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Re: Information on India for Adoption of List of Issues Prior to Reporting at its 126th Session (1 July - 26 July 2019)

Dear Distinguished Committee Members:

We respectfully submit this letter to the Human Rights Committee (“the Committee”) in regard to the adoption of a list of issues prior to reporting on India at its 126th session. Equality Now is an international human rights organization with ECOSOC status working to protect and promote the rights of women and adolescent girls worldwide, including through our membership network comprised of individuals and organizations in over 160 countries. WeSpeakOut is a survivor-led Indian organization comprised of women from the Bohra community. It works to campaign for the elimination of Female Genital Mutilation (FGM), also known as Khafz within the Bohra community, in India. It is party to the ongoing public interest litigation before the Supreme Court, and has been leading advocacy for the Indian government to outlaw FGM in the country.

Equality Now and WeSpeakOut are writing to express our concern about the discrimination and violence faced by women and girls in India, particularly FGM which is in violation of the equality, non-discrimination and equal protection of the law principles (Articles 2, 3 and 26) of the International Covenant on Civil and Political Rights (“the Covenant”). In addition, passing strong and effective laws that criminalize FGM on a permanent and universal basis are an essential pre-condition towards meeting *Goal 5 (Achieve gender equality and empower all women and girls)* of the agreed upon sustainable development goals in Transforming our world: the 2030 Agenda for Sustainable Development (“Agenda 2030”), adopted by UN members states in 2015. Goal 5 includes specific targets, including target 5.3 *Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation*.

The Indian Constitution guarantees a fundamental right to equality and non-discrimination based on sex (Articles 14 & 15), as well as the rights to life and personal liberty (Article 21). Despite its international and national obligations, India does not have a law specifically banning FGM. In fact, the Indian Government’s official stance has been to deny the existence of FGM in India which they have done publicly in Parliament in 2014 and 2018.¹

¹ Lok Sabha Unstarred question No. 4380 answered on 19.12.2014 available online at <http://164.100.47.194/Loksabha/Questions/QRresult15.aspx?qref=10570&lsno=16>; Lok Sabha Unstarred

Female Genital Mutilation in India

FGM is known to be practiced in India by the Dawoodi, Alvi and Suleimani Bohra communities, as well as certain sections of Sunni Muslims. It is often incorrectly viewed as a religious requirement, though it is customary/traditional practice aimed at controlling the sexuality of women and girls. It violates the right to equality and non-discrimination as well as the right to bodily integrity and dignity of the women and girls on whom it is performed. In the Bohra community, FGM is mainly performed on young girls around the age of seven and involves the cutting of the prepuce or clitoral hood. This could be classified as either Type 1 (partial and/or total removal of the clitoris and/or the prepuce) or Type IV (all other harmful procedures to the female genitalia for non-medical purposes, for example: pricking, piercing, incising, scraping and cauterization) FGM as classified by the World Health Organization.

There are no country-wide studies or large-scale population surveys that measure the prevalence of FGM in India. However, the existence of FGM in India has been documented through two independent research studies. The most recent study titled *The Clitoral Hood: A Contested Site* was commissioned by WeSpeakOut and Nari Samata Manch and released in 2018.² The study largely included participants from the Bohra community, though two participants from the Sunni Muslim community were also included. The study found that seventy five (75%) of all daughters of the study sample were subjected to FGM, which means it continues to be practiced on little girls. Ninety seven percent (97%) of women who remembered their FGM experience from childhood recalled it as painful.

Another study titled *Understanding Female Genital Cutting within the Dawoodi Bohra Community* was conducted by Sahiyo in 2017.³ It included 385 respondents from numerous countries, all from the Bohra community. 34% of the study's participants were from India. The findings of the survey indicated that 80% of the survey's participants had undergone FGM.

FGM, including the type practiced in India, has short term and long term ill effects on the health and psychological well-being of the victims. The research study, *The Clitoral Hood: A Contested Site*, has documented the case of a 7-year-old girl who nearly bled to death after being subjected to FGM.⁴ Additionally, FGM is often aimed at controlling female sexuality. The impact of FGM on the sexual life of the survivors has been documented in both research studies mentioned above. In the ongoing case before the Indian Supreme Court, an affidavit has been filed by a gynaecologist who has observed the cases of at least 20 girls from the Bohra community who had been subjected to FGM/C. In his professional opinion, in most cases the clitoris was cut or affected since there is a very small region between the skin and the clitoris. This leads to immense difficulty in being able to separate the clitoris from the prepuce and being able to cut only the skin/hood/ prepuce. So, in most cases the clitoris gets cut /affected.⁵

question No. 466 answered on 20.07.2018 available online at http://shashitharoor.in/questions_inparliament_details/502

² Lakshmi Anantnarayan, Shabana Diler and Natasha Menon, *The Clitoral Hood: A Contested Site*, 2018, available online at http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf

³ Mariya Taher, *Understanding Female Genital Mutilation within the Bohra Community – An Exploratory Survey*, 2017, available online at

https://www.28toomany.org/static/media/uploads/Continent%20Research%20and%20Resources/Asia/sahiyo_report_final-updatedbymt2.pdf

⁴ Lakshmi Anantnarayan, Shabana Diler and Natasha Menon, *The Clitoral Hood: A Contested Site*, 2018, p. 43, available online at http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf

⁵ See Intervention Application No. 43032 of 2017, in WP (Civil) No. 286 of 2017, available online at <https://cdn.theleaflet.in/wp-content/uploads/2018/08/Read-the-Written-Submissions-by-Senior-Advocate-Indira-Jaising-on-behalf-of-intervenor-Masooma-Ranalvi.pdf>

The clitoris is an extremely sensitive area with over 8000 nerve endings. The clitoral hood protects the sensitive nerve endings of the clitoral glans from friction and other forces, and provides vital protection to the clitoris. Any damage to the clitoral hood exposes the sensitive clitoris. Thus damage to the clitoral hood or the clitoris can have lifelong negative effects on physical, psychological and sexual health, as testified by the study participants.

