

## INTERNATIONAL EXPERT CONSULTATION TO ADDRESS HARMFUL PRACTICES AGAINST CHILDREN

### With a specific focus on the interplay between children's right to protection from all forms of violence and customary and religious laws

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Egypt's case

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I would like to set the tone for my speech by highlighting that the main challenge for Egypt is that most development efforts occur against a cultural backdrop that claims to be based on religion and where religion is used to win people's emotions. This is especially true in the case of calls for early marriage as a protection against misdemeanour and FGM as a form of purification and protection of the girl from harmful sexual desires. It is in no way unusual to hear statements that it was all done out of love to protect the honor of the girl and that of her family. This mentality has been ingrained in the cultural fabric for decades. Fighting against harmful traditional practices requires collaboration and networking between many stakeholders. It has to start by providing the information that respond to the fears and social pressures. Using a rights based multi- dimensional strategy is a must. There needs to be political support at the highest levels. We must remember that the state bears a legal responsibility to protect the rights of children and matters cannot be thrown only on the shoulders of NGO's and the donor community. At the same time, it is not sufficient to adopt a law that prohibits certain practices. It is crucial that the law is known, and citizens buy into these laws. Consequently The process of legal reform or criminalization of such harmful practices is equally if not more crucial as the content of the laws criminalizing such practices. In my intervention I will deal with both and I will be using Egypt as a case study. I would like to talk about two aspects of its components; namely the process and the content. I will also touch on the follow up and assessment and the challenges that still lie ahead.

#### **First: The process of the legal reform:**

The process of legal reform has turned into a societal movement. It has created space for a diverse array of stakeholders. Our starting point was advocacy around children as subjects of rights. The process, which took around 8 years, started by providing access to information, education, awareness raising, interactive debate and bottom up community participation both at the national and local levels. Through a rights based approach, we focused on responding to the public's fears and inquiries in a holistic manner. Decision making at the national level was guided by the breakthrough at the grassroots level.

It was only logical to use a rights based comprehensive and multidisciplinary approach. We focused on a core set of rights. We began in 2001 by raising awareness of the rights of the girl: namely the Girls' Education Initiative, the elimination of both Female Genital Mutilation (FGM) and child marriage

The process involved the following efforts:

- 1- Creating public consensus against FGM and child marriage among all stakeholders.
- 2- Making the voices of grass roots heard. Loud negative voices little by little faded away replaced by more and more people who crept out of the woodwork and iterated “No To FGM or to Child marriage” in similar fashion to when Egyptians took to Tahrir square demanding change. In both these processes the media played a crucial role in mobilizing increasing communities, making them aware that they are not alone in their struggle.
- 3- Encouraging youth movements as agents of change. The FGM Free Village Model Program is symbolic of the radical change younger generations of both genders typify. Always willing to abandon harmful traditional practices. Here, we can make the analogy with what happened on the 25th January. The role played by males both young and old has been crucial. After all the objective of the practices is to make the girl marriageable.
- 4- Establishing a comprehensive media strategy that strengthens public debate on the crimes through all forms of media including TV, radio, drama and internet. Our efforts have paid off. The media succeeded in touching the emotional side of the issue from a human rights perspective.
- 5- The child helpline 16000, a complaint mechanism was established in 2005 followed by the marriage counseling help line in 2009 where thousands of calls are received requesting information and further counseling. Through the line assistance, counseling and rehabilitation were provided. The help line helped to close the gaps in the database. It also proved to be a tool for monitoring and guiding advocacy strategy. Messages received through the lines reflected the changing perceptions of such practices.
- 6- Promoting rights based liberal religious discourse that denounces such crimes and addresses the Rights of the Girl Child. Any contradiction with religious law systems were cleared beyond doubt. The fatwa of the Grand Mufti and the statement of the Coptic Church opened the door for religious leaders to tackle both FGM & Child marriage from a rights perspective; as the core finding of all holy religions.
- 7- Creating a Lobby of enlightened parliamentarians of both genders.
- 8- The role of the males either at the grass root level, young or old, as religious, parliamentarian or Media professional has been critical.

This participatory bottom up process set the stage for formulating and enforcing clear cut legislation that prohibits both FGM and child marriage.

