

MESA Boston 2016 - Five hundred Mob-Sexual Assaults and one FGM case: Whose laws rule Women's rights in Egypt?

This presentation briefly exposes the challenges that Human Rights and Feminist activists endure when litigating cases that fall under the realm of Women's Rights. This is a domain historically very politicised and a field of contestation between independent activists and state feminists.

The FGM law is supposed to be a corrective/ deterrent law to eliminate a so-called cultural norm. However the practice of the law has shown that fundamental values embedded in the tradition of FGM are not challenged by the legal system because there is no political will to do so. Using the coin of authenticity evoked by the customary law, the judge enabled reconciliation outside the formal legal system to free the Doctor and the Father committing the crime.

On the other hand, the first and only case of mob-sexual assault brought to trial dealt with a Sexual Harassment Law that failed to recognize the nature of the crime. The new law only contemplates behavioural, phone and online sexual harassment. Consequently charges of torture and attempted murder were used to condemn assailants to life sentences and send an exemplary message to the rest of the nation.

Using ethnography from the FGM case and against the context of the mob-sexual assault's trial, I delve into the dynamics that State Institutions and law enforcement officers trigger during litigation, dynamics that result in:

- a) Rearticulating patriarchal norms
- b) Realigning with the political agenda.

LET'S INTRODUCE FIRST THE SCOPE OF THE CASES-

In June 2013, the death of Sohair al-Bata'a reached the news. The doctor who carried out the procedure and Sohair's father were the first people in Egypt to be

prosecuted under FGM charges. However, despite receiving a prison sentence of two years for manslaughter and three months for FGM charges (the minimum sentence), the doctor was not in fact immediately imprisoned and kept operating in the area even after his conviction. The manslaughter sentence was cancelled following a reconciliation agreement reached with the girl's family, therefore he only had to serve a 3-month sentence for FGM.

In June 2014, just before handing power to Abdel Fatah El-Sisi, interim President Adly Mansour issued Decree No. 50 to combat crimes of sexual harassment. A few days later, during the street celebrations that took place after El-Sisi was proclaimed President, several mob sexual attacks were documented. Taking this as an offense directly to himself, the new elected President visited the survivor in the hospital,

"Our honour is being assaulted in the streets. This is unacceptable and we can't allow one more incident like this to happen." We can hear him saying to the survivor in front of the cameras and bringing attention to the entire nation.

Seven assailants were rapidly tried under the new law, and charged also with torture and attempted murder they were condemned to life sentence. Independent organizations welcomed the step, however, responded that the: *First Verdict in Cases of Mob-Sexual Assault and Gang Rape in Tahrir Square Is No End to the Story*. The remaining 500 cases documented since 2012 are still awaiting justice (Nazra 2014).

Having in mind the current context of blatant human rights violations and repressive measures deployed by the State, important points are that:

- 1- The legal system is flexible and unclear enough to allow accommodating legal practices that permit that foundations of discriminatory gender practices remain untouched
- 2- This happens within the scope of the law.
- 3- But is often unconstitutional

4- And violates principles of international treaties that the GoE has ratified.

Some details from the FGM Trial will better explain this argument:

The FGM case had two phases according to the two trials that took place. In the first court case, under faulty killing charges, doctor and father were acquitted upon agreement of reconciliation. The matter was closed at the village level upon an agreement on a monetary transaction.

Law enforcement officers at the local level were aware that the father had changed his testimony to delete the FGM account that was first reported in the police station the day of Sohair's death. Still they agreed to conduct the case through the customary law despite violating fundamental rights of the child; something that they are aware of as part of the Child Protection committee in the ground deployed by the same amendment of the child law that bans FGM.

The involvement of a small local human rights organization, in coordination with a national independent human rights' organization and international organization, plus international media, kept the subject alive. This team of NGOs managed to put forward an appeal.

In parallel, the National Anti-FGM programme, run under the umbrella of the National Population Council (NPC) – a state institution-, and funded by the United Nations Development Programme was lagging behind in its task of defending Sohair's rights. Despite being the state entity supposed to have the technical expertise, the team of NGOs was always taking the initiative in the legislative process.

