

Mandates of the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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(Please use this reference in your reply)

21 June 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on violence against women, its causes and consequences; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 41/17, 44/5 and 42/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the death of Ms. Maseray Sei, who was subjected to female genital mutilation by the Bondo secret society.

According to the information received:

The case of Ms. Maseray Sei

On 18 December 2021, Ms. Maseray Sei, a 21-year-old student reportedly joined the Bondo House in Nyandehun Village in the Imperri Cheifdom in Bonthe District in the Republic of Sierra Leone to be initiated in the Bondo secret society, which requires female genital mutilation as a prerequisite for a membership. According to some studies, being a Bondo member confers exclusive access and status, and there is a system of rewards and punishments associated with membership, which creates a community pressure to become a Bondo member. Punishments for not joining can include violence, social ostracism, name calling, shunning, forced excision, and death. The societal pressure is also evinced in the political arena, in which parliamentarians are expected to support traditional institutions and practices of the Bondo society.

On 19 December 2021, three women initiators, [REDACTED] and [REDACTED] reportedly initiated Ms. Sei along with twelve girls. After the mutilation during the initiation ceremony, Ms. Sei complained of health complications that she described as a headache. The initiators called a retired mid-wife and a traditional birth attendant, who administered two tablets of Paracetamol to the initiates, including to Ms. Sei. Ms. Sei continued to complain of acute pain and became progressively more restless after midnight; she died in the early hours of the morning of 20 December 2021. The initiators deposited the corpse of Ms. Sei at her family's house.

By daybreak of 20 December 2021, Ms. Sei's death was reported to the chiefdom authorities and the Police at the Rutile Division in Moribatown. The Local police Unit Commander dispatched a team led by the Crime Officer to the scene of crime, who met with local dignitaries and the village community. Ms. Sei's corpse was collected from the family house and transferred to the Bo Government Hospital Mortuary in Bo City.

The above named three initiators were arrested along with two local authorities, the village head [REDACTED] (or, [REDACTED]) and the acting Section Chief of the Bigo Section of the Imprerri Chiefdom Chief [REDACTED], on charges of permitting the initiation, and were kept in open detention from 20 to 30 December 2021. Based on the statements obtained from those arrested, the Crime Officer of the Rutile Division sent the file to the State Counsel of the Southern Region, which reviewed the file and they were released on stiff bail on 31 December 2021, conditioned on conducting a post-mortem.

On 14 January 2022, Ms. Sei's corpse was transferred from the Bo Mortuary to the Connaught Hospital Freetown Mortuary and a post-mortem was performed in the presence of a family member and the Investigating Officer. The cause of death was determined as acute hemorrhagic shock, profuse bleeding, clitorrectomy and bitten tongue. On 16 January 2022, the corpse was returned to Ms. Sei's home village and handed to the family.

The State Counsel sent a review of the case requesting clarifications and advised the police to charge the matter to the court. Reports indicate that only one initiator has been charged with manslaughter as of 26 January 2022.

Domestic legal framework on female genital mutilation

Despite the widespread prevalence of female genital mutilation in Sierra Leone, where 83% of women aged 15 to 49 have undergone it, there are no national laws dealing specifically with the issue in the country.

Section 33(1) of the 2007 Child Rights Acts prohibits torture, inhuman or degrading treatment or punishment "including any cultural practice which dehumanises or is injurious to the physical and mental welfare of a child", which could be interpreted to include female genital mutilation. However, the Act does not establish sanctions for it. The Government has said it will introduce a bill in Congress to explicit prohibit female genital mutilation to be performed to those under the age of 18.

On a local level, in some chiefdoms (including in the districts of Bo, Bonthe, Kambia, Kailahun, Port Loko, Pujehun, Western Area Rural and Western Area Urban), paramount chiefs and local practitioners (soweis) have signed 'Memoranda of Understanding' (MOUs) with the national Government. These agreements ban female genital mutilation for girls under the age of 18 and require the consent of women over the age of 18. These MOUs are restricted to girls, entirely voluntary and have no legal standing.

We would like to express our deepest concern over these allegations, which include serious violations of the victims' rights to life; physical integrity; liberty; not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment; health, particularly sexual and reproductive health, and non-discrimination. We are dismayed that the victim was subjected to female genital mutilation, a grave form of violence against women and girls that is mainly motivated and perpetuated by gender inequality and discriminatory social norms. We are also concerned at the lack of preventative measures and a strong response from the

authorities to prosecute instances of female genital mutilation.