In June 2008 The Egyptian Parliament passed law no. 126 which provided a new legal framework, amending three laws: the Child Law, Personal Status Law and the Penal Code. Over 100 new provisions, inter alia prohibiting and criminalizing FGM/C and child marriage. Two components of the first and most comprehensive rights based legal reform in Egypt's history.

## Second: Content of the legal reform to combat FGM:

The legal reform combating FGM was spread out over two laws.

### First: Umbrella provisions under the Child Law number 126/ 2008:

- 1- Article 1 provides that “the State ensures as a minimum, the rights provided for by the **Convention on the Rights of the Child CRC**; its optional protocol on Sale of Children; child prostitution and Pornography; and on involvement of children in Armed Conflict and other international treaties enforced in Egypt”.
- 2- Article 3 guarantees the rights enshrined in the four core values or Principles of the CRC; namely the right to Non Discrimination (Article 2), Best Interest of the Child (Article 3), Right to Life, Survival and Development within a family empowered to provide protection of the child from any form of violence or harmful practices (Article 6) and the Right of the child to be Heard (Article 12). Articles 1 & 3 alone are capable to bring about a paradigm shift in the status of exploited and abused children.
- 3- Article 7 *bis-a* “prohibits to deliberately expose the child to any physical abuse, illegal or **harmful practices**”.
- 4- Article 96 considers “the child falls at risk if the child’s safety, morals, health, or life was jeopardized.... The perpetrator shall be liable to punishment with imprisonment for a period not less than six (6) months, and a fine of not less than two thousand (2,000) Egyptian pounds, and not exceeding five thousand (5,000) Egyptian pounds, or by either of the two penalties.
- 5- Article 98-bis <sup>(1)</sup> states that anyone who comes to know that a child is jeopardized, should provide such child with whatever urgent assistance... , adequate to avoid this child from such danger or remove it”. The violation shall be reported to the protection committee or *the child help line or to the police to take action*.
- 6- Article 116-bis (2) “*The minimum penalty stipulated for any crime (under the child law)* shall be doubled, if the crime is committed by an adult against a child, or if it is committed by one of the parents, or by the child’s guardians, or by people in charge of supervising or upbringing the child, or by those who have authority over the child, or by a servant to any of the above mentioned.

### Second: FGM Specific Provision added to The Penal Code no. 58 of 1937

#### **Article 242-bis:**

Notwithstanding Article 61 of the Penal Code, and without prejudice to any stricter penalty prescribed by another law, anyone who caused the injury which is punishable by Articles 241, 242 of the Penal Code, through performing female genital mutilation, shall be liable to punishment with **imprisonment for not less than three (3) months and not**

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<sup>1</sup> Added by Law no. 126 of 2008

<sup>2</sup> Added by Law no. 126 of 2008

**exceeding two (2) years, or with a fine of not less than one thousand (1000) Egyptian pounds, and not exceeding five thousand (5000) Egyptian pounds.**

This article, coupled with Article 116 bis of the child law means that the minimum punishment for FGM is 2000 pounds and six months imprisonment.

### **Third: amending the Civil Status law, no. 143 of 1994**

#### **Combating Child Marriage:**

- We won the battle in Egyptian Parliament to raise the minimum age of marriage for girls to 18, equal to that of boys in what surprisingly turned out to be mission impossible. I must confess we didn't allocate adequate time for prior advocacy and networking at the grass roots level as we did in the case of FGM. The stumbling block was that religion did not define a minimum age for marriage, and it would be a violation of Sharia Law to set one. We garnished the support of enlightened male and female scholars who found religious texts to the effect that the ruler can make such decisions if it will benefit or remove harm. We could not however say that it is prohibited to marry under the age of 18. Rather the stipulation was to prohibit registration of the marriage for those under 18<sup>th</sup>. **The marriage contract shall not be registered for those who did not reach the age of eighteen (18) complete calendar years.** Anyone who registers a marriage in violation to the provisions of this Article shall be disciplinary punished.

The Law sent a message that child marriage is a crime punishable by law. We had moved strategically and took a calculated risk of presenting this as a form of violence and commercial sexual exploitation of the girl child. We started by targeting marriages of poor young girls to non- Egyptian older men. This instigated a cry of national pride that generated media momentum against child marriage. In 2009 alone 9,300 cases were reported, and perpetrators brought to justice. Media coverage deterred any further violations. In a matter of few months the number of violations dropped considerably.

