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Silent War: Accountability for Sexual Violence Committed by the Al-Assad Regime

February 19, 2019

by Kate Morrow, Caylee Watson, & Nicholas Ripley

Women in Syria are increasingly subjected to systemic gender-based violence from parties on all sides of the conflict. In March 2018, the United Nations (UN) released a report entitled, “I lost my dignity: Sexual and gender-based violence in the Syrian Arab Republic.” The report was based on interviews with survivors, their relatives, defectors, healthcare professionals, lawyers, and other members of the affected communities. The report focused on the perpetration of sexual violence from March 2011 through December 2017. In 2018, the film, *“Silent War”, directed by Manon Loizeau*, shared survivors’ direct accounts of the violence. The film, along with the report, reveal that Bashar Al-Assad’s regime is responsible for intentionally weaponizing sexual violence to collect information on opposition forces.

In 2004, the Syrian Arab Republic ratified the U.N. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT). However, in 2011, fifteen school children were arrested and tortured which led to nonviolent protests in Dara’a. Those peaceful protests were met with violence, which sparked the non-international armed conflict between Assad’s Regime and the Free Syrian Army (FSA), and later, other rebel groups that have emerged since the war began. Common Article 3 of the Geneva Conventions defines the law of non-international armed conflict. Assad is violating international law as he continues to order the use of sexual violence as a psychological weapon to torture men, women, and children in Syria.

The systematic perpetration of rape, torture, and humiliation happens in detention centers, private homes, and in plain view at government checkpoints. Assad’s government forces have used sexual and gender-based violence to attack the civilian population. As a means of manipulating dissent and opposition, the regime’s forces were ordered to sexually abuse detainees in at least fifteen detention centers.

In heartbreaking accounts, survivors describe entering a protective dissociative state, astral-projecting their souls to other realms in an instinctive attempt to keep them safe during an attack, only to struggle to retrieve them later on. But in the grand scheme, women are not the true targets of these attacks; they are just collateral damage used to pain the men they belong to. It is as if these women are merely possessions to be ruined — a cosmology that allows for the desecration of a subhuman object without moral intervention.

Survivors of the detention centers, when released, do not return to a culture that accepts them. Many women were excommunicated, divorced, or were subject to “honor killings” because of the sexual abuse and violence they were subjected to while detained. In a culture that condemns survivors of rape and sexual abuse as undignified and worthless, there is little access to counseling or therapy. In the film, one survivor explained that when women are arrested, they wish for death because “[they] are raped by the Regime and then punished by society.”

Under Common Article 3, “persons taking no active part in hostilities, including members of the armed forces who have laid down their arms . . . shall in all circumstances be treated humanely . . . and the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons”: a) murder of all kinds, mutilation, cruel treatment, and torture; b) taking of hostages; c) outrages upon personal dignity, in particular, humiliating and degrading treatment; d) the passing of sentences and carrying out of executions without judicial guarantees and judgment by a regularly constituted court. The Assad Regime’s systematic and psychological use of sexual violence and torture against civilians clearly violates Common Article 3. The only difficulty in enforcing Common Article 3 is the absence of clear winners in the complicated conflict.

Torture has evolved into a *jus cogens* peremptory norm in international law. Assad’s Regime can deny that it used sexual violence as a means of torture; however, by denying it, Assad continues to reaffirm the absolute prohibition of torture. Thus, if and when we finally see an end to the conflict, Assad will have nowhere left to go as he will not be able to escape the responsibility of states to hold him accountable for violating such sacred rights. The entire international community is bound by *jus cogens* norms, and therefore, they are obligated to extradite and prosecute its violators.

While the perpetration of sexual and gender-based violence by Assad’s regime is the most systematic of all of the parties in the conflict, the Islamic State group, armed groups, and Jabhat Fatah al-Sham (members of the former al-Qaeda group) all engage in some way in sexual violence against women and girls, according to the UN report.

With many survivors describing their attackers as “giants” and “monsters,” it is easy to lose sight of the humanity of the attackers and the earthly jurisdiction over their crimes. Ambitious as it may be, the international community must use all the weapons in its arsenal to eradicate war crimes of sexual violence as well as the systems of power and patriarchy that feed them. One mechanism for assisting in the efficiency of prosecution is the International, Impartial, and Independent Mechanism (IIIM), which supports the investigation and prosecution of the most serious crimes under international law committed in the Syrian Arab Republic since 2011. This mechanism created an office that assists in the preparatory work, such as collecting evidence and preparing files, for prosecuting serious crimes, such as torture. The IIIM provides the investigative resources needed to prosecute these crimes. There is no question that the sexual violence being used as a weapon in Syria is a form of torture prohibited under the UN CAT, the Geneva Conventions, and *jus cogens* principles. With the creation of the IIIM and other UN organs directed specifically at violations of international law in Syria, the international community has the tools, the authority, and the responsibility to prosecute the sexual and gender-based violence committed by the Assad regime and other actors within the Syrian conflict.

The Syrian conflict is a complex and ever-changing international event. The weaponization of sexual violence, regardless of who and for what is wrong. With the involvement of UN agencies and brave survivors, the hope is justice will eventually be served.

The authors would like to thank Java Films for allowing viewing of the film, *Silent War*. They would also like to thank the survivors for telling their stories and showing the world what is happening in Syria.

Sexual Assault in Mecca

March 12, 2019
by Yousra Elkhalfa

Pilgrimage to Mecca, or *Hajj*, is required for all Muslims at least once in their lifetime if their physical health and financial ability allows it. The carrying out of *Hajj* includes many sacred rituals such as circling the Mosque seven times. Sexual assault in Mecca is as prevalent as in any other public space in Saudi Arabia. Attacks on women in Mecca, considered to be one of the holiest places in the world, are a result of Saudi Arabia's failure to protect women from abuse.

