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**מרכז מחקר ומידע**

## **Background Paper on Sperm Donation in Israel**

**Presented to the Committee on the Rights of the Child**

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## 1. Introduction

This document was prepared for a debate held by the Knesset Committee on the Rights of the Child about sperm donation in Israel. The document provides a survey of the following topics:

1. Data on sperm donation in Israel;
2. Changes in conditions for receiving a sperm donation;
3. Changes in the composition of the population requiring sperm donation in Israel;
4. Ministry of Health regulations for management of a sperm bank;
5. Management of a central information base and preservation of donor anonymity – arguments for and against;
6. The emotional implications on the child of being conceived through sperm donation;
7. The right to parenthood vs. the welfare of the child;
8. Legal aspects of sperm donation;
9. An international comparison of legislation on the issue.

## 2. Background

The use of sperm from a donor began as a solution to fertility problems of couples due to infertility of the male partner. Sperm donation can be used in two ways: injection of the sperm directly into the uterus (Artificial insemination); or In Vitro Fertilization (IVF), fertilization of ova outside of the body followed by the placement of the fertilized ova in the woman's uterus.

In 1988, artificial insemination by a donor (AID) was permitted for unmarried women, however, until 1997, they were discriminated against in regard to sperm donation. While a married woman was entitled to receive these treatments without conditions or restrictions, any unmarried woman was required, by Ministry of Health regulations, to undergo an evaluation by a psychiatrist and a social worker as a pre-condition for receiving AID. Following an appeal to the High Court of Justice by Dr. Tal-Yarus Hakak, these Health Ministry regulations were cancelled.<sup>1</sup>

In recent years there has been a rise of hundreds of percent in the number of applications by single women to the sperm bank, and their average age has gradually gone down from 40 plus to 35 plus.<sup>2</sup> The rise in the number of single women requesting sperm donation is due to changes in the accepted family model. Over the past 30 years, the single parent family<sup>3</sup> has become a common phenomenon, particularly in the West. In Israel too, there

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<sup>1</sup> Appeal no. 998/96, Dr. Tal Yerus-Hakak vs. The Ministry of Health. The argument of the appellant: The Health Ministry's regulation is invalid since it is discriminatory on the basis of personal status and sexual inclination; because it violates the basic human rights to be a parent, over his body and his privacy; because it exceeds the authority; because it is in secondary and not primary legislation; because it is unreasonable, and because it was not published".

<sup>2</sup> Ruth Har Nir, Director of Sperm Bank, Hadassah Hospital, Mt. Scopus, telephone conversation, 28 December 2004.

<sup>3</sup> A single-parent family is defined as a family where one parent runs a household for him/herself and his/her children (to age 17), and who does not have a permanent partner (based on Shlomo Svirsky et al, "Single Mothers in Israel", Advah Centre, December 2002).

has been a significant rise in the number of single parent families, from about 4% in the seventies to about 20% in 2003<sup>4</sup>. It is mostly well-educated, high SES women who choose this path.

Until now there has been no primary legislation regulating the new fertility techniques and the use of sperm or egg donation. In an attempt to resolve problems resulting from the process of sperm donation, the Minister of Health set regulations regarding AI, including AID.

### 3. Data on Sperm Donation in Israel

**The Donors** – 42% of sperm donors in Israel are students, 37% are soldiers and 20% older men with a profession.<sup>5</sup> Donors receive 200-250 NIS per donation.

**Criteria for donor approval** – According to Dr. Yigal Madjer, Director of the Sperm Bank at the Sheba Hospital in Tel Hashomer,<sup>6</sup> the criteria that must be fulfilled by a donor are very strict, so that only 3 out of every 10 applicants, or even less, are approved. He reports that there is a permanent shortage of donors. The potential donor must declare that he is healthy and does not suffer from any contagious disease or from any physical or mental disability – either congenital or resulting from an accident or illness. He must also declare that he does not and never has used drugs, and has no sexually transmitted disease. He must also declare that no member of his family has suffered or currently suffers from any physical or mental hereditary defect.

The potential donor undergoes a general medical examination, including a physical examination and blood tests for hepatitis B and C and Tay Sachs. His sperm is also examined and he is tested for HIV antibodies on the day of the donation with a repeat test six months later.

