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Re: Information on Canada for Adoption of List of Issues Prior to Reporting at its 132nd Session (28 June - 23 July 2021)

Introduction

1. We present the following submission in advance of the 132nd session of the Human Rights Committee ('the Committee'), taking place between 28 June - 23 July 2021, for consideration of the List of Issues Prior to Reporting for Canada. Equality Now and the End FGM Canada Network are writing to express our concern about the continued prevalence of Female Genital Mutilation/Cutting (FGM/C) in Canada and the failure of the Canadian government to take concrete and effective action to end FGM/C in Canada and provide support for survivors, which constitute a violation of its obligations under the International Covenant on Civil and Political Rights (ICCPR). The issues detailed in this submission highlight the failure of the State to comply with its obligations under Article 2 (non-discrimination), Article 3 (equality for men and women) and Article 26 (equality before the law) of the ICCPR.

Information about the authors of the submission

2. Equality Now is an international human rights NGO with ECOSOC status and the mission to achieve legal and systemic change that addresses violence and discrimination against women and girls around the world. Founded in 1992, Equality Now is a global organization with partners and members in every region. Ending sexual violence, ending sex trafficking, ending harmful practices and achieving legal equality are the main areas of Equality Now's work. This submission also references Equality Now's report '*Female*

Genital Mutilation/Cutting: A Call for a Global Response published in 2020, jointly with the End FGM European Network and the U.S. End FGM/C Network.¹

3. The End FGM Canada Network is a coalition of individuals and civil society organizations that exists for the purpose of promoting, upholding and enforcing the human rights of girls and women residing in Canada, as enshrined in the Canadian Charter of Rights and Freedoms, the United Nations' Universal Declaration of Human Rights, and the Declaration of the Rights of the Child, to be protected from the practice of female genital mutilation or cutting (FGM/C), to end FGM/C in Canada and worldwide, and to support survivors of FGM/C in Canada.

Female Genital Mutilation/Cutting in Canada

4. FGM/C is a harmful practice that involves the partial or total removal of the female genitalia for non-medical reasons. It is recognised internationally as a violation of the rights of women and girls and an extreme form of violence which infringes on their right to be free from all forms of discrimination, right to life and physical integrity, including freedom from violence and the right to health.
5. There are no official, publicly available estimates of the number of survivors of FGM/C living in Canada, or women and girls at risk of undergoing FGM/C². However, the Canadian Border Services Agency has stated that “it is almost certain” that FGM/C is also happening in Canada.³ Canada has sizeable populations of diaspora communities from countries where FGM/C is known to be practiced⁴. A 2016 study authored by anti-FGM organization Sahiyo which surveyed 385 women around the world – primarily from the Dawoodi Bohra community – and found that of those women, 18 (5%) lived in Canada and had all undergone FGM, and two had had the procedure in Canada itself⁵. Informal analysis by the End FGM Canada Network of Canada’s 2016 census data reveals that approximately 100,000 survivors of FGM/C live in Canada and thousands of young girls are at risk. However, this estimate is based on immigrants from countries in Africa and the Middle East which have nationally-representative prevalence data on FGM/C⁶. The practice of FGM is far more widespread globally, with evidence indicating the presence of FGM/C in over 90 countries around the world, in both diaspora

¹ Equality Now, End FGM European Network, US End FGM/C Network, *Female Genital Mutilation/Cutting: A Call for a Global Response*, 2020. https://www.equalitynow.org/fgmc_a_call_for_a_global_response_report

² Shivangi Misra, Female genital mutilation in Canada and the limits to criminalization, 11 July 2020, Canadian Dimension.

<https://canadiandimension.com/articles/view/female-genital-mutilation-in-canada-and-the-limits-to-criminalization>

³ Stewart Bell, Female genital mutilation practitioners are travelling to Canada, border officers warned, 17 July 2017, Global News Canada.

<https://globalnews.ca/news/3602227/female-genital-mutilation-canada-border-officers-warned/>

⁴ Dr Catherine Holtmann & Dr Lori Wilkinson, “Dr. Evangelia Tastsoglou, Principal Investigator Dr. Myrna Dawson, Co-Investigator Saint Mary’s University University of Guelph” 129.

⁵ “The Truth About the Secretive Practice of ‘FGM’ In Canada”, online: *Glob Citiz*.

<https://www.globalcitizen.org/en/content/fgm-in-canada-2/>

⁶ Giselle Portenier, *Defying destiny: a story of female genital mutilation*, 11 March 2016, Ottawa Citizen.

<https://ottawacitizen.com/news/defying-destiny-story-female-genital-mutilation>

communities and local populations with a long standing practice of FGM/C.⁷ An analysis of Canada's 2016 census data reveals that Canada's population in fact includes women and girls whose families have migrated from over 50 of these countries where FGM/C has been taking place for generations.

