

# **Egypt: Sexual Violence Against Women**

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# Egypt: Sexual Violence Against Women

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**SUMMARY** Violence against women has been a significant social and legal problem in Egypt for decades. The two main legislative instruments protecting women from sexual violence are the Egyptian Constitution of 2014 and the Criminal Code of 1937 and its amendments. The Egyptian Constitution of 2014 not only preserved the rights granted to women by previous Egyptian Constitutions but also introduced more rights aimed at protecting women from other forms of violence and discrimination.

The Egyptian Criminal Code divides crimes of violence against women into misdemeanors and felonies. Misdemeanors include sexual harassment. Felonies are comprised of female genital mutilation, rape, kidnapping a female, and sexual assault. Over the past twenty years, provisions of the Egyptian Criminal Code have been modified to enhance existing punishments against sexual violence and criminalize acts against women that were not previously considered crimes.

The Criminal Chamber of the Court of Cassation has laid out in several decisions the requirements for convicting perpetrators of sexual violence against women. The Egyptian Criminal Code also lists aggravating circumstances that affect such convictions.

The Code of Criminal Procedure of 1950 and its amendments regulate the trial proceedings for felonies and misdemeanors related to sexual offenses against women. They also govern the role of the public prosecution, law enforcement agencies, and medical examiners during the process of investigating sexual misdemeanors and felonies. Under the Code, the main functions of the public prosecution are receiving and investigating the victim's complaints, referring the case to the competent court in the form of an indictment, and appealing the court decision if it is not satisfactory. The duties of law enforcement officials are comprised of investigating crimes, collaborating with the public prosecution, carrying out arrests and searches, gathering evidence, conducting surveillance, and enforcing final judgments. Finally, the medical examiner's main role is to provide law enforcement officials, the public prosecution, and the magistrate judge with an adequate medical opinion during the investigative process. Medical experts may also assist the court during trial proceedings.

Various ideas have been put forward for enhancing the Egyptian legal system to protect victims' rights and more effectively combat violent sexual crimes against women. These include (1) the amendment of the Criminal Code to remove provisions that discriminate against women; (2) the addition of new provisions to both the Criminal Code and Code of Criminal Procedure focusing on victims' right to privacy and appropriate access to benefits offered by the ministries of justice, health and interior; and (3) measures to improve the criminal justice system in general.

## I. Background

Violence against women has increasingly been recognized as a significant social and legal problem in Egypt. This problem was not addressed extensively in the past; however, over the past two decades, media outlets and women's rights activists have sought to educate Egyptian society about the common forms of violence against women. Domestic and international NGOs have also issued reports on the scope of the problem and methods to overcome it.

There appear to be no official statistics for crimes of sexual violence against women because the victims of such violence refrain from reporting it out of fear of retaliation or shame. However, a 2013 United Nations report, *Study on Ways and Methods to Eliminate Sexual Harassment in Egypt*, claims that the spread of sexual harassment (physical and verbal) in Egypt has reached unprecedented levels. Of female respondents to the study, 99.3% replied that they had been subjected to some form of sexual harassment.<sup>1</sup> Likewise, Egyptian women continue to be subject to female genital mutilation (FGM) at extremely high rates. According to a joint demographic health survey conducted in October 2015 by the United States Agency for International Development (USAID), the United Nations International Children's Emergency Fund (UNICEF), a domestic nongovernmental organization (NGO), and the Egyptian Ministry of Health, approximately nine in ten women aged fifteen to forty-nine are victims of the crime of FGM in Egypt.<sup>2</sup>

The Egyptian legal system is bound by international law principles, including those pertaining to women's rights. The Arab Republic of Egypt ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on September 18, 1981.<sup>3</sup> Egypt also recognizes the UN Declaration on the Elimination of Violence Against Women of 1993. Accordingly, the Egyptian Criminal Code criminalizes some of the forms of violence cited in article 2 of the 1993 Declaration, such as sexual assault, rape, FGM, sexual harassment, and the trafficking of women.<sup>4</sup>

The criminalization of violence against women under the Egyptian Criminal Code is not only based on Western international law standards, but is also influenced by Islamic law principles,

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<sup>1</sup> BOUTHIANA EL DEEB, UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN (U.N. WOMEN), *STUDY ON WAYS AND METHODS TO ELIMINATE SEXUAL HARASSMENT IN EGYPT 6* (May 23, 2013), available at [http://www.dgvn.de/fileadmin/user\\_upload/DOKUMENTE/English\\_Documents/Sexual-Harassment-Study-Egypt-Final-EN.pdf](http://www.dgvn.de/fileadmin/user_upload/DOKUMENTE/English_Documents/Sexual-Harassment-Study-Egypt-Final-EN.pdf), archived at <https://perma.cc/K4CG-RHQT>.

<sup>2</sup> MINISTRY OF HEALTH AND POPULATION ET AL., *EGYPT: HEALTH ISSUES SURVEY 2015* at 103 (Oct. 2015), available at <http://dhsprogram.com/pubs/pdf/FR313/FR313.pdf>, archived at <https://perma.cc/GMF3-2S7R>.

<sup>3</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, <https://treaties.un.org/doc/Publication/UNTS/Volume%201249/v1249.pdf>, archived at <https://perma.cc/W2DW-ATPW>; *Convention on the Elimination of All Forms of Discrimination Against Women: Status as at Aug. 1, 2016*, UNITED NATIONS TREATY COLLECTION, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-8.en.pdf>, archived at <https://perma.cc/V2DW-4AVC>.

<sup>4</sup> Declaration on the Elimination of Violence Against Women, G.A. Res. 48/04, U.N. Doc. A/RES/48/104 (Dec. 20, 1993), <http://www.un.org/documents/ga/res/48/a48r104.htm>, archived at <https://perma.cc/ETB2-8SMP>.

because the Egyptian Constitution of 2014 establishes Islam as the main source of Egyptian legislation.<sup>5</sup>

Over the past five years, a number of infamous incidents of sexual violence against women that occurred in Cairo, Egypt, have led to the enhancement of punishments related to the crimes of sexual harassment, rape, and sexual assault. For example, in February 2011, Lara Logan, a South African television reporter for the US media network CBS, was sexually assaulted by a mob of more than forty men, and in November 2011, Caroline Sinz, a reporter for the French television channel France 3 was likewise sexually assaulted in the streets. In June 2012, women protesters in a demonstration calling for an end to sexual harassment and assault were themselves subjected to physical sexual harassment by a mob of men. In January 2013, NGOs received reports of nineteen cases of sexual assault and rape that occurred during demonstrations commemorating the overthrow of former President Hosni Mubarak. From June 28 through July 2, 2013, during protests leading to the removal of President Mohamed Morsi, 101 cases of sexual assault were documented by women's rights NGOs.<sup>6</sup> Finally, in June 2014, during a public celebration in downtown Cairo on the inauguration day of President Abdel Fattah El Sisi, a bystander captured an incident of sexual assault on his mobile phone, which showed a woman marked by welts from being aggressively stripped, pushed, pulled, and groped by a mob of men.<sup>7</sup>

## II. Research Methodology and Content

Information collected for this report was derived from the Egyptian Constitution, Criminal Code, and Code of Criminal Procedure, and decisions issued by the Egyptian Court of Cassation. This report discusses (1) the development of the current legal framework for addressing sexual violence; (2) existing definitions of crimes of violence against women under the Criminal Code; (3) the legal requirements for a criminal conviction and the aggravating circumstances that must be considered; and (4) the actors involved in the process of investigating, prosecuting, and adjudicating crimes, including crimes of sexual violence. It also outlines ideas suggested by activists and women's rights groups for improving current laws and the justice system, in order to address legal and procedural hurdles impeding the successful prosecution of violent sexual crimes.

