



Photo credit: Women take to the streets to demand rights for themselves at the beginning of the Arab Spring in Cairo, Egypt: Rosen Ivanov Iliev, Shutterstock, March 2011

Criminalization of Gender-Based Violence: A Legal Obligation

Moushira Khattab



About the Series

Gender-based violence (GBV) affects one in three women worldwide, making it an urgent and important policy challenge. Many countries around the world have passed laws intended to protect women from violence, yet violence persists. Over the past year, the COVID-19 pandemic has raised awareness of the perils women face from gender-based violence—what has come to be known as the “shadow pandemic”—but it has also aggravated risk factors while increasing barriers to protection, support, and justice.

This publication aims to focus on the intersection of gender-based violence and the rule of law by examining how legal frameworks, judicial system responses, and public policy contribute to the ways in which gender-based violence is—and is not—addressed around the world. Each piece addresses the complicated challenge of gender-based violence and the successes and failures of various public policy responses globally, and offers recommendations for a path forward.

INTRODUCTION

After submitting my first draft to the editor of this publication, three significant developments took place in Egypt, the potential impact of which pushed me to revisit the entire chapter. Gender-based violence (GBV) is a global pandemic that affects one in three women in their lifetime. In the Middle East and North Africa (MENA) region, violence against women (VAW) is referred to as a silent cancer that often goes undetected and unreported. Society in this region is becoming more aware of the epidemic, yet it is still not gender-sensitive to its causes or implications. GBV is a stigma that leaves its marks on the victims for years if not a lifetime.¹ Despite decades of effort by stakeholders including women's organizations, United Nations organs, civil society organizations, and the donor community, GBV in MENA remains perilous. The cultural setup condones impunity for some forms of domestic violence, even when it leads to premeditated murder, as in the case of female genital mutilation (FGM). COVID-19 highlighted the weaknesses inherent in many of the institutions that we have been socialized to take for granted. Institutions such as education and health-care systems, in addition to social protection schemes, stood the test of time up until 2020. By that same token, COVID-19 shattered fledgling institutions in the MENA region, including institutions such as those that make laws criminalizing GBV.

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The COVID-19 pandemic, which spread worldwide in early in 2020, heightened the already grave

risks widely faced by women across the MENA region. Women's rights organizations, helplines, and shelters for survivors of domestic violence in some MENA countries reported an increase in calls for support or recorded a rise in cases of GBV. In Algeria, at least 39 cases of murder or “intentional assault and battery” resulting in death were recorded by the Centre of Information on the Rights of Women and Children during the COVID-19 lockdown, with women's rights groups warning that the true number of cases was likely to be higher.² At the height of the COVID-19 pandemic, the challenges facing women in Egypt increased. For example, many women had to take on a new role as the family doctor.³ Incidences of violence against children and harmful practices increased in the villages of Upper Egypt as well.

As the world begins to emerge from the darkness that enveloped most of 2020 and 2021, priority must be given to recovering the lost ground in the fight against GBV. Previous gains must be won back and used to trample obstacles that stand in the way of stopping GBV dead in its tracks. Victims must be availed the opportunity to report and pursue justice without fearing discrimination (social or legal, under the charge of adultery), governments must act against impunity, and above all governments must openly condemn GBV.

Amid the gloom brought on by the pandemic, rays of hope emerged to turn the challenge into an opportunity. In an unprecedented move, Shubra Criminal Court in Cairo sentenced a father and a nurse (tried in absentia) to three and 10 years in prison respectively, for the crime of FGM. This is the first case to be handled by the criminal court since the criminal code was revised to harshen the penalty for FGM, turning it from a misdemeanor to a felony offense. This development became even more significant as Egypt launched its first ever National



Photo credit: A traditionally dressed Egyptian woman walks by a mosque in Cairo, Egypt: Nattyflo, Shutterstock, February 2020

Strategy for Human Rights on September 11, 2021. The strategy includes: (1) civil and political rights, (2) economic, social, and cultural rights and, interestingly, (3) human rights of women and the vulnerable. Though human rights experts may question such classification, it is a testament to the unprecedented gains and the strength of national awareness in support of women's rights. Two days later, on September 13, Egypt launched its human development report, again in the presence of President Sisi. The report, which comes after a 10-year pause, puts heavy emphasis on the evolving gains of women.

To me, such developments promise a paradigm shift and a quantum leap toward meeting international standards of human rights. On October 4, the Parliament of Egypt elected me to serve as the first female president of the National Council for Human Rights. While I recognize that it will not be smooth sailing, I am honored to fill a place once occupied by my mentor, Dr. Boutros Boutros-Ghali, former

secretary general of the United Nations (UN). I can comfortably say that Egypt is indeed turning over a new leaf.