From their side, the NPC explained to me that the case was closed but that it was reopened when they managed to involve the office of the General Prosecutor, who at the time was the controversial figure of Hisham Barakat (who was later on assassinated). The NPC invited the spoke person of Barakat's office to an international conference on FGM. There the Egyptian prosecutor was ashamed of

getting the news of this vast ‘African’ problem where Egypt was heading the list ahead of Sudan.

He asked: *what can I do?*

And the NPC said: *‘There is an important case and it is almost shut down, can you help to re-open it? [...]*

And the NPC officer continues: *‘then, he did something unofficial, he sent me the forensic report and told me “look by this forensic report the case will be shut down, if NPC can critique the report, maybe we can open it again”, so we [ALTHOUGH THIS WAS MAINLY THE NGO TEAM]* prepared a good report to critique the forensic report and a higher forensic committee was formed to revise the case’

Efforts in vain, the second trial convicted the Doctor for FGM, but for the minimum sentence of three months, while the report conveyed by the second forensic committee announced that the cause of the death was the doctor’s malpractice. Thus, again opening the case for reconciliation.

Moreover, the Doctor was released before the sentence was announced so he could close the reconciliation deal and the authorities never went to pick him up again to fill his three month sentences (actually the NGO team with journalists had to renew their calls for justice for that to happen almost a year later)

Two points are important here.

- A) The second trial did charge the doctor for FGM but as a minimum sentence. The main result was that the amount negotiated to compensate the family augmented.
- B) The rationale of the two trials was the same: this is that a crime performed on a minor was treated by the private law logic.

The NPC, as the entity concerned with the safeguarding of the rights of FGM victims and survivors, could have requested a third appeal to the constitutional court that would have had to convene to address uniquely the question of reconciliation.

This is to ask: is dealing with this case through reconciliation a violation of the fundamental rights of the child embedded in the Egyptian Constitution? The answer is obvious. And the political will of the NPC did not go that far. The case was closed after the second trial. It was step in the right direction, but was it the full the story?

USING THE COIND OF CUSTOMARY LAW- vs THE CHILD PROTECTION LAW HAS POLITICAL CONSEQUENCES

Sohair's mother told to the first local journalists covering the case: *'I do not want anything but the rights of my daughter'*

The amendment of the child law passed in 2008 that bans FGM also contemplates a child protection committee. This child protection committee is entitled to protect the rights of every child. However, the law enforcement officers in charge of it are the same that conducted the first trial to be solved at the local level through reconciliation. The Uncle of Sohair handled the negotiations, the Doctor came supported by the Sheikhs of the community and the deal was closed. The National Population Council did not complain about it.

Customary law is considered to have strong affinities with religious law. While the legal system may be loaded with laws attributed to foreign impositions, the customary law is believed to better preserve *Shari'a* principles, which subsequently means that it can be a better guarantor of local identities.

The affinity between the practice and religion is thus established in the minds of the local community, regardless of claims by FGM researchers that it is a pre-Islamic tradition with no religious basis. The religious texts may be clear that FGM is not required by Sharia but the *practice* is controversial.

The same social norm that fosters the prevalence of the practice of female circumcision is also the norm that designates how disputes arisen from it are dealt with. As the community is also protecting the doctor and safeguarding the continuation of the practice, the invoking of God's will is enough to seal the deal and coerce the family to accept monetary compensation, thus accepting reconciliation as the procedure to abide to. Sohair's mother desires have little to do here, as she was ostracized from the case.

Local Human Rights organizations came to break this balance, but again the Legal system managed to realign within the same principles in the second trial.

Note that these same Human Rights organization have for long time denounced the political game played by the state when using reconciliation, mainly in cases of sectarian violence. These is for three reasons:

- 1- It does not always offer equal and effective representation to all sides of the conflict;
- 2- It does not guarantee that participants will not be coerced to accept the outcomes;
- 3- And its outcomes often violate the Constitution

There are other very interesting points to rise with regard to Sohair's mother involvement in the case, that I will leave for later if we have time

Linking FGM to the Customary Law also has another political consequence.