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<sup>5</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, Jan. 2014, art. 2, unofficial English translation available on the State Information Service website, at <http://www.sis.gov.eg/Newvvr/Dustor-en001.pdf>, archived at <https://perma.cc/DC9A-LKYE>.

<sup>6</sup> FIDH ET AL., EGYPT: KEEPING WOMEN OUT – SEXUAL VIOLENCE AGAINST WOMEN IN THE PUBLIC SPHERE 13 (2014), available at [https://www.fidh.org/IMG/pdf/egypt\\_women\\_final\\_english.pdf](https://www.fidh.org/IMG/pdf/egypt_women_final_english.pdf), archived at <https://perma.cc/D9MM-6ZCP>.

<sup>7</sup> *Egypt Still Has a Sexual Assault Problem*, AL JAZEERA (July 17, 2014), <http://america.aljazeera.com/articles/2014/7/17/egypt-still-has-asexualassaultproblem.html>, archived at <https://perma.cc/N6WF-VMAW>; Nadine Marroushi, *Nine Defendants Given 20 Years to Life in Prison for Tahrir Mob Sexual Assaults*, MADA MASR (July 16, 2014), <http://www.madamasr.com/news/nine-defendants-given-20-years-life-prison-tahrir-mob-sexual-assaults>, archived at <https://perma.cc/2WTE-T9W5>.

### III. Development of a Legal Framework for Addressing Sexual Violence

Two main legislative instruments protect women from crimes of sexual violence in Egypt: the Egyptian Constitution of 2014 and the Criminal Code of 1937 and its amendments.

#### A. Egyptian Constitution of 2014

The current Egyptian Constitution, enacted in 2014, not only preserves the rights granted to women by previous Egyptian Constitutions,<sup>8</sup> but also introduces more rights aimed at protecting women from other forms of violence and discrimination. For instance, article 11 focuses on promoting gender equality, stating that “[t]he State shall ensure the achievement of equality between women and men in all civil, political, economic, social, and cultural rights in accordance with the provisions of this Constitution.” This article also obligates the state to protect women against all forms of violence.<sup>9</sup>

Article 11 introduces new concepts of protecting women that did not exist in previous Constitutions. It asserts the principle of “appropriate representation” of women in the House of Representatives and guarantees their right to hold senior government management positions and be appointed to judicial bodies and authorities “without discrimination.”<sup>10</sup> Furthermore, for the first time, article 180 of the 2014 Constitution requires that one quarter of the seats of the local councils be allocated for women, stating that,

[e]very local unit shall elect a local council by direct and secret ballot for a term of four years. A candidate shall be at least twenty-one (21) Gregorian years of age. The law shall regulate the other conditions for candidacy and procedures of election, provided that one quarter of the seats shall be allocated to youth under thirty five (35) years of age and one quarter shall be allocated for women.<sup>11</sup>

#### B. Criminal Code of 1937 and Its Amendments

Since the abolishment of the criminal law provision allowing rapists to marry their victims in 1999, provisions of the Egyptian Criminal Code criminalizing sexual offenses against women have been modified to enhance existing punishments and introduce new crimes against women.<sup>12</sup>

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<sup>8</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT of 1972, *as amended*, art. 62, unofficial English translation available on the constitutionnet.org website, at <http://www.constitutionnet.org/files/Egypt%20Constitution.pdf>, archived at <https://perma.cc/47LG-8R58>. Article 62 stipulates a minimum presentation of women in the Egyptian Parliament.

<sup>9</sup> CONSTITUTION art. 11, paras. 1, 3.

<sup>10</sup> *Id.* art 11, para. 2.

<sup>11</sup> *Id.* art. 180.

<sup>12</sup> Law No. 58 of 1937 (CRIMINAL CODE), *amended in 1952, as amended by Law No. 95 of 2003*, AL-JARIDAH AL-RASMIYAH [OFFICIAL GAZETTE], vol. 25, 19 June 2003, available at [http://www.mohamoon.com/montada/Default.aspx?action=Arabic\\_Law&ID=20](http://www.mohamoon.com/montada/Default.aspx?action=Arabic_Law&ID=20) (in Arabic), archived at <https://perma.cc/EWJ5-2FBX>, English translation available at <http://www1.umn.edu/humanrts/research/Egypt/criminal-code.pdf>, archived at <https://perma.cc/SG2T-XA8J>.

### *1. Sanctions Modifications*

Article 291 of the Criminal Code previously granted any individual who committed the offense of rape the option of marrying the victim in order to avoid the penalty imposed by the Code. This article faced opposition from women's rights groups and human-rights activists, who claimed that it encouraged individuals to commit rape. Accordingly, article 291 was repealed in 1999 by Presidential Decree No. 14 of 1999.<sup>13</sup>

In 2011, Presidential Decree Promulgating Law No. 11 of 2011 enhanced the penalties under the Criminal Code for multiple offenses against women, including sexual assault, rape, kidnapping, and public sexual harassment.<sup>14</sup> The penalty imposed under article 289 of the Code for kidnapping a woman was enhanced to "aggravated imprisonment" (imprisonment with hard labor) of not less than twenty years, and to life imprisonment or death if the offender committed sexual assault against the kidnaped female. Moreover, the penalty for rape under article 267 of the Code was increased from aggravated imprisonment to life imprisonment or death.

The latest sanctions modification occurred in June 2014, when Interim Egyptian President Adely Mansour approved Presidential Decree No. 50 of 2014, which modified articles 306(bis)(a) and 306(bis)(b) of the Criminal Code by creating enhanced penalties for the act of sexual harassment.<sup>15</sup> The amended version of article 306(bis)(a) provides that individuals who engage in any kind of sexually obscene behavior, whether by physical gestures or material transmitted by modern means of communication, are punishable by imprisonment for not less than six months or a fine of 3,000 Egyptian pounds (EGP) (approximately US\$337). If the act of sexual harassment is repeated by the same individual, the punishment is imprisonment for one year and a fine of EGP5,000–10,000 (approximately US\$563–1,126). The amended version of article 306(bis)(b) states that if the harassment is done with the intent of receiving sexual gratification from the victim, the punishment is imprisonment for not less than one year and a fine of EGP10,000–20,000 (approximately US\$1,126–2,252). It further provides that any individual who uses duress to receive sexual gratification is punishable by imprisonment for between two and five years and a fine of EGP20,000–50,000 (approximately US\$2,252–5,630).

