

Mandates of the Special Rapporteur on violence against women and girls, its causes and consequences; the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on discrimination against women and girls

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8 April 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on violence against women and girls, its causes and consequences; Special Rapporteur on the sale, sexual exploitation and sexual abuse of children; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 50/7, 52/26, 52/7 and 50/18.

In this connection, we offer the following comments on the **Women's (Amendment) Bill 2023** (hereinafter the Bill), which intends to repeal the **Women's (Amendment) Act 2015**, including a ban on female genital mutilation.

According to the information received:

The Women's (Amendment) Bill 2023 was introduced to “uphold religious purity and safeguard cultural norms and values” of female genital mutilation and seeks to lift the ban, which is seen as “a direct violation of citizens’ rights to practice their culture and religion.” The Bill also contends the terminology of female genital mutilation and advocates for “female circumcision.”

On 18 March 2024, the second reading of the Bill passed before the Parliament of the Gambia, with forty-two parliamentarians in favor of the motion, four against it and one abstained. The Bill is expected to be referred to a parliamentary committee, which will review the Bill, consult stakeholders and experts on the issue and write a report for further discussion at the plenary.

The Bill intends to delete the provisions that were introduced to the Women's Act No. 12 of 2010 through the Women's (Amendment) Act 2015, specifically to delete **Section 32A on prohibition of female circumcision, which contains that:**

- (1) A person shall not engage in female circumcision.
- (2) A person who engages in female circumcision commits an offence and liable on conviction –
 - (a) to imprisonment for a term of three years or a fine of fifty thousand dalasis or to both; and
 - (b) where female circumcision causes death, to life imprisonment.
- (3) Female circumcision includes –

- (a) the excision of the prepuce with partial or total excision of the clitoris (clitoridectomy);
- (b) the partial or total excision of the labia minora;
- (c) the partial or total excision of the external genitalia (of the labia minora and the labia majora), including stitching;
- (d) the stitching with thorns, straw, thread or by other means in order to connect the excision of the labia and the cutting of the vagina and the introduction of corrosive substances or herbs into the vagina for the purpose of narrowing it;
- (e) symbolic practices that involve the nicking and pricking of the clitoris to release drops of blood; or
- (f) engaging in any form of female genital mutilation or cutting.

The bill also intends to delete **Section 32B on accomplices to female circumcision, which contains that:**

- (a) A person who requests, incites or promotes female circumcision by providing tools or by any other means commits an offence and is liable on conviction to imprisonment for a term of three years or a fine of fifty thousand dalasis or to both.
- (b) A person who knows that female circumcision is about to take place or has taken place, and fails, without good cause, to warn or inform, as the cause may be, the proper authorities promptly, commits an offence and is liable on conviction to a fine of ten thousand dalasis.

International human rights standards regarding female genital mutilation and other harmful practices

a) Female genital mutilation as a harmful practice and a form of violence against women and girls

For the purposes of this letter, female genital mutilation includes female circumcision and female genital cutting, which involves the partial or total removal of external female genitalia or other injury to the female genital organs for non-medical reasons, as cited in several general recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW Committee). The Declaration on the Elimination of Violence against Women adopted by the United Nations General Assembly defines violence against women 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 that are harmful to women. According to the afore-mentioned Declaration, 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.

In the report on domestic violence against women, the Special Rapporteur on violence against women, its causes and consequences noted that female genital mutilation is one of the most pernicious forms of violence committed against women and girls (E/CN.4/1996/53).

In the joint general recommendation No. 31 of the CEDAW Committee and general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, the Committees highlighted 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 disadvantaged groups of women and children (CEDAW/C/GC/31/Rev.1 – CRC/C/GC/18/Rev.1). Harmful practices are often associated with serious forms of violence or are themselves a form of violence against women and children.

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 and No. 35 (2017) on gender-based violence, in which the CEDAW Committee identified female genital mutilation as a form of violence against women and emphasized the severe negative consequences of female genital mutilation on women and girls. In the above general recommendations.