**The number of donations accepted from each donor** – Ministry of Health regulations limit the number of donations accepted from any donor in a very general manner: “The person responsible should refrain from accepting too many sperm donations from a single donor”.<sup>7</sup> However, as we will see later, it is difficult to enforce this regulation. Decisions are left to the discretion of the director of the sperm bank, and some directors

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<sup>4</sup> Data calculated from: Central Bureau of Statistics, *Statistical Year Book 2004*. According to the new statistical yearbook of the Council for the Welfare of the Child, there is trend towards a rise in the number of children living in single-parent families: in 1995 there were 132,000 children living in single-parent families, in 2000 the number had risen to 171,000 and in 2003 to some 188,00 children – 8.5% of all children in Israel (Council for the Welfare of the Child, *Children in Israel: Statistical Yearbook 2004*, December 2004. It should be noted that close to 97% of children in single parent families live with the mother). The rise in the number of single-parent families in Israel is due to a rise in the divorce rate and in the number of births outside of marriage, and also to the immigration of a large number of single-parent families from the CIS and from Ethiopia. The model of single-parent families has become accepted in Israel (Shlomo Svirsky, “Single Mothers in Israel”, information of equality 12, The Advah Centre, December 2002). This is the cause of the rise in the number of single women who seek to have a child without the involvement of a man in their lives. The most common way of achieving this is through a sperm bank.

<sup>5</sup> It is reasonable to assume that if donor confidentiality ends, their profile will change. Source: Summary of report of “The New Family” organization, in: Moshe Ronen, *The Israeli Family*, Yediot Ahronot, 8 February 2005.

<sup>6</sup> Reported at a meeting of the Committee on the Status of Women, 31 January 2005.

<sup>7</sup> Ministry of Health, Circular of the Director General, 13 December 1992 on: Management of Sperm Banks and Artificial Insemination.

limit the number of donations from each donor to 10. However, a donor may choose to continue at another sperm bank, and there is no way of supervising this situation without central records.<sup>8</sup>

**The number of women who seek a donation** – The Ministry of Health has no data on the number of women who apply to sperm banks or of the number of artificial inseminations carried out in Israel.<sup>9</sup>

According to Dr. Madjer, 320 women received sperm donations in 2004 at the Sheba Hospital, Tel HaShomer. Of these, 260 were unmarried and 60 were married.<sup>10</sup>

According to the report of the “New Family” organization,<sup>11</sup> **77% of the women who apply for a sperm donation are unmarried, as opposed to only 44% in 1997.** This indicates an ongoing rising trend in the number of single women seeking sperm donation.<sup>12</sup>

**Number of successful pregnancies** – The sperm banks in Israel do not have precise data on the number of women who become pregnant from sperm donations, since there is little follow up on the women.<sup>13</sup> According to Dr. Madjer, the number of successful pregnancies is higher for married women than for single women. His explanation for this is that the single women who apply for AID are generally older (80% of them are over 35), and since the older the woman the more difficult it is to become pregnant, these women need a greater number of treatment cycles and more sperm.<sup>14</sup>

#### 4. Management of Sperm Banks

There are currently 14 sperm banks operating in Israel with the authorization of the Ministry of Health, and attached to hospitals.<sup>15</sup> A circular of the Director General of the Health Ministry, in its most recently updated version from 1992, sets rules regarding the management of sperm banks and instructions for the performance of artificial insemination:

1. A sperm bank must be part of a hospital, and be recognized by the Ministry of Health;
2. Artificial insemination by donor from a recognized sperm bank may only be carried out:
  - a. In a hospital where there is a recognized sperm bank;
  - b. In **public** wards and clinics that provide infertility treatment;

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<sup>8</sup> According to Rabbi Dr. Mordechai Halperin at the Knesset Committee on the Status of Women, 31 January 2005, and in his statements in the Aloni Committee Report and in his articles (see bibliography).

<sup>9</sup> Letter from the Deputy Director General of the Ministry of Health, 3 January 2005

<sup>10</sup> Reported at Meeting of Knesset Committee on the Status of Women, 31 January 2005.

<sup>11</sup> Summary of report of “The New Family” organization, in: Moshe Ronen, *The Israeli Family*, Yediot Ahronot, 8 February 2005.

<sup>12</sup> Note that the extent of AID among married couples has reduced considerably since the late nineties in light of the use of the new technology of micromanipulation – Intracytoplasmic sperm injection (ICSI) – the insertion of the sperm into the egg – for the treatment of low-fertility in the male. Source: Carmel Shalev, *Health, Justice and Human Rights*, Ramot Publications, TAU, 2003.

<sup>13</sup> Dr. Avraham Leitman, Director of Sperm Bank and Male Fertility Clinic, Rambam Hospital. In: Tzachi Cohen “The Seed of Calamity” Yediot Ahronot – Weekend Supplement, 28 January 2005. He says “I do not think that there is anyone who can give precise details”.