### *2. New Crimes*

With respect to introducing new crimes to the Criminal Code, the Child Protection Law, Law No. 126 of 2008, replaced the previously repealed article 291 of the Code;<sup>16</sup> the new provision criminalizes the trafficking and sexual, economic, and commercial exploitation of minors, subjecting to punishment

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<sup>13</sup> Presidential Decree Promulgating Law No. 14 of 1999, AL-JARIDAH AL-RASMIYAH, vol. 16, 22 Apr. 1999, p. 1 (in Arabic).

<sup>14</sup> Presidential Decree Promulgating Law No. 11 of 2011, AL-JARIDAH AL-RASMIYAH, vol. 11, 22 Mar. 2011, p. 3 (in Arabic).

<sup>15</sup> Presidential Decree No. 50 of 2014, AL-JARIDAH AL-RASMIYAH, vol. 23(bis), 5 May 2014, p. 63 (in Arabic).

<sup>16</sup> Law No. 126 of 2008, AL-JARIDAH AL-RASMIYAH, vol. 24 (Duplicate), 15 June 2008, p. 2 (in Arabic).

anyone who buys or sells a child, or offers a child for sale, or anyone who delivers or accepts or transfers a child as a slave, or exploits the child sexually or commercially, or exploits the child in forced labor, or other illegal purposes, even if the crime is committed transnationally.<sup>17</sup>

Offenders are punishable by forced labor for a period of not less than five years and a fine of EGP50,000–200,000 (approximately US\$5,630–22,523).<sup>18</sup>

The Child Protection Law also amended article 242(bis) of the Criminal Code to criminalize the act of FGM. Previously, a ministerial resolution issued in 2007 had prohibited doctors and nurses from practicing FGM procedures. However, the act of FGM itself was not criminalized by the Criminal Code until June 2008. The amendment provision made this act punishable by imprisonment for three months to two years, or by a fine of EGP1,000–5,000 (approximately US\$112–563).<sup>19</sup>

On August 31, 2016, the Egyptian People’s Assembly approved the enhancement of penalties under 242(bis). Under the amendment, individuals who perform FGM may be punished by a period of imprisonment between five and seven years. The article also punishes any individual who escorts a victim of this crime to the perpetrator with a penalty of imprisonment of between one and three years. Furthermore, the amendment provides that a person can be sentenced to up to fifteen years of imprisonment if the act of FGM leads to death of the victim.<sup>20</sup>

In 2010, the crime of trafficking for the purpose of sexual exploitation and forced labor was expanded by Law No. 64 of 2010 to cover all persons.<sup>21</sup> Article 2 of the Law prohibits both domestic and international trafficking of persons, defining a trafficker as “one who deals in any manner in a natural person, including: the sale, offer for sale, purchase, or promise thereof; or the use, transport, delivery, harboring, reception, or receipt, whether within the country or across its national borders.”<sup>22</sup> Article 5 of the Law imposes penalties of “[a]ggravated imprisonment and a fine of not less than 50,000 pounds and not to exceed 200,000 pounds or a fine equal to the value of the benefit gained, whichever is greater.”<sup>23</sup>

#### **IV. Existing Definitions of Crimes of Sexual Violence Against Women Under the Criminal Code**

The Egyptian Criminal Code has divided crimes of sexual violence against women into two categories: misdemeanors and felonies. Misdemeanors include sexual harassment, while felonies consist of FGM, rape, the kidnapping of a female, and sexual assault.

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<sup>17</sup> CRIMINAL CODE art. 291, *as amended by* Law No. 126 of 2008 (all translations of Arabic sources by author).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* art. 242(bis).

<sup>20</sup> Law No. 78 of 2016, AL-JARIDAH AL-RASMIYAH, vol.38 (Duplicate ) (E), 26 Sept. 2016, p. 6 (in Arabic)

<sup>21</sup> Law No. 64 of 2010, AL-JARIDAH AL-RASMIYAH, vol. 18 (Duplicate), 9 Sept. 2010, p. 5 (in Arabic).

<sup>22</sup> *Id.* art. 2.

<sup>23</sup> *Id.* art. 5.

## A. Misdemeanors

### 1. Sexual Harassment

According to article 306 of the Criminal Code, the offense of sexual harassment involves the harasser (the offender), the victim (female), and an inappropriate act against the victim's will. There are two types of sexual harassment: physical and verbal. Physical sexual harassment is an obscene act that is perpetrated by the offender on the body of the victim or on his own body. Verbal sexual harassment encompasses obscene gestures and words made in public.<sup>24</sup> Article 306 proscribing sexual harassment<sup>25</sup> aims at protecting the dignity of the victim from any obscene gestures in public that are deemed offensive. Legal scholars give examples of acts that are considered physical sexual harassment. According to Professor Adel Amer, anti-sexual harassment provisions apply to the following: (1) an attempt to kiss the victim against her will; (2) touching the victim; or (3) an attempt to take off the victim's clothes.<sup>26</sup>

## B. Felonies

### 1. Rape

Rape is defined by article 267 of the Criminal Code as having complete sexual intercourse with a female without her free consent.<sup>27</sup> The Criminal Chamber of the Egyptian Court of Cassation has also defined the crime of rape, declaring in Ruling No. 4113 of January 6, 1988, that complete sexual intercourse (full penetration) against the will of the victim is a key factor in determining whether or not the offense is rape or sexual assault.<sup>28</sup>

### 2. Kidnapping a Female

According to article 290 of the Criminal Code, the abduction of a female may be through force or deception. The article states that, "whoever personally, or through others, cunningly or forcibly kidnaps a female shall be punished with a period of aggravated imprisonment."<sup>29</sup>

### 3. Sexual Assault

In Ruling No. 289 of February 24, 1950, the Egyptian Court of Cassation defined the crime of sexual assault as an indecent act carried out on the victim's body without her consent that does

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<sup>24</sup> CRIMINAL CODE art. 306.

<sup>25</sup> The concept of sexual harassment as it is understood in Egypt is focused on an act that occurs in public places.

<sup>26</sup> Dr. Adel Amer, *The Concept of Sexual Harassment under Comparative Law*, AL-MESRYOON (June 19, 2014), <http://almesryoon.com/وجهة-نظر/500185-مفهوم-التحرش-الجنسي-في-التشريعات-المقارنة> (in Arabic), archived at <https://perma.cc/6K5K-G2WN>.

<sup>27</sup> CRIMINAL CODE art. 267, as amended by Law No. 11 of 2011.

<sup>28</sup> Petition No. 4113 of 1988, Hearing of 6 January 1988, Court of Cassation, Criminal Chamber, Technical Office, vol. 39, p. 79 (in Arabic).