Furthermore, in 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 detrimental consequences for their health and growth, and recalled the need to guarantee the right of 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 it is an impediment to the full realization of gender equality.

b) Violation of the right to health

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, which your Excellency's Government acceded to on 29 December 1978. In its general comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights notes that States should respect, protect and fulfil the right to health of all. The obligation to protect the right to health requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health, and 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, and 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. States are under an obligation to ensure that women can enjoy their right to health without discrimination, including the freedom to control one's health and body. States are also required to ensure freedom of individuals from non-consensual medical treatment and other procedures, and therefore obliged to obtain informed consent from individuals, especially women, before any interference with their right to health. Furthermore, States are obliged to prevent third parties from coercing women to undergo harmful practices, as well as to adopt effective and appropriate measures to abolish harmful practices affecting the health of children, particularly girls, including female genital mutilation. The 2008 resolution adopted by the World Health Organization on female genital mutilation urged all 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 persons, including medical professionals (WHA61.16).

Furthermore, in its general recommendation No. 24 (1999) on the right to health, the CEDAW Committee called for States parties to address women's right to health. In particular, the Committee noted the ways in which some cultural or traditional practices, such as female genital mutilation, may put children and adolescents in particular risk, including to death and physical harm. Such harmful traditional practices may also expose women and girls to the risk of contracting HIV/AIDS and other sexually transmitted diseases. The Committee reminded States parties' obligation to protect the rights relating to women's health, including by enacting and effectively enforcing laws that prohibit female genital mutilation and child marriage.

We would also like to draw your attention to the reports of the Working Group on discrimination against women and girls' reports, in which the experts reiterated that the instrumentalization of women's bodies lies at the heart of discrimination against women, undermining the achievement of their highest attainable standard of health (A/HRC/32/44/Add.1, A/HRC/38/46/Add.2). Women's non-discriminatory enjoyment of the right to health must be autonomous, effective and affordable. The State has the primary responsibility to respect, protect and fulfil women's right to health in law and in practice, including where health services are provided by private actors. The Working Group emphasized that urgent measures should be adopted to eradicate all manifestations instrumentalizations, taboos regarding stereotypes which result in harmful practices such as female genital mutilation, highlighting that this form of violence has serious and irreversible psychological and physical consequences for girls and women and that can even result in death following the procedure itself or during childbirth. No belief or custom may be invoked or misinterpreted as justification for violating the rights of women and girls or for torturing or oppressing them. The Working Group further urged states to criminalize all forms of female genital mutilation and to ensure that all perpetrators of gender-based violence, including those responsible for female genital mutilation, are prosecuted and convicted, as well as to increase efforts to raise awareness about any harmful practices.

c) Violation of the right to freedom from torture

The practice of female genital mutilation can be considered as a violation of the right to freedom from torture under the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, which the Gambia ratified on 28 September 2018. The fact that female genital mutilation is constitutive of torture or ill-treatment has been recognized in multiple statements. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated in the report that violence in the name of honor, sexual violence, and harassment, as well as slavery-like practices often of a sexual nature, female genital mutilation and human trafficking are encompassed in the traditional practices that may be defined as forms of violence constituting torture or cruel, inhuman or degrading treatment (A/HRC/7/3, para. 44). The Special Rapporteur also made clear that female genital mutilation involves the deliberate infliction of pain or suffering reaching the threshold of torture, and that the pain inflicted by female genital mutilation does not stop with the initial procedure, but often continues as ongoing torture throughout a woman's life (A/HRC/7/3, paras. 50-51). The Special Rapporteur further asserted this position in another report by stating that female genital mutilation has to be considered as a harmful practice that constitutes ill-treatment and torture (A/HRC/31/57, para. 58). More recently, the Human Rights Council has also reiterated this viewpoint by recognizing in its resolution 50/L.15 on the elimination of female genital mutilation that the practice constitutes torture or ill-treatment and must be prohibited, in accordance with regional and international human rights standards.