A woman recounted her pilgrimage to Mecca where the Kaaba, considered Islam's most sacred site, is located. She describes the crowd as you approach the Kaaba to touch it: "I was next to the Kaaba and somebody grabbed my bum. I thought it was just the crowd; everyone was pushing. But then, when I moved up, somebody grabbed my boobs. I turned my head and I saw this guy just smirking at me." An unnamed Saudi official familiar with Hajj affairs said the Kingdom does not tolerate this kind of behavior anywhere, especially at holy sites, and added that allegations made by the women were being taken very seriously by authorities. There will be additional female officers in holy sites to handle these assaults on women.

In 2013, Saudi Arabia enacted legislation which banned domestic violence. The ban, approved by Saudi Arabia's cabinet, included protection of women against physical and sexual abuse. In 2018, King Salman bin Abdulaziz issued a royal decree ordering the enactment of a law that effectively deters and defines harassment. The bill, drafted by the Interior Ministry under the instruction of King Salman, punishes any form of harassment as long as it "insults, provokes or patronizes women." King Salman introduced a system to combat sexual harassment in public and private spaces such as work. The legislation was approved by the Shura Council, Saudi Arabia's formal consultative body. The potential penalties for violators are up to two years' imprisonment and a fine of up to SR100,000 (\$26,600). If the crime is repeated, the potential prison sentence increases to five years and the fine to SR300,000 (\$80,000). These sentences are still under advisement, and more severe penalties are expected. Saudi Arabia has made important strides when it comes to protection of women; however, the country fails in many respects.

While Saudi Arabia has ratified several human rights conventions, including the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), there are many legal restrictions on Saudi women's rights in the name of Sharia law (a legal system derived from religious precepts of Islam). Because Sharia law, as applied by Saudi courts, is uncodified and because judicial precedent does not bind judges, the scope and content of this law is uncertain.

Saudi Arabia has an obligation under CEDAW to protect and uphold women's bodily integrity. The Concluding comments of the Committee on the Elimination of Discrimination against Women indicated that they are concerned with how Saudi Arabia is upholding principles of equality, making the State in violation of Article 1 of the Convention because this results in direct and indirect discrimination against women. The Committee calls upon Saudi Arabia to

take action before their next periodic review. The Committee made the request “to submit the present concluding observations to all relevant ministries, to the Consultative Council (Shura), and to the Judiciary so as to ensure their full implementation.” State responsibility is extended to both public and private actors under Article 2 of the Convention making it possible to hold Saudi Arabia responsible for the lack of protection for women in public spaces.

These issues affect women throughout the entire region. Women in the Middle East have challenged modesty laws by claiming that they do not protect women. For instance, many women on Farsi Twitter shared their experience of harassment and also challenged the belief that wearing the hijab keeps women safe from assault and harassment. In Iran, like Saudi Arabia, the hijab is mandatory.

Saudi Arabia has slowly been making strides when it comes to the protection of women’s human rights. As pressure mounts from the international human rights community, Saudi Arabia seems determined to combat sexual harassment. Implementation of changes will create a healthier environment for all individuals on their pilgrimage to Mecca.

Genocide Overlooked: The Yazidis of Sinjar

March 9, 2019
by Caylee Watson

In Syria, there are no clear “winners” of the nearly eight-year war. As information makes its way out of the region from survivors, smugglers, activists, medical personnel, and journalists, it is evident that the atrocities are immeasurable. There is no question that crimes against humanity and war crimes have been and continue to be committed. However, what is less known is that a specific population has suffered disproportionately: the Yazidi people. The crimes Islamic State of Iraq and Al-Sham (ISIS) has committed against the Yazidi people in Iraq and Syria amount to genocide.

On August 1, 2018, the UN marked the fourth anniversary of the ISIS invasion of the Sinjar region of northern Iraq where it began committing genocide against the Yazidi people.

To this day, the Yazidis feel abandoned by the international community and are calling on it to do more to investigate the three thousand women and children that are still missing or held by ISIS. Time is running out and some fear that without support or military aid their people will disappear altogether. For years now, Yazidi groups have called for more efforts to be made to rescue their missing. Kris Phelps of the British Charity War Child, one of the few NGOs still working in the Yazidi camps explained, “[the] Yazidis feel betrayed by their neighbors, forgotten by their government, and the provision of aid is dwindling.”

Prior to the August 3, 2014, attack, the Sinjar region on the Iraqi-Syrian border was predominantly Yazidi. The Yazidi faith is one of the oldest monotheistic religions in the world. There has been widespread discrimination against the Yazidis throughout modern history because some believe they are “infidels” and “devil-worshippers.” ISIS claims it is specifically mandated to destroy the Yazidis. For example, it has published articles outlining the Yazidis “continual existence to this day [as] a matter that Muslims should question.”

Paulo Pinheiro, Chair of the Commission of Inquiry on the Syrian Arab Republic, shared that ISIS “subjected every Yazidi woman, child or man that was captured to the most horrific of atrocities.” An estimated five thousand Yazidi men were killed and around seven thousand women and girls, some as young as nine, have been sold in markets to ISIS fighters as sex slaves. One woman who escaped told the commission she had been sold fifteen times and that “[i]t is hard to remember all those who bought me.”

In the 2016 UN report, “They Came to Destroy: ISIS Crimes Against the Yazidis,” the Commission of Inquiry determined that ISIL was committing a genocide according to the definition contained in Article VI of the Rome Statute and Article II of the Genocide Convention. Both instruments define genocide as crimes against persons that are accompanied by an intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.

The Yazidis are a religious group within the meaning of the statute and have distinct modes of worship and culture. Moreover, ISIS identifies their religious distinction as reason for their

killing of Yazidis. Thus, the public statements and conduct of ISIS demonstrates that from 2014 to 2017, ISIS committed illegal enumerated acts against the Yazidis with intent to destroy them in Iraq and Syria within the meaning of Article VI of the Rome Statute and Article II of the Genocide Convention.

