

## Comments to the “Preliminary findings of Country Visit to Denmark” of the Special Rapporteur on Freedom of Religion or Belief

Mikael Aktor, vice chairman of Intact Denmark, Association against Circumcision of Children

25 March 2016

To para II (page 6 in the printed document)

**You write:** “At the same time, they [ban on ritual slaughter and demands to outlaw religiously motivated circumcision of male infants] are worth highlighting already here as examples of a possibly too narrow understanding of what religion can entail and, accordingly, what freedom of religion as a *human* right should cover. In order to find out what actually matters religiously to various *communities*, the culture of trustful communication between State authorities and religious communities is crucial and should be further cherished” (my italics).

**Comment:** Is it what matters religiously to various religious communities that should be decisive on issues on religious freedom as a human right? Is not that an improper adjustment to internal power structures within such communities at the expense of their individual members? In other contexts you have been explicit that religious freedom is a right of human persons, not of religions.

To para IV (page 11 in the printed document)

**You write:** “For many Jews, I was told, a ban of circumcision in a country would signal no less that they cannot stay in that country.”

**Comment:** In our meeting with you we informed you of the low circumcision rate among the Jewish community, and you expressed surprise and asked us to confirm our statement with transcripts from the Register for Ritual Circumcision in 2014. I did that in an email sent to Jon García on 20<sup>th</sup> March. In that email I also quoted from an interview with the former Chief Rabbi, Bent Lexner, who estimated the rate of circumcision per year to be typically 10-15 including circumcisions performed in private hospitals and those performed by himself as a mohel, which amounted to only four in 2014. I therefore suggest that the above sentence is expanded with a remark about the relatively small number of Jewish circumcisions compared with the estimated number of Jews in Denmark.

It is also problematic to define religious identities by the practices of religious communities as if such practices are necessary conditions of such identities. In Denmark many practices that are endorsed by religious scriptures are illegal, and in general religious persons adjust to such prohibitions without losing their religious self-identity.

Same para (page 11-12 in the printed document)

**You write:** “The Government has a responsibility to reassure the Jewish Community, also through clear public statement, that their existence and future in Denmark is secured beyond any doubt.”

**Comment:** With the previous statement in the report that Jews have told you that a ban of circumcision would signal that they cannot stay in the country this sentence may be read as if you think that scenario to be a matter of fact, that is, that the Government of Denmark has to guarantee the continuing possibility of circumcision of baby boys in order to reassure the Jewish Community about its continuing status in the Danish society as being both welcome and appreciated. If that really is your opinion you should write so. Otherwise (as I hope is your intention) it might be formulated like “The Government has a responsibility to reassure the Jewish Community, also through clear public statement, that their existence and future in

Denmark is secured beyond any doubt *no matter what future decisions are made by the Danish Parliament about circumcision of young boys.* – Or similar.

### **In general**

In the complicated discussions on male circumcision and human rights I think that there are two crucial concepts that have not been properly discussed or defined. These are the notions of physical integrity and physical harm.

### **Physical integrity**

The UN Committee on the Rights of the Child mentions physical integrity several times in its general comments (No. 13) on the UN Convention of the Rights of the Child article 19 about violence (e.g. “the child’s absolute right to human dignity and physical and psychological integrity”), but it is not mentioned in the Committee’s general comments (No. 15) on article 24 about health. Does that mean that physical integrity is only relevant in cases of violence and not in terms of health? This is not confirmed by the fact that the prohibition against female genital mutilation is based on article 24, para 3, that is, as something which is prejudicial to the health of children. I do not suppose anyone would think that FGM is not a violation of the physical integrity of girls.

However, when the Council of Europe adopted its resolution 1952 circumcision of both girls and boys was explicitly categorized as “a violation of the physical integrity of children” and in its recommendation 2023 as “a certain category of human rights violations against children”. Actually I am not aware that any official human rights document from UN or CoE has yet clearly expressed the idea that circumcision of young boys for religious reasons is *not* a violation of the physical integrity of children. The CoE’s resolution 2076, para 9, refers to resolution 1952 and endorses its concern to protect children’s rights, but recommends “that member States provide for ritual circumcision of children not to be allowed unless practiced by a person with the requisite training and skill, in appropriate medical and health conditions”. This statement does not, however, exempt circumcision of young boys, even performed under these conditions, from being a violation of the physical integrity of children, although it seems that the intention of the text is to hint that it does.

The lack of clear exemptions of circumcision from being a violation of children’s right to physical integrity is logical. How can irreversible surgical operations, which remove healthy, functional parts of children’s bodies for no medical reasons, not be a violation of that right? In another context, that of CoE’s Convention of Human Rights and Biomedicine, this logic is confirmed. Article 6, para 1, states in general that “an intervention may only be carried out on a person who does not have the capacity to consent, for his or her direct benefit.” That this benefit is not any benefit, but a health benefit, is clearly expressed on CoE’s summary of the text.<sup>1</sup> In Danish medical law this principle is not limited to medical experiments or tissue transplantation but is regarded as a general principle of the care and conscientiousness demanded of medical professionals.

Further, if the child is “a rights holder in his or her own capacity, not just through a membership in a family or community”, which it is according to your Interim Report A/70/286,<sup>2</sup> and if physical integrity is not only a right but a fundamental right, which I am sure it is according to the underlying principles of the universal human rights, would it then not constitute one of the limitations to parents’ religious freedom according to the International Covenant on Civil and Political Rights article 18, para 3, and the Convention on the Rights of the Child article 14, para 3?

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<sup>1</sup> <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/164>

<sup>2</sup> <http://www.refworld.org/pdfid/562f43db4.pdf>

**Physical harm**

Not all types of FGM involves post-operational complications, especially not if performed under the same health conditions as suggested by CoE in its resolution 2078 for the circumcision of boys. Still, all types of FGM are categorized as harmful practices in terms of article 24, para 3, of the Convention of the Rights of the Child. In this case harmful practices include irreversible removal of healthy, functional tissue for no medical reasons but also with no post-operational complications. The same does not seem to count for boys. In general, it is frustrating that a permanent removal of a healthy, functional part of a child's body, which has unavoidable consequences for the future adult, is not counted as bodily harm regardless of the medical complications that may or may not occur.

**In conclusion**

The specific problem with circumcision of children – girls and boys – is that it is irreversible and has physical consequences for their adult lives. It is not, therefore, only a matter of parents' religious freedom or their right to educate their children in the tradition of their family but must include considerations of the child as an individual with an open future. In this sense genital surgery on babies cannot be isolated from the sexual rights of individuals including – as an obvious right – the right to genital autonomy.