<sup>14</sup> Reported by Dr. Madjer, at meeting of Committee on the Status of Women, 31 January 2005.

<sup>15</sup> Letter from the Deputy Director General of the Ministry of Health, 3 January 2005. For list of sperm banks, see appendix.

- c. In recognized IVF units
3. AID may not be performed in a private clinic.

According to these rules, the sperm bank must keep separate records with information on the donor and the recipient, in separate index systems, and these must be maintained by the attendant physician. **The regulations of the Health Ministry state explicitly that a sperm bank is forbidden to reveal identifying details of the donor.** The department or clinic where the procedure is performed is also not permitted to pass on any information regarding the identity of the sperm donor.<sup>16</sup>

During the nineties, there were changes in the artificial insemination procedure and the Director General's Circular of 1992 set restrictions in light of the growing fears of the HIV virus, that can be passed on in seminal fluid. The use of fresh sperm donations was forbidden, and only the use of frozen sperm from a recognized sperm bank was permitted. This regulation was introduced since HIV antibodies appear in the blood of an infected person only three to six months after initial infection. Consequently, only a blood test taken by a sperm donor six months after the donation can ensure that the donor is not an HIV carrier. Since sperm cannot be kept at room temperature for more than a few hours without irreversible damage, there is a need for a sperm bank where the sperm is kept frozen.<sup>17</sup>

The regulations for sperm banks state that donors must undergo blood tests every six months. Only if the follow-up blood tests are normal will the use of the sperm donations that were frozen at least six months prior to the blood test be permitted.

The sperm banks, which in Israel belong to the large hospitals, carry out additional periodic tests on donors to identify STD's and other infectious diseases, thus reducing to a minimum the risks of using donated sperm. Nevertheless, there are still claims that there are too few tests, and apart from a number of specific illnesses there is no way of knowing of any genetic defects in the donors.<sup>18</sup>

In regard to payment for the treatment, the Health Funds cover the costs of the treatment, i.e. the IVF procedure and the laboratory tests, while the recipient has to pay for the sperm donation, the cost of which is currently 350-450 NIS per unit. The recipient generally requires a number of treatment cycles and therefore a number of sperm units before pregnancy is achieved.<sup>19</sup>

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<sup>16</sup> Ministry of Health, Director General's Circular: Management of sperm banks and artificial insemination – regulations regarding the management of a sperm bank and instructions for carrying out artificial insemination, 13 November 1992.

<sup>17</sup> Avraham Leitman, "What is alternative pregnancy", in: Shulamit Almot and Avinoam Ben-Zeev (eds.), *Alternative pregnancy: An inter-disciplinary survey of IVF*, Tel Aviv, Hakibbutz Hameuhad, 1996, pp. 13-45. (in Hebrew). The article notes that the procedure for identifying the HIV virus in seminal fluid is expensive and technically complex, and is therefore not generally used. The Circular of the Health Ministry's Director General of 13 November 1992, states that "From 1 January 1993 it will be forbidden to use fresh sperm from a donor for artificial insemination".

<sup>18</sup> Dr. Ruth Weissberg, Director of Sperm Bank at the Sheba Medical Centre, Tel HaShomer, in an interview for Ynet, 27 May 2004. Access to Ynet site, 21 December 2004. She states that more in-depth tests would significantly raise the cost of the sperm.

<sup>19</sup> Letter from the Ministry of Health, 2 January 2005.

## 5. Central record keeping and preservation of anonymity of donors – for and against

The principal argument in favour of revealing the identify of sperm donors is **the right of the child to know his identity and heredity**, a right that conforms with the international Convention on the Rights of the Child from 1989.

The principal argument of those in favour of preserving the anonymity of donors is that **lack of anonymity of the donor will reduce the number of potential donors**, since they do not want their identity to be revealed in the future.

**The Public-Professional Commission in The Matter of In Vitro Fertilization** (hereafter The Aloni Commission)<sup>20</sup> discussed the social, ethical, halakhic [Jewish religious law] and legal aspects of the treatment methods involved in IVF, including that of sperm donation. On 10 December 1992, the Commission published an interim outline summary of its work for public debate.<sup>21</sup> In July 1994, the Commission published its final report whose conclusions were different from those of the interim report in relation to sperm donation, following testimonies heard by the Commission from professionals after the publication of the interim report.<sup>22</sup>

The main issues discussed by the Commission in regard to sperm donation included the question of the right of a child born through sperm donation to investigate his biological origins on reaching maturity, and the keeping of central records including the identity of the child's biological and legal parents. The Commission finally recommended **not keeping central records, its main argument being that in Sweden the number of donors went down following a law recognizing the right of the child to know the identity of the donor on reaching maturity, and this would be likely to happen in Israel too.**