Despite this, India does not have any specific law prohibiting the practice of FGM in India. The government has failed to take any action to prevent FGM or raise awareness about the practice and its consequences. It has also not taken any steps to prosecute acts of FGM under existing criminal laws of hurt (Sections 319 - 326 of the Indian Penal Code) and child protection (the Protection of Children from Sexual Offences Act, 2012).

In fact, the Women and Child Development Ministry of the Indian Government has gone so far as to deny the existence of FGM in India, publicly in Parliament in 2014 and 2018⁶, and also through a press release in 2018.⁷ This denial was issued despite the fact that the Minister for Women and Child Development, Mrs. Maneka Gandhi, had in the past publicly acknowledged the existence of FGM in India, noting that it is a crime under existing laws, and has asked the religious head of the Bohra community to take measures to put an end to the practice.⁸ Further, even the members of the Bohra community who defend the practice have publicly admitted in the ongoing litigation before the Supreme Court that the practice continues to take place.

A public interest litigation requesting a legal ban on the practice of FGM in India is pending before the Supreme Court.⁹ The case has been recently referred to a five-judge Constitution Bench.¹⁰ Prior to this referral, the judges on the bench made remarks stating that FGM prima facie appears to be a violation of the right to privacy guaranteed by the Constitution, and the bodily integrity of the child.¹¹ The Court also noted that there seems to be no scientific or medical basis for the practice of FGM, which is likely to cause a significant amount of trauma, pain and bleeding.¹²

Regardless of the case currently pending before the Supreme Court, the Indian Government has an obligation under the Covenant to take steps to eliminate the practice of FGM. According to the Committee's General Comment No. 28, State parties in countries where FGM occurs should provide the Committee with "information on its extent and on measures to eliminate

⁶ Lok Sabha Unstarred question No. 4380 answered on 19.12.2014 available online at <http://164.100.47.194/Loksabha/Questions/QResult15.aspx?qref=10570&lsno=16>; Lok Sabha Unstarred question No. 466 answered on 20.07.2018 available online at http://shashitharoor.in/questions_inparliament_details/502

⁷ Ministry of Women and Child Development, Government of India, Recent poll by a Foundation on the world's most dangerous countries for women 2018 is not based on data but on perception of unknown persons, 27 June 2018, <http://pib.nic.in/newsite/pmreleases.aspx?mincode=64>

⁸ Moushumi Das Gupta, Government will end Female Genital Mutilation if Bohras don't: Maneka Gandhi, The Hindustan Times, May 29, 2017, available online at <https://www.hindustantimes.com/india-news/practise-of-female-genital-mutilation-should-be-banned-in-india-maneka-gandhi/story-kQhNA4rIYOLQTurkN5zAAM.html>

⁹ *Sunita Tiwari v. Union of India*, Writ Petition (Civil) No. 286/2017 (Public Interest Litigation).

¹⁰ Supreme Court of India, Order dated 24 September 2018 in WP (C) No. 286/2017, available at https://www.sci.gov.in/supremecourt/2017/936/936_2017_Order_24-Sep-2018.pdf

¹¹ The New Indian Express, Female genital mutilation violative of constitutional rights: Supreme Court, 30 July 2018, available online at <http://www.newindianexpress.com/nation/2018/jul/30/female-genital-mutilation-violative-of-constitutional-rights-supreme-court-1850779.html>

¹² Press Trust of India, SC questions rationale behind female genital mutilation, says it can't direct doctors to perform procedure, 31 July 2018, available online at <https://www.firstpost.com/india/sc-questions-rationale-behind-female-genital-mutilation-says-it-cant-direct-doctors-to-perform-procedure-4862561.html>

it.” In its previous State Party Reports, India has failed to provide information on the extent of FGM within the nation, or its plans to eliminate the practice, despite its prevalence.

Suggested Questions for the State Party

- What are the government’s plans and timeframe for enacting and enforcing a comprehensive law that prohibits Female Genital Mutilation (FGM) and guarantees the protection of women and girls who are at risk of undergoing FGM?
- Please provide statistical and other relevant data on the extent of the practice and impact of FGM in India and the measures taken by the government to eliminate and address it. If such data is not available, what are the government’s plans to collect such data estimating prevalence and impact of FGM across the country?
- What are the government’s plans for ensuring that all women and girls who have been subjected to FGM receive justice, protection and access to support services?

Thank you for your consideration. Please do not hesitate to contact us if we can provide further information.

Sincerely,



Yasmeen Hassan
Global Executive Director,
Equality Now



Masooma Ranalvi,
Founder, WeSpeakOut