We also express concern that there is currently no dedicated national legislation in Sierra Leone that expressly criminalises and punishes the practice of FGM.

This would also contradict Sierra Leone's obligations under international human rights law, particularly the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the African Charter on Human and Peoples' Rights, the Protocol to The African Charter on Human and People's Rights on the Rights of Women in Africa and the African Charter on the Rights and Welfare of the Child.

We recall that the right to life constitutes a customary international and *jus cogens* norm from which no derogation is permitted under any circumstances pursuant to article 4(2) of the ICCPR. States parties are expected to take all necessary measures to prevent the arbitrary deprivation of life including by non-State actors (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18). We would further like to highlight the importance of conducting thorough, prompt, effective, impartial and independent investigations into all suspected unlawful killings in line with international standards, particularly the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016)). We reiterate that we stand ready to support your Excellency's Government efforts in this regard and remain available for any assistance we may be able to provide to the authorities concerned.

We remind that amongst other things, investigations into alleged unlawful killings should seek to determine who was involved in the death and their individual responsibility for the death and seek to identify any failure to take reasonable measures which could have had a real prospect of preventing the death. It should also seek to identify policies and systemic failures that may have contributed to a death and identify patterns where they exist. All those responsible for unlawful killings should be brought to justice and victims should be granted full reparations, including guarantees of non-repetition.

We therefore call upon your Excellency's Government to take urgent and comprehensive measures to protect women and girls from violence, and particularly to prevent harmful practices such as female genital mutilation from being committed against women and girls. We also urge your Excellency's Government to ensure that traditional, historical, religious or cultural attitudes are not used to justify discrimination against women and girls and violations of their human rights.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information and, to the extent available, the results of any judicial or other investigation conducted in connection with the death of Ms. Maseray Sei. Please indicate whether the autopsy indicated was conducted in accordance with the international standards enshrined in the United Nations Revised Manual for the Effective Investigation of Extra-Legal, Arbitrary and Summary Executions (The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)).
3. Please provide information on the measures taken to protect women and girls of all ages from violence, including female genital mutilation, and ensure their right to sexual and reproductive health, in compliance with Sierra Leone's obligations under international human rights law.
4. Please provide information on the implementation status of the female genital mutilation Strategy developed by the Ministry of Gender and Children's Affairs and the Ministry of Social Welfare.
5. Please provide information on the criminal charges and rulings issued against the initiators of female genital mutilations, including the case of five persons related to Ms. Sei's initiation. Please explain how this is compatible with Sierra Leone's obligations under international human rights law.
6. Please provide information on measures taken to penalise the practice of female genital mutilations, such as through amending the Child Rights Act and other relevant laws.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

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Special Rapporteur on violence against women, its causes and consequences

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Government to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by the Republic of Sierra Leone on 11 November 1988. The Convention requires States parties to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”, art. 2(f) and art. 5(a) “to modify social and cultural patterns... with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority of either of the sexes.” We would like to refer your Excellency’s Government to article 3 of the Universal Declaration of Human Rights which states that “Everyone has the right to life, liberty and security of person”; and article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR) Sierra Leone acceded to on 23 August 1996, which provides that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.

We wish to refer to Human Rights Committee (CCPR), General Comment No. 36. In particular, we wish to stress that the right to life is the supreme right from which no derogation. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right, whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed and infused by other human rights.

Paragraph 1 of article 6 of ICCPR provides that no one shall be arbitrarily deprived of life and that this right shall be protected by law. Accordingly, States parties must also exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State. Additionally, in its General Comment No. 31, the Human Rights Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its agents and by private persons or entities. Along these lines, we reiterate that the obligation to protect the right to life requires States to take special measures to protect persons in vulnerable situations whose lives are particularly endangered by specific threats, including women (CCPR, General Comment No. 36, para. 23).

We also refer to the report on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings (A/HRC/35/23) indicating that “States have an obligation to protect the right to life of women when they exercise custody or control over women.” The Special Rapporteur also highlighted “To close the impunity gap regarding gender-based killings in and outside armed conflicts situations, States must investigate and prosecute these crimes, whether committed by State or non-State actors”.