The commission recommended the keeping of central, unidentified, medical records, of sperm and egg donors. The records kept on the donor will not enable identification but will only note personal details and characteristics, including genetic illnesses. **The central medical records will serve only for statistical requirements, for the determining of policy or for research. This information will not be available to the child when he grows up.**<sup>23</sup>

Rabbi Dr. Mordechai Halperin<sup>24</sup> presented a minority opinion and brought arguments **in favour of maintaining a central database of sperm donations. In his opinion there are two main arguments in favour of recording and keeping details of the genetic parent:**

- 1. The basic human right of a person to identify his roots;**
- 2. The prevention of incest and/or hereditary defects due to marriage between a genetic brother and sister.**

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<sup>20</sup> The Ministers of Justice and Health appointed the Commission on 18 June 1991. The Commission Chairman was Retired District Court Judge Shaul Aloni.

<sup>21</sup> Ministry of Justice, Committee to examine the issue of IVF, *Interim Summary – An outline for public debate*, December 1992.

<sup>22</sup> Ministry of Justice, *Report of The Public-Professional Commission in The Matter of In Vitro Fertilization*, July 1994.

<sup>23</sup> *Ibid.*

<sup>24</sup> At the time of his appointment, Dr. Halperin was the Director of the Schlesinger Institute for Medical Halakhik Research and Medical Advisor to the Deputy Health Minister. He is currently the Advisor on Medical Ethics to the Health Minister.

## 1. THE RIGHT OF THE CHILD TO IDENTIFY HIS ROOTS AND A BILL FOR LEGISLATION SIMILAR TO THAT OF SWEDEN

According to Rabbi Dr. Halperin, the Swedish law of 1987 that determines the right of a child born through AID to receive information on his biological father on reaching maturity is considered one of the most advanced laws in the western world. Sweden preserves the basic human right that allows each person to know who is his biological father, even if he was born through AID. The law is founded on the principle that **no interest can be powerful enough to deny a human being, who seeks the most basic information on his identity, that information, for very few rights are more basic than the right of a human being to know his parents.** Legislation following the Swedish model would conform to the international Convention on the Rights of the Child from 1989 that recognizes the child's rights "to preserve his or her identity, including nationality, name **and family relations**".

In the opinion of Rabbi Dr. Halperin, in decisions on this issue the **right of the donor to privacy must be weighed against the more basic right of the progeny to know his identity.** Appropriate efforts to ensure the welfare of the child represents one of the expressions of human dignity. **In weighing the rights, the right of the minor takes precedence.**<sup>25</sup>

Regarding the central argument of the Commission regarding the consequences of the legislation in Sweden, Rabbi Dr. Halperin responded that in fact, the law did not cause a reduction in the number of donors in Sweden, but rather a change in their socio-economic profile. Before the legislation, the donors were primarily young, low-income men who donated sperm for a living, while since the passing of the law the donors tend to be older, and more established and responsible. **There was no reduction in the number of donors and there was no difficulty in obtaining donors following the law.**<sup>26</sup>

In a debate held by the Committee on the Status of Women on 31 January 2005, Rabbi Dr. Halperin repeated this argument regarding sperm donors in Sweden. However, it is

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<sup>25</sup> Mordechai Halperin, "A Definition of parenthood and the right to locate biological roots", in: Refael Cohen-Almagor, *Dilemmas in Medical Ethics*, HaKibbutz HaMeuchad and the Van Leer Institute, 2002, pp. 161-188, and also in the Aloni Commission Report, in: Mordechai Halperin and Yerucham Priger, (eds.), *Medicine, Ethics and Halakha*, The Schlesinger Institute for Medical Halakhik Research, 1996, pp. 127-194.