<sup>29</sup> CRIMINAL CODE art. 290.

not amount to the offense of rape but is obscene and offensive to the victim. The court also stated that sexual assault may be combined with force in some cases, such as when the offender uses a weapon to commit the act of sexual assault.<sup>30</sup> Sexual assault is distinguished from sexual harassment under the Egyptian legal system by the fact that it is viewed as attempted rape; the offender does not need to leave marks on the victim's body to be charged with sexual assault.<sup>31</sup>

#### 4. FGM

Article 242(bis) of the Criminal Code defines the offense of FGM as a deliberate act causing injury to the female productive organ or a permanent deformity.<sup>32</sup> As noted above, prior to the criminalization of the act of FGM in 2008, Ministerial Resolution No. 271 of 2007 banned medical doctors and nurses from carrying out medical procedures for the purpose of cutting or modifying any part of the reproductive system of a female, whether the procedure takes place in government or private hospitals or clinics.<sup>33</sup> As previously mentioned, Law No. 78 of 2016 shall sanction individuals who commit FGM even if they are outside the medical profession with imprisonment.

### V. Requirements for Conviction and Aggravated Circumstances

Throughout its history, the Criminal Chamber of the Court of Cassation has discussed in its decisions the requirements for convicting perpetrators of sexual violence against women.<sup>34</sup> The Criminal Code also provides aggravating circumstances that affect such convictions.

#### A. Rape

##### 1. Requirements for Conviction

In Ruling No. 5946 of January 14, 1987, the Criminal Chamber of the Court of Cassation discussed two elements of proof required for a conviction on a charge of rape: the material element and the mental element. The material element consists of physical sexual intercourse, which is established, the Court explained, on proof of complete sexual intercourse between the offender and the female victim.<sup>35</sup> The Court stated that the mental element encompasses duress, coercion, and deception. In Ruling No. 5946, the Court held that the offenders had used both

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<sup>30</sup> Petition No. 289 of 1950, Hearing of 24 February 1950, Court of Cassation, Criminal Chamber, judicial year 20, in MOURAD'S CRIMINAL ENCYCLOPEDIA OF THE RULINGS OF THE EGYPTIAN CASSATION COURT CD-ROM (undated; in Arabic).

<sup>31</sup> Amer, *supra* note 26.

<sup>32</sup> *Id.* art. 242(bis), as amended by Law No. 126 of 2008.

<sup>33</sup> Ministerial Resolution No. 271 of 2007, AL-WAQA'A AL-RASMIYAH, vol. 158, 28 June 2007, p. 12 (in Arabic).

<sup>34</sup> Egypt is not a common law system and therefore the rulings of the criminal chamber of the court of cassation do not serve as binding precedent, although they do indicate what the approach/interpretation of the court could be in different cases.

<sup>35</sup> Petition No. 5946 of 1987, Hearing of 14 January 1987, Court of Cassation, Criminal Chamber, Technical Office, vol. 38 judicial year 38, p. 92 (in Arabic).

coercion and deception for the purpose of suppressing the victim's consent in order to have complete sexual intercourse with her.<sup>36</sup>

With respect to the deception aspect of the offense of rape, Professor Ahmad Fathi Sorour, a jurist and former Speaker of the Egyptian Parliament, has written that the court can convict the offender of rape when there is evidence that he took advantage of the victim's being asleep, drugged, drunk, or mentally incompetent to have complete sexual intercourse with her against her will.<sup>37</sup>

## 2. *Aggravating Circumstances*

The penalty for rape is death where certain aggravating circumstances are present. Under article 267 of the Criminal Code, such circumstances are deemed to be present when

- the perpetrator is related to the victim;
- the perpetrator is one of the victim's guardians and is responsible for her upbringing or care, or has authority over her;
- the perpetrator works as a domestic servant for the victim; or
- the rape is perpetrated by two or more persons.<sup>38</sup>

## **B. Kidnapping of a Female**

### 1. *Requirements for Conviction*

The Criminal Chamber of the Egyptian Court of Cassation ruled on October 4, 1998, that in order to secure a felony conviction for the abduction of a female, there must be evidence that the victim was forced or deceived into moving from one place to another without her consent.<sup>39</sup>

### 2. *Aggravating Circumstances*

Article 289 of the Criminal Code enhances the penalty when the abducted female is a minor. The provision states that "whoever, personally or through others, kidnaps without cunning or coercion a child who has not reached eighteen years of age, shall be punished by imprisonment for a period of ten to fifteen years. If the kidnapped minor is a female, the punishment shall be death."<sup>40</sup> The punishment for such crime used to be just aggravated imprisonment.

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<sup>36</sup> *Id.*

<sup>37</sup> AHMAD FATHI SOROUR, THE MEDIATOR IN THE CRIMINAL CODE 655–56 (Cairo, Dar al-Tebaha al-Haditha, 4th ed. 1991) (in Arabic).

<sup>38</sup> CRIMINAL CODE art. 267, para. 2, *as amended by* Law No. 11 of 2011.

<sup>39</sup> Petition No. 21138 of 1998, Hearing of 4 October 1998, Court of Cassation, Criminal Chamber, judicial year 66, *in* MOURAD'S CRIMINAL ENCYCLOPEDIA..

<sup>40</sup> CRIMINAL CODE art. 289.

Article 290 provides for life imprisonment when the abduction of a female aged eighteen years or older is carried out by cunning, force, or other means. The penalty is death when the abducted woman is forced to have sexual intercourse without her consent.<sup>41</sup>

In Ruling No. 23765 of January 17, 2000, the Court of Cassation upheld the death sentence issued by the Court of Appeal against an individual who was found guilty of the crime of rape in conjunction with the abduction of a female minor. According to the Court of Cassation, in this case, there was clear evidence that the offender had a deliberate intent to commit the crime of rape after kidnapping the minor. The Court also stated that the offender's deliberate intent, coupled with the age of the victim, created the aggravating circumstances supporting the enhanced penalty.<sup>42</sup>

### C. Sexual Assault

#### 1. Requirements for Conviction

In the case of sexual assault, in contrast with the crime of rape, the Criminal Chamber of the Court of Cassation stated in Ruling No. 289 of April 24, 1950, that there is no need to prove that the offender had complete sexual intercourse with the victim against the victim's will. The offender may commit the crime of sexual assault by physically touching the victim with a tool, his/her hands, or his/her reproductive organs against the victim's will.<sup>43</sup> The Court stipulated that in the crime of sexual assault, the gender of the offender and victim may be either male or female. Furthermore, the offense of sexual assault may occur in public, such as on public transportation or in the streets, or in private places, such as a residence or private doctor's clinic, the Court said.<sup>44</sup>

The offense of sexual assault may be combined with the use of force aimed at suppressing the victim's consent. In Ruling No. 4794 of February 14, 1985, the Court of Cassation stated that the crime of sexual assault includes the mental element of deliberate intent on the part of the perpetrator and the victim's lack of consent. This mental element must be combined with the material element, which is the physical act on the body of the victim. Despite the offender's deliberate intent to commit the crime of sexual assault, the sexual assault provision does not apply if there is no proof that the offender carried out a physical act on the victim's body, the Court said.<sup>45</sup>

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<sup>41</sup> CRIMINAL CODE art. 290; See also Petition No. 4113 of 1988, Hearing of 6 January 1988, para. 2.

