



## Criminalizing FGM... Why?

### CRIMINALIZING FGM ... BY LAW

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## Criminalizing FGM ... Why?

In June 2008, The Egyptian Parliament passed the Child law no. 12 of 1996 amended by law 126 of 2008 that was submitted by the National Council for Childhood. The amendments included an article that criminalizes FGM, and furthermore the Parliament incorporated this article in the criminal code (article 242 bis).

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Many people still have questions about the article (242 bis) that criminalizes FGM and the reasons behind the criminalization, the penalties will be applied and is the physician's penalty for performing FGM similar to that of the midwife, and who has the right to lodge a complaint about FGM, and how?

This booklet responds to all these above questions, in order to acquaint the public with comprehensive information on the logic behind the new law and how it will be enforced.

### **QI: WHAT PROMPTED NCCM TO CRIMINALIZE THE PRACTICE OF FGM? AND WHAT ARE THE REASONS BEHIND THE CRIMINALIZATION?**

Reasons behind the criminalization of FGM are:

#### **a) FGM is a lifetime mutilation and disability to the body of a woman**

FGM is “all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons” (World Health Organization definition). This cutting mutilates the external genitalia organs, and women lose permanently all the vital and beneficial functions that these organs procure.

#### **Prevalence of FGM in Egypt**

The Egyptian Demographic Health Survey (2005) issued by the Ministry of Health and Population, states that 96% approximately of married women in the age group (15-49 years) went through FGM. Whereas its prevalence rate among those in the age group (15-17 years) is 80%.

A recent study carried out by the Ministry of Health and Population in 2005 on school girls (age group 10-18 years) showed that the prevalence rate is 50.3%. This rate varies according to the school location; for example in urban schools the rates

were 4% compared to 62% in rural areas, whereas in private urban schools rates dropped to 9.2%

### **b) Female genital mutilation causes physical and psychological harm**

Scientific research carried out by national medical entities such as the Egyptian medical faculties and associations demonstrated the harmful physical, psychological and sexual impact on Egyptian women as a result of female genital mutilation; these can be classified as follows:

- 1 - Short-term Physical Consequences: Hemorrhage, pain, nervous shock, infection from the use of unclean tools, transmission of dangerous diseases such as virus C and AIDS, as well as mutilation of the external genitalia.
- 2 - Long-term Physical Consequences: Mutilation of the external genitalia for life as a result of total or partial cutting, scars or painful tumors, chronic inflammation of the urinary or reproductive system, chronic inflammation of the pelvis, and childbirth complications.
- 3 - Sexual Consequences related to marital life: Difficulty in attaining sexual satisfaction during intercourse due to the cutting of parts responsible for generating sexual satisfaction in women
- 4 - FGM... Silent Psychological Torment: Women suffer from adverse psychological effects from being exposed to the cruel practice of FGM. Most circumcised women describe the day on which they underwent circumcision as the “Black Day”, which proves that it is a painful and humiliating experience that remains etched in their memory forever.

- **Some presume that FGM weakens sexual desire in women but in fact it is controlled by the brain and FGM in no way can control desire or sexual behavior. Only with sound religious upbringing, humanitarian ethics, and correct scientific information can we guarantee virtuous behavior before and after marriage.**

Some presume that talking about the harmful effect of FGM is an exaggeration as no complaints on FGM are received from Egyptian women. Scientific research studies have proved the harmful physical and psychological impact resulting from FGM. Egyptian women do not express themselves out in the open, but the majority would talk truthfully about their physical and psychological problems resulting from FGM if given the chance. FGM harms men as well; NCCM Child Helpline 16000 daily receives calls from all over Egypt, from fathers, mothers, wives, and husbands complaining from FGM. They feel that the phone call is a secure medium through which they can communicate safely and talk about their problems and complaints truthfully and with transparency.