<sup>26</sup> In his article "A Definition of parenthood and the right to locate biological roots", (see note 25) Dr. Halperin says: In order to make a more official inquiry into what exactly happened in Sweden following the passing of the law, in January 1996 I met in Copenhagen with Prof. Lars Densik (Director of the programme for comparative research on "childhood – social and developmental implications" at the University of Roskilde, Denmark), who had been involved in the debates and recommendations that preceded the Swedish legislation. According to him, the facts that were spread around the world about the situation in Sweden are simply incorrect. "It is not true that there was a drop in the availability of donors. The change that did occur was not in the number of the donors, but in their socio-economic profile . . . However subsequent to the law there was no fall in the number of donors and no difficulties in obtaining donors". Dr. Halperin adds that that during a preliminary presentation of this article to members of the "Discussion and Thinking Group on Medical Ethics" at the Van Leer Institute in Jerusalem on 20 December 1996, Dr. Carmel Shalev (former coordinator of the Aloni Commission), reported that the Commission had received similar information from other sources. Therefore paragraph 4.1 of the Aloni Commission report about the Swedish Law, states that "the law caused an **initial** (emphasis by Dr. Halperin) significant drop in the number of sperm donations". Dr. Halperin adds that "It is still not clear to me why the report omitted the significant information that in the end the change that occurred in Sweden was not in **the number** of donors, but, as noted, only in their **socio-economic profile**, when this omission can create in the reader an incorrect impression about the consequences of the Swedish law".

important to note that there are countries where changes in the law on sperm donation led to a decline in the number of donors and a decrease in supplies available at the sperm banks.<sup>27</sup>

## 2. THE PROBABILITY OF MARRIAGE BETWEEN HALF-SIBLINGS AS A RESULT OF AID AND THE CONSEQUENCES

Many professionals argue that the statistical probability of marriage between half siblings as a result of AID is minimal and no greater than the probability of marriage between siblings in the general population as a result of extra-marital relations.<sup>28</sup> Rabbi Dr. Halperin presents calculations that prove that the probability here is much higher, especially because our country is so small.<sup>29</sup>

Directors of the sperm banks claim that the risk of sibling marriages can be reduced by restricting the number of pregnancies for a single donor. This claim does not stand the test of reality, because even though each donor undertakes not to donate sperm at another sperm bank, this restriction cannot be enforced without full central record keeping. At professional medical conferences it became apparent that the instructions are not followed and there is no way of enforcing them.

The consequences of the possibility of marriage between half siblings are serious both from a *Halakhik* and a medical point of view: according to Jewish law, children born of an incestual union are considered bastards who are forbidden to marry; marriages between brother and sister are likely to result in the birth of children suffering from genetic illnesses and defects.<sup>30</sup>

It should be noted that children born through AID **face additional medical risks because of lack of information on their genetic make-up and the impossibility of receiving essential information in the event of a medical emergency.**<sup>31</sup>

To this must be added **the emotional consequences for the child.** But this will be discussed in a separate chapter.

## 6. The Right to Parenthood vs. the rights of the child

In Jewish culture, parenthood is a central moral value<sup>32</sup> and although Israeli society is not a single cultural unit, in general it regards parenthood as a very important value. It should be noted in this context that the number of treatment cycles for IVF in proportion to the

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<sup>27</sup> See the international comparison further on, and the testimony of doctors who are directors of sperm banks in the minutes from the meeting of the Committee on the Status of Women on 31 January 2005.

<sup>28</sup> For example Adv. Miriam Hubner-Harel, the legal advisor of the Ministry of Health, in: Tzachi Cohen, "Sperm of Calamity", *Yediot Ahronot* – Weekend Supplement 7 Days, 28 January 2005.

<sup>29</sup> Mordechai Halperin, "A Definition of parenthood and the right to locate biological roots", in: Refael Cohen-Almagor, *Dilemmas in Medical Ethics*, HaKibbutz HaMeuchad and the Van Leer Institute, 2002, pp 161-188, and also in the Aloni Commission Report, in: Mordechai Halperin and Yerucham Priger, (eds.), *Medicine, Ethics and Halakha*, The Schlesinger Institute for Medical Halakhik Research, 1996, pp. 127-193.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> Avraham Steinberg (ed.), *Medical-Halakhik Encyclopaedia*, entry on "Fertility and infertility", The Schlesinger Institute for Medical Halakhik Research, 1996, p. 372.



size of the population in Israel is the highest in the world.<sup>33</sup> Here we shall discuss the issue of the “right to parenthood” in the context of single women who seek to become pregnant from donated sperm and thus to realize their potential to become a mother, even at the cost of the lack of a father figure in the life of their child. As already mentioned, in recent years there has been a sharp increase in the number of these women.

There have been articles in the media recently about contacts between the Ministry of Health and the Ministry of Justice regarding a change in the status quo on sperm donations in Israel in order to establish a **central records store that will coordinate the data on sperm donors and even allow their identity to be revealed to their progeny in the future.** This led to protests by many single women who called on the authorities not to take this action, so as not to cause a shortage of sperm donations that would deny them their right to parenthood. On the other side, members of child rights organizations called on them to consider the right of the child to know his identity and family relations. A clash has apparently been created here between **“the right to parenthood”** and the **“welfare of the child”** who is to be conceived.<sup>34</sup>

It can therefore be argued, that in various contexts, the welfare of the potential child conflicts with the right to parenthood of the potential parent. This is so, for example, when there is a fear of passing on genetic diseases or defects to the foetus, or if a doubt arises regarding the ability of the parent/s to care for and provide for the child in a case where the parent is physically or mentally disabled, sick, lacks sufficient economic means, is of advanced age, and so on.