THE UNITED NATIONS RESPONDS

The UN was established with two overarching objectives: to maintain international peace and security and to foster friendly relations among nations based on respect for the principle of equal rights and self-determination for peoples. To achieve its objectives, the UN cooperates with various stakeholders in addressing international economic, social, cultural, and humanitarian crises, and aims for human rights and fundamental freedoms to be at the center of its global efforts.⁴

Throughout the 76 years of its existence, the UN has been praised as much as it has been criticized. Most recently, its mishandling of the COVID-19 pan-



Photo credit: A woman attends a lecture about media's representation of women in Cairo, Egypt: Touqa Essam, Shutterstock, February 2018

demic exposed the fragility of international peace and security. While the secretary general of the UN and the UN's World Food Programme rose to the challenge, the United Nations Security Council (UNSC) proved inept at dealing with the crisis. The ongoing spread of the pandemic will exacerbate patterns of global inequality, potentially causing instability and armed conflicts. In the event of a recession, or worse, a depression, the structural inequalities inherent in systems of development aid, humanitarian assistance, and the global political economy will increasingly present a challenge for the Global South.

The confusion and disappointment that stemmed from the UNSC's failures should not overshadow the more valuable assets of multilateralism. The UN human rights system overall is a flagship and full-fledged success story. Although in certain parts of the developing world, especially the MENA region, respect for universal human rights is not yet within

reach, it has become a powerful political tool around the world.

In 2020, as the world became engulfed in the pandemic and various countries implemented sweeping lockdowns, UN Secretary General António Guterres was the first to globally draw attention to its impact on women. He urged all governments to prioritize the prevention and redressing of violence against women and girls in national response plans to COVID-19. He "appealed for an end to violence everywhere" and cautioned that "violence is not confined to the battlefield. For many women and girls, the threat looms largest where they should be safest. In their own homes."⁵ He called for a global ceasefire to focus on the battle of our lives.

Women's rights activists have long encouraged the UN's most powerful organ, the Security Council, to join the battle for women's human rights. UNSC Resolution 1325, which was adopted on October 31,

2000, and sets forth an agenda for women, peace, and security, has provided a strong asset in the fight to end GBV through the rule of law. Resolution 1325 and other ensuing resolutions offer a “common language” and approach for unifying efforts toward ending VAW, and the UN has subsequently provided women’s advocacy groups with international funding. However, the formulation and implementation of National Action Plans by governments have proven difficult. Indeed, 21 years have passed since the adoption of Resolution 1325, and few countries including Egypt have yet to start the process of preparing a National Action Plan.

“To expand the achievements of the UN, countries must adopt a human rights approach to combat GBV.”

UNSC Resolution 1820 in 2008 heralded a very important legal development. It is the first Security Council resolution to recognize conflicts related to sexual violence as a tool of war. Depending on the context, it characterizes rape and other forms of sexual violence as war crimes, crimes against humanity, or acts conducive to genocide. It stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, and it calls upon UN member states to comply with their obligations for prosecuting persons responsible for such acts, to ensure access to justice by all victims of sexual violence.

These and other UNSC resolutions raise the bar for women’s rights. MENA countries still have not invested in this asset and must do so. To expand the achievements of the UN, countries must adopt a human rights approach to combat GBV. Mandating

the UNSC resolutions with regard to women’s human rights is a significant stride that member states should not overlook. Rather, they should embrace these resolutions and build upon them. Doing so emphasizes the importance of women’s rights and gives countries an opportunity to meet internationally recognized standards—and, crucially, it lessens the load on governments currently grappling with the global pandemic and other regional crises and conflicts. Actions that stem from the UNSC resolutions will assist states in including the prevention of VAW in their COVID-19 national response plans and encourage a global coalition to enact sweeping, robust change.

The way forward on eliminating VAW has become clearer thanks to the work of UN Human Rights Treaty Bodies as well. Implementation of these measures is an ongoing process, not a onetime action. It calls for the incremental and progressive realization of human rights in their entirety. Solutions to complex and multifaceted challenges such as GBV take time to enact and go beyond merely passing laws. Success lies in building awareness and enforcing laws, data collection, capacity-building, resource allocation, cooperation with civil society, and monitoring and evaluation of mandates.

FEMALE GENITAL MUTILATION IN EGYPT: CASE STUDY IN BEHAVIORAL CHANGE

Various myths and superstitions have long put forth the idea that FGM makes a girl eligible for marriage, controls her sexual desire, and prevents adultery. Commonly called tahara, which means purification, FGM is falsely associated with good hygiene, cleanliness, and chastity. This context shows the complexity of trying to reverse such a custom. Yet in the



Photo credit: A group of girls attend reading class in Shalateen, Egypt: Tools12, Shutterstock, March 2017

span of five years, I am honored to have led a societal movement to combat FGM. We have succeeded in turning what was a socially accepted habit into a crime punishable by law. An important source of activism came from a grassroots movement that refused the practice and was determined to uproot it, with the media acting as a strategic ally.