### **c) FGM is not a medical practice, it is prohibited that physicians perform FGM**

Some claim that there is no consensus among doctors on rejection FGM, since some physicians still perform it. The answer to this allegation is easy, since the issue

concerns “medical references and not the physician attitude”; we therefore rely on the consensus found in medical references and textbooks that has the test of time and scientific credibility, and not on the opinion or behavior of some physicians who seek material gain. From the medical point of view, the issue is settled and can be summarized in one word: rejection, for the following reasons:

1. There is no description of a surgery called FGM in any national or international medical textbook or reference.
2. FGM is not taught in any national or international medical school, furthermore the medical curricula approved by the Egyptian Higher Council for does not include FGM.
3. International medical organizations such as the World Health Organization and the International Union for Gynecology and Obstetrics criminalize FGM and consider that physicians who perform it violate the ethical code of the medical profession.
4. FGM violates medical ethics which revolve around a number of principles: beneficial, preventing risks, equitable, ability to take decisions, acceptance based on knowledge. Is it fair or beneficial to deprive women of the functions of her genital organs, and mutilate her body as a result of FGM? Are physicians performing FGM preventing risks, when all medical and scientific research proved the harmful effect on the physical and psycho-sexual well being of women? Are young girls about to undergo FGM aware of what is happening to them, can they accept or refuse? Do physicians yield to the will of fathers to cut organs vital to the life and health of their daughters?
5. Physician cannot, under the pretext of tradition and customs, legally perform FGM. The four conditions needed for surgical intervention determined by Egyptian law are as follows: to discover a disease, cure a disease, alleviate existing pain, or prevent expected complications. None of the conditions above apply to FGM.
6. The Ministerial Decree 271 of 2007, “Prohibits doctors, nursing staff or other from cutting or shaving or modifying any natural part of the female reproductive system (FGM), whether in government or non-governmental hospitals organizations or other locations. Any one performing FGM violates the laws and regulations governing the medical profession.” Thus any physician performing FGM is in direct violation of the Ministerial decree, and infringes on the laws and regulations governing the medical profession and is liable to administrative and criminal penalty.
7. Declaration by the Egyptian Medical Syndicate warning all physicians from performing FGM, and those contravening will be punishable by law and professionally.

**Some doctors presume that FGM is plastic surgery for girls, and that some girls need FGM according to medical opinion. FGM mutilates the reproductive organs, this is not plastic surgery, and no girl needs FGM i.e. cutting her genitalia on the grounds that it beneficial to her body, soul, and marital life. These organs,**

like many other in her body, have growth limitations, and not as many presume that they grow to be similar to the male organ.

#### **d) FGM is not a precept of Islam**

Some say we cannot criminalize FGM because it is a precept of Islam, or at least it is permissible. FGM was known during the times of the Prophet (PBUH) and he did not forbid it, so how can we?

Islamic Law is derived from the following agreed upon sources: the Holy Quran, authentic Sunna (tradition and sayings of the Prophet), Ijma' (consensus), and Qiyas (deduction by analogy).

- There is no reference whatsoever to female circumcision in the Holy Quran
- There is no authentic evidence in the Sunna that requires female circumcision.
- There is no Ijma', those reading the works of the Fuqaha, discover that there is no consensus on a specific legal ruling regarding FGM between the different schools.
- The teachings of Islam call for respecting the human body and human rights men and women alike. They have the right to enjoy a healthy body and soul as prescribed by the authentic prophetic hadith "Do not harm yourself or others"

**Dr. Mohammed Sayed Tantawy, Sheikh of Al Azhar, said: "With regards to females, there is no legal text and there is no hadith fit to be a proof of FGM. What we witness in Egypt is just a custom that has spread from one generation to another, but is gradually disappearing from the different social strata."**