The welfare of the potential child also conflicts with the right to parenthood when **there arises a suspicion of psychological harm to the child because of the special conditions of his birth, for example, problems of identity that arise from the fact that the child is the result of AID and from his wish to know about his biological roots, and deprivation arising from the lack of a father figure** in the case of a single parent family or a lesbian couple.

The question we must ask is whether society should consider the “welfare of the child” only once that child exists, **or even when the actual existence of the child stands in question.** The change in legislation, management of a central information database of sperm donors and the requirement for revealing the identity of the donor to his progeny all **conform with the rights of the child.** As against this, in this case, the stores of the sperm banks would be likely to be reduced, and as a result, **there will be single women who will not be able to give birth.** This is the crux of the disagreement between potential single mothers and the organizations that carry the flag for **children’s rights.**<sup>35</sup>

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<sup>33</sup> In Israel, some 1,800 treatment cycles are performed each year per every one million people, while in the USA 240 treatment cycles are performed per every one million people and in Great Britain, 416.

<sup>34</sup> The researcher Vardit Ravitsky proposes a definition for the concept “the right to parenthood”: “The right of a person to act in any way, including in ways that are made possible only by technology (without harming the rights of others) in order to bring about the creation of a child who has a genetic link or a birth link to at least one of his/her intended parents, and in order to raise him/her as their own child.” Source: Vardit Ravitsky, “The right to parenthood in an age of technological insemination”, in: Refael Cohen-Almagor, *Dilemmas in Medical Ethics*, HaKibbutz HaMeuchad and the Van Leer Institute, 2002.

<sup>35</sup> At the meeting of the Committee on the Status of Women on 31 January 2005, all participants in the discussion agreed that the existing situation whereby the identifying information on the donor should remain secret should continue, excepting the representative of the Council for the Welfare of the Child, who took the opposing position.

## 7. Psychological implications of being born through AID

There have not yet been enough studies performed on adolescents and adults who were born through the new fertilization techniques, including AID. However, there have been a large number of studies on adopted children, and the findings have shown that not knowing the identity of their biological parents caused difficulties in the development of their self-identity, particularly during adolescence. Clinical studies indicate considerable psychological tension among adoptees arising from lack of knowledge of the clinical genetics of their biological parents.<sup>36</sup> Founded on these findings, Israel was one of the first countries to authorize the opening of adoption files to adopted children on their reaching the age of 18 in **the Law on Adoption of Children 1981**.

If we take an analogy from adopted children to children born through AID,<sup>37</sup> who also do not know the identity of their biological father, then they face similar problems of difficulty in developing their self-identity. And indeed, many children born from AID complain of a “black hole” in their identity.<sup>38</sup>

## 8. Legal Aspects of Sperm Donation

When a child is born through AID, there is a question as to who is considered the parent and what are the legal relationships between each of the parents and the child. Since the sixties, this issue has found expression in legislation in the United States and Europe, and this legislative and judicial process is still ongoing. Some legislatures around the world ignore the issue, preferring to leave it without clearly defined, restrictive legislation, since this is a very sensitive issue with social and moral implications that cannot easily be resolved.

In Israel the legal provisions are still at the beginning of the road, but an initial infrastructure of court judgments and legal literature has already been laid down.

According to *Halakha* [Jewish religious law], anyone born through artificial insemination by a donor is not considered the son of the husband of the woman giving birth. There is a dispute between the Rabbis on the question as to whether the child is considered the son of the donor. “Most of the rabbinical authorities are of the opinion that the donor is the father of the child. A minority opinion says that there is no family relationship to the donor if the child was not the result of sexual union.”<sup>39</sup>

The laws of the State of Israel determine that the husband of the woman treated (in the case of AID for a married couple suffering from fertility problems) is, for all purposes, the legal father of the child born through this treatment, so long as he signed an agreement to the procedure before it was carried out.

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<sup>36</sup> S. Michie and T. Martteau, “Knowing Too Much or Knowing Too Little: Psychological Questions Raised for the Adoption Process by Genetic Testing”, in P. Turnpenny (ed.), *Secrets in the Genes: Adoption, Inheritance and Genetic Disease*, London, British Agencies for Adoption and Fostering, 1995, pp. 166-175.