<sup>42</sup> Petition No. 23765, Hearing of 17 January 2000, Court of Cassation, Criminal Chamber, judicial year 67, *in MOURAD'S CRIMINAL ENCYCLOPEDIA*.

<sup>43</sup> Petition No. 289, Hearing of 24 April 1950, Court of Cassation, Criminal Chamber, Technical Office, vol. 1, judicial year 2, p. 534 (in Arabic).

<sup>44</sup> *Id.*

<sup>45</sup> Petition No. 4794 of 1985, Hearing of 14 February 1985, Court of Cassation, Criminal Chamber, Technical Office, vol. 36, judicial year 54, p. 260 (in Arabic).

## 2. *Aggravating Circumstances*

Law No. 11 of 2011 strengthened the penalty for sexual assault under article 269 of the Criminal Code to aggravated imprisonment for three to fifteen years for an assault carried out by force against a child (male or female) who is younger than eighteen years of age. If the victim is younger than twelve years of age and the perpetrator is one of her relatives, one who has authority over her, or one of the servants in the victim's house, the penalty is aggravated imprisonment from seven to fifteen years.<sup>46</sup> The punishment of such offence used to be a temporary imprisonment with hard labor.

### **D. FGM**

#### 1. *Requirements for Conviction*

In Ruling No. 29348 of May 2, 1996, although there was no specific statutory offense at the time, the Criminal Chamber of the Court of Cassation determined that the act of FGM is a misdemeanor physical assault that leads to the physical injury of a person's body, with the material element for this crime being the "bloody injury" of the victim's body caused by the offender's physical assault. The Court also stated that the requisite mental element for the crime is the offender's intent to carry out an assault to cause a bloody injury to the victim. Such an injury may be caused by a cold weapon, including a knife or surgical blade.<sup>47</sup>

In 2012 the Egyptian Supreme Constitutional Court defined FGM as an infringement on the physical integrity of a human being, ruling that both article 242(bis) of the Criminal Code, which defines the offense of FGM, and Ministerial Resolution No. 271 of 2007, which prohibits all medical personnel from carrying out the procedure, are constitutional.<sup>48</sup>

#### 2. *Aggravating Circumstances*

The amendments to Article 242(bis) of the Criminal Code, enacted in August 2016, treat the crime of FGM as a felony, not a misdemeanor, if the act leads to the victim's death, and in such cases the perpetrator is subject to an aggravated period of imprisonment(imprisonment with hard labor) of up to fifteen years.

## **VI. Investigation and Prosecution of Sexual Offenses**

At this point in time, there are no special procedures related to sexual violence cases; such cases are processed under the same procedural rules applicable to other criminal cases.

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<sup>46</sup> CRIMINAL CODE art. 269, *as amended by* Law No. 11 of 2011.

<sup>47</sup> Petition No. 29348, Hearing of 2 May 1996, Court of Cassation, Criminal Chamber, Technical Office, vol. 47, judicial year 59, p. 565 (in Arabic).

<sup>48</sup> Petition No. 31677, Hearing of 3 February 2012, Supreme Constitutional Court, judicial year 61, *in* MOURAD'S CRIMINAL ENCYCLOPEDIA.

The Code of Criminal Procedure of 1950 and its amendments regulate the roles of the public prosecution, law enforcement agencies, and medical examiners during the process of investigating felonies and misdemeanors.<sup>49</sup> Article 23 of the Code defines “judicial officers” as members of the public prosecution and assisting entities; police officers, policemen, constables, and assistants; heads of police stations; and mayors, heads, and chief guards of villages.<sup>50</sup> Article 21 grants them the authority to investigate misdemeanors and felonies, and to look for perpetrators and gather evidence.<sup>51</sup>

## A. Role of Public Prosecution

### 1. Filing Complaints

The Code of Criminal Procedure grants the public prosecution jurisdiction over the investigation of felonies and misdemeanors. Article 1 of the Code states that “[t]he public prosecution shall have exclusive jurisdiction over filing and handling criminal cases. . . . No criminal case may be abandoned, suspended, or delayed except in circumstances provided by law.”<sup>52</sup> Other provisions relevant to the initiation of sexual offense prosecutions are as follows:

- Article 3 of the Code stipulates that a criminal case may be filed only on the grounds of a written or oral complaint made by the victim or his/her legal representative to the public prosecution or one of the aforementioned judicial officers. The Code imposes a statute of limitations on the reporting of misdemeanors and felonies.<sup>53</sup>
- According to article 4 of the Code, if there is more than one complaint based on the same crime, the public prosecution may combine all of them into one case. Moreover, if there is more than one accused and a complaint is made against one of them, such a complaint must be deemed by the public prosecution as being made against all of them.<sup>54</sup>
- Under article 5, the Code grants the guardian of a crime victim who is younger than fifteen years of age or is deemed mentally incompetent the legal right to submit a legal complaint on her behalf to the public prosecution.<sup>55</sup>
- According to article 25 of the Code, when an individual learns of the commission of a crime and orally reports the crime to the public prosecution or a judicial officer without filing a formal, written complaint or request for an investigation, the public prosecution is still authorized to file a legal action and investigate the case.<sup>56</sup>

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<sup>49</sup> Law No. 150 of 3 September 1950, CODE OF CRIMINAL PROCEDURE, available on the official website of the Ministry of Justice, at <http://laws.jp.gov.eg/home/altshryat/alqwanyn-aljnayyte> (in Arabic), archived at <https://perma.cc/KH3E-A7VW>.

<sup>50</sup> *Id.* art. 23.

<sup>51</sup> *Id.* art. 21.

<sup>52</sup> *Id.* art. 1.

<sup>53</sup> *Id.* art. 55.

<sup>54</sup> *Id.* art. 4.

<sup>55</sup> *Id.* art. 5.

<sup>56</sup> *Id.* art. 25.

## 2. Investigating Complaints

Law enforcement officials are required, under article 31 of the Code of Criminal Procedure, to go immediately to a crime scene to gather and preserve relevant physical evidence, record the statements of witnesses or those who may be able to verify information about the crime and the perpetrator, and notify the public prosecution, which must immediately send a prosecutor to the scene of the crime.<sup>57</sup> Article 64 provides members of the public prosecution with the right to request the appointment of an investigative magistrate judge or conduct the investigation directly.<sup>58</sup>

In connection with crimes punishable by a period of imprisonment exceeding three months, members of the public prosecution, while investigating the crime scene, have the power to order the arrest of a suspect present at the scene if there is sufficient evidence against him/her.<sup>59</sup> The prosecution also has the right to subpoena a person not present at the crime scene or issue a warrant for his/her arrest.<sup>60</sup>

After concluding the examination of the evidence and witness testimony in misdemeanor or felony cases, the public prosecution must order the dismissal of the case if there is insufficient evidence against the accused.<sup>61</sup> Public prosecution has the right to release the accused without bail at any time after the dismissal of the case.<sup>62</sup> If the public prosecution orders the dismissal of a case, the victim must be notified of the case's dismissal.<sup>63</sup> However, if members of the public prosecution find enough evidence against the suspect, they have the right to order the suspect to appear directly before the competent court.<sup>64</sup> The prosecution may order the suspect's detention for up to four days.<sup>65</sup> The prosecution may also extend the detention period of the accused.<sup>66</sup> Finally, the results of the investigation are classified and may not be disclosed by the prosecution.<sup>67</sup>

## 3. Referring Cases to Court

The Code of Criminal Procedure grants the public prosecution the power to refer misdemeanors and felonies to the competent court if there is sufficient evidence against the suspect. The public prosecution has the right to refer misdemeanor cases to a misdemeanor court, which may issue a

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<sup>57</sup> *Id.* art. 31.