First, according to the UN report, ISIS intentionally killed thousands of Yazidis in both Iraq and Syria. Second, ISIS fighters have sexually enslaved and systematically raped Yazidi women and girls. Attempts to escape and resist were met with extreme violence, killings, beatings, and rape. Third, ISIS subjected the Yazidi people to conditions like rape, forced birth control, separation of the sexes, prohibition of marriages, impregnation of women to deprive group identity, and mental trauma resulting in the reluctance to procreate which are measures to prevent births within a group. Lastly, ISIS forcibly relocated Yazidi women and children and separated them from Yazidi men. This strategy led to the disappearance of part of the group because under the Yazidi religion, both parents must be Yazidi for the child to be of Yazidi faith. After examining women and girls who were held by ISIS, experts in psychology explain that due to the sexual enslavement and rape, Yazidi women and girls have anxiety around any contact with men and disinterest in relationships. Thus, ISIS has acted with intent to destroy and performed many of the enumerated acts, which thus amount to a genocide.

Despite the UN report and meeting the elements, the international community has not acted adequately. Yazidi religious leader, Baba Sheikh, explained, "The world is only talking about Yazidis but doing nothing." The Yazidis understand that their former territory is a war zone, and thus locating and rescuing the survivors may be difficult, but it is still important and necessary—especially now that the Caliphate has been reduced to tents. Those who were unable to escape "are being tortured in excruciating agony, month after month, year after year." Thousands have been missing since 2014 and the international community must to make them a priority before it is too late.

Migrant Workers Endure Inequality under Saudi Arabian Law

March 10, 2019
by Lucette Moran

The execution of a Filipina domestic worker in January is the latest in a long line of executions carried out by the Saudi Arabian government against domestic migrant workers mostly from the Philippines and Indonesia. The execution of the thirty-nine year-old Filipina maid, whose name is not revealed for the family's privacy, comes only a few months after the government executed another maid, Tuti Tursilawati of Indonesia, this past October. Ms. Tuti was executed seven years after being convicted of murdering her employer. Migrant Care, a migrant worker's rights group, says she was defending herself from sexual assault. Ms. Tuti was the fourth Indonesia migrant worker to be executed in Saudi Arabia since 2015, and there are many others waiting on death row. Saudi Arabia has faced repeated criticisms for systemic violations of due process in its criminal justice system and frequent use of capital punishment; in 2018, fifty percent of those executed were foreign nationals.

Concern about Saudi Arabia's mistreatment of domestic migrant workers has increased steadily over the past decade. In response to dangerous labor conditions, the Indonesian government banned domestic workers traveling to Middle Eastern countries between 2011 and 2013 and, after Saudi Arabia executed two Indonesian domestic workers in 2015, Indonesia increased the ban to twenty-one countries. The Philippines has saved several Filipino migrant workers from executions by paying "blood money" to the Saudi families of those allegedly killed; however, in the case of the Filipina worker executed this year, the Saudi Supreme Judicial Council decided that "blood money" was not allowed to be paid. There are at least one million Filipino and around 1.5 million Indonesian migrant workers in Saudi Arabia, primarily holding positions in domestic or construction services. Saudi Arabia is among the top five executioners in the world, punishing capital crimes with beheading or even "crucifixion."

Saudi Arabia is violating its duty to follow international customary law, as articulated in the Universal Declaration of Human Rights, prohibiting abusive and prejudiced treatment of migrant workers within its territory. Articles Thirteen and Twenty-three of the Declaration provide that all persons have the rights to freedom of movement across borders and the right to free choice of employment in "favourable conditions" and "without any discrimination," respectively. Migrant workers also enjoy protections from violence, threats, arbitrary detention or arrest, and "measures of collective expulsion" under Articles Sixteen and Twenty-two of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). Although the Saudi government has taken no action regarding the ICRMW, Saudi Arabia has committed to the International Convention on the Elimination of Discrimination Against Women (CEDAW). Notwithstanding the government's reservations over CEDAW Article 11(2) on marriage or maternity, Saudi Arabia has still committed to the elimination of discrimination against women in the work place and the job market. Saudi Arabia has also acceded to International Convention on the Elimination of All

Forms of Racial Discrimination, which includes the obligation to guarantee individuals rights to “equality before the law” and freedom from ethnic discrimination in regard to their fundamental rights to employment rights; these rights include “just and favourable conditions of work.” Saudi Arabia is bound to uphold international human rights standards under customary law and relevant provisions of its international commitments.

Domestic migrant workers in Saudi Arabia endure inequality under the law from the moment they enter the country. For months or years before any allegations or arrests are made, many migrant workers under the kafala (“sponsorship”) system are trapped in contracts with abusive employers. Workers are prohibited from changing jobs or even leaving the country without the approval of their sponsor; foreign workers trying to return home or find work elsewhere must obtain exit visas, which can only be requested by the sponsors on the workers’ behalf. Exit visas also require high financial thresholds, including the settling of all debts and fines, and the transfer or closure of all vehicles, cell phones, Saudi Arabian bank accounts, and lines of credits. The use of the death penalty against vulnerable populations is egregiously contrary to international law, and the international community must condemn Saudi Arabia’s conduct.

Persecution of the Bahá'í in Iran

April 13, 2019

by Yousra Elkhalfifa

The Bahá'í religion has faced persecution and severe human rights violations throughout the world. This is especially true in Iran which has the highest number of followers of the Bahá'í faith. There are more than five million Bahá'ís in communities spanning over two hundred countries. Iran's Constitution does not recognize the faith despite it being the largest religious minority in the country and, therefore, the Bahá'í cannot freely exercise their religion because they are not deemed "People of the Book" by Article 13 of Iran's Constitution. The religion has also faced discrimination in other parts of the world, such as Europe during the reign of the Nazis. The faith was outlawed in 1937 and an unaccounted number of individuals belonging to the faith were put on trial and sent to their deaths in concentration camps. On April 18, 2018, the leader of the Houthis in Yemen, Abdul-Malek al-Houthi, delivered a speech where he vehemently denounced those belonging to the Bahá'í faith. The rhetoric employed in his speech calling the Bahá'í religion a "satanic movement" is concerning and can incite acts of violence and further increase the persecution against the Bahá'í. Today the Bahá'í community continues to endure systematic discrimination and struggles to secure their human rights.