Dr. Yussef Karadawy says that according to Islamic jurisprudence of "prohibiting the permissible for the best interest"; it is permissible to prohibit something if when applied causes harm. When we examine the legitimate sources namely the Quran, the Sunna, the Ijam'a, and the Qiyas we do not find any evidence that FGM is an obligation or is recommended. We also do not find any evidence that FGM is prohibited or unacceptable. Some say it is recommended, or an obligation, or an honorable act. This shows that they agree on permissibility. But the legal rule asserts that permissible and accepted things could be prohibited partially or totally if proven to cause harm or damage, because what is permissible, is granted to facilitate and make life easy "Allah doth wish to lighten your (burden): For man was created weak." (Women: 28). Therefore if there is evidence that what is permissible causes harm to mankind or to the majority it becomes imperative to stop it based on the rule: "Do not harm yourself or others"

The Moufti Dr. Ali Goma'a said: "FGM is not a religious issue, but rather an inherited custom and tradition. Many religious scholars have relegated the issue to doctors, and they in turn have affirmed that it was a harmful practice, therefore it should be prohibited."

Dr. Selim Al Awa, the Secretary General of the International Union of Muslim Scholars said that the basic rule for anything is permissibility. Since there



- Purity and chastity are Christian virtues. They are acquired by making free choices and loving purity, not by cutting an organ from the body. Thus, Christianity cannot accept obligatory FGM as a means to ensure a girl's chastity and honor.

#### **f) FGM violates the rights of vulnerable groups**

Vulnerable groups are unable to defend themselves (young girls) and the State has the obligation to protect them with suitable policies and legislations.

Law no. 12 of 1996 stated in Article 75 that “The State shall guarantee protecting the child from all work that is liable to harm his health or impede his physical, mental, spiritual, or social growth.”

The Convention on the Rights of the Child (CRC) ratified by Egypt, states in Article 24 paragraph 3 that: “States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.” Article 19 prohibits all forms of violence, or abuse, and article 16 affirms the right of the child to privacy.

Based on the above, FGM constitutes a clear violation of the rights of the Egyptian girl as follows:

- Right to live: FGM, which may lead to the death of the girl child, is performed to observe traditions, customs and norms and to please society.
- The right that the best interests of the child shall be a primary consideration. The decision to perform FGM has health and psychological implication whether in the short or long term; consequently, the family as well as the person performing FGM (physician or others) should carefully consider whether FGM complies with the best interest of the child in the short or long term or in the future.
- Right to a healthy life and body free from disease or mutilation: undoubtedly, the loss of organs having vital functions has an adverse effect on the girl's physical health.
- Right to freedom of expression and to knowledge: article 12 of the Convention on the Rights of the Child recognizes the right of a child to freedom of expression in matters and decisions that affect his or her life. The majority of girls undergo FGM without being aware of the adverse consequences of the practice, or the scientific facts about the organs and their vital functions.
- Right to protection: The girl who is subjected to FGM does not feel protected and safe, and no longer trusts her parents whom she holds responsible for her pain and sufferings.

#### **Q2: DID THE ARTICLE (242 BIS) CRIMINALIZE ALL FORMS OF FGM AND WHAT ARE THE PENALTIES APPLIED?**

The amendments have put an end to any confusion as to the penalties on performing FGM. The new article 242 bis added to the Penal Law, by virtue of the Child Law no. 12 of 1996 amended by Law 126 of 2008, stated that: “Without prejudice to any

greater penalty prescribed by another law, shall be punished by imprisonment for not less than three months and not exceeding two years, or a fine of not less than one thousand pounds, and not exceeding five thousand pounds, any one who caused the injury which is punishable by Articles 241, 242 of the Penal Code, through performing female genital mutilation.”

- It becomes evident that whatever the age of the female, and not considering the consent of the female or her guardian, even if FGM, in its lighter forms, is performed by a physician, or has caused a wound but has not resulted in a handicap or disease, the act is penalized by imprisonment for a period not less than three (3) months and not exceeding two (2) years, or a fine not less than one thousand (1,000) Egyptian Pounds and not more than five thousand (5,000) Egyptian Pounds.
- If parts of the genital organs of the girl are mutilated, the act is then considered a crime since it causes a permanent handicap as stated in article 240 of the Penal Law. This is an irreversible and incurable situation because after cutting the female external genitalia the organ cannot revert to its original shape or function. FGM deprives women of their external genitalia which have vital functions for them. This act also causes physical and mental diseases.