<sup>58</sup> *Id.* art. 64.

<sup>59</sup> *Id.* art. 34.

<sup>60</sup> *Id.* art. 35.

<sup>61</sup> *Id.* art. 61.

<sup>62</sup> *Id.* art. 204.

<sup>63</sup> *Id.* art. 62.

<sup>64</sup> *Id.* art. 63.

<sup>65</sup> *Id.* art. 201.

<sup>66</sup> *Id.* art. 202.

<sup>67</sup> *Id.* art. 75.

judgment against the accused.<sup>68</sup> The attorney general or the prosecution also has the authority to refer felony cases to a criminal court in the form of an indictment report.<sup>69</sup>

#### *4. Appealing Court Decisions*

The public prosecution has the legal right to appeal judgments issued by misdemeanor courts (courts of first instance) to a court of appeal within thirty days from the date the judgment is issued.<sup>70</sup>

The public prosecution has the right to seek the repeal of a final judgment of a court of appeal in misdemeanor and felony cases before the Court of Cassation.<sup>71</sup>

### **B. Role of Law Enforcement Agencies**

#### *1. Investigating Crimes*

The Code of Criminal Procedure authorizes law enforcement personnel to investigate crimes under the supervision of the public prosecution.<sup>72</sup> As mentioned above, law enforcement officers accompany public prosecution teams to crime scenes to examine the evidence and question witnesses,<sup>73</sup> and the police at crime scenes are authorized to prohibit persons present from leaving or moving far from the scene until they are questioned.<sup>74</sup> Article 22 allows the public prosecutor to ask the police force to investigate any person who has committed acts in violation of the law.<sup>75</sup> Additionally, article 200 states that a public prosecutor who conducts an investigation in person may assign law enforcement officers to perform some tasks during the investigative stage of a crime.<sup>76</sup>

While the police are authorized to assist with investigations, their investigative findings are not necessarily deemed reliable. In Ruling No. 25951 of February 6, 2016, the Criminal Chamber of the Court of Cassation noted that a law enforcement agency may make mistakes while investigating a crime. For instance, law enforcement officials responsible for a case may reach incorrect conclusions or investigate the wrong suspect. Consequently, reports issued by

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<sup>68</sup> *Id.* art. 160.

<sup>69</sup> *Id.* art. 214.

<sup>70</sup> *Id.* arts. 402, 406.

<sup>71</sup> *Id.* arts. 442, 446.

<sup>72</sup> *Id.* art. 21.

<sup>73</sup> *Id.* art. 31.

<sup>74</sup> *Id.* art. 32.

<sup>75</sup> *Id.* art. 22.

<sup>76</sup> *Id.* art. 200.

members of law enforcement agencies after conducting an investigation are not deemed a credible source of evidence, the Court said.<sup>77</sup>

## 2. *Collaborating with the Public Prosecution*

In addition to assisting with investigations, members of law enforcement must accept reports and complaints regarding crimes and promptly send them to the public prosecution pursuant to article 24 of the Code of Criminal Procedure. All actions taken by police officers must be documented in signed reports, showing the time and place of the crime. The same article mandates that police reports must be signed by the witnesses and experts heard by the police, and be sent to the public prosecution.<sup>78</sup>

## 3. *Arrest, Search, and Seizure*

Law enforcement officials have the right, under article 35 of the Code of Criminal Procedure, to request the public prosecution to issue an arrest warrant for a person of interest.<sup>79</sup> The same article also states that law enforcement is responsible for enforcing subpoenas and arrest warrants. Article 40 prohibits arbitrary arrests, and provides that no person may be arrested or detained without a warrant from the public prosecution.<sup>80</sup>

Article 46 allows law enforcement officials to search a suspect after arresting him/her. If the suspect is a female, the search must be conducted by a female officer.<sup>81</sup> Article 91 also requires members of law enforcement to obtain a warrant from the public prosecution or investigating magistrate judge before entering and searching places of residence.<sup>82</sup> During the search, members of the police are permitted to seize documents, weapons, tools, and anything that could be used in the commission of the criminal act, whether a misdemeanor or a felony.<sup>83</sup>

## 4. *Conducting Surveillance*

Under article 95 of the Code of Criminal Procedure, law enforcement agencies may conduct surveillance of the correspondence and telecommunications of suspects. Such surveillance must be authorized by a warrant issued by the public prosecution or a judge. The police also have the right to conduct surveillance of a convict after his/her release.<sup>84</sup> Article 538 states that a

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<sup>77</sup> Petition No. 25951 of 2016, Hearing of 2 February 2016, Court of Cassation, Criminal Chamber, judicial year 85, in MOURAD'S CRIMINAL ENCYCLOPEDIA..

<sup>78</sup> CODE OF CRIMINAL PROCEDURE art. 24.

<sup>79</sup> *Id.* art. 35.

<sup>80</sup> *Id.* art. 40.

<sup>81</sup> *Id.* art. 46.

<sup>82</sup> *Id.* art. 91.

<sup>83</sup> *Id.* art. 55.

<sup>84</sup> *Id.* art. 95.

convicted individual may be under police surveillance after serving the original period of punishment.<sup>85</sup>

### 5. *Enforcing Final Judgments*

Under article 462 of the Code of Criminal Procedure, law enforcement personnel are responsible for enforcing criminal judgments in cooperation with the public prosecution. The article permits the use of force when necessary to enforce a final decision in a criminal case.<sup>86</sup> When a judgment entails an *in absentia* sentence of imprisonment for a period of one month or more, law enforcement personnel have the right to search for the accused and arrest and detain him/her until the court schedules a hearing or approves the objection to imprisonment submitted by the accused's defense attorney.<sup>87</sup>

## C. Role of Medical Examiners

### 1. *Assisting the Public Prosecution and Law Enforcement*

Judicial officers, including members of the public prosecution and law enforcement, have the right to seek the assistance of medical experts and ask their professional opinion in oral or written form during the investigation of a case.<sup>88</sup> Article 24 of the Code of Criminal Procedure authorizes expert witnesses, including medical experts, to give their testimony in an investigation report. As mentioned above, the report must be signed by the expert and sent to the public prosecution.<sup>89</sup>

Pursuant to article 75 of the Code, the results of a medical examination and all information provided by medical experts in an investigation report are considered classified and may not be disclosed by the experts.<sup>90</sup>

### 2. *Assisting the Magistrate Judge*

A magistrate judge appointed by the public prosecution is authorized to seek the expertise of a medical examiner, and the investigating magistrate judge must be present at the time the expert conducts the medical exam.<sup>91</sup> Before beginning his/her work, the medical expert must be sworn in before the magistrate judge investigating the case and promise to give a "conscientious opinion."

