision of a child and significantly, in all such cases brought before the court, the court has opted, in the interests of the child, to delay the imposition of circumcision until the child himself can decide. No UK Court has ever found that it is in the interests of a child to be made subject to non-consensual circumcision before he is at least 16.

The underlying principle behind the law's approach to children is that (a) they have certain minimum independent rights and that (b) because of the vulnerability of children, those rights have more need of protection from potential rights abuse than adults. Ordinarily, therefore, where an adult enjoys legal protection from a certain harm, children are afforded *greater* protection, not less. This is clear, for example, in laws against the sexual abuse of children, rights of children to legal representation in court, child protection laws etc. Non-therapeutic circumcision (NTC) without the child's consent represents an unjustified departure from this principle, exposing a child to a violation of his bodily autonomy from which any adult male is protected by the ordinary law of assault.

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<sup>1</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."

We believe the forcible cutting and scarring of a boy's genitals without a medical indication (and the irreversible amputation which is its result) certainly is enough to constitute actual bodily harm under s.47 of the *Offences Against the Person Act 1861* and is thus, *prima facie*, not lawful, just as it would be unlawful, for example, to amputate his earlobe or little finger. The consent or otherwise of the parents is irrelevant because (a) for policy reasons it is not possible to consent to an assault save in very limited circumstances (see *R v Brown* [1996] HL); (b) even if it were possible, in the law of assault it is the victim's consent that is at issue and no one else's.

Any form of unnecessary cutting, scarring and infliction of pain on a child is in undoubted breach of the prohibition on child cruelty in s.1, *Children & Young Persons Act 1933*<sup>2</sup>, which requires no more than exposure to a practice "likely to cause unnecessary suffering or injury". NTC would fall squarely within that definition precisely because it is unnecessary, painful and causes amputation, scarring, complications and permanent loss.

Current legislation and common law also protects children from acts which could have long-term consequences not foreseen or desired by them. The *Tattooing of Minors Act 1969* prohibits the tattooing of a child irrespective of the child's desire or consent for precisely the reason that the procedure is irreversible, the child may regret the procedure, and that there is a risk that the child will not understand the long-term consequences. Those principles apply to genital cutting equally if not more. It is inconsistent and undesirable that a tattooist would be committing a crime if he were to tattoo a boy's foreskin, but no crime at all were he to cut it off forcibly with a knife.

Finally, Section 5 of the Animal Welfare Act 2006 protects animals from mutilation, including, for example, a prohibition on the docking of a dog's tail (s.6). There are the strongest of policy reasons that a human child enjoy at least the same rights than that of animals, which is not so if the genital cutting of a male child is permissible.

### **Gender equality and male circumcision**

All children deserve equal protection under the law, regardless of their gender, and the UK is obliged to ensure non-discriminatory application of its law under its Convention obligation of non-discrimination in respect of Convention rights (Article 14). Given that female infants are protected from all forms of genital cutting in the *Female Genital Mutilation Act 2003*, there can be little argument that the same protection ought to be extended to male children in the light of the evidence<sup>3</sup> of the significant harm done via male circumcision. The principle behind FGM ban was the protection of girls from any form of genital cutting, no matter how slight or what the cultural background of the parent. There is no legitimate basis for denying such protection to boys.

### **Religiously-based assault in other contexts is prosecuted**

UK courts have rightly prosecuted those who assault their children in decisions which make it clear that the religious beliefs of the assaulter do not excuse such conduct, nor does the parental status of the assaulter. In *R v Adesanya* (1994) (unreported, Central Criminal Court, London; see *Re J* [1999] 2 FCR 345 at 357) a woman who ritually scarred her son's face but defended the act on the basis that she was complying with the religious practices of her tribe was convicted of assault.

### **Circumcision is far from risk-free and affects a significant minority of infants**

Significant new evidence has emerged in the UK of the serious complication rate from ritual circumcision. As a result of a recent freedom of information request<sup>4</sup>, it was found that, in one hospital alone in 2011, 11 baby boys needed to be admitted to the hospital's paediatric intensive care unit with serious, life-threatening complications following circumcision. In this age group there is rarely a medical reason for circumcision so it is likely that all of these babies' lives were threatened by an operation on their normal bodies that they did not need. More extensive and damning FOI results will be published over the next few months. The Birmingham data are stark but represent the tip of the iceberg.

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<sup>2</sup> "If any person who has attained the age of sixteen years and has responsibility for any child or young person under that age, wilfully assaults, ill-treats, neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of an offence".

<sup>3</sup> Royal Dutch Medical Association Report.

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

<sup>4</sup> FOI Response from Birmingham Children's Hospital

<http://www.secularism.org.uk/uploads/foi-bch-response-received-260612.pdf>

In February 2012, a baby boy died in North London as a direct result of bleeding complications two days after a ritual circumcision. In this case the coroner ruled that it was a tragic, 'unforeseen' accident and that the rabbi who performed the circumcision was not to blame<sup>5</sup>.

We would like to direct you to the 2010 statement of the Royal Dutch Medical Association<sup>6</sup> produced along with seven other Dutch scientific associations including the GPs, paediatric surgeons, paediatricians and urologists. Their conclusion was that the procedure can be harmful and that it violates the boy's human rights to autonomy and physical integrity; a position mirrored by the recent German court ruling.

Furthermore, research published by Sorrells et al in 2007<sup>7</sup> confirms what many uncut men know – that the foreskin contains several of the most sensitive areas on the penis. Many men are too embarrassed to speak out about the harm done to their most intimate body parts in the name of their parents' religion.

### **Human Rights implications**

Though UNCRC is not part of domestic law, our ratification of the treaty requires the UK to interpret domestic law in accordance with the treaty if possible. Art 24(3) provides "*States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.*" The application of Art 24(3) would impose a duty on UK tribunals to interpret the criminal law on assault and bodily autonomy in such a way as to prevent "traditional practices prejudicial to children's health" such as NTC.

Furthermore, The European Convention on Human Rights (Article 3) prohibits torture, and "inhuman or degrading treatment or punishment". There are no exceptions or limitations on this right. Following the judgment in the case of Tarhan vs Turkey (which concerned the non-consensual shaving of hair), the trigger threshold is now lower and forced removal of any body part will be likely to trigger the article.

We reject the claim that a parent's right to religious freedom, entitles them to decide for themselves whether they wish to have this intervention carried out. Denying parents any entitlement to make such a decision does not constitute any limitation of the parents' right to manifest their religion; the child has rights too, not only to religious freedom, but also to the right to physical integrity. This invasive surgery is non-consensual, non-therapeutic, irreversible, unnecessary and not without risk. It should be postponed until the boy is old enough to give (or withhold) informed consent.

In light of our conclusions and the evidence provided, we ask you to investigate whether non-therapeutic infant circumcision is a breach of UK children's rights.

We look forward to hearing from you.

Yours sincerely,

Keith Porteous Wood  
Executive Director

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<sup>5</sup> <http://bit.ly/LbygXL>

<sup>6</sup> Royal Dutch Medical Association Report.

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

<sup>7</sup> <http://onlinelibrary.wiley.com/doi/10.1111/j.1464-410X.2006.06685.x/pdf>