The United Nations Human Rights Council (38th Session)("Council") on June 2018 found that Bahá'ís face relentless persecution solely for their religious beliefs. In Iran, despite the government's vow to end religious discrimination, there is an increasing number of anti-Bahá'í propaganda. Bahá'í students who wrote to their government after being denied enrollment in university because of their faith were sentenced to five years in prison for being part of an "anti-state Bahá'í cult." This is because Iran and other countries that discriminate against Bahá'ís see them as a religion that contradicts the principles of Islam. On March 26, 2018, the Supreme Leader of Iran, Ali Khamenei, issued a religious decree or *fatwa* stating "You should avoid any association and dealings with this perverse and misguided sect." One of the results of this government orchestrated persecution has been economic strangulation. Bahá'í individuals in Iran are deprived of the possibility of earning a living wage due to the denial of employment in the public sector and denial of business-related permits.

The Iranian government is engaged in the economic suppression of Bahá'ís. Economic strangulation is defined as "punishment of a group by cutting off commercial dealing with them." This economic deprivation leads to a lack of income, which is the most standard feature of poverty. However, poverty does not take into account the social, cultural, and political aspects at play. Poverty includes a nullification of economic and social rights such as "the right to health, adequate housing, food and safe water, and the right to education."

Article 23 of the Universal Declaration of Human Rights provides that "everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment." In addition, Iran signed and ratified a Governance Priority Convention called the Employment Policy Convention on June 10, 1972, which aims to achieve full employment and raise the standard of living. Article 1, Section 2, of the Employment Policy Convention states that the "policy shall aim to ensure that—(a) there is work available for those

seeking to work; (b) that such work is as productive as possible; (c) there is freedom of choice of employment ... irrespective of race, colour [sic], sex, religion, political opinion, national extraction or social origin.”

Iran needs to live up to its responsibilities under the Employment Policy Convention as related to Bahá'ís. Iran must find more adequate solutions to ensuring Bahá'í rights in the pursuit of growth and development. Iran must also examine the circumstances needed for the enjoyment of an adequate standard of living for those Bahá'í individuals facing persecution and economic strangulation.

Saudi Arabia: Women's Rights Activists Continue to Be Arrested, Detained, and Prosecuted

April 16, 2019
by Caylee Watson

On April 5, 2019, Saudi Arabia arrested and detained at least seven more women's rights activists. The latest arrests come after around a dozen women's rights campaigners were put on trial in March 2019 following almost a year-long detention. In October 2018, the United Nations Human Rights experts reminded Saudi Arabia of its obligations as a member of the UN Human Rights Council and as a signatory to the Committee on the Elimination of Discrimination against Women (CEDAW) and the Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment (CAT) to protect and promote the rights of human rights defenders who peacefully carry out their work.

In May 2018, Saudi Arabia began a crackdown on dissent and arrested and detained more than a dozen women's rights activists after they protested to lift the driving ban, end the male guardianship system, and protect victims of domestic violence. Mohammed bin Salman, the Crown Prince of Saudi Arabia, continues to struggle balancing ending discriminatory practices with preserving traditional conservative Sharia (Islamic law). It is understood that the motivation behind the arrests was to prevent others from participating in activism. Many of the arrested activists are among Saudi Arabia's most prominent figures in women's rights and used both social media and traditional modes of protest. Since their arrest, there has been international outrage, but it worsened once Prince Mohammed bin Salman lifted the driving ban law shortly after the arrests.

In December 2018, Human Rights Watch and Amnesty International both reported that Saudi officials allegedly tortured and sexually harassed and assaulted at least four detained women's rights activists. For example, the "women testified that they were subjected caning, electrocution, and waterboarding by masked male interrogators . . . and some women say they were forcibly touched and groped, made to break their fast during . . . Ramadan, and threatened with rape and death."

UN Human Rights experts called on Saudi Arabia for the immediate release of all women human rights defenders who were arrested and detained. Rather than complying with the demands of the UN experts, Saudi Arabia announced on March 1, 2019, that it would be prosecuting ten women's rights activists who had been detained for ten months in a terrorist court. Saudi Arabia claims that the women have ties to foreign intelligence agencies and have been labeled traitors by Saudi Arabia's state media. However, on March 27, 2019, the State announced it would be moving the proceedings to a criminal court. One day later, three women, Rokaya Mohre, Aziza al Yousef, and Eman Nafjan were released and confirmed rumors that they were subjected to physical and sexual abuse.

Some believe the shift to the criminal court and the release of the three women are products of international pressure, especially following the torture and killing of journalist Jamal Khashoggi. More than thirty countries at the UN Human Rights Council criticized Saudi for detaining the activists.

If women were tortured while in Saudi Arabian custody, it would be a violation of CAT. Although the women were originally arrested on charges of undermining national security, Saudi Arabia cannot use such a threat as an excuse to use torture. General Comment 2 explicates rights mentioned in CAT and clarifies that there are no derogations permitted under the provisions of the treaty. Thus, Saudi Arabia has a duty to hold those responsible for the torture liable in its own system of justice. While such accountability is unlikely, the right to be free from torture is now considered a jus cogens preemptory norm in international law. Jus cogens principles are considered so fundamental and important that they cannot be set aside, and additionally, all states have a responsibility to hold violators responsible.