6. There are numerous studies that have surveyed Canadian survivors of FGM/C. A 2017 study by Sahiyo documents two instances of FGM/C where women from the Bohra community had undergone the procedure in Canada.⁸ A 2018 study documents interviews with 14 Somali-origin women living in Toronto who had undergone FGM/C.⁹ Another 2017 study interviewed seven women living in Canada, all of whom had been cut in their countries of origin (which included Djibouti, Ethiopia, Mali, Guinea, Egypt, etc.), but did not perpetuate FGM/C on their daughters.¹⁰ A study that focused on the health concerns of women living with FGM/C also surveyed 21 women living in Canada (of which 20 had undergone FGM/C who originated from 15 different African countries where FGM/C takes place).¹¹
7. News reports also indicate that girls in Canada have been taken to their countries of origin to be cut, despite the fact that such "vacation cutting" is prohibited under Canadian law.¹²
8. The CEDAW Committee in 2016 in its Concluding Observations on the eighth and ninth periodic reports of Canada had expressed concern that information on harmful practices, including FGM/C and ways to combat them is not readily accessible to many women in Canada. The committee recommended that the Canadian government "systematically collect disaggregated data on harmful practices in the State party and make information on ways to combat such practices widely available."¹³ We understand that Statistics Canada has partially complied with this recommendation and gathered data based on Canada's 2016 census to estimate the number of women and girls living in the country who have undergone FGM/C and/or who are at risk of having FGM/C performed on

⁷ Equality Now, End FGM European Network, US End FGM/C Network, *Female Genital Mutilation/Cutting: A Call for a Global Response*, 2020. https://www.equalitynow.org/fgmc_a_call_for_a_global_response_report

⁸ Mariya Taher, *Understanding Female Genital Cutting in the Dawoodi Bohra community: An Exploratory Survey*, February 2017. https://sahiyo.files.wordpress.com/2017/02/sahiyo_report_final-updatedbymt2.pdf

⁹ Danielle Jacobson et. al., *The lived experience of female genital cutting (FGC) in Somali-Canadian women's daily lives*, 13(11) PLoS ONE (2018).

<https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0206886&type=printable>

¹⁰ Sophia Koukoui, Ghayda Hassan & Jaswant Guzder, *The mothering experience of women with FGM/C raising 'uncut' daughters, in Ivory Coast and in Canada*, 14 Journal of Reproductive Health 51 (2017).

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5382428/>

¹¹ Uzima Women Relief Group International, *Investigating Experiences and Health Concerns of Female Genital Mutilation among African Women in Toronto*, 2017.

<https://www.uzimawomeninternational.org/female-genital-mutilation-cutting#/>

¹² Giselle Portenier, *Defying destiny: a story of female genital mutilation*, 11 March 2016, Ottawa Citizen, <https://ottawacitizen.com/news/defying-destiny-story-female-genital-mutilation>; Jayme Poisson, *Woman shares traumatic FGM secret and a bond is formed*, 24 September 2017, Toronto Star.

<https://www.thestar.com/news/fgm/2017/09/24/woman-shares-traumatic-fgm-secret-and-a-bond-is-formed.html>

¹³ Committee on the Elimination of Discrimination Against Women, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, CEDAW/C/CAN/CO/8-9, 25 November 2016, paras 22-23.

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/03/PDF/N1640203.pdf?OpenElement>

them. The failure to make public available data on FGM/C, however, is in contravention of the CEDAW committee's recommendations.

9. According to the Committee's General Comment No. 28, State parties in countries where FGM/C occurs should provide the Committee with "information on its extent and on measures to eliminate it." In its previous State Party Reports, Canada has failed to provide data on the extent of FGM/C within the country, or its plans, if any, to eliminate the practice.
10. The Honourable Prime Minister, Justin Trudeau, issued a statement on the International Day of Zero Tolerance for Female Genital Mutilation, 2021 acknowledging the need for improved data collection stating that "Here at home, we can help address the issue by improving data collection. We can also offer information and training to health service providers to identify those at risk and to assist survivors through culturally sensitive social support, and health and psychological services." The mandate to collect the data is with the federal government. Data collected thus far, has not been made public.¹⁴

Legal and Policy Interventions of the Canadian Government relating to FGM /C

11. Canada is a signatory to the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Social, Economic and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These international commitments create both negative and positive duties on the Canadian government to protect, promote and fulfill the rights under the international human rights law. Canadian courts have recognised the importance of Canada upholding its obligations under international treaties to protect rights enshrined therein.¹⁵
12. The Canadian Constitution includes the Canadian Charter of Rights and Freedoms. Under section 7 of the Charter, everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.¹⁶ The rights under the charter apply to Canadian citizens and non-citizens.
13. The Canadian Criminal Code was amended in 1997, to include FGM/C as a form of aggravated assault.¹⁷ Any person conducting FGM/C for non-medical reasons faces up to

¹⁴ "Statement by the Prime Minister on International Day of Zero Tolerance for Female Genital Mutilation", (6 February 2021), online: *Prime Minist Can.* <https://pm.gc.ca/en/news/statements/2021/02/06/statement-prime-minister-international-day-zero-tolerance-female-genital>

¹⁵ *Slaight Communications Inc. v. Davidson* [1989] 1 S.C.R. at page 1041

¹⁶ *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

¹⁷ Section 268, Criminal Code of Canada

14 years of imprisonment. If a person does not commit the act but agrees aids or abets the act of FGM/C, they can be convicted as a party to the offence under section 21(1) of the Criminal Code.