Moreover, in its general recommendation No. 2 (2008) on the implementation of article 2 by States parties, the Committee Against Torture noted that where State authorities or others acting in official capacity or under law have knowledge of or reasonable grounds to believe that acts of torture or ill-treatment are committed by non-State officials or private actors and fail to exercise due diligence to prevent, investigate, prosecute and punish such 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. The Committee has applied this principle to States parties' failure to prevent and protect victims from female genital mutilation as well as gender-based violence, such as rape, domestic violence and trafficking. Also, in its general comment 2 (para. 2) the Human Rights Committee stated that the aim of the provisions of article 7 on the prohibition of torture and other cruel, inhuman and degrading treatment or punishment of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.

d) Duty to adopt prevention and response measures on female genital mutilation

In article 4(g), the Declaration on the Elimination of Violence against Women notes the responsibility of States 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, health and social services, facilities and programmes, as well as support structures, and to

take all other appropriate measures to promote their safety and physical and psychological rehabilitation.

In the report on domestic violence, the Special Rapporteur, while emphasizing the severe physical and psychological complications that derive from female genital mutilation, stressed the need for engagement of community and religious leaders to prevent the practice (E/CN/4/1996/53). The Special Rapporteur recommended that States adopt legislations to criminalize female genital mutilation and implement education and awareness raising programmes to prevent the practice.

In resolution 44/16, the Human Rights 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.

Lastly, article 5 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) ratified by the Gambia in May 2005, requires States parties to "prohibit and condemn all forms of harmful practices which negatively affect the human rights of women, and which are contrary to recognized international standards." This includes, in particular, the "prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalization and para-medicalization of female genital mutilation and all other practices in order to eradicate them" (art. 5, b) and the "provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting" (art. 5, c). Under article 3(4), States parties commit to "adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence..." The Maputo Protocol also requires States Parties to, inter alia, "enact and enforce laws to prohibit all forms of violence against women" [article 4(2)(a)]; "punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims" [article 4(2)(e)] and "establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women" [article 4(2)(f)]. The proposed Bill is also incompatible with the African Charter on the Rights and Welfare of the Child (the Children's Charter), to which the Gambia is a State party.

We would like to draw your attention to the Convention on the Rights of the Child, ratified by the Gambia on 8 August 1990. Article 24(3) of the Convention outlines the need for States parties to take all effective and appropriate measures to abolish traditional practices that are prejudicial to the health of children. 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, honor killings and female genital mutilation" in violation of the principle of the best interests of the child as per article 3 of the Convention on the Rights of the Child.

We further recall your Excellency's Government obligations as a State party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) since 16 April 1993. 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 “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” (art. 5(a)).

In its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992), the CEDAW Committee clarified that States parties are under an obligation to act with due diligence and 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, including acts or omissions of officials in its executive, legislative and judicial branches. Furthermore, States parties 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 the joint general recommendation No. 31 of the CEDAW Committee and general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, the Committees noted that victims of female genital mutilation may require treatment or surgical interventions to address the short-term and long-term physical and psychological consequences. Finally, the Committees recommended that the States parties to the Conventions ensure that any efforts undertaken to change harmful practices and underlying social norms are holistic, community- and rights-based, and promotes active participation of all relevant stakeholders, especially women and girls. States parties should also ensure the delivery of specialized training to healthcare providers, social workers, police officers and other service providers who may interact with victims of female genital mutilation.

