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Executive Summary:

1. This report is submitted by the Egyptian Initiative for Personal Rights.¹The report examines Egypt's violations of its negative obligation to respect the right to freedom from sexual and gender-based violence as well as Egypt's failure to carry out its positive obligation to investigate, prosecute and punish acts of sexual and gender-based violence. In addition, the report demonstrates through two cases, how the State lacks any political will to eliminate a growing trend of sexual and gender-based violence perpetrated by state actors, which feeds a culture of impunity.

National legal framework

Restrictive Legal Definition of Crimes of Sexual Violence:

2. In comparison to international criminal and human rights law, Egypt has a narrow definition of rape, which inadequately protects against sexual and gender-based violence against women. The definition as per the Egyptian Penal Code² requires penile penetration and so does not protect against rape using other parts of the perpetrator's body or using objects.
3. Article 267 of the Penal Code prohibits anyone from "lying with a woman without her consent" (with a sentence of death or life imprisonment).³ However, the Court of Cassation, the highest court of the Egyptian judicial system, has clarified that this means nothing less than full vaginal intercourse using a penis.⁴ Article 268 prohibits indecent assault and punishes it with hard labor for three to seven years. Instances of anal rape or rape using parts of the body or objects other than male genitals are treated as an indecent assault.⁵ Article 278 prohibits public acts of indecency (with a penalty of detention up to one year or a fine). Article 279 prohibits immoral acts against women, whether carried out in public or private (with a penalty of detention up to one year or a fine).

¹The **Egyptian Initiative for Personal Rights (EIPR)**, is a Cairo-based independent human rights organization which works to defend and promote the rights to privacy, health, religious freedom and bodily integrity. Since its establishment in 2002, the EIPR has acquired extensive experience in advocacy before UN treaty bodies, the former Commission on Human Rights, the Human Rights Council, as well as the African Commission on Human and Peoples' Rights. www.eipr.org

² Penal Code, Law 58 for the Year 1937 (as amended).

³ Sentence was increased by Decree No. 11 for the Year 2011, issued by the Supreme Council of Armed Forces.

⁴ Court of Cassation Reports s.3, no. 294, p.788, decision dated 14 April 1964, as cited in Badawy, Ahmed Mohammed, *Gara'im al-'ird*, p.17.

⁵ Court of Cassation, decision dated 21 March 1960, Technical Office, Year 11, p.286, as cited in Badawy, Ahmed Mohammed, *Gara'im al-'ird*, p.33, 37.

4. Up until March 2014 the government has refused a draft law, written by civil society organizations, which attempts to introduce a less restrictive definition of “rape” and aimed at classifying sexual violence in a way not to fall under the category of “public indecency”, which disregards the victim and if charged would result in a penalty of merely one year’s imprisonment or a fine.

Ouster Clause impedes process of investigation

5. Apart from the legal definitions of acts of sexual violence, the Public Prosecutor’s Office has on many occasions asked the victims to present evidence supporting their claims and to identify the perpetrator in order for the prosecutor to initiate investigations in the first place. As will be shown below, such a clause can pave the way for a culture of impunity, especially when the perpetrator is a state actor.

Egypt’s failure in its negative obligation to respect individual’s rights – systematic sexual and gender-based violence

6. In October 2012, Amnesty International issued a report on the human rights violations committed by the Egyptian armed forces while they were in charge of the country’s administration in its interim period between February 2011 and June 2012. In a section of the report on violence against women the report stated that, “the violence, often sexual in nature, appeared to be aimed at terrorizing women into staying at home and away from protests (...).”⁶
7. Since 2011, Egypt has witnessed numerous turbulent events, which had escalated to a confrontation between protestors on one side and the Police or the Military on the other side. On all occasions it was proven that sexual and gender-based violence is a systematic well-embedded tactic that state actors exercise on civilians.
8. In March 2011, military soldiers arrested 18 women among other protestors, while dispersing a sit-in. The women were beaten in their private parts, threatened with rape and were forcibly subjected to genital examination (commonly referred to as virginity tests). The examination took place in a room connected to other spaces where military officers were watching and taking pictures with their phones of the women while they were being examined naked. The military doctor examined their private parts with his hands, and any woman who objected was threatened to be beaten again and then subjected anyhow to the examination.
9. Nine months later in December 2011, when the Egyptian military was again dispersing a sit-in by the Cabinet Offices, footage of this dispersal showed a woman protester being beaten on the ground by soldiers, tearing her *abaya* and revealing her bra. Other women protestors who were arrested the same day described that they were sexually harassed while being dragged into detention. Inside the parliament building, where they were unlawfully detained, soldiers were targeting women’s breasts and genitals during beatings. Some of the arrested women protestors gave their testimonies on these events to Amnesty International⁷, in which they stated that soldiers were sexually harassing women

⁶ Amnesty International, “Brutality Unpunished and Unchecked. Egypt’s Military Kill And Torture Protesters With Impunity”, 2 October 2012, p. 27, available at:

