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### Virginity Tests and their Implications on Law and Development

On 9<sup>th</sup> March, Egyptian military officers in their operation to clear Tahrir Square, arrested at least 18 women and subjected them to virginity tests. Amnesty international, an international organization that primarily focuses on Human rights violations as described in the Universal Declaration of Human Rights and other human rights standards, issued a report condemning this inhumane act. The procedure, which will be discussed below, was described as a violation of human rights within international law. The incident was also condemned by all human rights and women's rights organizations in Egypt and was perceived as a serious setback on the road towards democracy and freedom in the new era that was initiated by the January 25<sup>th</sup> revolution. In this new era, Egyptians aspire to pursue a new developmental agenda, one which is grounded in freedom, equal citizenship and the respect of the rights of all citizens. The 8<sup>th</sup> March violations of women's rights cast a shadow on these aspirations and raised concerns about the way forward. These unlawful virginity tests have violated human rights laws on several levels, and have also highlighted the urgency of determining the directions of development that Egypt is undertaking. In this paper, I will attempt to examine the implications of these practices for the future of Egypt. I will first describe what happened in detail. I will then analyze the events with reference to specific international human rights principles and laws, such as the right to bodily privacy,

unlawful discrimination against women and the right to freedom of speech. Another question that I will try to answer throughout my paper is whether or not domestic law allows for such violations, and the extent to which cultural perceptions imbue the interpretation and implementation of law.

Women protestors were forced to take virginity tests after the breakup of a peaceful demonstration by military officers. Amnesty international was informed that women received electric shocks, were beaten, and exposed to strip searches while being photographed by male soldiers then subjected to virginity tests. They were threatened and told that if it turned out that any one of them was not a virgin she will be charged with practicing prostitution. After their arrest, women were taken to Cairo Museum where they were further beaten with hoses and sticks. They were handcuffed, received electric shocks in their legs and chest and were labeled “prostitutes”. They were then detained in prison and brought to the military court on the 11 March and then released on the 13<sup>th</sup> of March. Some of them received a one year suspended prison sentence. Amnesty International was also against the trial of civilians before military courts since they have a record of being unfair and restrict the right to appeal (“Egyptian Women Protestors”).

Salwa Hosseini, a twenty year old woman, told Amnesty International that she was taken to Heikstep to a military prison where she was asked to take off all her clothes with many other women protestors, and was searched by female guards in the prison. However, not only females could see her without clothes. The doors and windows were open, and soldiers were staring, looking and taking photos of her and other women while they were naked. Amnesty International received information that a woman who claimed to be a virgin but proved to be

otherwise was beaten and received electric shocks. Not only were women photographed naked but they were also threatened with the dissemination of their pictures to the public (“Egyptian Women Protestors”).

The forced virginity test is a violation of a woman’s right to bodily privacy and a threat to her honour and reputation. According to Article 12 of the UDHR: “No one shall be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.” Similarly, Article 17 of the ICCPR grants the individual the same right to privacy as defined by the UDHR. The virginity test is a painful procedure which entails an intervention by a medical practitioner. Any physical split of the hymen is considered to be a sign of a loss of virginity without taking into consideration its connection to sexual activity. Medical experts have confirmed that the hymen’s thickness, elasticity and easiness to break vary from one person to the other and therefore are not indicators of sexual intercourse. The relation between honor and reputation under the law and discrimination against women through controlling her virginity by family members, law enforcement officials and doctors tend to imply that the women’s bodily privacy is less important than maintaining honor within the family. The women protestors’ honour and reputation was further in danger because soldiers were taking pictures of them while they were naked and threatened to make them public in order to further humiliate and shame the women (“Egyptian Women Protestors”).

A similar case previously took place in Libya where the Human Rights Watch announced it to be a degrading treatment and a violation of a women’s right to privacy and physical integrity. It is important to note here, that Libya and Egypt are similar in that both states are

Muslim states who regard a women's loss of her virginity as unacceptable religiously and culturally. In Libya, Human Rights Watch was told by most women and girls it interviewed in social rehabilitation facilities that they were forced to take virginity tests. The virginity test is not only a factor requested by family members, but also by doctors and law enforcement officials in this example that would influence their perception of the woman being immoral if she had lost her virginity. Virginity test is a painful and inhumane process that Libyan authorities force on women and girls. The male doctors that carry the tests are unknown which raise further questions about questions of dignity and honour. Victims have attested that the process of undressing that is followed by a painful degrading examination is intimidating as a physical violation and threatening for its consequences. Human Rights Watch declared this act in a report to be a degrading treatment and a violation of women's privacy, dignity and physical integrity ("Libya: A Threat to Society").

The Libyan case is similar to the forced virginity tests on Egyptian women protestors. It tells a great deal about the cultural perceptions of women and the restrictions imposed on them if they do not want to ruin their reputation. This is a violation of Article 12 of the UDHR since this act is an attack on women's "honour and reputation". The Egyptian culture is similar to the Libyan culture in that in Egypt too, for a woman to have lost her virginity outside marriage means that she is immoral, and that she brings shame to herself and to her family members. The virginity issue is so culturally charged that a virginity test is often conducted, especially in rural areas in Egypt. On the wedding night the bride and groom are accompanied by family members. In order to prove that she is still a virgin, the bride allows a woman, usually a friend or a family member to insert her finger which is covered with a piece of cloth into her vagina to receive the blood that comes from the breakage of the hymen. The blood is referred to as the blood of

honour (Ragab). This is an example that further illustrates the importance of a woman in Egypt to keep her virginity until marriage and the implications of forced virginity tests on Egyptian women protestors' honour and reputation.