Further, article 19 of the Convention on the Rights of the Child provides States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. In addition, article 39 of the Convention on the Rights of the Child provides that States parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

e) *Efforts by the Government of the Gambia to prevent female genital mutilation/cutting/circumcision and respond to the needs of victims*

We underline that the adoption of the Women’s (Amendment) Act in December 2015 was widely welcomed. In her country visit report to Gambia in 2021, the previous Special Rapporteur on the sale, sexual exploitation and sexual abuse of children welcomed the adoption of the Women’s (Amendment) Act in December 2015, which prohibited and punished female genital mutilation (A/HRC/46/31/ADD.1). The CEDAW Committee also welcomed the progress

achieved in legislative reforms, including through the Women's (Amendment) Act in 2015, during its sixth periodic review of the Gambia (CEDAW/C/GMB/CO/6).

At the same time, it was recognized at the time that challenges in the prevention of female genital mutilation in Gambia persisted and that the Government of Gambia needed to double its efforts. For example, in its second period review of the Gambia, the Human Rights Committee noted its concern at the entrenched patriarchal attitudes and gender stereotypes in the Gambia and the widespread practice of child marriage and female genital mutilation, despite the criminalization of these practices. The Committee recommended the Gambia to strengthen the enforcement of the Children's (Amendment) Act of 2016 and the Women's (Amendment) Act of 2015, which criminalize child marriage and female genital mutilation, respectively, and enhance public awareness, particularly among traditional and religious leaders, of the lifelong negative consequences of such harmful practices (CCPR/C/GMB/CO/2).

In its second and third periodic review of Gambia, the Committee on the Rights of the Child urged the Gambia to provide physical and psychological recovery programmes for victims of female genital mutilation, and to establish and make reporting and complaints mechanisms accessible to girls who have been victims, or fear becoming victims, of the practice; to strengthen efforts to raise awareness of women, men and children, government officials, extended families, chiefs and other traditional, religious and community leaders on the harmful impact of female genital mutilation on the psychological and physical health and welfare of girls; to prevent the practice, while promoting positive cultural practices in childhood; to support and empower the media and civil society organizations working on combating female genital mutilation and ensure free access to the media; and to take measures to help practitioners of female genital mutilation find alternative sources of income (CRC/C/GMB/CO/2-3).

Furthermore, during the sixth review, the CEDAW Committee also recommended that your Excellency's Government: (a) Address the cultural beliefs underlying the harmful practice of female genital mutilation, including by educating parents and traditional and religious leaders on the lifelong devastating effects on both the physical and mental health of girls and women, and by raising awareness of the criminalization of female genital mutilation; (b) Establish safe reporting mechanisms for health practitioners, teachers, social workers, and women and girls, and ensure that all reports are duly investigated and prosecuted and perpetrators are adequately punished, including when the act is committed across the border; and (c) Improve access to support and rehabilitation services, as well as to reparation, including financial compensation, for women and girls who are victims of female genital mutilation, ensuring that they are protected from retaliation.

In view of the above-mentioned observations, we note that although the draft Bill is a Private Member's Bill, we urge your Excellency's Government to address the issues raised in this letter and reject this Bill should it be brought to the Government for Presidential assent in order comply with relevant international human rights law and standards, including 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. Female genital mutilation is a grave form of violence against women and girls that is mainly motivated and perpetuated by gender inequality and discriminatory sociocultural norms. It has long-term negative effects on women and girls' enjoyment of a range of

human rights and poses a serious obstacle to achieving meaningful gender equality. We 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 addition to the backtracking that the intended amendments would result in the rights of women and girls in the Gambia, it would set a dangerous global precedence of Governments facilitating female genital mutilation, instead of directing resources to the prevention of and protection from the practice.

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

1. Please provide any additional information, updates and/or comment(s) you may have on the current status of the Bill.
2. Please provide detailed information on how the Government intends to proceed with regard to the aforementioned Bill, which seems in contradiction with the Gambia's international human rights obligations.
3. Please provide detailed information on the initiatives undertaken by the Government aimed at raising public awareness about the harmful impacts of female genital mutilation.
4. Please provide detailed information about the measures taken, or intended to be taken, to ensure that the rights of women and girls to sexual and reproductive health, including access to adequate health services, to physical and mental integrity, and to life, are in line with international human rights standards.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government, will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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