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<sup>85</sup> *Id.* art. 538.

<sup>86</sup> *Id.* art. 462.

<sup>87</sup> *Id.* art. 468.

<sup>88</sup> *Id.* art. 29.

<sup>89</sup> *Id.* art. 24.

<sup>90</sup> *Id.* art. 75.

<sup>91</sup> *Id.* art. 85.

Reports made by experts must be submitted in writing.<sup>92</sup> The magistrate judge has the authority to set a time frame for the medical expert to examine the case and write his/her report, and to replace the expert with another should he/she fail to submit the report on time.<sup>93</sup>

### *3. Assisting the Accused*

The Code of Criminal Procedure grants the accused the right to hire his/her own medical expert to inspect the documents and materials presented by the expert appointed by the magistrate judge.<sup>94</sup> In addition, the accused's defense lawyer has the right to reject the expert appointed by the magistrate judge if he/she can present justifiable reasons for the rejection.<sup>95</sup>

### *4. Assisting the Court*

In addition to assisting the public prosecution, members of law enforcement, and the magistrate judge during the investigation, medical experts may offer their assistance to the court during trial proceedings. The court may, on its own motion or at the request of the litigants, appoint such medical experts or subpoena them to attend a hearing to give testimony or clarify reports they have submitted, either during an investigation or before the court during trial proceedings.<sup>96</sup>

## **VII. Role of the Court**

### **A. Jurisdiction of the Court**

There are two types of courts under the Code of Criminal Procedure: misdemeanor courts, which have the authority to adjudicate crimes deemed misdemeanors under the Criminal Code,<sup>97</sup> and criminal courts (courts of appeal, criminal chambers), which rule on any act deemed a felony.<sup>98</sup> The jurisdiction of these courts is determined according to the location where the crime was committed, and where the accused resides or was arrested.<sup>99</sup> The statute of limitations is three years for misdemeanor cases and ten years for felonies.<sup>100</sup>

### **B. Trial Proceedings**

The Code of Criminal Procedure stipulates that, during trial proceedings, criminal courts and misdemeanor courts also have the right to hear civil compensation cases arising from the felony

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<sup>92</sup> *Id.* art. 86.

<sup>93</sup> *Id.* art. 87.

<sup>94</sup> *Id.* art. 88.

<sup>95</sup> *Id.* art. 89.

<sup>96</sup> *Id.* arts. 292–293.

<sup>97</sup> *Id.* art. 215.

<sup>98</sup> *Id.* art. 216.

<sup>99</sup> *Id.* art. 217.

<sup>100</sup> *Id.* art. 15.

or misdemeanor being adjudicated.<sup>101</sup> In some cases the judge might to be ineligible to hear the case—for example, a judge must recuse him/herself from a case if he/she was personally the victim of the crime or was involved in investigating the case.<sup>102</sup>

The Code sets forth the following requirements, to guarantee the fairness of the trial and judgment:

- All court hearings must be conducted in public.<sup>103</sup>
- The public prosecution must attend the criminal court hearing and the court must hear the allegation of the prosecution team.<sup>104</sup>
- The accused must be present at the hearing in both felony and misdemeanor cases.<sup>105</sup>
- The court must render its decision in a public hearing.<sup>106</sup>
- The judgment must include the reasons upon which it was drawn, the type of crime, and the punishment imposed on the accused.<sup>107</sup>
- A copy of the full judgment must be issued publicly within eight days from the date it is pronounced.<sup>108</sup>

During misdemeanor and felony trial proceedings, the judge is authorized to render judgment and select the penalty on the basis of his/her personal discretion.<sup>109</sup>

### **C. Appeal Process**

The accused and the public prosecution have the right to appeal the decision issued by the court in misdemeanor and felony cases, except in a misdemeanor case where the penalty is EGP300 (approximately US\$33) or less.<sup>110</sup> The appeal of a judgment issued by a court of first instance must be filed within thirty days.<sup>111</sup>

With regard to filing an appeal of court decisions issued in felony cases, the Code of Criminal Procedure provides that the request for review of judgment issued by the criminal court must be

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<sup>101</sup> *Id.* art. 220.

<sup>102</sup> *Id.* art. 247.

<sup>103</sup> *Id.* art. 268.

<sup>104</sup> *Id.* art. 269.

<sup>105</sup> *Id.* art. 270.

<sup>106</sup> *Id.* art. 303.

<sup>107</sup> *Id.* art. 310.

<sup>108</sup> *Id.* art. 312.

<sup>109</sup> *Id.* art. 302.

<sup>110</sup> *Id.* art. 402.

<sup>111</sup> *Id.* art. 410.

reviewed by the Court of Cassation. The Court of Cassation decides whether or not to accept the request after reviewing the statements submitted by both the public prosecution and the accused. If the Court of Cassation deems the request to be valid, the Court must repeal the judgment issued by the criminal court and order the retrial of the case in another criminal court.<sup>112</sup>

## VIII. Ideas for Improving Current Laws and the Justice System

The previous pages outline the scope of the problem of violence against women in Egyptian society and discuss the legal framework that governs these and other crimes. Despite the laws and procedures described above, prosecutions and convictions for crimes of sexual violence against women are rare in Egypt, according to recent reports issued by international human rights organizations, such as Amnesty International.<sup>113</sup> There are no official figures related to convictions of perpetrators of sexual violence crimes, but sources have described the reluctance of victims of such crimes to report them, due to the negative perceptions of sexual violence victims on the part of members of law enforcement and the prosecution.<sup>114</sup> Therefore, as a first step toward combatting the pervasive problem of sexual violence in Egypt, women's rights activists and organizations have put forward various measures to amend and strengthen existing laws and to make the criminal justice system more responsive to victims.<sup>115</sup> These ideas focus on three areas of the Egyptian legal system:

- Amending the Criminal Code to remove or change provisions that discriminate against women;
- Adding new provisions to the Criminal Code and Code of Criminal Procedure that focus on the victim's right to privacy and appropriate access to assistance provided by the ministries of justice, health, and interior; and
- Improving the criminal justice system in general through the training of officials, public awareness campaigns, and other measures.

### A. Modifications of the Criminal Code

Despite recent reforms of the Criminal Code, women's rights organizations claim that some Code provisions still discriminate against women. Women's rights groups, such as Nazra for Feminist Studies, have argued that those provisions to be repealed or modified.<sup>116</sup> For instance, the Criminal Code discriminates against women found guilty of committing adultery by

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<sup>112</sup> *Id.* art. 446.