In June 2018, in its report on Saudi Arabia Review under CEDAW, the committee on the Elimination of Discrimination against Women concluded that although steps have been taken for women to drive and for there to be procedures to end domestic violence, “it cannot mask the structural nature of gender inequality, which is rooted in the system of male guardianship.” Thus, as a ratified party to CEDAW, Saudi Arabia has a duty to end the male guardianship system because it is inherently unequal. Saudi Arabia’s unsubstantiated treason charges against these women’s rights activists need to be dropped to comply with the legal obligations under CEDAW and CAT.

If the charges are not dropped, then Saudi Arabia will continue to face backlash from the international community. Additionally, if evidence shows that the women were tortured Saudi Arabia will face even more international backlash if they do not hold their own state actors responsible, especially after the Jamal Khashoggi torture and killing in October 2018. Lastly, until Mohammad bin Salman eliminates the male guardianship system, Saudi Arabia will continue to violate the principles of CEDAW and activists will continue to protest—causing him more strife in Saudi Arabian Foreign Affairs.

Egypt's Counter-Terrorism Courts Target Journalists and Human Rights Defenders

April 26, 2019
by Lucette Moran

The Egyptian government is using emergency state courts and anti-terrorism laws to detain and prosecute activists, journalists, and human rights defenders under the guise of protecting Egypt from “[terrorists and drug traffickers](#).” These proceedings violate international human rights law because the counter-terrorism judicial courts rarely offer a fair trial or appeal process, and the trials often result in capital punishment. Egypt is using these counter-terrorism courts to silence dissent to President Abdel Fattah al-Sisi’s government.

Egypt dramatically expanded its definition of terrorism when it passed Law 95 of 2015 for [Confronting Terrorism](#). The Egyptian counter-terrorism law exceeds the definition of terrorism adopted by the UN Security Council by designating an act of terrorism as any “use of force or violence or threat or terrorizing” that aims to “disrupt general order” or the work of public authorities; endanger the safety or security of society; or harm other people, the environment, peace, or “national unity.” Under this definition, typically lawful acts of civil disobedience could be construed as terrorism and prosecuted accordingly. The law also affects any person or group identified by the government in the [Terrorist Entities Law \(2015\)](#), which relies on a similarly ambiguous definition of terrorism and allows for courts to approve a prosecutor’s nomination to designate individuals or groups as terrorists. Law 95 further expands prosecutors’ powers, going so far as to allow warrantless detentions of suspected terrorists for up to eight days without judicial review.

Egyptian authorities’ abusive use of counter-terrorism laws and courts have only increased since the passage of the above laws. Journalists, bloggers, human rights and labor activists, and other peaceful critics of the regime have been the [primary targets of this extended counter-terrorism crackdown](#). Those accused of violating Egypt’s 2015 counter-terrorism law are transferred to [Emergency State Security Courts](#), a parallel system opened in October 2017 to address terrorism and drug trafficking in response to a declared state of emergency. These extrajudicial courts are overseen by a special prosecutorial branch, the Supreme State Security Prosecution, which has charged several activists for aiding or joining a banned terrorist group or “spreading false news.”

Under Article Six of the [International Covenant on Civil and Political Rights \(ICCPR\)](#), all persons have the inherent right to life, and in countries that still practice capital punishment, the death sentence should only be carried out for the most serious crimes. Anyone sentenced to death always maintains their right to amnesty, pardon, or commutation of the sentence. Pursuant to Article Fourteen of the ICCPR, all persons shall receive equal treatment in court, and each is entitled to a fair, public hearing before a “competent, independent and impartial tribunal” with the right to appeal or receive judicial review of verdicts. Article Ninety-seven of [Egypt’s 2014 Constitution](#) forbids the use of extraordinary courts. Finally, [Security Council Resolution 1624 \(2005\)](#) emphasizes states’ responsibilities to ensure any measures enacted to address terrorism do not violate international law, especially international human rights law.

In a joint statement last fall, seventeen independent UN human rights experts condemned the use of Egypt's anti-terrorism laws to systematically attack human rights activists. An unusually high number of signatories supported the statement, in which the case of a women's rights activist, Amal Fathy, was prominently criticized. Ms. Fathy was charged, inter alia, for terrorism and "publishing fake news" while promoting women's rights. The UN experts described the targeting of activists such as Ms. Fathy as evidence that the Egyptian government is using the guise of counter-terrorism to squash legitimate and peaceful political dissent. The ICCPR, the UN Security Council Resolution 1624, and Egypt's own constitution, clearly support their assertion. The Egyptian government is in violation of its international and national responsibilities to provide fair criminal proceedings and preserve human rights. The government should suspend all open cases and cease the use of its extraordinary counter-terrorism courts.

Ending Female Genital Mutilation (FGM) by 2030: Using law at the national and regional levels to protect women and girls

May 3, 2019
by Satang Nabaneh*

Introduction

Female Genital Mutilation (FGM) is a widespread and pervasive human rights violation experienced by women and girls. FGM refers to all procedures “involving partial or total removal of the external female genitalia or other injury to the female organs for non-medical reasons.”^[1] It is estimated that more than 200 million women and girls have been cut in thirty countries across Africa, the Middle East, and Asia where FGM is concentrated. Another estimated 3 million girls are at risk of FGM annually.^[2] The World Health Organization (WHO) has also estimated that 100 to 140 million women and girls worldwide are currently living with the consequences of FGM. It is mostly carried out on young girls at some point between infancy and the age of fifteen years old. In Africa, an estimated 92 million girls from ten years of age and above have undergone FGM.^[3]

Development of International Human Rights Norms on FGM

Over the past two decades, international human rights norms have evolved significantly to recognize FGM as a fundamental human rights violation against women and girls. Early human rights instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)^[5] and the Convention on the Rights of the Child (CRC)^[6] prohibit harmful “traditional practices” but do not explicitly prohibit the practice of FGM. However, these provisions can still be interpreted to safeguard women and girls from the practice.