The practice of FGM is clearly used to fuel the narrative of the rural areas as un-modern, stagnant people whose 'traditions' keep the country in the darkness. A very similar narrative already used by the British administration in its time. The monetization of the death of Sohair further fuels this narrative. This is an example of a very old story of concern over 'barbaric traditions' discriminating against women and violating their rights, that underpins the idea of the need to be rescued therefore justifying an intervention or in this precise case making them responsible

for their marginalisation from the 'modern' society. In this regard, FGM is then, a class marker and generator that assigns different (mis)enjoyment of rights.

The reality, however, is that rural areas, and particularly those in Upper Egypt, are highly underserved by government services, so the state often finds it handy to fuel the narrative that local people, through their cultural practices, are responsible for their own difficult situation. Culture and backward practices are the responsible to prevent them from enjoying the fruits of modernization. Whether or not local villagers want to take the leap into the enjoyment of modern lifestyles, the reality is that there is no state structure to enable them to do so.

TO CONCLUDE -

The sentences revealed that dealing with women related crimes is always dealt with through the logic of the private law.

On one hand, the FGM case was solved with the minimum sentence and left the door open to be fixed by reconciliation, thus remaining in the realm of the private law despite being a crime committed on a minor. State officials did not push to take the case to the constitutional court. This would have implied reconsidering if a death case that also includes FGM charges could be trial by reconciliation or if on the contrary this is unconstitutional, thus becoming a State matter out of the rule of the private law.

Appealing to customary law was essential to both: opening the door for reconciliation and arguing that FGM has still too much support so bringing a cultural norm into a further appeal that would have complicated the matter for the State authorities.

On the other hand, the Sexual Harassment trial had become a state's matter because it happened during President Sisi's celebration taking office. Thus, torture and attempted murder charges built on the sentence. Sexual Harassment law

contemplates the maximum of 5 years prison, but the assailants got live sentence. And the remaining 500 cases got no justice at all.

AbdElhameed and Zaki Ahmad (2014) had argued that Sexual violence in the public space could be explained by the idea of the expansion of the domestication of women's rights logic -that for so long has prevailed in Egypt- into the street. This idea is very well reflected in President Sisi's quote in his visit to the survivor in the Hospital: 'our honour is being assaulted in the streets' and I highlight here the possessive article 'our'.

The relevant question would be why adding similar charges to the Doctor that killed Sohair is simply unthinkable for the judicial legal system, despite being FGM one of the worst forms of gender based violence performed on minors and vastly covered by the international treaties, like CEDAW and ICRC, which GoE is signatory.

This is to say, that matters pertaining women's bodies happening in the street have been dealt with as if they were part of the private law, meaning that the State is perceived and treated as the male householder.

Thus, both cases used different mechanisms to remain within the scope of the private law.

Both have used corrective measures applied by the legal system to maintain the realm of the domestication in favour of rearticulating the protection paradigms behind the patriarchal and authoritarian system that govern Egyptians citizens nowadays. This is labelled as to maintain male's honour.

Sadly in the process, blatant human rights violations, theoretically embedded in the Egyptian constitution are ignored and survivors and victims like Sohair have little chances to find justice.

Independent human rights and feminists activists said

“There [is] need to be clearer classification of crimes related to FGM [...] because then there would be no room for reconciliation. There is a lack of political will. The clear fact that there was no single report coming from the state itself shows the state doesn’t fulfil its role to protect the women right to health and life.”

FINALLY, WHAT DOES THIS MEAN FOR ACTIVISTS IN THE BATTLEFIELD?

Clearly, the FGM trial shows that without the perseverance of Human Rights NGOs, the case would have been closed in the first trial. The domestic battle of FGM is a highly controversial question for independent feminists and human rights activists, that while fiercely opposing the FGM practice, and proactively working with communities to change social norms, they also understand that the State, operating in the framework of international development projects, manage to tailor success stories with a double face: while the FGM trial was applauded by the international community, people on the ground were aware that fundamental pillars of gender inequalities have been left untouched.

The judicial system in Egypt had long been accused of severe corruption and political alignment with the regimes governing the country. Mass sentences, enforced disappearances that later on resurface in prisons, crack down on Islamists and human rights NGOs or the assassination of our colleague, Giulio Regeni are few of the many examples of the complicity of the legal system with Sisi’s use of violence to implement his ‘reforms’.

Legal reforms in the framework of women’s rights are not exempted of this politisation and as such they play a role into maintaining the narratives and the social norms that underpin the regime.