<sup>113</sup> AMNESTY INTERNATIONAL, CIRCLES OF HELL, DOMESTIC, PUBLIC AND STATE VIOLENCE AGAINST WOMEN IN EGYPT (2015), [http://www.amnestyusa.org/sites/default/files/mde\\_120042015.pdf](http://www.amnestyusa.org/sites/default/files/mde_120042015.pdf), archived at <https://perma.cc/5JRJ-GXYQ>.

<sup>114</sup> *Id.* at 49.

<sup>115</sup> See, e.g., "Qanun Nashaz" A Campaign on the Legal Issues Associated with Violence against Women in Both Public and Private Spheres, NAZRA FOR FEMINIST STUDIES (Dec. 9 2014), <http://nazra.org/en/2014/12/%E2%80%9Cqanun-nashaz%E2%80%9D-campaign-legal-issues-associated-violence-against-women-both-public-and>, archived at <https://perma.cc/D9MM-6ZCP>.

<sup>116</sup> *Id.*

imposing a harsher penalty than that imposed on men for the same crime. Specifically, a husband is punishable by imprisonment for up to six months for committing adultery in the marital residence but is not punishable for committing adultery with an unmarried woman outside of the marital residence because such conduct is not legally considered to be adultery.<sup>117</sup> A wife who commits the same acts, however, is punishable by imprisonment for up to two years.<sup>118</sup>

Women's rights organizations have also raised concerns about the ability of judges in rape cases to reduce the sentence of the accused. Those organizations argue that the Criminal Code authorizes this, stating that, "[i]n felony counts, if the conditions of the crime for which public prosecution is initiated necessitate a grant of clemency by the judges, the penalty may be changed."<sup>119</sup> Consequently, if a man is convicted of raping a woman and faces life imprisonment, the judge has discretionary power to reduce the sentence to simple imprisonment without giving any justification.<sup>120</sup>

Another concern is that the Criminal Code draws a distinction between the penalty imposed on a husband who kills his wife upon catching her in the act of adultery with another man and a wife who kills her husband on catching him in similar act. If a husband catches his wife in the act of adultery and kills both her and the man she was with on the spot, he is punishable by imprisonment.<sup>121</sup> Criminal Code provisions and penalties regulating the crime of homicide do not apply in such cases. However, because article 237 does not provide a similar punishment for a wife who kills her husband and his adulteress partner in the same circumstances, she can be charged with the standard homicide offense, which is punishable with the death penalty. Activists have argued that article 237 should be abolished and the standard homicide provisions should apply on the husband as well.<sup>122</sup>

## **B. Suggested New Provisions**

Commentators and activists have identified provisions that they consider should be introduced into the Egyptian Criminal Code and Code of Criminal Procedure to address the above discrepancies and strengthen the rights of women who are victims of violent sexual crimes. Those provisions are included in a model law introduced by a group of women's rights organizations.<sup>123</sup>

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<sup>117</sup> CRIMINAL CODE art. 277; *see also* NAZRA FOR FEMINIST STUDIES, *supra* note 115, section 3(b) under "Laws that Discriminate against Women."

<sup>118</sup> CRIMINAL CODE art. 274.

<sup>119</sup> *Id.* art. 17.

<sup>120</sup> NAZRA FOR FEMINIST STUDIES, *supra* note 115, section 1 under "Laws that Discriminate against Women."

<sup>121</sup> CRIMINAL CODE art. 237; *see also* NAZRA FOR FEMINIST STUDIES, *supra* note 115, section 3(c) under "Laws that Discriminate against Women."

<sup>122</sup> NAZRA FOR FEMINIST STUDIES, *supra* note 115, section 3(c) under "Laws that Discriminate against Women."

<sup>123</sup> FIDH ET AL., *supra* note 6, at 80.

Some of the provisions included in the model law focus on the benefits offered to victims and raising awareness. For example, the model law provides that “[a] fund for the care and rehabilitation of victims of violence and their families shall be created.”<sup>124</sup> It also states that the Ministry of Social Affairs will be responsible for establishing the appropriate facilities to provide rehabilitation services to victims.<sup>125</sup> Furthermore, it prohibits investigators and law enforcement from releasing any information related to victims of the crime except by request issued by the competent investigating judge or court of appeal.<sup>126</sup> Concerning the issue of enhancing awareness of the problem, the model law requires the state to support civil society to establish a nongovernmental organization that aims to raise awareness of violent crimes against women.<sup>127</sup>

Women’s rights organizations have also emphasized the implementation of recommendations adopted by the United Nations to reduce the re-traumatization of victims and facilitate their court testimony.<sup>128</sup> Those organizations suggest that in order to prevent the victim’s identity from being revealed, the Code of Criminal Procedure could include new ways for the victim to testify before the judge during the criminal proceedings without requiring her to be present in the court room. For instance, a victim could be allowed to give her testimony against the perpetrator via video conference or in a private session before the judge.<sup>129</sup>

### C. Suggested Measures to Improve the Justice System

The following are measures that women’s rights groups have argued should be introduced into the Egyptian justice system to strengthen the rights of women who are victims of violent sexual crimes:

- Members of law enforcement, the public medical examiner’s office, and the prosecutor’s office who are involved in investigation and interrogation procedures pertaining to cases of violent crimes against women should receive appropriate training. Such training would aim to identify best practices and establish guidelines for handling such cases without violating the victim’s dignity and right to privacy.<sup>130</sup> The Ministry of Interior and Justice should assign more female prosecutors, police, and medical examiners to deal with female victims. The purpose of such an approach would be to overcome any embarrassment that victims might feel when they give their statements before male members of law enforcement, the prosecution, and the medical examiner’s office.<sup>131</sup>

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 81.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 82.

<sup>128</sup> *Id.* at 47.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 58.

<sup>131</sup> *Id.* at 41.

- The Ministry of Justice and Health should provide female victims of sexual and gender-based violence with appropriate access to legal aid and medical and psychological treatment.<sup>132</sup>
- Law changes to prohibit the offender from contacting the victim at her home or workplace.<sup>133</sup>
- The Council of Ministers should create a national strategy on combatting violent sexual crimes against women. This strategy would be updated annually and published along with a status report addressing the achievements of the Council in this area.<sup>134</sup>

## IX. Conclusion

Sexual violence has been an ongoing problem in Egypt. Despite recent amendments to the Criminal Code aimed at curbing the issues, commentators have identified further deficiencies in the laws and practices with respect to the right to privacy of victims of sexual violence as well as the assistance available to such victims.

Activists and women's rights organization as well as the National Women's Council have called on the three branches of government to establish an action plan to not only enhance sanctions in order to deter the perpetrators of these crimes, but also to provide adequate protections so that victims can come forward and testify against those perpetrators.

There are a range of legal issues and initiatives related to the protection of victims of sexual crimes that are being discussed as part of the ongoing debate, including the creation of a sex offender database; introducing the concept of restraining orders; and enhancing public awareness about offending and victims' rights.

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<sup>132</sup> *Id.* at 58.

<sup>133</sup> *Id.* at 86.

<sup>134</sup> *Id.* at 59.