During the Fourth World Conference on Women in 1995, notable African feminists led efforts for the explicit condemnation of FGM in the platform for action.^[7] In 2012, the United Nations General Assembly adopted a resolution, calling on the international community to eliminate FGM.^[8] The Sustainable Development Goals (SDGs) include a target under Goal 5 to eliminate all harmful practices including FGM by 2030.^[9] In July 2018, the Human Rights Council passed a resolution highlighting the negative implications of FGM for the status and treatment of girls which impedes gender equality.^[10]

Beyond these consensus documents, UN treaty monitoring bodies have clearly established that all forms of FGM violate a range of human rights including protection from physical and mental violence,

health, life, and constitutes torture or other cruel, inhuman or degrading treatment.[11] Through their general comments, recommendations, and concluding observations, treaty bodies have affirmed that states have a legal obligation to adopt effective and appropriate measures to abolish FGM.[12]

At the regional level, the African Charter on Human and Peoples' Rights (African Charter), the African Charter on the Rights and Welfare of the Child (African Children's Charter), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) have emphasized the right of women and girls not to be subjected to FGM. The African Union (AU) Agenda 2063 (Aspirations 3, 4 & 6) condemns all forms of violence and discrimination against women and girls, including FGM.

FGM and the Maputo Protocol

The Maputo Protocol (Protocol) was adopted by the African Union on July 11, 2003, pursuant to Article 66 of the African Charter and came into force on November 23, 2005.[13] The Protocol's holistic protection of women's rights extends to social, political, and economic spheres. It contains thirty-two substantive provisions that address the unique human rights challenges faced by women and girls in the African context.

The Protocol is unique as the only international human rights instrument that explicitly prohibits the practice of FGM. Article 5 of the Protocol specifically obliges states to ensure that legislative measures and imposed sanctions are in place to prohibit all forms of FGM and its medicalization. States are further required to promote awareness campaigns and to provide victims health, legal, and judicial services.

It should be noted that Article 5 of the Protocol must be read concurrently with Article 2 which relates to elimination of all discriminatory practices against women, because FGM is a practice that exclusively targets women and girls and reinforces their subordinate position in society. Moreover, FGM is deemed to violate the right to be free from violence, making Article 3 of the Protocol applicable because it requires states to ensure that victims of all violence (including those perpetuated because of cultural practices) are rehabilitated. This is critical because it guarantees that the dignity and well-being of women and girls that have undergone harmful practices are safeguarded. A collective reading of these provisions would seem to show that the Protocol has adopted a three-pronged approach to eradicating cultural practices such as FGM.

First, the Protocol proposes the use of criminal law to curb the spread of this practice. Second, the Protocol recommends education and awareness campaigns that will address behavioral change in societies. Third, the Protocol adopts a humanistic approach of rehabilitating victims of all forms of violence. This approach is not only pragmatic but also commendable. Applying criminal law to public health issues has remained very contentious, and prior experience has shown that this effort may, in the long run, be ineffective.^[14] Indeed, such an approach may even become counter-productive in the end. Thus, countries have also adopted health, alternative rites passage, and empowerment approaches to address this serious challenge to the human rights and freedom of women and girls in the region.[15]

Influence of Human Rights Norms on National Law Reforms on FGM in Africa

The evolution of strong international and regional human rights standards recognizing FGM as a human rights violation has significantly prompted national law reform. Incorporating international human rights standards, which vary according to the legal system of individual countries, ensures enforceability within national legal systems.[16] The domestic legal framework plays an essential role in protecting the rights of women and girls against FGM. Currently, about sixty countries around the world have adopted laws that criminalize FGM, with twenty-four countries in Africa now banning the practice.[17] In many African countries, the use of legal sanctions to address FGM is by far the most common response adopted by African governments.[18] Criminalization often involves the imposition of jail sentences or fines.

During the past ten years, the trend of criminalization is increasingly found in a variety of laws including penal codes, specific anti-FGM laws, women's rights acts, and domestic violence acts. Between 2007 and 2018, countries such as Zimbabwe, Uganda, South Sudan, Kenya, Guinea Bissau, Mozambique, The Gambia, and Cameroon all have laws that punish the practice of FGM. Either new laws have been introduced or existing laws have been amended. For instance, The Gambia amended its Women's Act in 2015,[19] while Nigeria adopted the Violence Against Persons (Prohibition) Act in 2015, prohibiting FGM—although only directly applicable in the Federal Capital Territory, Abuja.[20] In Mauritania, Article 12 of the Children's Code of 2015 prohibited FGM.[21] Guinea also adopted a similar provision in its Children's Code in 2008.[22] Guinea-Bissau is the only country that adopted a separate and specific FGM law in 2011.[23]

Access to Justice for Women and Girls

The obligation to protect women and girls from FGM requires states, their agents, and officials to not only take action to prevent and impose sanctions for violation of their rights by private parties, but to exercise due diligence to investigate, prosecute, and punish such violators.

The number of court cases on FGM varies across countries. In Kenya, the special unit for investigating FGM cases opened in 2014 following the ban in 2011 and has prosecuted seventy-six cases in its first two years.[24] In The Gambia, there have been two cases relating to FGM since the law was adopted in late-2015; one case involved a five-month-old baby who died as a result of FGM in Sankandi Village.[25] Burkina Faso is increasingly recognized as one of the few countries where FGM legislation is effectively and systematically enforced. In 2016, the government of Burkina Faso reported to the CEDAW Committee that, according to the data of all regional courts of Burkina Faso in 2009, 241 persons were convicted for violating the law prohibiting FGM.[26]

In *Law and Advocacy for Women in Uganda v. Attorney General*, the Constitutional Court of Uganda held that FGM is a practice that violates women's rights, their dignity, and is condemned by both the Constitution of Uganda and international law. [27] The Petitioner, a non-governmental organization, asked the Constitutional Court of Uganda to declare FGM unconstitutional in accordance with Article 2(2) of the Constitution, alleging that it violated the right to life guaranteed under Article 22(1); the right to dignity and protection from inhuman

treatment, secured under Article 24; the rights of women recognized under Article 33; and the right to privacy guaranteed under Article 27(2) of the Constitution. This decision of the Constitutional Court of Uganda to prohibit FGM is an important step in the development of progressive jurisprudence of state obligations under international and national law to protect women's rights against the practice of FGM.