The perpetrator’s penalty is imprisonment from three to five years; if the wound is done with premeditation, the penalty is hard labor from three to ten years.

- If FGM causes the victim’s death: This criminal mutilation, in many cases, leads to the death of the girl as a result of a hemorrhage, or nervous shock, or anesthesia.
- The penalty for a perpetrator causing an injury leading to death (article 236 of the Penal Code) is hard labor or imprisonment from three to seven years; but if done with premeditation, the penalty is temporary hard labor or imprisonment.

### Q3: IS THE PHYSICIAN’S PENALTY FOR PERFORMING FGM SIMILAR TO THAT OF THE MIDWIFE?

Yes, the law criminalizing FGM does differentiate between a doctor and any other person. The physician’s penalty might be more severe for the following reasons:

- In general, physicians perform FGM with premeditation, and the judge cannot find any justifying reason for their criminal action since physicians despite being aware that FGM is not a medical practice and is harmful to the girls’ health, perform this criminal act. There are powerful grounds to sentence physicians with maximum penalty or fine.
- Furthermore they violate the Ministerial Decree no. 272 of 2007 prohibiting “all physicians, member of the medical staff and others, from cutting, disfiguring or changing any natural part of the reproductive system of the female (FGM), whether it is performed in governmental or non-governmental hospitals or any other places.

- In addition to the aforementioned, the Egyptian Medical Syndicate and the Ministry of Health are informed of all charges against physicians performing FGM to take the necessary disciplinary measures such as closing clinics, and revoking memberships to the syndicate and medical permits.
- In conclusion the penalty for physicians is more severe, they are penalized with imprisonment, a fine and disciplinary measures.

#### **Q4: IS THE PENALTY DROPPED IN CASE OF SETTLEMENT BETWEEN THE PERSON WHO PERFORMED FGM AND THE GIRL OR HER FAMILY?**

Since the victim's or her family's acceptance to perform FGM is not considered by Egyptian court, and families consenting to such a practice are legally regarded as being perpetrators, liable to punishment. The penalty of the person performing FGM is not dropped whether it is the physician or any other person, even in case of settlement because FGM's penalty is not one that can be dropped because of settlement.

#### **Q5: WHO HAS THE RIGHT TO LODGE A COMPLAINT? AND HOW?**

Every citizen has the right to lodge a complaint and first and foremost is the victim herself even if she is a child.

#### **Complaints are lodged at the following sites:**

- Police or prosecutors offices
- The sub-Committee for the Protection of Childhood, located in every district, a subsidiary of the General Committee chaired by the Governor, mandated by the Child Law to receive complaints related to childhood issues.
- The NCCM Child Helpline 16000 mandated by the Child Law to investigate and follow up complaints received by the line.

#### **References**

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2. FGM is not a precept of Islam, Ministry of Waqf (endowments), 2007.
3. "FGM from an Islamic Perspective" Dr. Selim Al Awa, National Council for Childhood and Motherhood, 2005.
4. "No To FGM" Ministry of Health and Population, 2000.
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6. Child law no. 12 of 1996 amended by law 126 of 2008, National council for childhood and motherhood, 2008.

# FGM VIOLATES THE LAWS AND REGULATIONS GOVERNING THE MEDICAL PROFESSION

## The Egyptian Ministerial Decree 271 of 2007

The Decree prohibits doctors, nursing staff or others from cutting or excising or modifying any natural part of the female external genital organs (FGM), whether in government or non-governmental hospitals organizations or other locations. “Any one performing FGM violates the laws and regulations governing the medical profession.” Thus any physician performing FGM is in direct violation of the Ministerial decree, and infringes on the laws and regulations governing the medical profession and is liable to administrative and criminal penalties.



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