#### **Third: Law enforcement:**

- Enforcing the law meant empowering the grassroots to report violations. The Child help line as a complaint mechanism played a crucial role in bringing violators to justice. The media encouraged reporting as well. Anti-FGM messages are being incorporated in educational curriculums. The prosecutor general played an instrumental role in enforcing the law on both child marriage and FGM. He issued circulars to prosecutors interpreting the law in a manner that closed any lope holes. Examples of court cases dealing with cases of harmful practices against girls and boys are worth considering here. The prosecution started to use reference to CRC. It started to use language such as the right of the child to protection (in cases of child marriage and child labour for the first time in Egyptian history. This constituted a paradigm shift to a scenario where parents were free to do what they like with their children. ( This can be the subject of a book)

We developed appropriate guidelines and provided training for religious leaders, social workers, doctors, justice providers, and members of the local child protection Committees. As the Ministry of Family and Population was established in March 2009, harmful practices against girls and boys were integrated in the Strategy document. This has complemented the various national strategies on violence against children. The newly established child protection system catered very much for

such issues. The hype was vigorously maintained and voices of defenders of the practice were nearly silenced. Reporting violations was very positive and led to prosecution of perpetrators. An entire program on VAC was allocated to capacity building of professionals working with and for children on the implementation of the law.

Impact assessment of the legal reform started from day one of its entry into force. Prosecution of perpetrators has been very active. Assessment showed that in most cases reports take place mostly when medical complications happen. The legal reform needs to be completed to stop parents' impunity. It also needs to be supported by consistent advocacy to create awareness about its provisions, enforcement and monitoring mechanisms. It needed to be complemented by educational reform; appropriate financial resources and coordinated efforts of entities working for and with children such as child local protection committees.

#### **Fourth: Indicators of success:**

1. FGM and child marriages were both shrinking.
2. Media Silence Broken
3. Rural village Communities saying "No To crimes of FGM and child marriage"
4. An Enlightened Religious Dialogue that addresses the Rights of the Girl Child.
5. A supportive Youth social Movement

Over 8 years the prevalence of FGM has fallen below 50%. In 2009 alone 9300 cases of child marriage were prevented and criminalized. In 2010 the number of violations dwindled drastically. This means that the perception of the practices has changed at a social level, and that there is awareness that they constitute a crimes rather than accepted social habits.

#### **Fifth: The popular uprising of 25th January 2011 and its impact:**

Ultra conservative forces are now in the driving seat. Activists working on banning FGM or child marriage are now keeping a very low profile, fighting FGM under different banners. Women's groups are struggling to maintain the gains achieved. The media is not paying any attention to such issues. Ultra conservative groups now monopolize public discourse. The Committee on the Rights of the Child concluding observations released in June 2011 went unnoticed.

For the first time in Egypt's history a presidential hopeful recently criticized the law criminalizing FGM on national television and said parents should be given the liberty to decide on what to do with their children. This candidate's campaign is sponsoring mobile clinics that tour Egypt's poor villages and carry out FGM free of charge. While FGM remains officially outlawed under Egyptian law, the current state of political confusion and quasi-anarchy allows the perpetrators to get away with these practices.

What is perhaps most shocking is that for the first time it is an Islamist female parliamentarian that is pushing for women's rights to be scrapped.

a- The right of women to divorce at no fault, known as the Khula Law adopted in 2001 along with the right to child custody. B- lower the age of marriage to 14 years, C- Decriminalize FGM.

Will the courageous men and women at the grass root level who resisted social pressure and said no to FGM and child marriage be able to face these new pressures? People also need to be more watchful of their new religious leadership- in this case the Islamic-dominated parliament even in their personal lives as they are now public figures. Recent cases of two ultra-Islamic MPs exposed their fallability and the fact that they are far from perfect themselves with one being caught getting plastic surgery done with large sums of cash and a belly dancer in his car and another currently under investigation for being caught in the act with an apparent prostitute in a friend's car on a highway. Are these the leaders that Egyptians fought and died for eighteen months ago? Is this the call for freedom and justice for law that shook Tahrir Square?