The trend for criminalizing FGM comes on the heels of the push that legislation should be a supportive tool that serves as a catalyst for social change and should foster an environment that enables/encourages the abandonment of the practice. Studies have shown that in countries like Senegal, legislation on FGM can complement other strategies including alternative or mock rites passage[28] and empowerment of women and girls.[29]

It is pertinent to point out that most of these laws have not been effective in curbing the practice of FGM in affected countries despite the influx of aid and decades of awareness raising and abandonment campaigns. In many African countries, FGM still is performed without legal consequences for offenders, despite laws prohibiting the practice. Where FGM is performed in private clinics without prosecution of physicians who carry out the procedure, the state provides de facto consent to the practice and is therefore accountable.

The use of criminal law to prohibit the practice of FGM has its limitations. FGM as a deeply rooted traditional practice entrenched in culture serves as a major obstacle to ending the practice despite criminalization.[30] There is general lack of acceptance of laws against the practice as the majority of affected communities are usually not involved in the law-making process, and they often consider these laws as foreign and a challenge to their culture.[31] This result is public resentment which pushes the practice underground and promotes cross-border migration to perform FGM. In a majority of places where FGM is practiced, traditional and religious leaders wield more power than the government. For example, upon the end of twenty-two years of authoritarian rule in The Gambia by former President Yahya Jammeh, during whose time FGM was banned, debates about the constitutionality and efficacy of the 2015 anti-FGM law arose. [32]

Likewise, there are no real mechanisms in place to report, refer, and protect women and girls at risk of FGM. The belief that FGM is personal and not a matter of public concern continues to affect responses in the prevention, reporting, and prosecution of FGM cases. The privacy of the practice prevents detection by law enforcement. In addition to the attitudes of the community, the attitudes of law enforcement are also a problematic as some are unwilling to enforce the law.[33] This reticence, coupled with inadequate resources and training, has a negative impact on the effectiveness of any legal measures.

While laws lay the foundation to ensure effective access to justice for women and girls with respect to FGM, other gender-specific and holistic measures—including prevention and empowerment approaches—that make women and girls more likely to seek justice should be adopted. States must implement programs, structures, and resources to intensify sensitization against the practice, especially as most perpetrators do not respect the laws nor understand the human rights implications of FGM.[34]

Conclusion

The transformative impact of normative developments on national-level laws and policies regarding FGM has also resulted in greater recognition globally of the human rights of women and girls. Laws that criminalize FGM serve as important milestones towards ensuring that legal frameworks protect the rights of women and girls against the practice of FGM. Notwithstanding this point, the effectiveness of these laws remains questionable. In addition to punitive laws, states should, inter alia, ensure gender equality frameworks, promote attitudinal and social change, and design and implement comprehensive awareness campaigns against FGM by engaging with men and boys, religious and traditional leaders, and other stakeholders. Programs geared towards women and girls' empowerment and agency should be a strong focus as this is an effective measure to eradicate the practice by 2030. A legal prohibition on FGM is not necessarily a guarantee that women and girls would be protected against FGM. Eradicating FGM does not only require legislation and the incorporation of international human rights norms into domestic legislation but must also include these social programs as well.

[1] World Health Organization, Fact Sheet: Female Genital Mutilation (2016), <http://www.who.int/mediacentre/factsheets/fs241/en/>. The WHO has classified FGM/C into four broad categories: (i) partial or total removal of the clitoris and/or the prepuce (Type I); (ii) partial or total removal of the clitoris and labia minora, with or without excision of the labia majora (Type II); (iii) narrowing of the vaginal orifice by cutting and bringing together the labia minora and/or the labia majora to create a seal (with or without excision of the clitoris)—usually, the cut edges of the labia are stitched together, which is referred to as “infibulation” (Type III); and (iv) all other harmful procedures to the female genitalia for non-medical purposes, for example, pricking, piercing, incising, scraping, and cauterization (Type IV).

[2] UNICEF, UNICEF's Data Work on FGM/C (2017), https://www.unicef.org/media/files/FGMC_2016_brochure_final_UNICEF_SPREAD.pdf.

[3] World Health Organization, Fact Sheet: Female Genital Mutilation (2016), <http://www.who.int/mediacentre/factsheets/fs241/en/>.

[4] See, Satang Nabaneh & Adamson S. Muula 'Female Genital Mutilation/Cutting: A complex legal and ethical landscape' *International Journal of Gynecology & Obstetric*. (Published online: Feb. 19 2019) <https://doi.org/10.1002/ijgo.12792>.

[5] United Nations Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

[6] United Nations Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

[7] Report of the Fourth World Conference on Women, A/CONF.177/20, chap. I, resolution 1, annex II, (1995) para. 124(i)

1995 Beijing Declaration and Platform for Action, para. 124
(i), <http://www.un.org/documents/ga/conf177/aconf177-20en.htm>.

[8] G.A. Res. 67/146, Intensifying Global Efforts for the Elimination of Female Genital Mutilations (Mar. 5, 2013). Another resolution was adopted in 2016, see, G.A. Res. A/RES/71/168 (Dec 19, 2016).

[9] G.A. Res. Transforming our world: the 2030 Agenda for Sustainable Development' A/RES/70/1(Sept. 25, 2015).

[10] Human Rights Council Res. 38/1, Elimination of All Forms of Discrimination against Women and Girls, U.N. Doc. A/HRC/38/L.1/Rev. 1 (July 5, 2018).