Through a rights-based approach, we made it clear that FGM is a violation of females' rights. This was not an easy task in a conservative society riddled with prejudice. To say the least, human rights, let alone women's rights, has been perceived as a foreign agenda. Due to the complexity and sensitivity of this issue in particular, we opted to partner with key stakeholders to pursue a comprehensive strategy of social marketing to encourage social change. To combat FGM, we surveyed the political, economic, cultural, and environmental value systems in Egypt. Through qualitative and quantitative research on the then-prevailing perception of the practice, we

developed messaging that would resonate with our target audience and allow us to achieve long-term behavioral changes.

Our key strategies to combat FGM—and GBV more broadly—focused on the following interventions and tactics:

1. Lump three forms of GBV together: deprivation of education, child marriage, and FGM. Raising girls' education to the top of the agenda was less provocative than addressing FGM in isolation.
2. Create a public consensus against GBV, including FGM and child marriage, by building momentum on the ground and creating a coalition of stakeholders, including the media, civil society, medical practitioners, line ministries, religious leaders, and educational institutions.

3. Enhance the voices of grassroots activists to feature their resentment of FGM and highlight the pledge formulated by village communities to end the practice. Grassroots groups and local communities spoke out according to their own will, declaring publicly their stance against GBV. Villages also created their own manifestoes by signing public declarations against FGM. These declarations provoked the sentiments of surrounding communities, pressuring them to make commitments that uphold the rights of young girls as well. These brave actions on the part of local communities made our quest for a legal framework banning FGM more doable.

4. Design a program through extensive participation on the part of all stakeholders, in order to build on the previous experiences of others and respond effectively to the ongoing debates and myths.

5. Create an environment conducive to change, thus empowering families with girls at risk. The voices afraid of change eventually faded out as more people crept out of the shadows to demonstrate their desire for change.

6. Support the emergence of a youth movement that endorses young people as agents of change. The youth were informed, innovative, and developed advocacy tools that proved to have an effective impact on their peers.

7. Establish a comprehensive media strategy that consisted of informative media campaigns to educate the public. We invested in creating a public dialogue against FGM through all forms of media, including TV, radio, drama, and the internet. The impact of the media can be assessed by looking at the success of the child helpline, where thousands of calls were received requesting additional information and counseling. The helpline provided a tool for monitoring, which guided the entire process.

8. Promoting rights based liberal religious discourse that denounces GBV was also an integral component of our media strategy. The fatwa, or religious edict of the Grand Mufti, and statements by the Coptic Orthodox Church have opened the door for religious leaders to tackle FGM from a human rights perspective. Today, with such clear-cut religious positions against the practice, very few people can say, "We do FGM for God."

9. Incorporate an anti-FGM module within the context of education curricula promoting the rights of female children.

10. Introduce legislation that criminalizes FGM, which became less provocative as the other pillars of our strategy proved successful.

Our campaign lasted for five years, during which a space was created for a wide range of stakeholders. Advocacy around women's rights culminated in June 2008 with the adoption of Egypt's most comprehensive and visionary human rights legislation ever (Law 126/2008). It ensured, at a minimum, the rights that are guaranteed by international treaties Egypt previously ratified. We also raised the minimum age of marriage for girls from 16 to 18, equal to that of boys, and criminalized FGM with fines and the possibility of imprisonment. Women gained the right to pass their nationality to their children, and single mothers were granted the ability to register their children born out of wedlock and were also awarded educational custody of those children. These are all great successes that exceeded our initial hopes. Enlightened men, women, and the media all became integral components of these achievements, developing a sense of ownership and pride.

THE CHALLENGE REMAINS

Despite the enormous strides made in raising awareness and criminalizing FGM, few cases were brought to the courts and to date not one single court ruling was implemented. As the sentence by Shubra Criminal Court is made in absentia, the judge must impose the maximum penalty provided by the law. It remains to be seen whether it will be enforced or it will be business as usual. Sadly the national hype against the practice faded, after it reached its climax in December 2010 with a declaration by Benban village in Aswan against FGM. The penalty for FGM was harshened two times and has become a hard crime handled by the higher criminal court. This can be a double-edged sword, because the severity of the sentence may discourage the judge from imposing it, and it might prove to be a recipe for killing the law. To me, the pressing challenge is to restore national and local awareness against FGM through the revival of village declarations and activism. This should be complemented by a solid witness protection program, as well as social and psychological counseling for the victims.