<http://www.amnesty.org/fr/library/info/MDE12/017/2012/en>

⁷ Amnesty International, “Brutality Unpunished and Unchecked. Egypt’s Military Kill And Torture Protesters With Impunity”, 2 October 2012, p. 27 - 33, available at:

<http://www.amnesty.org/fr/library/info/MDE12/017/2012/en>

“with their hands and they deliberately hit women in their private parts”⁸. A testimony stated, “I was beaten on my breasts and in my private parts both in the front and the back... the officer kept insinuating that I would be sexually targeted that evening”. Other testimonies stated that soldiers, while beating the arrested, made sure their clothes get torn off. The testimonies reported that all those arrested were subjected to verbal as well as physical sexual abuse, and most of all there were a lot of threats of rape.

10. The policy of sexual and gender-based violence has been a systematic policy to terrorize women even before the military came to power in 2011. An example of such was the case of “Black Wednesday” in May 2005. Women journalists were present at demonstrations organized by opposition movements to protest constitutional amendments that consolidated the authoritarian rule of ousted President Mubarak. Police forces and thugs operating in full view of the police clamped down on the protesters, sexually assaulting the women. They were called sluts, whores, had their breasts fondled, were touched in their private parts, and had their clothes were torn off⁹. Jehad Safwat, a 21 year old medical student, who was arrested in a crackdown on student protests in January 2014, has also written a testimony after being released, confirming the existence of a policy in detention centres and prisons to subject women detainees to virginity and pregnancy tests. Safwat was one of four women who spoke about this particular incident confirming other forms of sexual and gender-based violence such as threats of rape as well.¹⁰

Egypt has a consistent pattern of failing in its positive obligation to investigate, prosecute and punish acts of sexual and gender-based violence

The Black Wednesday Case

11. Four of the women, who were victims of the Black Wednesday violence, have attempted to seek justice from the Egyptian legal system to no avail. The women lodged formal complaints with the Public Prosecutor’s Office which refused to take the testimonies of several eyewitnesses and failed to conduct serious independent investigations. In December 2005, the Public Prosecutor’s Office announced that it took a decision not to prosecute the matter, heavily relying on the fact that the “perpetrator was unknown”, although footage of the event showed that thugs were operating under the supervision of police officers and were all recognizable in the video footage. In May 2006, the Complainants submitted their case to the African Commission on Human and Peoples’ Rights.
12. In March 2013 the Commission took its decision, which held Egypt responsible for the acts of sexual violence among other violations. The facts of the case marked an intersection between violence and discrimination in that the attacks suffered by the victims were because they are women. The Commission found that the attacks were gender-specific and by extension discriminatory¹¹. The Commission took into consideration that the attacks were systematic and targeted at women who

⁸ Amnesty International, “Brutality Unpunished and Unchecked. Egypt’s Military Kill And Torture Protesters With Impunity”, 2 October 2012, p. 29, available at:

<http://www.amnesty.org/fr/library/info/MDE12/017/2012/en>

⁹ EIPR, “Egypt held to account for failing to protect women demonstrators from sexual assault - Commission tells Egyptian Government to compensate women as well as to investigate the assaults and punish those responsible”, 14 March 2013, available at <http://eipr.org/en/pressrelease/2013/03/14/1657>

¹⁰ “Egypt’s Security Forces Once Again Using Virginity Tests On Female Detainees”, 12 February 2014, available at <http://www.buzzfeed.com/sheerafrenkel/egypts-security-forces-once-again-using-virginity-tests-again>

¹¹ *EIPR and INTERIGHTS v. Egypt*, 323/2006, African Commission on Human and Peoples’ Rights, 2011

were at the scene of the demonstration and found that the state failed in its duty to effectively investigate, prosecute and punish the attacks.

13. The Commission requested Egypt to investigate this incident and to bring perpetrators to justice and to amend their laws in order to bring them in line with the African Charter. It also requested compensation to each of the four women in a specific amount as compensation for the physical and emotional damages for the trauma that they suffered, among other things.
14. A year later, the government has not taken any steps to implement the Commission's decision. It has not compensated the victims, legislative amendments were not introduced, it has not re-opened investigations and has not ratified the Women Protocol.
15. More importantly, the Commission has already found that “(...) failure to investigate effectively, with an outcome that will bring the perpetrators to justice, shows lack of commitment to take appropriate action by the State, especially when this lack of commitment is buttressed by excuses such as lack of sufficient information to carry out a proper investigation”¹² Furthermore, the decision recognized that the Complainants “were indeed deprived of an effective and impartial investigation from the PPO”¹³ which makes it even more indefensible for the State to suggest that the victims must rely on the same mechanism, without any guarantees or positive steps that would indicate a change in the commitment of the state to duly investigate, prosecute and punish.
16. The complete lack of implementation of this decision to date is a strong evidence of the systemic delays and lack of political will in relation to the reform of Egypt's legal framework as it relates to sexual and gender-based violence. It reflects a lack of political will to amend the laws to better address the sexual violence survivors' needs.

