

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on violence against women, its causes and consequences; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: OL Health (2002-7) G/SO 214 (53-24) G/SO 214 (89-15)
IDN 12/2012

9 November 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on violence against women, its causes and consequences; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolution 15/22, 15/23, 16/7, and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning a regulation on female genital mutilation.

According to the information received:

In November 2010, the Ministry of Health passed regulation No.1636/MENKES/PER/XI/2010 concerning female circumcision, authorizing certain medical professionals such as doctors, midwives and nurses to perform the procedure. The regulation defines the practice of female circumcision as 'the act of scratching the skin covering the front of the clitoris, without hurting the clitoris' (article 1.1). The procedure includes 'a scratch on the skin covering the front of the clitoris (frenulum clitoris) using the head of a single use sterile needle' (article 4.2 (g)).

It has been reported that, in response to concerns raised by civil society organizations in a petition presented to the Ministry of Health, the latter replied

that the regulation was aimed at protecting women from the harmful practice of female circumcision. The Ministry of Health reportedly stated that, as it is difficult to eliminate female circumcision in Indonesia because it is part of the culture and beliefs of most religions in the country, the regulation was passed to ensure that the procedure is carried out safely, in accordance with medical standards. The Ministry's representative allegedly explained that the regulation was also motivated by the Edict (Fatwa) of the Indonesian Council of Ulema (MUI) Number 9A of 2008, which states that the prohibition of female circumcision is considered contrary to Islamic law. He reportedly expressed concern that if female circumcision by health or medical professionals was banned, people would continue to perform it by choosing non-medical personnel such as shamans, which could cause harm or damage to female reproductive organs.

We would like to refer your Excellency's Government to its obligations under the Convention on the Elimination of All Forms of Discrimination against Women which Indonesia ratified on 13 September 1984, including article 5(a) which calls for States to take "all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women." We would also like to refer to General Recommendations No.14 (1990) on female circumcision, No.19 (1992) on violence against women and No.24 (1999) on women and health issued by the Committee on the Elimination of Discrimination against Women (CEDAW) which emphasize the severe health and other consequences for women and girls subjected to female genital mutilation, identify it as a form of violence against women, and recommend that States parties take measures to eliminate the practice of female genital mutilation. We further recall Indonesia's obligations as a State party to the Convention on the Rights of the Child. According to General Comment No.4 (2003) of the Committee on the Rights of the Child, all States parties must "protect adolescents from all harmful traditional practices, such as early marriages, honour killings and female genital mutilation."

We note that in its 2012 Concluding Observations (CEDAW/C/IDN/CO/6-7) on Indonesia, the CEDAW expressed concern "about the serious regression with regard to the practice of all forms of female genital mutilation including female circumcision". It was further concerned that "the State party replaced the 2006 Circular Letter of the Director General of Medical Service of the Ministry of Health banning the practice of "female circumcision" by the regulation of the Ministry of Health of November 2010 (Regulation No.1636/MENKES/PER/XI/2010) authorizing certain medical practitioner to conduct "female circumcision", after the Indonesian Council of Ulemas (Majelis Ulama Indonesia) issued two fatwas in 2008 and 2010." Consequently, the Committee urged your Excellency's Government to "withdraw this regulation and adopt robust legislation which will criminalize all forms of female genital mutilation including female circumcision, and provide sanctions against offenders; raise awareness among religious groups and leaders and the population in general about the fact that all forms of female

genital mutilation including female circumcision is a violation of the human rights of women and about the criminal nature and harmful effects of this practice; and sensitize and collaborate with religious groups who support “female circumcision” on the harmful effects of this practice, and encourage these groups to engage in comparative studies with other regions and/or countries which do not have this practice.”

We would also like to draw your Excellency’s Government attention to its commitment to protect the right to the highest attainable standard of physical and mental health as stipulated in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which your Excellency’s Government acceded to on 23 February 2006, and to General Comment No.14 (2000) of the Committee on Economic, Social and Cultural Rights which notes that States should respect, protect and fulfill the right to health of all. The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. The obligation to protect the right to health requires States to ensure that harmful social or traditional practices do not interfere with the right to health of women. It mandates States to prevent third parties from coercing women to undergo traditional practices such as female genital mutilation. The obligation to fulfill the right to health requires States to ensure the dissemination of appropriate information relating to harmful traditional practices.

The right to health casts an immediate obligation on States to guarantee the enjoyment and exercise of the right to health by all, without discrimination, including on the basis of sex. The State is therefore under an obligation to ensure women enjoy their right to health without discrimination. Additionally, the right to health includes the freedom to control one’s health and body. The State is required to ensure freedom of individuals from non-consensual medical treatment and other procedures. The State is therefore obliged to ensure informed consent is obtained by individuals, especially women, before any interference with their right to health. Further, States are obliged to prevent third parties from coercing women to undergo traditional practices. There is also a need to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including female genital mutilation.

Both articles 12 of CEDAW and article 24 of the CRC commit States Parties to take appropriate measures to eliminate discrimination against women in health care and ensure equal access to health care services by women and men, as well as the highest attainable standard of physical and mental health of children.

We take this opportunity to refer your Excellency’s Government to a statement issued in 2008 by relevant United Nations agencies and which calls upon, inter alia, all States, international and national organizations, civil society and communities to uphold the rights of girls and women and to develop, strengthen, and support specific and concrete actions directed towards ending female genital mutilation. Such statement can be found at : <http://www.unfpa.org/public/publications/pid/365>.

While female genital mutilation represents society's control over women's sexuality and constitutes a form of discrimination against women which reflects deep-rooted inequality between the sexes, we would also like to emphasize that the medicalization of an act which is not performed for medical purposes, as it is the case with this regulation, does not in any way make this practice more acceptable. In addition, we are concerned that the medicalization of any form of female genital mutilation legitimizes the practice in contravention of international human rights norms and standards. In this respect, we would like to refer to the 2008 resolution adopted by the World Health Organization on female genital mutilation (WHA61.16) which urged all its Member States to enact and enforce legislation to protect girls and women from all forms of violence, particularly female genital mutilation, and ensure implementation of laws prohibiting female genital mutilation by any person, including medical professionals.

In addition, female genital mutilation having no basis in religion as noted in CEDAW's 2007 Concluding Observations (CEDAW/C/IDN/CO/7), we would like to express our concern about the fact that the development of cited rules and regulations codifying discriminatory practices was influenced by tradition and religious related factors rather than international human rights norms and standards.

We would also like to take this opportunity to draw your attention to the fact that during the Universal Periodic Review on Indonesia in May 2012 , it was recommended that your Excellency's Government 'repeal Regulation of the Minister of Health N° 1636 and officially prohibit the increasing practice of female circumcision and other traditional practices inflicting sufferings on women and girls' (recommendation No. 109.26 by Norway); and 'adopt all necessary measures to eradicate the persistent practice of female genital mutilation, including through awareness-raising campaigns, in cooperation with civil society organizations' (recommendation No. 109.27, Uruguay).

In view of the aforementioned, we would appreciate receiving information from your Excellency's Government on measures it is taking to address the above-mentioned concerns, including to give effect to the Concluding Observations of CEDAW and recommendations of the UPR exercise.

We would appreciate receiving a reply to this letter seeking a constructive dialogue with your Excellency's Government on the issues outlined above within 60 days. We undertake to ensure that this reply is accurately reflected in the report that will be submitted to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health

Kamala Chandrakirana
Chair-Rapporteur of the Working Group on the issue of discrimination
against women in law and in practice

Rashida Manjoo
Special Rapporteur on violence against women, its causes and
consequences

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading
treatment or punishment