“The establishment of human rights councils and universal periodic reviews have made women’s rights more visible.”

Since the outbreak of the COVID-19 pandemic, emerging data and reports from those on the front lines indicate that GBV has intensified, in an alarming upsurge. It was labeled by UN Women as a shadow pandemic. MENA is no exception, yet scarce data on the impact of lockdowns on women in remains a challenge. Domestic violence happens

in the home, perpetrated by someone the victim knows intimately.

Preexisting challenges, such as regional conflicts and insecurity, also provide a fertile ground for GBV. MENA is plagued by occurrences of armed conflict in Syria, Iraq, Libya, and Yemen. The number of refugees and internally displaced persons now reaches into the millions as people are forced to flee the violence. The Israeli occupation of Arab territories has also taken a toll on the region, giving credence to violent extremism and terrorism. FGM, child marriage, rape, domestic violence, cyberbullying, sexual harassment, and human trafficking occur at greater levels during times of conflict and are largely unreported, due to the victims’ fear of stigmatization and retaliation, inadequate reporting mechanisms, and poor access to the justice system.

To their credit, MENA countries have a decent track record in terms of the ratification of human rights instruments and reporting to Human Rights Treaty Bodies. Moreover, the establishment of human rights councils and universal periodic reviews have made women’s rights more visible. Reservations about human rights conventions, however, remains a barrier. Several MENA countries have expressed concerns on the ground that their national laws, traditions, religion, or culture are not congruent with the positions set forth by Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), although their national constitutions or laws do prohibit discrimination. This exposes an inherent conflict between the provisions of certain states’ constitutions and their leaders’ reservations about the CEDAW. This has led some to believe that there is unresolvable tension between law and religion.

CEDAW has urged most MENA countries to review

and withdraw their reservations to Articles 2 and 16, which are incompatible with the object and purpose of CEDAW. Such reservations are of a general or sweeping nature that may water down the commitment of these states to the entire CEDAW.

“For the first time, the president of Egypt is an advocate of women’s rights.”

CONCLUSION

Against all odds, women of the MENA region (of whom I am one) are fighters. They have elbowed their way into a place at the decision-making table, and their voices can now be heard louder than ever. The so-called Arab Spring of 2011 was a turning point for women in the region. The women of Tunisia asserted their position as a solid political and cultural power to be reckoned with, and the country now has the first female prime minister in the region. After a rocky start, Egyptian women emerged stronger and louder—and thanks to their perseverance, the political will to uphold women’s rights in Egypt is much stronger. For the first time, the president of Egypt is an advocate of women’s rights. The National Council for Women is stronger than ever in terms of its mandate and its human and financial resources. The last bastions of discrimination in the judiciary have crumbled and women have joined the administrative courts (State Council) and the public prosecutorial bodies.

The fortune of Saudi women is unparalleled. The speed of modernization makes it hard to believe that only a few years ago women in that country weren’t afforded the most basic of rights. Just a few years ago, women in Saudi Arabia didn’t have right to

drive, and today a woman the Saudi ambassador to the United States. The rights of Persian Gulf women in the United Arab Emirates and Bahrain continues to advance at a rapid pace. Even embattled Libya has a female minister of foreign affairs, a smart move that will expedite post-conflict peace-building. MENA women’s list of achievements continues to grow.

However, MENA women’s achievements are still mostly in the public sphere, as they continue to battle to eradicate GBV in the private sphere. Egyptian women are gearing up for a heated battle over a new family law that stands to finally offer women an equal right to divorce. This law, if passed, will see Egyptian women breathe a collective sigh of relief and reinvigorate awareness of GBV. Success in this area is crucial to reversing the damage done by COVID-19 lockdowns, during which more girls than usual were mutilated, trafficked, or faced interruptions to their education. The ramifications of COVID-19 do not stop there: With resources drying up, women will continue to be the first to lose their jobs. And pressure on health care systems will continue to result in unwanted pregnancies, as well as more rape, marital or otherwise. All of this is against a background of renewed energy in the fight to eradicate FGM.

Post-COVID-19 national response plans provide an opportunity for women to build back better. MENA women need to unite and to leverage the fact that they have become a force to be reckoned with, knowing that there is no turning back and that the only way is forward.

NOTES

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Woodrow Wilson International Center for Scholars
One Woodrow Wilson Plaza
1300 Pennsylvania Avenue NW
Washington, DC 20004-3027

 www.wilsoncenter.org / gbv.wilsoncenter.org

 wwics@wilsoncenter.org

 facebook.com/woodrowwilsoncenter

 [@thewilsoncenter](https://twitter.com/thewilsoncenter)

 202.691.4000