[11] U.N. Human Rights Committee, *CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)*, CCPR/C/21/Rev.1/Add.10 (Mar, 29, 2000). See U.N. Committee Against Torture, *General Comment No. 2: Implementation of Article 2 by States Parties*, CAT/C/GC/2 (Jan. 24, 2008); Manfred Nowak (Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment), *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, A/HRC/7/3 (Jan. 15, 2008).

[12] See U.N. Committee on the Elimination of Discrimination against Women & U.N. Committee on the Rights of the Child, *Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices*, CEDAW/C/GC/31-CRC/C/GC/18 (Nov. 14, 2014); U.N. Committee on Economic, Social and Cultural Rights, *General Comment No. 22 on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/22, paras. 29, 49(a) & 59 (May 2, 2016); U.N. Committee on the Elimination of Discrimination against Women, *General Recommendation No. 14 (Ninth Session, 1990)*, para. 15(d) (1990).

[13] African Commission on Human and Peoples' Rights. Ratification Table: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa <http://www.achpr.org/instruments/women-protocol/ratification/>.

[14] Canadian HIV/AIDS Legal Network, *Criminal Law and HIV Briefing Paper 12* (2008).

[15] Elsie Johansen et al., *What Works and What Does Not: A Discussion of Popular Approaches for the Abandonment of Female Genital Mutilation*, 2013 *Obstetrics and Gynecology Int'l* (2013).

[16] In some countries, once a human rights instrument is ratified, it automatically forms part of national law. In other countries, including many common-law countries, provisions of treaties need to be directly incorporated into national law to give rise to enforceable rights and duties.

[17] World Bank, *Compendium of International and National Legal Frameworks on Female Genital Mutilation* (2018) [hereinafter *World Bank Compendium*].

[18] Guinea (1965), Ghana (1994), Burkina Faso (1996), Ivory Coast (1998), Senegal (1999), Djibouti (1995), and Togo (1998) banned the practice of FGM in their countries. See, R.J. Cook et al., *Female Genital Cutting (Mutilation/ Circumcision): Ethical and Legal Dimensions*, 79 *Int'l J. Gynecology & Obstetrics* 281, 285 (2002).

[19] Women's (Amendment) Act 2015, No. 11 of 2015, (Dec. 27, 2015), <https://www.lawhubgambia.com/womens-rights> (last visited Feb. 13, 2019); see Satang Nabaneh, *Banning Female Circumcision in The Gambia through Legislative Change: The Next Steps*, *AfricLaw*, Jan. 19, 2016, <https://africlaw.com/2016/01/19/banning-female-circumcision-in-the-gambia-through-legislative-change-the-next-steps/>.

[20] *Violence Against Persons (Prohibition) Act 2015*, (May, 23, 2015), <http://lawnigeria.com/LawsoftheFederation/Violation-Against-Persons-%28Prohibition%29-Act%2C-2015.html> (last visited Feb. 13, 2019).

[21] *Ordonnance No. 2005-015, Portant Protection Penale de L'Enfant (Criminal Protection of the Child)*, <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/73641/75348/F518879681/MRT-73641.pdf> (last visited Feb. 13, 2019). See *World Bank Compendium*, *supra* note 23, at 46.

[22] *Law No. L/2008/011/AN*, August 19, 2008. https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=AAC20477AF5D4B28C12576DC0039A4D7&action=openDocument&xp_countrySelected=GN&xp_topicSelected=GVAL-992BUD&from=state&SessionID=DZM89NQJK2.

[23] *Law to Prevent, Combat and Suppress Female Excision in the Republic of Guinea-Bissau*, Law No. 14/2011; see *World Bank Compendium*, *supra* note 23, at 38-41 (reprinting full text of law).

[24] Jina Moore, *Sparing Girls a Painful Rite*, *N.Y. Times*, Jan. 15, 2018, http://www.nytimes.com/images/2018/01/15/nytfrontpage/INYT_frontpage_global.20180115.pdf.

[25] Bakary Samateh, *Two Remanded for Practising Female Genital Mutilation*, *The Point*, Mar. 11, 2016, <http://thepoint.gm/africa/gambia/article/two-remanded-for-practising-female-genital-mutilation>. At the time of this Article, both court cases are still pending.

[26] Committee on the Elimination of Discrimination Against Women, Seventh Periodic Report of States Parties to be Presented in 2014: Burkina Faso, U.N. Doc. CEDAW/C/BFA/7, at 19 (June 9, 2016).

[27] *Law and Advocacy for Women in Uganda v. Attorney General (Constitutional Petition No. 8 of 2007)*, [2010] UGCC 4, Uganda: Court of Appeal/Constitutional Court (July 28, 2010).

[28] Girls are initiated into puberty through a mock ceremony that bears the semblance of the ritual without the actual cutting.

[29] See Bettina Shell-Duncan et al., *Legislating Change? Responses to Criminalizing Female Genital Cutting in Senegal*, 47 *Law & Soc. Rev.* 803 (2013).

[30] Editorial: Changing Culture to End FGM, 391 *The Lancet* 401 (2018).

[31] See e.g., Isabelle R. Gunning, *Arrogant Perception, World Travelling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 *Colum. Hum. Rts. L. Rev.* 189, 189-248 (1992).

[32] Nellie Peyton & Lamin Jahateh, *With Newfound Democracy, Gambia Faces Resurgence in FGM and Child Marriage*, Reuters, Jan. 23, 2018, <https://www.reuters.com/article/us-gambia-women-fgm/with-newfound-democracy-gambia-faces-resurgence-in-fgm-and-child-marriage-idUSKBN1FC0XA>.

[33] See 28 Too Many (2018), *The Law and FGM: An Overview of 28 African Countries* (Sept. 2018), <https://www.28toomany.org/Law> (last visited Feb. 13, 2019).

[34] Rebecca J. Cook et al., *Reproductive Health and Human Rights: Integrating Medicine, Ethics, and Law* (2003).