An important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents, including incidents involving

allegations of excessive use of force with lethal consequences. In this regard, we recall that in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular principle 9, there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. This principle was reiterated by the Human Rights Council in Resolution 17/5 on the “Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” (OP 4). The Council added that this includes the obligation “to identify and bring to justice those responsible [...] to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”.

Investigations and prosecutions of potentially unlawful deprivations of life should also be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity. A failure to investigate violations of the Covenant and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR (CCPR/C/21/Rev.1/Add.13, paras. 15).

We would like to also refer your Excellency’s Government to the Convention on the Rights of the Child ratified by Sierra Leone on 18 June 1990, which indicates that States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children (CRC, Art.24 (3)). In addition, article 12, coupled with article 2.2 of the International Covenant on Economic, Social and Cultural Rights to which Sierra Leone acceded on 23 August 1996, recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In this connection, I would like to refer your Excellency's Government to General Comment 14 of the Committee on Economic, Social and Cultural Rights, which indicates that there is a need to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage, female genital mutilation, preferential feeding and care of male children (GC 14, Para. 22).

The Declaration on the Elimination of Violence against Women, which was adopted by the United Nations General Assembly defines violence against women in its article 2 as encompassing, but not limited to, physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women. The Declaration states that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia, (a) the right to life; (b) the right to equality; (c) the right to liberty and security of person; and (d) the right to equal protection under the law (article 3). In its article 4 (g), the Declaration notes the responsibility of States to work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological

rehabilitation.

In the Joint General Recommendation No.31 of the Committee on the Elimination of Discrimination against Women and General Comment No. 18 of the Committee on the Rights of the Child (2014) on harmful practices, the Committees highlight that harmful practices, including female genital mutilation, are grounded in discrimination based on sex, gender and age, among other things, and have often been justified by invoking sociocultural and religious customs and values, in addition to misconceptions relating to some disadvantaged groups of women and children. Overall, harmful practices are often associated with serious forms of violence or are themselves a form of violence against women and children. The Committees noted that many victims of female genital mutilation may require treatment or surgical interventions to address the short-term and long-term physical consequences. Finally, the Committees recommend that the States parties to the Conventions ensure that any efforts undertaken to tackle harmful practices and to challenge and change underlying social norms are holistic, community based and founded on a rights-based approach that includes the active participation of all relevant stakeholders, especially women and girls. States parties should also provide specialized training to healthcare providers, social workers, police officers and others who may provide services to victims of female genital mutilation.

The CEDAW Committee, in its General Recommendation No. 24 (1999) on the right to health, stressed the need for States parties to address the health rights of women taking into account the distinctive features and factors that make their needs and interests different from men's. In particular, it notes how some cultural or traditional practices, such as female genital mutilation, put girl children and adolescent risks in particular risk, including of death and disability. Such harmful traditional practices may also expose girls and women to the risk of contracting HIV/AIDS and other sexually transmitted diseases. The Committee reminded States parties' obligation to protect rights relating to women's health, including by enacting and effectively enforcing laws that prohibit female genital mutilation and the marriage of girl children.

In its General Recommendation No. 35 (2017) on gender-based violence against women, the CEDAW Committee clarifies that States parties are under an obligation to act with due diligence to investigate all crimes perpetrated against women and girls, to prosecute and punish perpetrators, and to provide effective reparations without delay. States parties are responsible for acts or omissions of its organs and agents that constitute gender-based violence against women. This includes the acts or omissions of officials in its executive, legislative and judicial branches. Furthermore, States are responsible for investigating, prosecuting and applying appropriate legal or disciplinary sanctions, as well as providing reparation, in all cases of gender-based violence against women, including those constituting international crimes, and in cases of failure, negligence or omission on the part of public authorities.

In its Concluding observations on Sierra Leone (CEDAW/C/SLE/CO/6) in 2014, the CEDAW Committee expressed concern at the lack of legal prohibition and the rejection of a provision criminalizing child female genital mutilation during the adoption of the Child Rights Act, despite the memorandum of understanding signed between Soweis, local chiefs and civil society organizations on the banning of child female genital mutilation throughout the country. The Committee also noted the high

rates of domestic and sexual violence against women and urged that the Government intensify its efforts in holding consultations with the civil society and women's organizations and traditional leaders at the provincial and local levels to change stereotypes, discriminatory attitudes and practices.