The Case of the Virginity Testing

17. The same lack of commitment to investigate, prosecute and punish sexual violence committed by state actors, characterizes the Egyptian military justice system as well. The incident dating back to March 2011, in which women detainees were subjected to forced genital examination by a military doctor in a military prison resulted in increasing public pressure. Consequently, the Military Justice Department requested the military prosecutor to open an investigation into the matter. The responsible military doctor was summoned by the military prosecutor and denied that the forced genital examinations took place. During trial in December 2011 the military prosecutor charged the military doctor with public indecency and insubordination.
18. Despite the severity of the forced genital examinations, the accused military doctor was charged only with “Public act of indecency” under Article 278 of the Penal Code (as well as insubordination), an offence associated with a maximum prison sentence of one year. The use of this provision meant that, instead of focusing on the sexual violence against the victims, the charge was directed at addressing the effect of the accused's action on society at large rather than the attack on the women's bodily integrity. The choice of charge is notable, since the facts, as determined by the military prosecutor, form grounds for a charge of sexual assault, which is defined in Section 268 of the

¹² *EIPR and INTERIGHTS v. Egypt*, 323/2006, African Commission on Human and Peoples' Rights, 2011, para 163

¹³ *Ibid.* para.234

Egyptian *Penal Code* to include any intentional touching of certain body parts, including the genitals, without consent.¹⁴ The crime of sexual assault carries with it a heavier penalty than the crime of public indecency that the military prosecutor chose to charge the military doctor with.

19. In addition, the military prosecutor chose to charge the military doctor with insubordination, the latter charge negating the possibility that the alleged abuse could have been ordered from higher-ranking officers.
20. The Court acquitted the military doctor and the military prosecutor has chosen not to bring an appeal to the higher courts. In 2012, two of the women who were subjected to these virginity tests consequently decided to take their case to the African Commission on Human and Peoples' Rights, represented by the Egyptian Initiative for Personal Rights.

In Egypt, a culture of social stigma and blaming the victims supports the impunity prevailing in relation to sexual and gender-based violence:

21. It is important to note that a study in 2009 reported that only 2% of Egyptian women who are subjected to different forms of sexual harassment and abuse report such incidents to the police since they expect their communities to blame them for having put themselves in a position that made them vulnerable to harassment.¹⁵ Furthermore, many victims of harassment and sexual assault (especially those who are traditionally vulnerable such as "street children" and sex workers) have reported that they have been sexually abused by members of the police upon attempts to report incidents involving sexual violence.¹⁶
22. Such a perception of victims of sexual violence was most vivid when on 11 February 2013, members of parliament had the following to say at the Human Rights Committee of the Shura Council, the upper legislative body, in response to a wave of mob sexual attacks on protesters in Tahrir:
 - "Women should not mingle with men during protests"
 - "Women sometimes cause rape upon themselves through putting themselves in a position which makes them subject to rape"
 - "Some foreign-funded organizations are imposing western beliefs upon us; tents present in some squares witness prostitution"¹⁷
23. Jihad Safwat, the most recent victim, who spoke out about the virginity tests that the police conducted, stated: "My family cannot stand this, (...) they do not want me to speak about it. I am not married, I have not even had a boyfriend."

Recommendations

1. The implementation of the African Commission's decision in the Black Wednesday case, which urged the State of Egypt to pay a compensation to each of the victims in the amount of EP 57,000, to

¹⁴ *Penal Code (Egypt)*, Law 58/1937 (as amended), Article 268,

¹⁵ Amal Abdelhamid and Ziad al-Alaimy, "Gara'im al-ightisab bain al-waqe' wat-tashree'", New Woman Foundation, (2009).

¹⁶ Mona Ezzat, *Istighlal agsad al-nisa' bayn al-haymana al-zokooreyya wa solotat al-'amal*.

¹⁷ Rana Taha, "Shura Council members blame women for harassment", Daily News Egypt, 11 February 2013.

investigate the violations and bring the perpetrators to justice, to ratify the African Women's (Maputo) Protocol and to bring its domestic legislation in line with its international obligations..

2. Amend the Egyptian Penal Code to reflect international criminal and human rights standards regarding rape and other forms of sexual violence. In specific, amend Provision 267 (pertaining to rape) to reflect that rape must not be solely restricted to full vaginal penetration by the penis and that the definition of rape must comply with international standards.
3. Ensure that the state is held accountable for physical and psychological damage suffered by the many victims of sexual and gender-based violence perpetrated by the state's own agents.
4. Undertake relevant institutional and practical reforms to ensure that women alleging to have been subjected to rape or other forms of sexual violence can effectively pursue complaints. This entails the confidentiality of and protection of victims at the time of making a complaint and during the investigation and prosecution; increase the number of female police officers and prosecutors;
5. Undertake gender sensitivity training of members of the military and officials in the justice system;