Forced virginity tests are degrading, painful and inhumane acts that try to insult and demean women in their society. This is also a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which Egypt is a party to. It is also against Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and political Rights which provide that no one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment ("Convention against Torture"). The assumption here is that women who leave their homes and join demonstrations and protest against current situations are prostitutes. Egyptian culture is dominated by patriarchal attitudes that attempt to affect the lives of women by continuously trying to limit their role in society. This brings us to the next point namely discrimination against women.

Article 2 of the Universal Declaration of Human Rights grants freedom from "discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Also, in 1979 the UN General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women. Discrimination against women is defined in the Convention as: "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." Egypt is a party to the Convention

and is therefore liable under international law not to carry out any discriminatory behavior against women. However, forced virginity tests are a form of discrimination against women in political and cultural life. On the political level, women were arrested in the first place because they were politically active, demonstrating peacefully on the streets. However, once they are arrested, they are not treated as political prisoners, i.e their perceived transgression is no longer political, but moral. On the cultural level, the parallels drawn between the Libyan and Egyptian culture above is worth mentioning again. The military officers and soldiers having lived in a patriarchic society and influenced by cultural perceptions that encourage women to stay at home, have automatically made the assumption that women protestors who left their homes to demonstrate are prostitutes and therefore need to be investigated in relation to virginity tests. Even though the Egyptian Constitution granted women equal status to men, yet there are many discriminatory laws in the Penal Code No 58 of 1937 Articles 274, 277, 273 and 274 regarding the definition and penalties for committing adultery for instance. If an unmarried man and woman are caught practicing sex, the woman will be charged with prostitution, while the man can usually be let off and can act as a witness to prove that she is a prostitute. This law reflects cultural bias against women as it discriminate against them for committing the same act as men. It actually goes against Islamic law which metes out the same punishment to both men and women who commit adultery, or practice sex outside marriage. Therefore, it could be argued that the military officers humiliating treatment of women reflects their cultural biases that are inscribed in some laws in the penal code. However, their actions have no credence or justification with reference to all laws that prohibit the use of violence, torture or defamation. The military officers knew that by labeling women protestors as prostitutes, they were deliberately causing them harm, both physically and psychologically. Their practices also

revealed that women are easier to control because they are the only party that can be subjected to such tests.

Now with the success of the 25<sup>th</sup> of January revolution, Egypt is choosing its developmental path. One of the Egyptian priorities is to re-write the Egyptian Constitution. Several feminist groups in Egypt are working towards proposing reforms to the Egyptian law that would grant women more rights. These attempts aim to guide Egypt into a developmental path that prohibits discrimination against women and guarantees them equal citizenship rights. However, the forced virginity tests on women protestors taking place on the 8<sup>th</sup> of March after the overthrow of the Mubarak's regime raises questions about the developmental path that Egypt is taking and whether cultural perceptions, discrimination against women and the role of religion could be challenged through law reform or not.

The virginity tests forced on women protestors also raise questions about freedom of speech. It was the right of every citizen according to the Egyptian Constitution prior to the January 25<sup>th</sup> revolution to express his/her opinion freely through speeches and writings as long as it is within the scope of the law. This idea is supported by Article 47 of the Constitution which states that "Freedom of opinion is guaranteed and everybody can express his opinion and publish it by speech, or in writing, or pictures, or by any other means of expression within the limits of the law. Self-criticism and constructive criticism are a guarantee for the safety of the national structure." Criticizing actions done publically especially by public officials is part of the idea behind democracy and thus granted to every citizen. The right to criticize a public official is governed by Article 302 of the Penal code (Boyle 34). Freedom of speech is also a human right under the Universal Declaration of Human Rights and is defined as follows under Article 19:



“Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Article 20(1) further states that: “Everyone has the right to freedom of peaceful assembly and association.” The fact that women were arrested in the first place because they were peacefully demonstrated is a violation of both domestic and international law.

In addition, women protestors were trialed in military courts that have a record of being unfair and restrict the right to appeal. Since 1981, Egypt has been under Emergency Law and the President was authorized by the Code of Military Justice to refer civilians for military trials. Under the Mubarak regime, the trials that were referred to military courts were high profile political cases. Since February 2011, however, the military under the Code of Military Justice has tried thousands of civilians before military courts. Article 5-6 of the Code, allows for such trials under certain conditions such as when the crime has taken place in an area controlled by the military or in an area where a military officer is present (“Egypt: Military Trials”). The Code of Military Justice should, however, be used for offenses that are of a military nature. This further violates international law since Article 10 of the UDHR stipulates that: “Everyone is entitled full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” Article 11 adds that everyone is entitled to all “the guarantees necessary for his defence.” Military tribunals conducted after the 25<sup>th</sup> of January revolution are not independent and impartial: they are definitely biased, especially that the

protests in which these women participated challenged their legitimacy and their credibility for providing fair trials.

To conclude, the virginity tests that were conducted by the military on the bodies of women protestors are blatant violations of human rights. Their cruel and humiliating nature are an infringement of both domestic and international laws. They were driven by cultural norms that value women's virginity and honour and were therefore deliberately used to defame women protestors and undermine their legitimate right to protest and resist oppression. These violations are not new but they pose a serious challenge to Egypt's future as it moves toward a model of development based on rights and democratic rule.

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