14. Section 273.3 (2) the Canadian Criminal Code prohibits taking a minor outside the country for the intention to conducting, aiding or abetting FGM/C for non-medical purposes and/or causing bodily harm.
15. There has not been a single criminal prosecution or conviction for FGM/C in Canada since the legislation was enacted.
16. Canada was the first country to recognize fear of gender persecution as a ground for claiming refugee status. The Canadian Immigration and Refugee Board has granted refugee status to some women whose children would have been subjected to FGM/C, if she had been forced to return to her country of origin.
17. A Federal Interdepartmental Working Group on FGM which was formed in 1994, compiled a report in 1999, as a part of their ‘ongoing commitment of Canadians and the Government of Canada to stop this practice in Canada and to improve the health and well-being of affected women and their communities.’ The report made recommendations to the stakeholders, health-care providers, government and the communities affected by the practice. It recommended that, ‘To ensure that the practice of FGM does not occur in Canada, it will be critical to continue to promote and provide ongoing respect for the cultures of affected communities.’ and that, ‘Citizenship and Immigration Canada could provide early, effective intervention by developing information packages that are given directly to families upon arrival in Canada.’¹⁸ Almost three decades later, despite the continually increasing levels of immigration from affected countries, the vast majority of these recommendations have not been implemented.
18. The above-mentioned Interdepartmental Working Group held community-wide consultations and based on those consultations expressed that there is a need for a ‘national database of FGM-related activities’ and ‘resource centres for disseminating information on FGM’. These recommendations have not been implemented.
19. The Canadian government has taken a number of measures to combat FGM/C, including funding small scale-initiatives and research on FGM/C and including an advisory about the illegal nature of FGM/C in its citizenship guide. However, as highlighted above, the measures taken by the Canadian government far fall short of what is required to end FGM/C within Canada and address the needs of FGM/C survivors living in the country.
20. There is need for acceleration of efforts against FGM/C, including effective enforcement of the laws against FGM/C. The Canadian government needs to take a comprehensive approach towards ending FGM/C, starting with the establishment of national prevalence statistics to inform policies. Further, the government must develop a multi-sectorial

¹⁸ Patricia Huston, “Female Genital Mutilation,” 1999, The Canadian Women’s Health Network, 14 Feb. 2013 <http://www.cwhn.ca/sites/default/files/resources/fgm/fgm-en.pdf>, 10.

cross-country National Action Plan coordinated by a lead ministry which initiates policy development, monitors and further coordinates policy action on FGM/C, and facilitates cross-sectoral initiatives in the fields of education, health, and child protection. Funding is needed for non-governmental and community organizations to support survivors, implement prevention strategies in community organizations, and develop and deliver FGM/C related trainings. The Canadian government should look to European countries and learn from successful initiatives in terms of both protection for girls and support for survivors.¹⁹

Suggested Questions for State Party's List of Issues Prior to Reporting

21. We respectfully urge the Committee to raise the following requests and raise the following questions with the Canadian government:

- Please provide statistical and other relevant data on the number of women and girls living in Canada who have either undergone FGM/C or are at risk of undergoing FGM/C.
- What concrete policy and regulatory measures has the government taken to implement the CEDAW committee's 2016 concluding observations?
- What steps has and will the government take to implement the recommendations of the Federal Interdepartmental Working Group Report published in 1999?
- What measures have been taken by the Canadian government to eliminate and address the harmful practice of FGM/C within the country?
- What measures have been taken by the Canadian government to prevent the practice of FGM/C within its borders and anyone leaving the country for the purpose of conducting FGM/C?
- What measures have been taken by the Canadian government to advocate for the availability of and access to culturally competent support service providers (health interpreters, social workers, etc.) who are knowledgeable about FGM/C to ensure that women and families receive adequate and respectful counselling and support?
- What steps has the government taken to consult the communities most affected or at-risk of FGM/C?
- What efforts has the government made to consult with experts, including legal experts, child protection officials, medical practitioners, midwives, public health

¹⁹ See Klara Hillman, *An end to inaction: Addressing female genital mutilation in Canada*, 2019. <http://summit.sfu.ca/item/19283>

officials, education professionals etc. to combat and eliminate the practice of FGM/C in Canada and support survivors?

- Is there any government co-ordination at the federal-provincial-territorial level to prevent, eliminate and create awareness on FGM/C in Canada?
- Are there any steps being taken to facilitate, assist and make accessible the immigration and citizenship process for women and girls who are at-risk or have undergone FGM in their country of origin?
- Are there any effective mechanisms in place for the immigration and asylum claims of the family members of at-risk girls?
- What steps has the government taken to conduct an inquiry and create a National Action Plan including a comprehensive data collection plan that will help fill data and knowledge gaps?
- Is there a long-term sustainable strategic plan to provide core and project-specific funding to organisations and culturally-competant service providers that work on eliminating the practice of FGM/C?