<sup>37</sup> The Swedish law on sperm donation from 1987 was legislated following the establishment of a government committee that discussed the rights of children born through artificial insemination. The Committee decided in 1983, that there is a clear parallel between the basic rights of adopted children and the basic rights of those born through AID.

<sup>38</sup> The B-parent Internet site: <http://www.b-parent.co.il>, entry date, 6 January 2005.

<sup>39</sup> Ministry of Justice, *Report of the Public-Professional Committee to Examine the Issue of In Vitro Fertilization*, July 1994, p. 25.

According to Prof. Michael Corinaldi,<sup>40</sup> “a legal relationship is created between the husband and the child, carrying the nature of constructive paternal status, similar to adoption (including a requirement for child support but excluding inheritance laws). Appropriate judicial development regulating the status of children born through artificial birth techniques should follow similar precedents in other countries, with the changes necessary for our legal system, creating a concept of “legal parentage’.”<sup>41</sup>

Prof. Corinaldi proposes an alternative solution (in addition to recording the donor’s personal details on a donor’s card without contravening his anonymity) to problems that may arise regarding the child’s fitness to marry [according to Jewish religious law]. He proposes that those involved in the artificial insemination procedure, including the doctor, in consultation with someone proficient in religious law (such as the rabbi of the hospital), should investigate in advance the fitness of the donor so that when the time comes, there will, if necessary, be witnesses who can testify, without as far as possible harming the donor’s anonymity, regarding the child’s *Halakhik* fitness to marry (i.e. that the donation was from a Jew who is not barred from marrying). In this way, it seems, it will be possible to remove any *Halakhik* doubt related to lack of information on the donor’s identity. We should note that a child born through AID is considered in *Halakha* to be a “*shtuki*”, a person whose mother is known but whose father is unknown and who cannot therefore marry for fear that he is the son of someone who is forbidden to marry or of a first-degree relative. Close to the pregnancy a qualified rabbi will provide certification that the woman has become pregnant from a *halakhikly* acceptable man, so that if necessary it will be possible to prove the fitness of the donor, and thus prove that the child is a “*shtuki kasher*”.

Prof. Corinaldi says, however, that none of this will prevent the remote suspicion that the child may marry his biological half sibling or transgress the prohibition against incest (by marrying a close relative). The only way to remove this suspicion in the case of a Jewish donor, is by keeping records of births through AID (as mentioned above, the principal consideration against this is that it might deter donors).<sup>42</sup>

According to *Halakha*, if the donor is a non-Jew, there is no doubt whatever regarding the fitness of the child. Therefore, religious women in Israel who require a sperm donation usually request, on the advice of rabbis, to receive the sperm donation from a non-Jew. According to Ruth Har-Nir, the sperm banks import sperm from abroad, and at the sperm bank of Hadassah hospital there are donations from foreign students.<sup>43</sup>

## 9. Revealing the identity of sperm donors around the world – a comparative survey

A comparative survey indicates that there are various different ways of dealing with this issue: lack of regulations and/or legislation; preservation of the donor’s total anonymity and the possibility of revealing information on the donor’s identity. In countries where

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<sup>40</sup> Michael Corinaldi, lawyer and professor of law, “On the Question of Legal Parentage in Israel (children born through an artificial birth technique)”, in: Almog, Shulamit and Ben-Zeev, Avinoam (eds.), *A different type of pregnancy: a multi-disciplinary study of in vitro fertilization*, p. 137-159.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Ruth Har-Sinai, Director of Sperm Bank at Hadassah Hospital, Mt. Scopus, telephone conversation, 28 December 2004. It should be noted that some rabbis in Israel strongly oppose sperm donation, even from a non-Jew.

there is legislation allowing the revelation of details to the child following sperm donation, there is a distinction between revealing the full identity of the donor and revealing genetic information that will prevent marriage between close relatives.