The Committee recommended that the Government examine the causes and link, if any, between female genital mutilation and the prevalence of vesico-vaginal fistula, and continue to provide medical and psychological assistance to women and girls affected. The Committee, through its Rapporteur on Follow-up on Concluding Observations of the CEDAW, has also sent two reminders on 10 August 2016 and 26 April 2017, requesting the Government to provide information on the steps undertaken to implement recommendations pursuant to the Committee's sixty-fourth session held in July 2016.

Likewise, the Committee on the Rights of the Child, in its review of Sierra Leone (CRC/C/SLE/CO/3-5) in 2016, also expressed its concern that there was no explicit criminalization of female genital mutilation in the State party and that the practice was widely carried out in many communities, especially in rural areas. The Committee urged the Government to take concrete and consistent measures to eradicate the practice, such as sensitizing practitioners of female genital mutilation and providing them with alternative livelihoods.

The third cycle of the Universal Periodic Review of the Republic of Sierra Leone and the proceedings in the 38th session of the UPR Working Group in May 2021 also shed light on the need to prohibit and eliminate female genital mutilation, yet relevant recommendations were not accepted.

In its General Recommendation No. 2 (2008), the Committee Against Torture has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.

In her report on domestic violence against women (E/CN.4/1996/53), the Special Rapporteur on violence against women noted that female genital mutilation is one of the most pernicious forms of violence committed against women and girls. She stressed the severe health complications, both physical and mental, that derive from it, and stressed the need for engagement of community and religious leaders to prevent it. She recommended that States should adopt legislation which makes female genital mutilation a crime and implement education programmes to prevent the practice.

The former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health referred to the right to health and informed consent (A/64/272), where he stated that safeguarding an individual's ability to exercise informed consent in health and protecting individuals against abuses (including those associated with traditional practices) is fundamental to protecting these rights (A/64/272, Para.19).

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health indicated that States have the obligation to protect against all forms of violence “including preventing third parties from coercing women to undergo such traditional practices female genital mutilation and from interfering with the enjoyment of the right to health”, adding that this practices “undermines women's and girls' enjoyment of the right to the highest attainable standard of physical and mental health and must be eliminated”. In addition, she adds that this practice is included into “structural violence [, which] is a subtle and quite often invisible form of violence normalized through laws, policies and the institutionalization of certain practices that have their roots in legacies of colonialism, racism, apartheid and structural socioeconomic inequalities” (A/HRC/50/28, paras. 19, 60 and 70).

In its Resolution 44/16 on the elimination of female genital mutilation, the Human Rights Council recognized that all harmful practices, including female genital mutilation, when perpetrated against girl children, have particular detrimental consequences for their health and growth, and recalled in that regard the need to guarantee the right of girl children to be free from all forms of violence. It also recognized that the practice of female genital mutilation continued to have an adverse effect on the economic, legal, health and social status of all women and girls and that they are an impediment to the full realization of gender equality. The Council called upon States to take comprehensive, multisectoral and rights-based measures to prevent and eliminate female genital mutilation; and to develop and strengthen accountability systems, including by ensuring timely and effective remedies for victims.

The Working Group on discrimination against women and girls in its report Women's and girls' sexual and reproductive health rights in crisis (A/HRC/47/38) stated that during the COVID-19 pandemic, delivery of a broad range of essential sexual and reproductive health services and goods has been suspended or postponed, including support services for women and girls subjected to female genital mutilation. The Working Group expressed concerns about the widespread impunity for violations of the sexual and reproductive health rights of women and girls. The Working Group emphasized that accountability is needed at multiple levels and may take various forms, including administrative, social, political and legal. The Working Group recommended to adopt and enforce clear and coherent legal and policy frameworks to guide the provision of services, in accordance with human rights obligations, and simultaneously address social norms and discriminatory stereotypes that obstruct implementation, including by establishing clear channels for reparations and accountability; legally recognize and implement a broad set of reparations for violations of sexual and reproductive health rights, including through structural measures, such as guarantees of non-repetition; and fully implement the recommendations of the international human rights mechanisms and the legal decisions of regional and national bodies and courts that recognize the sexual and reproductive health rights of women and girls. In its report on health and safety

(A/HRC/32/44), the Working Group recommended take and implement strong and efficient measures to prevent female genital mutilation and other harmful practices.

Ultimately, in the event that a violation is found, full reparation must be provided, including adequate measures of compensation, rehabilitation and satisfaction. States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in 2006, provide that victims of a gross violation of international human rights law or of a serious violation of international humanitarian law must be guaranteed of: equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.