**Sweden** – As early as 1987, a law was passed enabling children born through sperm or egg donation to enquire into the identity of the donor when they reach maturity.<sup>44</sup>

**The United States** – Most sperm banks in the United States preserve confidentiality regarding donors. In 1982 a non-profit sperm bank was opened in Berkeley, California, where sperm was received only from men who agreed that their identity would be revealed to their genetic progeny on their reaching maturity. Following this, other sperm banks have been opened in the United States whose donors must agree that their identity be revealed.<sup>45</sup>

A youth born 18 years ago through sperm donation recently filed a precedential claim and won. The youth's testimony referred to the "black hole" in his life caused by the lack of a father figure and to the many questions to which he has no answers – such as a family tree on his fathers side, and what genetic material he carries – that sabotage his ability to develop a self-identity. Following this case, certain states of the USA and countries of Europe decided to allow children born through sperm donation to obtain information on their fathers, just as adopted children can open the adoption file on reaching age 18.<sup>46</sup>

**Australia** – In the State of Victoria, a law was passed in 1998, which requires donors to agree to the revealing of their identity when the child born from their sperm reaches the age of 18. Since then, many men who formerly donated sperm for which they were paid (mainly students) ceased giving donations, and stocks in the local sperm banks diminished.<sup>47</sup>

**Great Britain** – On 14 June 2004, new regulations were instituted in Britain regarding providing information on donors of sperm, eggs and fetuses, which became valid on 1 July 2004.<sup>48</sup> These regulations differentiate between information received from a donor before 1 April 2005 and that received after this date.

**Regarding information received from a donor before 1 April 2005** that is held by the responsible British authority, the Human Fertilization and Embryology Authority (HFEA): The HFEA must provide information on the donor following a request presented by a person born through donation of sperm/egg/foetus, who has reached 18, **without providing information that might reveal the identity of the donor.**

Information to be given could include the following:

1. Sex, height, weight, ethnic origin, eye colour, hair colour, skin colour, year of birth, country of birth and personal status;

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<sup>44</sup> Act (1984:1140) on Insemination; Regulation and General Recommendation – of 27 March 1987 – of the National Board of Health and Welfare on Insemination.

<sup>45</sup> "Donating sperm and agreeing that their identity be revealed to the resulting children", <http://www.ynet.co.il>, date of entry: 21 December 2004.

<sup>46</sup> B-parent Internet site, <http://www.b-parent.co.il>, date of entry: 6 January 2005.

<sup>47</sup> Doron Alex, "Member of parliament seek to donate sperm", *Maariv*, 17 January 2005; "Politicians, please donate sperm", *Yediot Ahronot*, 17 January 2005; source of information: news item broadcast on ABC News on 16 January 2005.

<sup>48</sup> Human Fertilization and Embryology Authority (Disclosure of Donor Information) Regulations 2004, on the official British legislation site: <http://www.hmso.Government.uk/acts.htm>, date of entry: 16 February 2005.

2. Information on whether the donor was adopted;
3. The ethnic origin of the donor's parents;
4. Tests the donor underwent, and information of his medical history and that of his family;
5. Number and sex of children – if the donor has any;
6. The donor's religion, profession, areas of interest and skills and motive for donating;
7. Additional information provided by the donor with the intention of passing it to the recipient/person requesting information.

These regulations stress that despite all the above permitted details, no information may be given that may lead to identification of the donor – whether in itself, or whether in conjunction with other information that the person requesting information may have already received.

**Information received from 1 April 2005:** The Authority will also provide, on request, details on the identity of the donor, i.e. in addition to the details mentioned above, the following identifying information will also be given: surname and first names of donor; donor's date and place of birth, a physical description of the donor and his last known address.

It should be noted, that according to these regulations, no information may be given to the enquirer that he does not wish to receive.

**Holland** –At the beginning of June 2004, regulations were instituted in Holland, which forbids clinics to accept anonymous sperm donations. The regulations permit a child born through sperm donation to receive information on his biological father on reaching the age of 16. It has been reported that this new policy led to a drastic drop in the number of sperm donations even before it officially became law. Following this, many women in Holland seeking sperm donations apply to the neighbouring Belgium.

**Norway** –A law forbidding the taking of anonymous sperm donations was passed in Norway in November 2003.

**France** –The anonymity of donors is protected by law.

**Austria** –A child born through sperm donation can acquire information on the identity of his biological father on reaching the age of 14.

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## Appendix: List of Sperm Banks in Israel 2005

1. Rambam Hospital, Haifa
2. Bnei Zion Hospital, Haifa
3. HaKarmel Hospital, Haifa
4. Ha'Emek Hospital, Afula
5. Beilinson Hospital, Petach Tikvah
6. Tel HaShomer Hospital, Ramat Gan
7. Liss (Ichilov) Hospital, Tel Aviv
8. Hadassah Hospital Ein Karem, Jerusalem
9. Hadassah Hospital Mt. Scopus, Jerusalem
10. Assaf HaRofeh Hospital, Tzrifin
11. Barzilai Hospital, Ashkelon
12. Soroka Hospital, Beer Sheva
13. Poriah Hospital, Tiberias
14. American Medical Center, Rishon LeTzion



